

File No. 240290

Committee Item No. 6

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date April 17, 2024

Board of Supervisors Meeting Date \_\_\_\_\_

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#### OTHER (Use back side if additional space is needed)

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Completed by: Brent Jalipa Date April 11, 2024

Completed by: Brent Jalipa Date \_\_\_\_\_

1 [License to Enter and Use - Honeybee Foods Corp. - Hallidie Plaza - \$1,200 Initial Monthly  
2 Base Fee]

3 **Resolution approving and authorizing the Director of Property to enter into a license to**  
4 **enter and use with Honeybee Foods Corp., a Delaware Corporation, dba Jollibee USA**  
5 **for approximately 414 square feet (underground) of Hallidie Plaza, effective upon**  
6 **approval of this Resolution, through December 8, 2034, at an initial rent of \$1,200 per**  
7 **month with 3% annual increases thereafter; and authorizing the Director of Property to**  
8 **enter into any additions, amendments, or other modifications to the License that do not**  
9 **materially increase the obligations or liabilities of the City to effectuate the purposes of**  
10 **this Resolution.**

11  
12 WHEREAS, The City and County of San Francisco owns Hallidie Plaza including  
13 Assessor's Parcel Block No. 0341, Lot Nos. 004 and 013, under the joint jurisdiction of the  
14 Recreation and Park Department, the Department of Public Works, and the Real Estate  
15 Division pursuant to the Park Code, Article 8C, Sections 8C.01 and 8C.02; and

16 WHEREAS, The Honeybee Foods Corp., dba Jollibee USA ("Honeybee") entered into  
17 a certain "Standard Net Retail Lease" for 934 Market Street, San Francisco, with Robert L.  
18 Coleman, Individually and as Co-Trustee of the Ralph Scott Coleman Trust, Wells Fargo  
19 Bank, Co-Trustee of the Ralph Scott Coleman Trust, Thomas A. Lucas, Trustee of the Robert  
20 Page Coleman Special Needs Trust, William Tell Coleman, and Lotus Coleman Patno, dated  
21 December 9, 2019 ("Lease"), for a term of 34 years or until December 8, 2034, to operate a  
22 Jollibee restaurant; and

23 WHEREAS, Honeybee desires to open its Jollibee restaurant but needs additional  
24 utilities, specifically electricity, to do so; and

25

1           WHEREAS, Honeybee desires to enter on and use certain real property owned by the  
2 City and County of San Francisco (“City”) located at Hallidie Plaza (“Plaza”), between  
3 Assessor’s Parcel Block No. 0341, Lot Nos. 004 and 013, which is not right of way, near its  
4 Jollibee restaurant located at 934 Market, San Francisco for installation and placement of a  
5 new utility line for its restaurant in the privately owned building; and

6           WHEREAS, The Director of Property negotiated a license to enter and use City’s  
7 property (“License”) for the underground space (414 square feet) (“License Area”) for a  
8 \$1,200 monthly license fee which he opines is not less than Market Rent (as defined in  
9 Administrative Code, Section 23.2); and

10           WHEREAS, The initial fee will increase annually by three percent during the term; and

11           WHEREAS, The proposed License provides for a just over 10-year term which runs  
12 with Jollibee’s 934 Market Lease term expiring on December 8, 2034, or any prior date  
13 Honeybee’s Lease terminates; and

14           WHEREAS, Honeybee shall be responsible for all costs associated with the License  
15 Area, associated utilities, and the placement, maintenance, connection, replacement, repairs,  
16 and removal of all equipment, fixtures, and City property within the License Area; and

17           WHEREAS, The License provides that Honeybee, and its agents/contractors shall only  
18 have exclusive use of the License Area during construction and installation; be allowed to use  
19 and occupy the underground area for utility installation, repair and maintenance; be required  
20 to minimize impacts to public use of the Plaza during and after construction; complete  
21 construction in a timely manner; and restore the Plaza to its original condition upon  
22 termination of construction; and

23           WHEREAS, A copy of the proposed License is on file with the Clerk of the Board in File  
24 No. 240290; now, therefore, be it

25

1           RESOLVED, That in accordance with the recommendation of the Director of the  
2 Department of Public Works, the General Manager of the Recreation and Park Department  
3 and the Director of Property after consultation with the City Attorney, the Board of Supervisors  
4 approves the License and authorizes the Director of Property and the City Attorney to take all  
5 actions necessary to enter into and perform the City’s obligations under the License; and, be it

6           FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of  
7 Property to enter into any amendments to the License (including without limitation, the  
8 exhibits) that the Director of Property determines, in consultation with the City Attorney, are in  
9 the best interest of the City, do not materially increase the obligations or liabilities of the City,  
10 do not materially decrease the benefits to the City, or are necessary or advisable to effectuate  
11 the purposes of this Resolution, and are in compliance with all applicable laws; and, be it

12           FURTHER RESOLVED, That within 30 days of the execution of the License, the  
13 Director of Property shall provide a copy to the Clerk of the Board for the Board’s file.

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RECOMMENDED:

/S/  
Andrico Penick  
Director of Property

RECOMMENDED:

/S/  
Phil Ginsburg  
General Manager  
San Francisco Recreation and Park Department

RECOMMENDED:

/S/  
Carla Short  
Director  
Department of Public Works

REVOCABLE LICENSE TO ENTER AND USE PROPERTY

by and between

CITY AND COUNTY OF SAN FRANCISCO

and

HONEYBEE FOODS CORPORATION, a Delaware Corporation.  
Licensee

to enter and use property located at  
Hallidie Plaza and Market Street, adjacent to 934 Market Street,  
San Francisco, California

February 8, 2024

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**CITY AND COUNTY OF SAN FRANCISCO**  
**REVOCABLE LICENSE**  
**TO ENTER AND USE PROPERTY**  
(A portion of Hallidie Plaza –Adjacent to 934 Market Street)

THIS REVOCABLE LICENSE TO ENTER AND USE PROPERTY (this “**License**”), dated for reference purposes only as of February 8, 2024, is made by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**City**”) and HONEYBEE FOODS CORPORATION, a Delaware Corporation (“**Licensee**”), pursuant to San Francisco Board of Supervisor’s Resolution No. \_\_\_\_\_, adopted by the Board on \_\_\_202\_\_\_, and approved by the Mayor, in accordance with San Francisco Charter Section 9.118.

City and Licensee agree as follows:

**1. LICENSE**

City grants to Licensee a revocable, personal, unassignable, non-exclusive, and non-possessory privilege to enter on and use that certain real property owned by City located at Hallidie Plaza, between Block 0341, Lots 004 and 013, near 934 Market in the City and County of San Francisco, as depicted on **Exhibit A** attached to this License (the “**License Area**”), for the limited purpose and subject to the terms, conditions and restrictions set forth below. This License gives Licensee a license only, revocable at any time at the will of City and nothing in this License constitutes a grant by City of any ownership, leasehold, easement, or other property interest or estate whatsoever in the License Area, or any portion of it. The privilege given to Licensee under this License is conditioned upon that certain “Standard Net Retail Lease” for 934 Market Street entered into by and among Licensee and Robert L. Coleman, Individually and as Co-Trustee of the Ralph Scott Coleman Trust, Wells Fargo Bank, Co-Trustee of the Ralph Scott Coleman Trust, Thomas A. Lucas, Trustee of the Robert Page Coleman Special Needs Trust, William Tell Coleman, and Lotus Coleman Patno (collectively, “**Landlords**”), dated December 9, 2019 (the “**Lease**”) remaining in full force and effect at all times during the term of this License, as may be extended, and is effective only to the extent of City’s rights in the License Area, and Licensee will obtain any further permission necessary because of any other existing rights affecting the License Area.

**2. USE OF LICENSE AREA**

**2.1 Scope of Permitted Use**

Licensee may enter and use the License Area for the sole purpose of excavating for construction, reconstruction, replacement, removal, maintenance, inspection, and use of associated equipment, at its sole cost and expense, for public utility purposes, including, but not limited to, electric, gas, and communication facilities, and also ingress thereto and egress therefrom and for no other purpose whatsoever. Solely for the purposes of access and use as granted under this License, the term “Licensee” shall include Licensee’s agents, contractors, and subcontractors.

