

REVOCABLE PERMIT TO ENTER AND USE PROPERTY

by and between

CITY AND COUNTY OF SAN FRANCISCO

and

HAYES VALLEY NEIGHBORHOOD ASSOCIATION, a California corporation,  
Permittee

to enter and use property located at  
Octavia Street between Oak and Lily Street, commonly known as Parcel R, and the property  
located along Octavia Street between Page and Lily Streets known as Parcel S  
San Francisco, California

May 31, 2018

## TABLE OF CONTENTS

|  | <u>Page</u> |
|--|-------------|
| 1. LICENSE .....   | 1           |
| 2. USE OF PERMIT AREA .....                                  | 1           |
| 2.1 Scope of Permitted Use .....                             | 1           |
| 3. CONDITIONS OF USE .....                                   | 1           |
| 3.1 Prior Approvals of City .....                            | 2           |
| 3.2 Display of Art .....                                     | 2           |
| 3.3 Vendors and Mobile Food Facilities .....                 | 2           |
| 3.4 Amplified Sound; Intellectual Property Rights .....      | 3           |
| 3.5 Supplies and Utilities; Improvements .....               | 3           |
| 3.6 Approvals and Identification of Agents and Vendors ..... | 4           |
| 3.7 Prevailing Wage and Working Conditions .....             | 4           |
| 3.8 Exercise of Due Care .....                               | 5           |
| 3.9 Cooperation with City Personnel .....                    | 5           |
| 3.10 Maintenance of Permit Area .....                        | 5           |
| 3.11 Revocability .....                                      | 5           |
| 4. RESTRICTIONS ON USE .....                                 | 5           |
| 4.1 Event Improvements .....                                 | 5           |
| 4.2 Dumping .....  | 6           |
| 4.3 Landscaping .....  | 6           |
| 4.4 Hazardous Material .....                                 | 6           |
| 4.5 Nuisances .....  | 6           |
| 4.6 Damage .....   | 7           |
| 4.7 Driving on Permit Area .....                             | 7           |
| 4.8 Sale of Foods and Beverages .....                        | 7           |
| 4.9 No Smoking .....   | 7           |
| 5. PERMIT FEE AND SECURITY DEPOSIT .....                     | 7           |
| 6. TERM OF PERMIT; REVOCABILITY .....                        | 8           |
| 7. INSURANCE .....   | 8           |
| 8. COMPLIANCE WITH LAWS .....                                | 9           |
| 9. COVENANT TO MAINTAIN PERMIT AREA .....                    | 10          |
| 10. REMOVAL OR ALTERATION OF IMPROVEMENTS .....              | 10          |
| 11. SURRENDER .....  | 10          |
| 12. WAIVER OF CLAIMS .....                                   | 10          |
| 13. REPAIR OF DAMAGE .....                                   | 11          |
| 14. SIGNS .....  | 12          |
| 15. UTILITIES .....  | 12          |
| 16. CITY'S RIGHT TO CURE DEFAULTS BY PERMITTEE .....         | 12          |