### 3. INSTALLATION OF FACILITIES

Licensee may install certain improvements, as set forth in **Exhibit B**, consisting of utility (gas, electric) and communication piping and related equipment, and all alterations and improvements approved by the City under this License (the "**Improvements**") on the License Area only on satisfaction of the following conditions, which are for the sole benefit of City:

#### 3.1 Notice to City of Intended Work; Approval of Plans and Specifications

Prior to commencing any Major Work, as defined below, Licensee shall provide City with no fewer than sixty (60) days' prior written notice. Prior to commencing any Ordinary Maintenance and Repair, as defined below, that requires excavation in the License Area, Licensee will provide City with no fewer than fifteen (15) days' prior written notice. The term "**Major Work**" means work in the License Area that cannot be reasonably expected to be completed within three (3) consecutive days. The term "**Ordinary Maintenance and Repair**" means work in the License Area that can be reasonably expected to be completed within three (3) consecutive days. Licensee will install the Improvements in accordance with plans and specifications approved in advance and in writing by City and as approved by City's regulatory agencies. In undertaking work within the License Area, Licensee shall use reasonable efforts to (i) complete all construction, maintenance or repair activities in an expeditious and diligent manner; and (ii) minimize disruption to City's use of City's land adjoining the License Area.

#### 3.2 Permits and Approvals

Before beginning any work to install the Improvements ("**Improvement Work**"), Licensee must obtain all permits, licenses, and approvals of any regulatory agencies required to commence and complete the Improvements (collectively, "**Approvals**"). Promptly after receipt of the Approvals, Licensee will deliver copies of them to City. Licensee acknowledges that no approval by City under this License for purposes of the Improvements will be deemed to constitute the approval of any federal, state, or local regulatory authority with jurisdiction required for the Improvements, and nothing in this License will limit Licensee's obligation to obtain all Approvals, at Licensee's sole cost.

#### 3.3 Prevailing Wages and Working Conditions

(a) Any undefined, initially-capitalized term used in this Section has the meaning given to that term in San Francisco Administrative Code Section 23.61. Licensee will require its contractors and subcontractors performing (i) labor in connection with a "public work" as defined under California Labor Code Section 1720 *et seq.* (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction, at the License Area to (1) pay workers performing such work not less than the highest prevailing rate of wages, (2) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (3) employ apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, "**Prevailing Wage Requirements**"). Licensee will cooperate with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Prevailing Wage

Requirements. For current Prevailing Wage rates, see [www.sfgov.org/olse/prevailingwages](http://www.sfgov.org/olse/prevailingwages) or call the City's Office of Labor Standard Enforcement at 415-554-6235.

(b) Licensee will include and will require its contractors and subcontractors (regardless of tier) to include, the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract must name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third-party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any contractor or subcontractor in accordance with San Francisco Administrative Code Section 23.61. Licensee's failure to comply with its obligations under this Section will constitute a material breach of this License. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party.

(c) Licensee will also pay, and will require its contractors and subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities on the License Area as set forth in and to the extent required by San Francisco Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in Section 21C.3), a Show (as defined in Section 21C.4), a Special Event (as defined in Section 21C.8), Broadcast Services (as defined in Section 21C.9), Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in Section 21C.10), and Security Guard Services for Events (as defined in Section 21C.11).

### **3.4 Local Hire Requirements for Improvements**

Any undefined, initially-capitalized term used in this Section has the meaning given to it in San Francisco Administrative Code Section 23.62 (the "**Local Hiring Requirements**"). Improvements are subject to the Local Hiring Requirements unless the cost for such work is (i) estimated to be less than \$750,000 per building permit or (ii) meets any of the other exemptions in the Local Hiring Requirements. Licensee will comply with the Local Hiring Requirements to the extent applicable. Before starting any Improvement or Improvement Work, Licensee must contact City's Office of Economic Workforce and Development ("**OEWD**") to verify if the Local Hiring Requirements apply to the work (i.e., whether the work is a "**Covered Project**").

Licensee must include a requirement to comply with the Local Hiring Requirements in any contract for a Covered Project with specific reference to San Francisco Administrative Code Section 23.62. Each such contract must name the City and County of San Francisco as a third-party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Licensee will cooperate with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. Licensee's failure to comply with its obligations under this Section will constitute a material breach of this License. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party.

### **3.5 Installation of Above-Ground Markers**

Licensee will install above-ground markers identifying the location of any underground Improvements installed at the License Area. City must approve in writing before installation the location, type, and installation of markers and identifying information.

### **3.6 As-Built Drawings**

Promptly after completion of the installation of the Improvements, Licensee will furnish City with a complete copy of final as-built drawings for the Improvements.

### **3.7 Baseline**

Licensee must document the condition of the License Area before the commencement of any work through the use of photographs, maps, and any other appropriate documentation to provide a pre-work baseline to monitor impacts. Licensee will consult with City to determine the appropriate documentation. Licensee will provide City with a copy of that documentation before any work begins.

### **3.8 Exercise of Due Care**

Licensee will use, and will cause its Agents (as defined in Section 20 below) to use, due care at all times to avoid any damage or harm to City's property. Licensee will take such soil and resource conservation and protection measures with the License Area as City may request. City has the right to approve and supervise any excavation work. Licensee will do everything reasonably within its power, both independently and on request by City, to prevent and suppress fires on and adjacent to the License Area attributable to Licensee's actions or inactions.

### **3.9 Cooperation with City Personnel**

Licensee and its Agents will work closely with City personnel to avoid disruption (even if temporary) of City property in, under, on, or about the License Area and City uses of the License Area.

### **3.10 Work Schedule**

At least fourteen (14) days before commencing any work on the License Area, Licensee will notify the Director of Property, in writing as set forth in Section 42, (NOTICES) of the date such work will commence and the intended schedule. Licensee will complete all work within the time period set forth in any regulatory permits issued by City in its regulatory capacity, including any from City's Department of Public Works, Building Inspection, and Planning.

### **3.11 Restoration of License Area**

Immediately following completion of any work on the License Area, Licensee will, at its sole cost, remove all debris and any excess dirt and restore the License Area to its condition immediately before Licensee's use, to the satisfaction of City. Licensee will, at its sole cost, restore excavated areas as required by City's regulatory permitting process.

### **3.12 Responsibility for Maintenance of Facilities**

Licensee will be solely responsible for maintaining, at its sole cost, all facilities, improvements, equipment, and fixtures placed in or on the License Area in good and safe condition, and City will have no duty whatsoever for any maintenance of any of Licensee's facilities in the License Area.

### **3.13 Revocability**

Licensee acknowledges and hereby agrees that the installation of the Improvements or any facilities in the License Area, regardless of cost, will not in any way whatsoever limit City's right to revoke this License or limit any of City's other rights under this License or at law or in equity.

## **4. RESTRICTIONS ON USE**

Licensee acknowledges that the following uses of the License Area by Licensee or any other person claiming by or through Licensee are inconsistent with the limited purpose of this License and are strictly prohibited. The uses listed below are not exclusive and this Section does not limit the City's authority to specify additional restrictions on the use of the License Area, in City's sole discretion.

### **4.1 Improvements**

Except as otherwise expressly provided in this License, and **Exhibits A and B** hereto, Licensee may not construct or place any temporary or permanent structures or improvements on the License Area, and Licensee will not alter any existing structures or improvements on the License Area.

### **4.2 Dumping**

Licensee may not dump or dispose of refuse or other unsightly materials on, in, under, or about the License Area.

### **4.3 Hazardous Material**

Licensee will not cause, and Licensee will not allow any of its Agents or Invitees (as defined in Section 20 (Indemnity) below to cause, any Hazardous Material (as defined below) to be brought on, kept, used, stored, generated, or disposed of in, on, or about the License Area, or transported to or from the License Area. Licensee will immediately notify City when Licensee learns of or has reason to believe that a release of Hazardous Material has occurred in, on, or about the License Area. Licensee will comply with all laws requiring notice of releases or threatened releases to governmental agencies, and will take all action necessary to mitigate the release or minimize the spread of contamination. If Licensee or its Agents or Invitees cause a release of Hazardous Material, Licensee will, without cost to City and in accordance with all laws and regulations, restore the License Area to the condition immediately before the release. In connection with the release and restoration of the License Area, Licensee will give City a full opportunity to participate in any discussion with governmental agencies regarding any settlement

agreement, cleanup or abatement agreement, consent decree, or other compromise proceeding involving Hazardous Material. "**Hazardous Material**" means material that, because of its quantity, concentration, or physical or chemical characteristics, is at any time deemed by any federal, state, or local governmental authority to pose a present or potential hazard to public health, welfare, or the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., or under California Health & Safety Code Section 25316; a "hazardous waste" listed under California Health & Safety Code Section 25140; any asbestos and asbestos containing materials whether or not those materials are part of the License Area or are naturally occurring substances in the License Area, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "**release**" or "**threatened release**" when used with respect to Hazardous Material includes any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under, or about the License Area.

#### **4.4 Nuisances**

Licensee will not conduct any activities on or about the License Area that constitute waste, nuisance, or unreasonable annoyance (including, without limitation, emission of objectionable odors, noises, or lights) to City, to the owners or occupants of neighboring property or to the public.

#### **4.5 Damage**

Licensee will not do anything about the License Area that will cause damage to any of City's property.

### **5. RESERVED**

### **6. LICENSE FEES**

Licensee will pay to City a yearly non-refundable license fee of One Thousand Two Hundred and No / Dollars (\$1,200.00) (the "**License Fee**"). The initial license fee is payable upon commencement of this License and must be made in cash or by good check payable to the City and County of San Francisco and delivered to City's Director of Property at the primary address for notices to City specified below, or any other place that City may designate in writing. Thereafter, on the anniversary of the commencement date, the License Fee will be increased annually by three percent (3%) of the prior year's License Fee. Licensee will pay the annual License Fee to City in advance, without prior demand and without any deduction, setoff or counterclaim whatsoever, on or before the first day of the term of this License and on or before the first day of each following year. Licensee must pay all amounts payable under this License in cash or by good cashier's or certified check to the City and County of San Francisco and delivered to City's Director of Property at the primary address for notices to City specified below, or such other place as City may designate in writing.

Licensee acknowledges that its late payment to City of any annual fee or other sums due from Licensee under this License under will cause City to incur costs not contemplated by this



License, the exact amount of which will be extremely difficult to ascertain. Those costs include, but are not limited to, processing and accounting charges. Accordingly, if any License Fee or any other sum due from Licensee, is not received by City within fifteen (15) days after it is due, then Licensee must pay to City a late charge of One Hundred Fifty Dollars (\$150). The parties agree that the late charge represents a fair and reasonable estimate of the costs City will incur because of Licensee's late payment. City's acceptance of a late charge by City neither constitutes a waiver of Licensee's default regarding the overdue amount, nor prevents City from exercising any of the other rights and remedies.

## **7. TERM OF LICENSE; OPTIONS TO RENEW; REVOCABILITY**

The privilege given to Licensee under this License is temporary only and will commence upon approval by the Board of Supervisors and Mayor's signature on the Resolution related to this License estimated to be January 1, 2024, and will expire no later than 5:00 p.m. on December 8, 2034. However, if either (a) Licensee fails to comply with any of the terms or conditions of this License, or (b) the Lease is either terminated or expires prior to December 8, 2034, and Licensee does not cure the non-compliance within three (3) days after notice by City (or if Licensee fails to comply with a non-monetary obligation that cannot be cured within three (3) days, and Licensee does not commence the cure within three (3) days and diligently pursue the cure until it is timely completed), then City may, without limiting any of its other rights and remedies, revoke this License. If City revokes this License, then Licensee will immediately surrender the License Area in the condition required under this License. Further, City may revoke this License, with or without notice to Licensee, if City determines that there is an emergency requiring revocation of the License, in which case, Licensee will immediately surrender the License Area in the condition required under this License. Licensee hereby acknowledges and agrees that notwithstanding the activities permitted under Section 2. 1 (Scope of Permitted Use) above, the installation of improvements by Licensee within the License Area shall not in any way whatsoever limit City's right to revoke this License pursuant to its terms or any of City's other rights under this License.

Licensee has the option to extend this License on the same terms and conditions contained herein, for up to two (2) extensions periods of up to five (5) years each; provided, however, that as preconditions to Licensee's exercise of an extension, (1) Licensee shall have provided evidence to City that the underlying Lease, has also been extended such that the Lease will remain in full force and effect during the entire term of the extension(s), and (2) the Recreation and Parks Commission, Public Works Commission, San Francisco Board of Supervisors and Mayor shall have each approved the extension in their respective sole discretion.

If Licensee continues to operate in the License Area after the expiration of this License without the City's consent will be at a monthly permit license equal to TEN THOUSAND Dollars (\$10,000.00) per month, and will constitute a default by Licensee and entitle City to exercise any or all of its remedies as provided in this License and at law, even if City elects to accept one or more payments of the monthly license fee.



## 8. INSURANCE

(a) Licensee will procure and keep in effect at all times during the term of this License, at Licensee's expense, and cause its contractors and subcontractors to maintain at all times during any work or construction activities on the License Area insurance as follows:

(i) General Liability Insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Independent Licensees, Explosion, Collapse and Underground (XCU), Broad Form Property Damage, Sudden and Accidental Pollution, Products Liability and Completed Operations;

(ii) Automobile Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired automobiles, as applicable, and Sudden and Accidental Pollution; and

(iii) Workers' Compensation Insurance with Employer's Liability Coverage with limits of not less than One Million Dollars (\$1,000,000) each accident.

(b) All liability policies must provide for the following: (i) name as additional insureds the City and County of San Francisco, its officers, agents, and employees; and (ii) specify that the policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this License and that insurance applies separately to each insured against whom claim is made or suit is brought. The policies must also provide for severability of interests and that an act or omission of one of the named insureds that would void or otherwise reduce coverage will not reduce or void the coverage as to any insured, and will afford coverage for all claims based on acts, omissions, injury, or damage that occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period. Sudden and accidental pollution coverage in the liability policies required by this License will be limited to losses resulting from Licensee's activities (and Licensee's Agents and Invitees) under this License (excluding non-negligent aggravation of existing conditions with respect to Hazardous Materials).

(c) All insurance policies Licensee is required to maintain must be endorsed to provide for thirty (30) days' prior written notice of cancellation for any reason, non-renewal, or reduction in coverage to both Licensee and City. Notice to City will be mailed to the address(es) for City set forth in Section 40 below.

(d) Before the commencement date of this License, Licensee will deliver to City certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to City, evidencing the coverages required, together with complete copies of the policies at City's request. If Licensee fails to procure the required insurance, or to deliver the policies or certificates, then City may procure the required insurance for the account of Licensee, and Licensee will pay the cost of those policies will to City within five (5) days after delivery an invoice.

(e) If any of the required insurance is provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in the general annual aggregate limit, then the general aggregate limit must be double the occurrence or claims limits specified above.

(f) If any of the required insurance is provided under a claims made form, then Licensee will maintain that coverage continuously throughout the term of this License and, without lapse, for a period of three (3) years beyond the License expiration, to the effect that, if any occurrences during the License term give rise to claims made after expiration of the License, then those claims will be covered by the claims-made policies.

(g) On City's request, Licensee and City will periodically review the limits and types of insurance carried under this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Licensee for risks comparable to those associated with the License Area, then City in its sole discretion may require Licensee to increase the amounts or coverage carried by Licensee to conform to the general commercial practice.

(h) Licensee's compliance with the provisions of this Section will in no way relieve or decrease Licensee's indemnification obligations under this License or any of Licensee's other obligations under this License. Notwithstanding anything to the contrary in this License, this License will terminate immediately, without notice to Licensee, on the lapse of any required insurance coverage. Licensee will be responsible, at its expense, for separately insuring Licensee's personal property.

## **9. SECURITY FOR PERFORMANCE**

On or before the commencement date of this License, Licensee must deposit with City the sum of Twenty-Five Thousand Dollars (\$25,000 (the "**Security Deposit**") to secure Licensee's faithful performance of all terms and conditions of this License, including, without limitation, its obligation to surrender the License Area in the condition required by this License. The Security Deposit must be paid in cash. The amount of the Security Deposit does not limit Licensee's obligations under this License. City may (but is not required to) apply the Security Deposit in whole or in part to remedy any damage to the License Area caused by Licensee, its Agents or Invitees, or any failure of Licensee to perform any other terms, covenants, or conditions of this License (including, but not limited to, the payment of license fees or other sum due from Licensee either before or after a default), without waiving any of City's other rights and remedies under this License or at law or in equity. To the extent it is applicable to this License, Licensee waives the provisions of California Civil Code Section 1950.7 or any similar law, statute, or ordinance now or later in effect and Licensee expressly agrees that City may retain any portion of Security Deposit reasonably necessary to compensate City for any other foreseeable or unforeseeable loss or damage caused by the acts or omissions of Licensee, its Agents or Invitees.

If City uses any portion of the Security Deposit to cure any default by Licensee, Licensee will immediately replenish the Security Deposit to the original amount. If any license fee is increased under to any of the provisions of this License, Licensee will increase the amount of the

Security Deposit proportionately. City's obligations with respect to the Security Deposit are solely that of debtor and not trustee. City is not required to keep the Security Deposit separate from its general funds, and Licensee is not entitled to interest on the Security Deposit.