|     |  |    |
|-----|--|----|
| 17. | NO COSTS TO CITY .....   | 12 |
| 18. | INDEMNITY .....  | 12 |
| 19. | "AS IS" CONDITION OF PERMIT AREA; DISABILITY ACCESS; DISCLAIMER OF REPRESENTATIONS ..... | 13 |
| 20. | NO ASSIGNMENT .....  | 14 |
| 21. | CESSATION OF USE .....   | 14 |
| 22. | NO JOINT VENTURES OR PARTNERSHIP; NO AUTHORIZATION .....                                 | 14 |
| 23. | MACBRIDE PRINCIPLES - NORTHERN IRELAND .....   | 14 |
| 24. | NON-DISCRIMINATION .....   | 14 |
|     | 24.1 Covenant Not to Discriminate .....  | 14 |
|     | 24.2 Subcontracts .....  | 15 |
|     | 24.3 Non-Discrimination in Benefits .....  | 15 |
|     | 24.4 Condition to Permit .....   | 15 |
|     | 24.5 Incorporation of Administrative Code Provisions by Reference .....                  | 15 |
| 25. | TROPICAL HARDWOODS AND VIRGIN REDWOOD BAN .....  | 15 |
| 26. | NOTIFICATION OF LIMITATIONS ON CONTRIBUTIONS .....                                       | 16 |
| 27. | POSSESSORY INTEREST TAXES .....  | 16 |
| 28. | RESTRICTION ON THE USE OF PESTICIDES .....   | 16 |
| 29. | PROHIBITION OF TOBACCO SALES AND ADVERTISING .....                                       | 17 |
| 30. | PROHIBITION OF ALCOHOLIC BEVERAGE ADVERTISING .....                                      | 17 |
| 31. | CONFLICTS OF INTEREST .....  | 17 |
| 32. | FOOD SERVICE AND PACKAGING WASTE REDUCTION .....   | 18 |
| 33. | SAN FRANCISCO PACKAGED WATER ORDINANCE .....   | 18 |
| 34. | VENDING MACHINES; NUTRITIONAL STANDARDS .....  | 18 |
| 34. | NOTICES .....  | 18 |
| 35. | SEVERABILITY .....   | 19 |
| 36. | SUPERVISION OF MINORS .....  | 19 |
| 37. | COUNTERPARTS .....   | 20 |
| 38. | COOPERATIVE DRAFTING .....   | 20 |
| 39. | SUGAR-SWEETENED BEVERAGE PROHIBITION .....   | 20 |
| 39. | GENERAL PROVISIONS .....   | 20 |

**CITY AND COUNTY OF SAN FRANCISCO**  
**REVOCABLE PERMIT**  
**TO ENTER AND USE PROPERTY**  
(Hayes Valley Neighborhood, San Francisco)

THIS REVOCABLE PERMIT TO ENTER AND USE PROPERTY (this "Permit"), dated for reference purposes only as of May 31, 2018, is made by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City") and HAYES VALLEY NEIGHBORHOOD ASSOCIATION, a California corporation ("Permittee").

City and Permittee agree as follows:

**1. LICENSE**

City confers to Permittee a revocable, personal, unassignable, non-exclusive and non-possessory privilege to enter upon and use that certain real property owned by City located at Octavia Street between Oak and Lily Street, commonly known as Parcel R, and the property located along Octavia Street between Page and Lily Streets known as Parcel S in the City and County of San Francisco, more particularly described in Exhibit A attached hereto (collectively, the "Permit Area"), for the Permitted Uses (defined in Section 2 below) subject to the terms, conditions and restrictions set forth below. This Permit gives Permittee a license only, revocable at any time at the will of City, and notwithstanding anything to the contrary herein, this Permit does not constitute a grant by City of any ownership, leasehold, easement or other property interest or estate whatsoever in the Permit Area, or any portion thereof. The privilege given to Permittee under this Permit is effective only insofar as the rights of City in the Permit Area are concerned, and Permittee shall obtain any further permission necessary because of any other existing rights affecting the Permit Area.

**2. USE OF PERMIT AREA**

**2.1 Scope of Permitted Use**

Permittee may enter and use the Permit Area only to perform its obligations under this Permit and those temporary uses and intermittent activities ("Events"), (a) that are permitted uses under the City's Planning Code Section 209.4, which is incorporated into this Permit as though fully set forth herein, but not for uses requiring a variance or conditional use permit, and (b) for which Permittee has fulfilled the conditions set forth in Section 3, below (collectively, the "Permitted Uses") and for no other purpose whatsoever.

**3. CONDITIONS OF USE**

Before using the Permit Area, Permittee shall obtain all permits, licenses and approvals (collectively, "Approvals") of any regulatory agencies required for the Permitted Uses. Promptly upon receipt of such Approvals, Permittee shall deliver copies to the Director of Property and applicable City agencies, and if any event activity requires an Approval, Permittee must display such approvals in a conspicuous place during all hours of such Event. Permittee shall complete and return all forms required by City for Permittee's activities in the Permit Area.

### **3.1 Prior Approvals of City**

Before using the Permit area for any Event, Permittee must (a) at least ten (10) working days before the start of each month or other notification and approval method as agreed upon in writing by the parties, provide a written document or monthly calendar, specify the days and times (the “Event Hours”) and types of Events to the Director of Property; (b) obtain all necessary Approvals for such proposed Events and (c) provide copies of such Approvals to the Director of Property. Permittee’s use is subject to limitations and restrictions as the City may establish from time to time

### **3.2 Display of Art**

Prior to the display of any artwork in the Permit Area, Permittee shall obtain the written approval of the City and County of San Francisco’s Art Commission, through its Visual Arts Committee, and provide a copy of such Approval to the Director of Property.