## **10. COMPLIANCE WITH LAWS**

Licensee will, at its expense, conduct and cause to be conducted all activities on the License Area in a safe and prudent manner and in compliance with all laws, regulations, codes, ordinances, and orders of any governmental or other regulatory entity (including, without limitation, the Americans with Disabilities Act and any other disability access laws), whether presently in effect or subsequently adopted and whether or not in the contemplation of the parties. Licensee will, at its sole expense, procure and maintain in force at all times during its use of the License Area any and all business and other licenses or approvals necessary to conduct the activities allowed under this License. Licensee understands and agrees that City is entering into this License in its capacity as a property owner with a proprietary interest in the License Area and not as a regulatory agency with police powers. Nothing in this License will limit in any way Licensee's obligation to obtain any required regulatory approvals from City departments, boards, or commissions or other governmental regulatory authorities or limit in any way City's exercise of its police powers.

## **11. COVENANT TO MAINTAIN LICENSE AREA**

In connection with its use of the License Area, Licensee will at all times, at its sole cost, maintain its improvements, equipment and fixtures in the License Area in a good, clean, safe, secure, sanitary, and slightly condition.

## **12. REMOVAL OF IMPROVEMENTS**

Without limiting any of City's other rights under this License or otherwise, Licensee will promptly, at City's request, alter or remove at no cost to City all improvements or other property installed or placed in, on, under, or about the License Area by or for Licensee, as may be necessary to avoid any actual or potential interference with any public utilities now or later installed in, on, under, or about the License Area, with the maintenance or repair the License Area or those utilities, or otherwise with any public trust uses or any other municipal operations or uses by City. In the event of an emergency City may, at its sole option and without notice, alter, remove, or protect, at Licensee's sole expense, any and all facilities, improvements, plantings, or other property installed or placed in, on, under, or about the License Area by Licensee.

## **13. SURRENDER**

On the expiration of this License or within ninety (90) days after any other termination of this License, Licensee will surrender the License Area in the same condition as received, and broom clean, free from hazards, and clear of all debris, and Licensee will remove all of its property from the License Area and any signs or any other improvements permitted under this License, and will repair, at no cost to City, any damage to the License Area caused by that removal. Licensee's obligations under this Section will survive any termination of this License.

#### **14. WAIVER OF CLAIMS; WAIVER OF CONSEQUENTIAL AND INCIDENTAL DAMAGES**

(a) Neither City nor any of its Agents, or their employees, will be liable for any damage to the property of Licensee, its Agents or Invitees, or their employees, or for any bodily injury or death to any persons, resulting or arising from the condition of the License Area or its use by Licensee.

(b) Licensee acknowledges that this License is freely revocable by City and in view of that fact, Licensee expressly assumes the risk of making any expenditures in connection with this License, even if the expenditures are substantial. Without limiting any indemnification obligations of Licensee or other waivers contained in this License and as a material part of the consideration for this License, Licensee fully RELEASES, WAIVES, AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its Agents, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under the law of eminent domain, or otherwise at equity, if City exercises its right to revoke or terminate this License.

(c) Licensee acknowledges that it will not be a displaced person at the time this License is terminated or revoked or expires by its own terms, and Licensee fully RELEASES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its Agents, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws.

Licensee expressly acknowledges and agrees that the fees payable under this License do not take into account any potential liability of City for any consequential, special, or incidental damages including, but not limited to, lost profits, arising out of disruption to the facilities or Licensee's uses under this License. City would not be willing to give this License in the absence of a complete waiver of liability for consequential, special, and incidental damages due to the acts or omissions of City or its Agents, and Licensee expressly assumes all risk with respect thereto. Accordingly, without limiting any indemnification obligations of Licensee or other waivers contained in this License and as a material part of the consideration for this License, Licensee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action for consequential, special, and incidental damages (including without limitation, lost profits), and covenants not to sue for such damages, City, its Agents, and all persons acting by, through or under each of them, arising out of this License or the uses authorized under this License, including, without limitation, any interference with uses conducted by Licensee under this License, regardless of the cause, and whether or not due to the negligence or gross negligence of City or its Agents.

(d) In connection with the foregoing releases, Licensee acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at**

**the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

Licensee acknowledges that the releases contained in this License includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Licensee acknowledges that it has agreed to this License with full knowledge of this waiver and the effect of this waiver, and, being fully aware of the consequences, Licensee intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained in this License will survive any termination of this License.

## **15. REPAIR OF DAMAGE**

If any portion of the License Area or any property of City located on or about the License Area is damaged by Licensee, its Agents or Invitees or as a result of any activities conducted by Licensee, its Agents or Invitees, Licensee will immediately, at no cost to City repair any and all the damage and restore the License Area or property to its previous condition.

## **16. SIGNS**

Licensee will not place, erect, or maintain any sign, advertisement, banner, or similar object on or about the License Area except for any temporary sign that is necessary for Licensee's use so long as Licensee first obtains City's written consent, which City may give or withhold in its sole discretion.

## **17. UTILITIES**

City has no responsibility or liability of any kind for any utilities that may be on, in, or under the License Area. Licensee has the sole responsibility to locate all utilities and protect them from damage. Licensee will arrange and pay for any necessary temporary relocation of City and public utility company facilities, subject to the prior written approval by City and any utility companies for any relocation. Licensee will be solely responsible for arranging and paying directly for any utilities or services necessary for its activities; provided, however, that under San Francisco Administrative Code Section 99.3, Licensee will only receive electricity at the License Area from the San Francisco Public Utilities Commission ("SFPUC") unless SFPUC determines that the service is not feasible.

## **18. CITY'S RIGHT TO CURE LICENSEE DEFAULTS**

If Licensee fails to perform any of its obligations under this License, to restore the License Area or repair damage, or if Licensee defaults in the performance of any of its other obligations under this License, then City may, at its sole option, remedy the failure for Licensee's account and at Licensee's expense by providing Licensee with three (3) days' prior written or oral notice of City's intention to cure the default (except that no prior notice will be required in an emergency as determined by City). No actions taken by City will be construed as a waiver of any rights or remedies of City under this License or otherwise, and nothing in this License will imply any duty of City to do any act that Licensee is obligated to perform. Licensee will pay to City on demand, all costs, damages, expenses, or liabilities incurred by City, including, without

limitation, reasonable attorneys' fees, in remedying or attempting to remedy the default. Licensee's obligations under this Section will survive the termination of this License.

## **19. NO COSTS TO CITY**

Licensee will bear all costs or expenses of any kind or nature in connection with its use of the License Area, and will keep the License Area free and clear of any liens or claims of lien arising out of or in any way connected with its use of the License Area.

## **20. INDEMNITY**

Licensee will indemnify, defend, and hold harmless City, its commissions, departments, boards, officers, agents, employees, contractors or subcontractors (collectively, “**Agents**”), and each of them, from and against all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages, and liabilities of any kind (collectively, “**Losses**”), arising in any manner out of **(a)** any injury to or death of any person or damage to or destruction of any property occurring in, on, or about the License Area, or any part of it, whether the person or property of Licensee, its Agents, its invitees, guests, or business visitors (collectively, “**Invitees**”), or third persons, relating in any manner to any use or activity by Licensee; **(b)** any failure by Licensee to faithfully observe or perform any of the terms, covenants, or conditions of this License; **(c)** the use of the License Area or any activities conducted by Licensee, its Agents, or Invitees; or **(d)** any release or discharge, or threatened release or discharge, of any Hazardous Material caused or allowed by Licensee, its Agents, or Invitees, on, in, under, or about the License Area, any improvements on the License Area, or into the environment; except solely to the extent of Losses resulting directly and solely from the willful misconduct of City or City's authorized representatives. The foregoing indemnity includes, without limitation, reasonable attorneys' and consultants' fees, investigation and remediation costs, and all other reasonable costs and expenses incurred by the indemnified parties, including, without limitation, damages for decrease in the value of the License Area and claims for damages or decreases in the value of adjoining property. Licensee specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim that actually or potentially falls within this indemnity provision even if the allegation is or may be groundless, fraudulent, or false, which obligation arises at the time the claim is tendered to Licensee by City and continues at all times thereafter. Licensee's obligations under this Section will survive the expiration or other termination of this License.

## **21. “AS IS” CONDITION OF LICENSE AREA; DISABILITY ACCESS; DISCLAIMER OF REPRESENTATIONS**

Licensee accepts the License Area in its “AS IS” condition, without representation or warranty of any kind by City, its officers, agents, or employees, including, without limitation, the suitability, safety, or duration of availability of the License Area or any facilities on the License Area for Licensee's use. Without limiting the foregoing, this License is made subject to all applicable laws, rules, and ordinances governing the use of the License Area, and to any and all covenants, conditions, restrictions, easements, encumbrances, claims of title, and other title matters affecting the License Area, whether foreseen or unforeseen, and whether those matters are of record or would be disclosed by an accurate inspection or survey. It is Licensee's sole

obligation to conduct an independent investigation of the License Area and all matters relating to its use of the License Area, including, without limitation, the suitability of the License Area for its uses. Licensee, at its own expense, will obtain all permissions or other approvals from any third parties with existing rights as may be necessary for Licensee to make use of the License Area in the manner contemplated under this License.

Under California Civil Code Section 1938, to the extent applicable to this License, Licensee is advised that the License Area has not undergone inspection by a Certified Access Specialist (“CASp”) to determine whether it meets all applicable construction-related accessibility requirements. A CASp can inspect the License Area and determine if it complies with all the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the License Area, City may not prohibit Licensee from obtaining a CASp inspection of the License Area for the occupancy or potential occupancy of Licensee if requested by Licensee. City and Licensee will mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the CASp inspection fee, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the License Area.

## **22. NO ASSIGNMENT**

This License is personal to Licensee and may not be assigned, conveyed, or otherwise transferred by Licensee under any circumstances. Any attempt to assign, convey, or otherwise transfer this License will be null and void and cause the immediate termination of this License.

## **23. CESSATION OF USE**

Licensee will not terminate its activities on the License Area without prior written notice to City.

## **24. NO JOINT VENTURES OR PARTNERSHIP; NO AUTHORIZATION**

This License does not create a partnership or joint venture between City and Licensee as to any activity conducted by Licensee on, in or relating to the License Area. Licensee is not a State actor with respect to any activity conducted by Licensee on, in, or under the License Area. The giving of this License by City does not constitute authorization or approval by City of any activity conducted by Licensee on, in, or relating to the License Area.

## **25. MACBRIDE PRINCIPLES - NORTHERN IRELAND**

The provisions of San Francisco Administrative Code Section 12F are incorporated into this License by this reference and made part of this License. By signing this License, Licensee confirms that Licensee has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.



## **26. NON-DISCRIMINATION**

### **26.1 Covenant Not to Discriminate**

In the performance of this License, Licensee will not to discriminate against any employee of, any City employee working with Licensee, or applicant for employment with Licensee, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of those protected classes, or in retaliation for opposition to discrimination against those classes.

### **26.2 Subcontracts**

Licensee will include in all subcontracts relating to the License Area a non-discrimination clause applicable to the subcontractor in substantially the form of Subsection 26.1 above. In addition, Licensee will incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and will require all subcontractors to comply with those provisions. Licensee's failure to comply with the obligations in this Subsection will constitute a material breach of this License.

### **26.3 Non-Discrimination in Benefits**

Licensee does not as of the date of this License and will not during the term of this License, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits, or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of the employees, where the domestic partnership has been registered with a governmental entity under state or local law authorizing the registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

### **26.4 Condition to License**

As a condition to this License, Licensee will execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division (the "CMD"). Licensee represents that prior to execution of this License, (i) Licensee executed and submitted to the CMD Form CMD-12B-101 with supporting documentation, and (ii) the CMD approved the form.



## **26.5 Incorporation of Administrative Code Provisions by Reference**

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the use of City property are incorporated in this Section by reference and made a part of this License as though fully set forth. Licensee will comply fully with and be bound by all of the provisions that apply to this License under those Chapters of the Administrative Code, including but not limited to, the remedies provided in those Chapters. Without limiting the foregoing, Licensee understands that under Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50) for each person for each calendar day during which that person was discriminated against in violation of the provisions of this License may be assessed against Licensee and/or deducted from any payments due Licensee.

## **27. TROPICAL HARDWOODS AND VIRGIN REDWOOD BAN**

The City and County of San Francisco urges companies not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product, except as expressly permitted by the application of San Francisco Environment Code sections 802(b) and 803(b). Licensee will not, except as permitted by the application of sections 802(b) and 803(b), use or incorporate any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product in the performance of this License.

## **28. NOTIFICATION OF PROHIBITION ON CONTRIBUTIONS**

Through its execution of this License, Licensee acknowledges its obligations under Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever the transaction would require the approval by a City elected officer, the board on which that City elected officer serves, or a board on which an appointee of that elected officer serves, from making any campaign contribution to (1) the City elected officer if the contract must be approved by that official, (2) a candidate for the City elective office, or (3) a committee controlled by the elected officer or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for the contract or twelve (12) months after the date the contract is approved. Licensee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same elected officer or board in a fiscal year have a total anticipated or actual value of \$100,000 or more. Licensee further acknowledges that (i) the prohibition on contributions applies to each Licensee; each member of Licensee's board of directors, and Licensee's chief executive officer, chief financial officer, and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Licensee; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Licensee and (ii) within thirty (30) days of the submission of a proposal for the License, the City department with whom Licensee is contracting is obligated to submit to the Ethics Commission the parties to the License and any sublicensee. Additionally, Licensee certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for

the lease, and has provided the names of the persons required to be informed to the City department with whom it is leasing.

## **29. POSSESSORY INTEREST TAXES**

Licensee recognizes and understands that this License may create a possessory interest subject to property taxation and that Licensee may be subject to the payment of property taxes levied on that interest under applicable law. Licensee agrees to pay taxes of any kind, including possessory interest taxes, if any, that may be lawfully assessed on Licensee's interest under this License or use of the License Area and to pay any other taxes, excises, licenses, license charges, or assessments based on Licensee's usage of the License Area that may be imposed on Licensee by applicable law. Licensee will pay all of charges when they become due and payable and before delinquency.

San Francisco Administrative Code Sections 23.38 and 23.39 require that certain information relating to the creation, renewal, extension, assignment, sublicense, or other transfer of this License be provided to the County Assessor within sixty (60) days after the transaction. Accordingly, Licensee must provide a copy of this License to the County Assessor not later than sixty (60) days after the commencement date of this License, and any failure of Licensee to timely provide a copy of this License to the County Assessor will be a default under this License. Licensee will also timely provide any information that City may request to ensure compliance with this or any other reporting requirement.

## **30. RESTRICTION ON THE USE OF PESTICIDES**

Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or “**IPM Ordinance**”) describes an integrated pest management (“**IPM**”) policy to be implemented by all City departments. Licensee will not use or apply or allow the use or application of any pesticides on the License Area or contract with any party to provide pest abatement or control services to the License Area without first receiving City’s written approval of an IPM plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Licensee may need to apply to the License Area during the term of this License, (ii) describes the steps Licensee will take to meet the City’s IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address, and telephone number, an individual to act as the Licensee’s primary IPM contact person with the City. Licensee will comply, and will require all of Licensee’s contractors to comply, with the IPM plan approved by the City and will comply with the requirements of sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Licensee were a City department. Among other matters, those provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City’s Department of the Environment), (c) impose certain notice requirements, and (d) require Licensee to keep certain records and to report to City all pesticide use at the License Area by Licensee’s staff or contractors.

If Licensee or Licensee's contractor will apply pesticides to outdoor areas at the License Area, Licensee must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation ("CDPR") and any pesticide application must be made only by or under the supervision of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator license. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>.

### **31. PROHIBITION OF TOBACCO SALES AND ADVERTISING**

Licensee acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the License Area. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. In addition, Licensee acknowledges and agrees that no Sales, Manufacture, or Distribution of Tobacco Products (as such capitalized terms are defined in Health Code Section 19K.1) is allowed on the License Area and such prohibition must be included in all subleases or other agreements allowing use of the License Area. The prohibition against Sales, Manufacture, or Distribution of Tobacco Products does not apply to persons who are affiliated with an accredited academic institution where the Sale, Manufacture, and/or Distribution of Tobacco Products is conducted as part of academic research.

### **32. PROHIBITION OF ALCOHOLIC BEVERAGE ADVERTISING**

Licensee acknowledges and agrees that no advertising of alcoholic beverages is allowed on the License Area. This advertising prohibition includes the placement of the name of a company producing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product.

### **33. DRUG-FREE WORKPLACE**

Licensee acknowledges that under the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession, or use of a controlled substance under federal law is prohibited on City premises. Licensee agrees that any violation of this prohibition by Licensee, its Agents, or Invitees will be a material breach of this License.

### **34. CONFLICTS OF INTEREST**

Through its execution of this License, Licensee acknowledges that it is familiar with the provisions of Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and sections 87100 et seq. and sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of those provisions, and agrees that if Licensee becomes aware of any such fact during the term of this License, Licensee will immediately notify the City.