### **3.3 Vendors and Mobile Food Facilities**

**(a) Generally.** Permittee may desire to obtain Approvals for third party vendors (“Vendors”) to operate in a portion of the Permit Area (the “Vending Space”) or adjacent to it, under the terms and conditions of this Permit, Planning Code Section 209.4, and any other applicable laws, codes and regulations. Permittee may have the right under such Approvals to allow such Vendors to operate in a portion of the Permit Area or adjacent to it, however, (i) the proposed use of Vending Space in the Permit Area shall be consistent with the provisions of this Permit, (ii) Permittee shall be responsible for the conduct and operation of and each Agent (as defined in Section 18 below) of a Vendor in the Permit Area, (iii) Permittee and Vendor and their Agents are responsible for all neighborhood noticing requirements, if any, and (iv) Permittee shall cause each Vendor and its Agents to comply with the applicable terms and conditions of this Permit, including without limitation, the obtaining of any and all Approvals.

**(b) Appearance and Design of Mobile Food Facility.** Permittee shall ensure that each mobile food truck, if any, including associated garbage receptacles, fixtures and equipment, be attractive in appearance and be kept clean and free from clutter at all times.

**(c) Quality of Products.** Permittee hereby agrees that any product, food, or refreshments offered for sale by any vendor under this Permit shall be of good quality, healthy, and sustainably-produced. City shall have the right to reasonably object to the quality of the food, beverages, and service(s) provided and Permittee shall have the obligation to promptly address those objections until corrected to the satisfaction of City.

**(d) Prohibition of Advertising.** No mobile food truck or equipment shall be used for advertising of any kind, except for the name and logo of the Vendor’s company and small generic illustrations of the products that are sold. The design and placement of all signs must be approved in writing in advance by City.

**(e) Standards of Conduct, Customer Service, and Contact Number.** Permittee shall cause Vendors to display accurate price signs visible to customers. Permittee, the Vendors, and their respective Agents shall conduct themselves in a professional and courteous and respectful manner at all times. The Permittee, not the City, shall be responsible for handling, addressing and responding to any customer concerns any service matters, including, but not limited to, those pertaining to the mobile food trucks including refund requests, product complaints, or other service matters. Permittee shall have visible signage on each mobile food truck identifying Permittee's company name and phone number for comments or complaints.

**(f) Prohibition of Alcohol.** Sales, distribution, promotion, advertising, and use of any type of alcohol is prohibited unless expressly permitted in writing by the Director of Property and Permittee has obtained and produced copies of all required Approvals.

**(g) Vendor Agreement Regarding Waiver and Release.** Prior to any Vendor operating in the Permit Area or adjacent to it, Permittee shall obtain from such Vendor a signed vendor waiver and release in the form attached hereto as EXHIBIT B. or in such other form and content approved by the Director of Property or his designee in writing. Permittee shall retain such executed waiver and release forms, and shall provide the original executed form to City at City's written request given from time to time.

**(h) No Fees Charged to Vendors.** Permittee shall not require any Vendor to pay Permittee any fees in consideration for Permittee allowing such Vendor to operate in the Permit Area.

**(i) Licensing for Mobile Food Facilities.** Permittee shall ensure that each mobile food truck operating on or adjacent the Permit Area pursuant to this Permit has obtained all required Approvals and complies with the current California Uniform Retail Food Facilities Laws to operate outdoors and the San Francisco Department of Public Health Mobile Food Vending Permit conditions.

### **3.4 Amplified Sound; Intellectual Property Rights**

Permittee acknowledges and agrees that if Permittee desires to use amplified sound on the Permit Area for an Event, Permittee must apply for and obtain all required permits for use of amplified sound from City, acting in its regulatory capacity. Further, Permittee shall be solely responsible for obtaining any necessary clearances or -permissions from third parties for the use of intellectual property on the Permit Area with respect to its activities thereon, including, but not limited to musical or other performance rights.