### **35. FOOD SERVICE AND PACKAGING WASTE REDUCTION**

Licensee will comply fully with and be bound by all of the provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided in that chapter, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated into this License by reference and made a part of this License as though fully set forth. This provision is a material term of this License. Licensee acknowledges that Chapter 16 includes monetary penalties for violations of One Hundred Dollars (\$100.00) for the first breach, Two Hundred Dollars (\$200.00) for the second breach in the same year, and Five Hundred Dollars (\$500.00) for subsequent breaches in the same year. Any assessment of those penalties will not limit City's rights under this License or otherwise for a breach of this Section, and are in addition to City's rights and remedies under this License and at law or in equity.

### **36. FIRST SOURCE HIRING AGREEMENT**

Licensee and City are parties to the First Source Agreement attached to this License as Exhibit C under San Francisco Administrative Code, Chapter 83 (the "**First Source Agreement**"). Any default by Licensee under the First Source Agreement will be a default under this License.

### **37. SAN FRANCISCO PACKAGED WATER ORDINANCE**

Licensee will comply with San Francisco Environment Code Chapter 24 ("**Chapter 24**"). Licensee may not sell, provide, or otherwise distribute Packaged Water, as defined in Chapter 24 (including bottled water), in the performance of this License or on City property unless Licensee obtains a waiver from the City's Department of the Environment. If Licensee violates this requirement, the City may exercise all remedies in this License and the Director of the City's Department of the Environment may impose administrative fines as set forth in Chapter 24.

### **38. RESERVED.**

### **39. CRIMINAL HISTORY INQUIRIES FOR EMPLOYMENT**

(a) Unless exempt, Licensee agrees to comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions; "**Chapter 12 T**"), which are hereby incorporated as may be amended from time to time, with respect to applicants and employees of Licensee who would be or are performing work at the License Area.

(b) Licensee will incorporate by reference the provisions of Chapter 12T in all sublicenses of some or all of the License Area, and will require all sublicensees to comply with the provisions. Licensee's failure to comply with the obligations in this subsection will constitute a material breach of this License.

(c) Licensee and sublicensees may not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is

undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(d) Licensee and sublicensees may not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (c) above. Licensee and sublicensees may not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) Licensee and sublicensees will state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Licensee or sublicensees at the License Area, that the Licensee and sublicensees will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Licensee and sublicensees will post the notice prepared by the Office of Labor Standards Enforcement (“**OLSE**”), available on OLSE’s website, in a conspicuous place at the License Area and at other workplaces within San Francisco where interviews for job opportunities at the License Area occur. The notice must be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the License Area or other workplace at which it is posted.

(g) Licensee and sublicensees understand and agree that on any failure to comply with the requirements of Chapter 12T, the City will have the right to pursue any rights or remedies available under Chapter 12T or this License, including, but not limited to, a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this License.

(h) If Licensee has any questions about the applicability of Chapter 12T, it may contact the City’s Real Estate Division for additional information. City’s Real Estate Division may consult with the Director of the City’s Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

#### **40. LICENSEE’S COMPLIANCE WITH CITY BUSINESS AND TAX AND REGULATIONS CODE**

Licensee acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment City is required to make to Licensee under this License is withheld, then City will not be in breach or default under this License, and the Treasurer and Tax Collector will authorize release

of any payments withheld under this paragraph to Licensee, without interest, late fees, penalties, or other charges, upon Licensee coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

**41. CONSIDERATION OF SALARY HISTORY**

Licensee must comply with San Francisco Administrative Code Chapter 12K. For each employment application to Licensee for work of eight (8) or more hours per week at the License Area, Licensee must not consider the applicant's current or past salary (a "Salary History") in deciding whether to hire the applicant or what salary to offer the applicant unless the applicant voluntarily discloses that Salary History without prompting. In addition, Licensee must not (1) ask those applicants about their Salary History, (2) refuse to hire, or otherwise disfavor, injure, or retaliate against applicants that do not disclose their Salary History, or (3) disclose a current or former employee's Salary History without that employee's authorization unless it is required by law, publicly available, or subject to a collective bargaining agreement.

**42. NOTICES**

Except as otherwise expressly provided in this License, any notices given under this License will be effective only if in writing and given by delivering the notice in person, by sending it first class mail or certified mail, with a return receipt requested, or overnight courier, return receipt requested, with postage prepaid, addressed as follows:

City: Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
Attn: Director of Property  
Re: Jollibie License

Licensee: Chelle Puig  
934 Market Street  
San Francisco, CA 94102  
RE: Jollibee License

Notices under this License will be deemed given two (2) days after the date when it has been mailed if sent by first class, certified or overnight courier, or on the date personal delivery is made. For convenience of the parties, copies of notices may be sent by email, but no notice sent only by email will be deemed given and will not be binding on the parties.

**43. SEVERABILITY**

If any provision of this License or the application of a provision of this License to any person, entity, or circumstance is invalid or unenforceable, the remainder of this License, or the application of the provision to persons, entities, or circumstances other than those as to which it is invalid or unenforceable, will not be affected, and each other provision of this License will be valid and be enforceable to the fullest extent permitted by law, except to the extent that

enforcement of this License without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this License.

#### **44. COUNTERPARTS**

This License may be executed in two or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument.

#### **45. COOPERATIVE DRAFTING**

This License has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the License reviewed and revised by legal counsel. No party will be considered the drafter of this License, and no presumption or rule that an ambiguity will be construed against the party drafting the clause will apply to the interpretation or enforcement of this License.

#### **46. GENERALLY APPLICABLE PROVISIONS**

**(a)** This License may be amended or modified only by a writing signed by City and Licensee. **(b)** No waiver by any party of any of the provisions of this License will be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in the written waiver. **(c)** All approvals and determinations of City requested, required, or permitted under this License may be made in the sole and absolute discretion of the Director of Property or other authorized City official. **(d)** This instrument (including the exhibit(s) attached to this License) contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged into this License. **(e)** The section and other headings of this License are for convenience of reference only and will be disregarded in the interpretation of this License. **(f)** Time is of the essence. **(g)** This License will be governed by California law and the City's Charter. Any legal suit, action, or proceeding arising out of or relating to this License shall be instituted in the Superior Court for the City and County of San Francisco, and each party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this License has been brought in an inconvenient forum. The Parties also unconditionally and irrevocably waive any right to remove any such suit, action, or proceeding to Federal Court. **(h)** If Licensee consists of more than one person then the obligations of each person will be joint and several. **(i)** Licensee may not record this License or any memorandum hereof. **(j)** Subject to the prohibition against assignments or other transfers by Licensee under this License, this License will be binding on and inure to the benefit of the parties and their respective heirs, representatives, successors, and assigns. **(k)** If City sells or otherwise conveys the property where the License Area is located, then this License will automatically be revoked. **(l)** All exhibits attached to this License are incorporated by reference.

***[SIGNATURES ON FOLLOWING PAGE]***



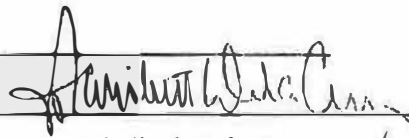
Licensee represents and warrants to City that it has read and understands the contents of this License and will comply with and be bound by all of its provisions.

LICENSEE:

HONEYBEE FOODS CORP., DBA JOLLIBIE  
USA

a

By: \_\_\_\_\_



Print Name: Maribeth Dela Cruz  
Its: President

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_

Andrico Q. Penick  
Director of Property

APPROVED AS TO FORM:

DAVID CHIU, City Attorney

RECOMMENDED:

Recreation and Parks Department:

By: \_\_\_\_\_

Vincent Brown  
Deputy City Attorney

By: \_\_\_\_\_

Philip A. Ginsburg  
General Manager

Department of Public Works:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_





Licensee represents and warrants to City that it has read and understands the contents of this License and will comply with and be bound by all of its provisions.

LICENSEE:

HONEYBEE FOODS CORP., DBA JOLLIBIE  
USA

a \_\_\_\_\_

By: \_\_\_\_\_

Print Name: Maribeth Dela Cruz

Its: President

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_

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APPROVED AS TO FORM:

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By: \_\_\_\_\_

Vincent Brown  
Deputy City Attorney

RECOMMENDED:

Recreation and Parks Department:

By: \_\_\_\_\_

Philip A. Ginsburg  
General Manager

Department of Public Works:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**

**License Area**

**LEGAL DESCRIPTION  
FOR  
UTILITY LICENSE AREA  
CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA**

**ALL THAT CERTAIN REAL PROPERTY** situate in the City and County of San Francisco, State of California, being a portion of 50 Vara Block No. 172, as shown on San Francisco Assessor's Block Book 0341 Lot 013, **SAID REAL PROPERTY** being more particularly described as follows:

**BEGINNING** at the most southwesterly corner of the abovementioned Lot 013, said corner being common to the most southeasterly corner of the land described in that certain Quitclaim Deed to Thomas A. Lucas, trustee of the Robert Page Coleman 2009 Special Needs Trust, recorded as Document No. 2009-I892568-00, Official Records of the City and County of San Francisco;

Thence from said **POINT OF BEGINNING** along the westerly line of said Lot 013, said line being common with the easterly line of the abovementioned Quitclaim Deed (2009-I892568-00), **North 07° 56' 37" West, a distance of 45.00 feet**; Thence leaving said common line and traversing through Lot 013, the following two (2) courses:

1. **North 82°03'23" East, a distance of 10.00 feet** to a line parallel with and distant 10.00 feet easterly, measured at right angles from said westerly line;
2. Along said parallel line, **South 07°56'37" East, a distance of 37.82 feet** to the northwesterly line of Market Street, said northwesterly line being in common with the southeasterly line of Said Lot 013;

Thence along the said common line, **South 46°23'46" West, a distance of 12.31 feet** to the **POINT OF BEGINNING**.

Containing 414 square feet, more or less.

**END OF DESCRIPTION**

For the purpose of making this description, the northwesterly line of Market Street is being taken as a bearing of **South 46° 23' 46" West** and is an assumed basis of bearing.

Being a portion of APN: 0341-013 (Lands of City and County of San Francisco).

A plat to accompany legal description, Exhibit "B", is attached hereto and made a part hereof.

The dimensions stated in this description and accompanying Plat (Exhibit "B") are measured in ground distances.

This description was prepared by me or under my direction in October of 2023 pursuant to Sections 8725, 8726(c), and 8726(g) of the Professional Land Surveyors Act of the State of California (Business and Professions Code Sections 8700-8805).



11/10/2023

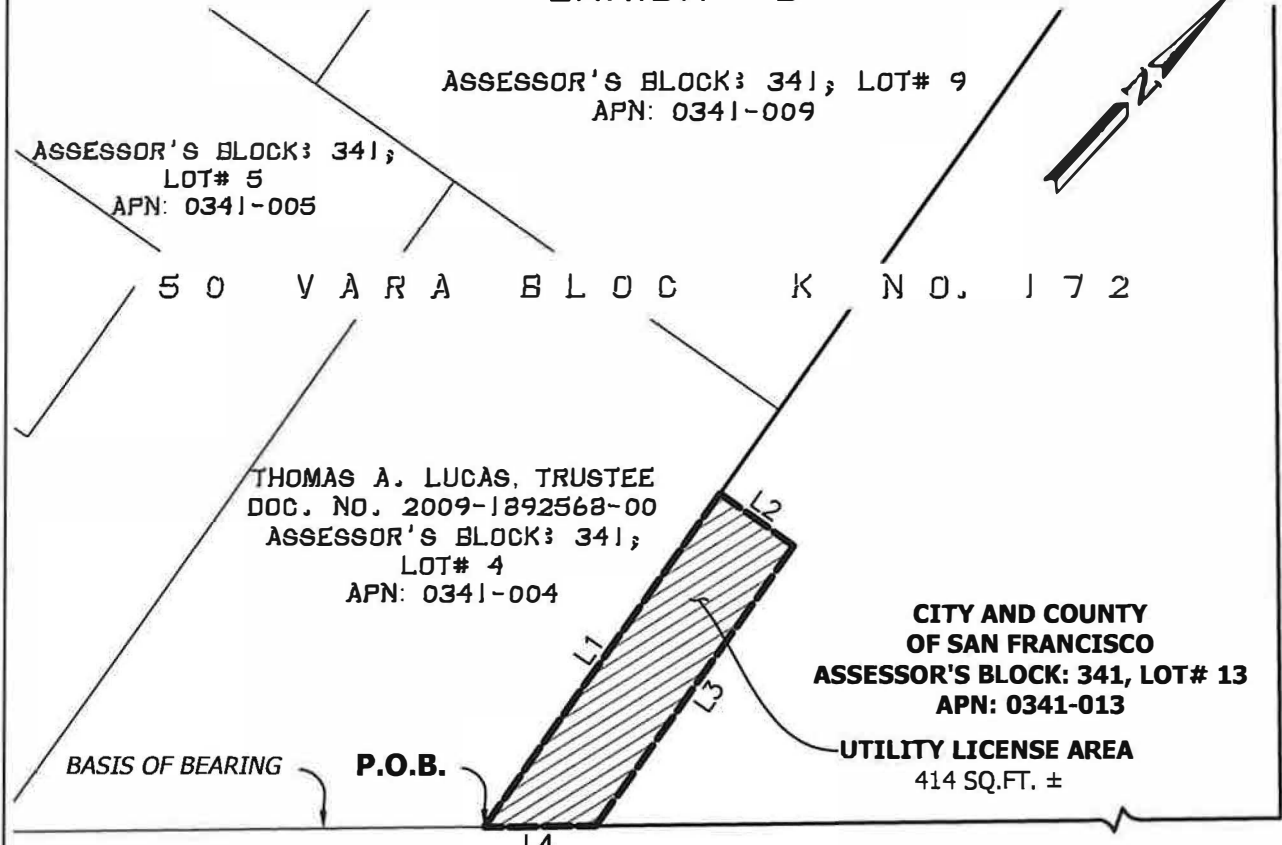
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DANIEL ORTEGA  
LICENSED LAND SURVEYOR No. 9569  
(EXP. 03/31/2024)  
STATE OF CALIFORNIA

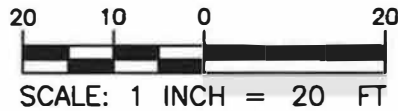
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DATE:

# EXHIBIT "B"



**BASIS OF BEARING:**  
THE NORTHWESTERLY LINE OF MARKET STREET IS BEING TAKEN AS A BEARING OF SOUTH 46°23'46" WEST AND IS AN ASSUMED BASIS OF BEARING.



THE DIMENSIONS STATED ON PLAT (EXHIBIT "B") ARE MEASURED IN GROUND DISTANCES.

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N07°56'37"W	45.00'
L2	N82°03'23"E	10.00'
L3	S07°56'37"E	37.82'
L4	S46°23'46"W	12.31'

## LEGEND



- UTILITY LICENSE AREA
- PROPERTY LINE
- ASSESSOR'S PARCEL NUMBER
- POINT OF BEGINNING

A.P.N.  
P.O.B.



SHEET 1 OF 1

**UTILITY LICENSE AREA  
PLAT TO ACCOMPANY LEGAL DESCRIPTION  
PORTION OF APN: 0341-013**

CITY AND COUNTY OF SAN FRANCISCO  
STATE OF CALIFORNIA



**TOWILL** | Surveying, Mapping and GIS Services  
2300 Clayton Road, Suite 1200  
Concord, CA 94520-2176  
(925) 682-6976 - www.towill.com

**UTILITY LICENSE AREA - CLOSURE:**

P.O.B. NORTHING: 2,113,490.9925

P.O.B. EASTING: 6,010,142.8874

BEARING: N07°56'37"W

DISTANCE: 45.00'

NORTHING: 2,113,535.5607

EASTING: 6,010,136.6685

BEARING: N82°03'23"E

DISTANCE: 10.00'

NORTHING: 2,113,536.9426

EASTING: 6,010,146.5726

BEARING: S07°56'37"E

DISTANCE: 37.82'

NORTHING: 2,113,499.4808

EASTING: 6,010,151.7998

BEARING: S46°23'46"W

DISTANCE: 12.31'

NORTHING: 2,113,490.9925

EASTING: 6,010,142.8874

PERIMETER: 105.1327'

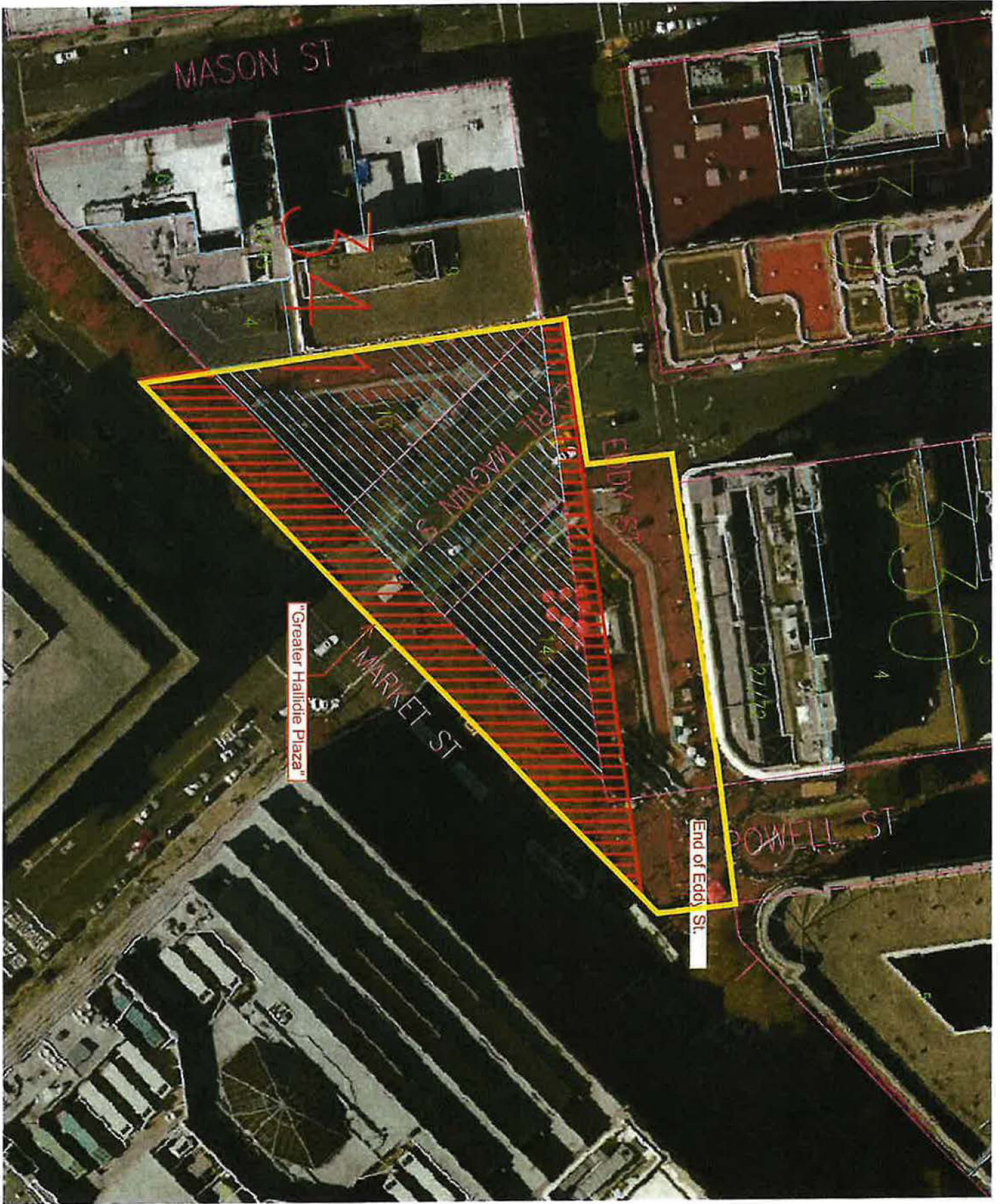
AREA: 414.12 square feet / 0.010 acres

CLOSING DISTANCE: 0.0000'

CLOSING BEARING: N00°00'00"E

PRECISION: 1:10,513,265,450





MASON ST

"Greater Hallidie Plaza"

MARKET ST

End of Eddy St.

POWELL ST





## **EXHIBIT B**

### **Licensee's Property**

- 86' of 4" SVC Conduit
- 127' 1-set of 3-250 CM 1/C, 600V, EPR&H, copper service cables bundled with one 250 KCM BCN





## San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Phone: 415.252.3100 . Fax: 415.252.3112

[ethics.commission@sfgov.org](mailto:ethics.commission@sfgov.org) . [www.sfethics.org](http://www.sfethics.org)

Received On:

File #: 240290

Bid/RFP #:

### Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

#### 1. FILING INFORMATION

<b>TYPE OF FILING</b>	<b>DATE OF ORIGINAL FILING (for amendment only)</b>
Original	
<b>AMENDMENT DESCRIPTION – Explain reason for amendment</b>	

#### 2. CITY ELECTIVE OFFICE OR BOARD

<b>OFFICE OR BOARD</b>	<b>NAME OF CITY ELECTIVE OFFICER</b>
Board of Supervisors	Members

#### 3. FILER'S CONTACT

<b>NAME OF FILER'S CONTACT</b>	<b>TELEPHONE NUMBER</b>
Angela Calvillo	415-554-5184
<b>FULL DEPARTMENT NAME</b>	<b>EMAIL</b>
office of the clerk of the Board	Board.of.Supervisors@sfgov.org

#### 4. CONTRACTING DEPARTMENT CONTACT

<b>NAME OF DEPARTMENTAL CONTACT</b>	<b>DEPARTMENT CONTACT TELEPHONE NUMBER</b>
Claudia J. Gorham	415-554-9850
<b>FULL DEPARTMENT NAME</b>	<b>DEPARTMENT CONTACT EMAIL</b>
ADM                      RED	realstateadmin@sfgov.org

5. CONTRACTOR	
<b>NAME OF CONTRACTOR</b> Honeybee Foods Corporation	<b>TELEPHONE NUMBER</b> 310-994-4730
<b>STREET ADDRESS (including City, State and Zip Code)</b> 100 North Barranca St, Suite 1200 West Covina, CA 91791	<b>EMAIL</b>

6. CONTRACT		
<b>DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)</b>	<b>ORIGINAL BID/RFP NUMBER</b>	<b>FILE NUMBER (If applicable)</b> 240290
<b>DESCRIPTION OF AMOUNT OF CONTRACT</b> \$1,200		
<b>NATURE OF THE CONTRACT (Please describe)</b> Yearly access and use permit fee \$1,200 with ten-year term plus tenant responsible for utilities, services, and maintenance.		

7. COMMENTS

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
<input type="checkbox"/>	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

**9. AFFILIATES AND SUBCONTRACTORS**

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Dela Cruz	Maribeth	Other Principal Officer
2	Untiong	William Tan	Other Principal Officer
3	Shin	Richard Chong Woo	Other Principal Officer
4	Caktiong	Tony Tan	Board of Directors
5	Tanmantiong	Ernesto	Board of Directors
6	Untiong	William Tan	Board of Directors
7			
8			
9			
10			
11			
12			
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16			
17			
18			
19			

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#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
20			
21			
22			
23			
24			
25			
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27			
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**9. AFFILIATES AND SUBCONTRACTORS**

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#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
39			
40			
41			
42			
43			
44			
45			
46			
47			
48			
49			
50			
<input type="checkbox"/>	Check this box if you need to include additional names. Please submit a separate form with complete information. Select "Supplemental" for filing type.		

**10. VERIFICATION**

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

**I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**

<p><b>SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK</b></p>  <p>BOS Clerk of the Board</p>	<p><b>DATE SIGNED</b></p>
---	---------------------------



**City & County of San Francisco**  
London N. Breed, Mayor



**Office of the City Administrator**  
Carmen Chu, City Administrator  
Andrico Q. Penick, Director of Real Estate

February 27, 2024

Honorable Board of Supervisors  
City and County of San Francisco  
City Hall, Room 244  
1 Carlton B. Goodlett Place  
San Francisco, CA 94102

RE: Permit to Enter and Use – Honeybee Foods Corp., a Delaware corporation – Hallidie Plaza

Dear Board Members:

Attached for your consideration is a Resolution authorizing and approving a Permit to Enter and Use with Honeybee Foods Corp., for a portion of Hallidie Plaza (414 square feet), San Francisco, for a temporary underground utility line necessary for a proposed Jollibee restaurant at 934 Market Street (privately owned) during the term of the restaurant's tenancy. The permit area is not within any right of way, but between the privately-owned building and the right of way.

The City and County of San Francisco (City) owns Hallidie Plaza under the jurisdiction of the San Francisco Recreation and Park Department (RecPark) with the Real Estate Division authorized on RecPark's behalf to issue permits. Honeybee Foods Corp. (Honeybee) entered into a lease with the private owner of 934 Market Street for a Jollibee's Restaurant. The restaurant needs additional electricity and desires to place a new line over a portion of Hallidie Plaza.

RED negotiated a new permit to enter and use with a term of approximately 10 years or until December 8, 2034 (the term of the underlying restaurant lease) at \$1,200 per month with three percent annual adjustments based upon the opinion of the Director of Property and comparable rentals.

RED recommends the permit and resolution, along with RecPark and the Department of Public Works. If you have any questions regarding this matter, please get in touch with Claudia J. Gorham of our office at 415-554-9871.

Respectfully,

A handwritten signature in blue ink, appearing to read "Andrico Q. Penick".

Andrico Q. Penick  
Director of Real Estate

**Office of the Director of Real Estate • 25 Van Ness Avenue, Suite 400 • San Francisco, CA 94102**  
**(415) 554-9850 • FAX: (415) 552-9216**