### **3.5 Supplies and Utilities; Improvements**

At no cost to the City, Permittee shall provide all necessary improvements, equipment, supplies, and utilities it requires for its uses and any Events. Permittee shall not use, borrow, and/or take any of City's utilities, without the written approval from the Director of Property or his/her designee. Permittee may install certain improvements, such as movable tents, canopies, chairs, and tables (the "Event Improvements") on the Permit Area during the Event Hours if allowed by the Planning Code and any other applicable law. Upon conclusion of each Event, immediately following the installation or removal of any Event Improvements, Permittee shall

remove all debris and shall restore the Permit Area to its condition immediately prior to Permittee's use hereunder, to the satisfaction of City.

### **3.6 Approvals and Identification of Agents and Vendors**

Permittee shall deliver copies of current government identification of its Agents, the Vendors, and the Vendor's Agents, that work in the Permit Area for identification purposes to City on or before the date of the applicable Event. Permittee recognizes and agrees that no approval by City for purposes of Permittee's activities hereunder shall be deemed to constitute the Approval of any federal, state, or local regulatory authority with jurisdiction, and nothing herein shall limit Permittee's obligation to obtain all such Approvals required for the Events any activities conducted at an Event by Permittee, its Agents, or its Vendors.

### **3.7 Prevailing Wage and Working Conditions**

Any undefined, initially-capitalized term used in this Section have the meaning given to such term in San Francisco Administrative Code Section 23.61. Permittee shall require that any person performing labor in connection with the Event Improvements or with any other facilities or improvements to the Permit Area 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), whether performing such labor for Permittee or a Vendor, or (ii) Covered Construction, at the Premises 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"). Permittee agrees to cooperate with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Prevailing Wage Requirements.

Permittee shall include and shall require its Vendors, contractors, and subcontractors (regardless of tier) to include, in any contract for Event Improvements or with any other facilities or improvements to the Permit Area 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 shall 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. Permittee's failure to comply with its obligations under this Section shall constitute a material breach of this Permit. 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.

Permittee shall also pay, and shall require its Vendors, contractors and subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities on the Premises 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).

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

Permittee shall use, and shall cause its Agents and Vendors to use, due care at all times to avoid any damage or harm to the Permit Area and City's property. Permittee shall take such soil and resource conservation and protection measures with the Permit Area as City may request. City shall have the right to approve and supervise any excavation work Permittee shall do everything reasonably within its power, both independently and upon request by City, to prevent and suppress fires on and adjacent to the Permit Area attributable to Permittee's use hereunder.

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

Permittee and its Agents shall work closely with City personnel to avoid disruption (even if temporary) of City property in, under, on or about the Permit Area and City uses of the Permit Area. Construction sites shall be screened with temporary fencing where possible to reduce visual impact.

### **3.10 Maintenance of Permit Area**

Permittee shall be solely responsible for maintaining the Permit Area and all Event Improvements in good and safe condition, and City shall have no duty whatsoever for any maintenance of the Permit Area or any such Event Improvements therein.

### **3.11 Revocability**

Permittee acknowledges and agrees that the installation of the Event Improvements or any other improvements or facilities permitted hereunder shall not in any way whatsoever limit City's right to revoke this Permit pursuant to the terms hereof or any of City's other rights hereunder.

## **4. RESTRICTIONS ON USE**

Permittee agrees that, by way of example only and without limitation, the following uses of the Permit Area by Permittee or any other person claiming by or through Permittee are inconsistent with the limited purpose of this Permit and are strictly prohibited as provided below:

### **4.1 Event Improvements**

Except as otherwise expressly provided in this Permit and temporary Event Improvements as set forth in Section 3, Permittee shall not construct or place any temporary or permanent structures or improvements on the Permit Area, nor shall Permittee alter any existing structures or improvements on the Permit Area without written permission from the Director of Property.



## **4.2 Dumping**

Permittee shall not dump or dispose of refuse or other unsightly materials on, in, under, or about the Permit Area.

## **4.3 Landscaping**

Permittee shall not plant any landscaping on or in the Permit Area. Permittee shall obtain any necessary Approvals, if any, for any temporary improvements and landscaping of potted plants, trees, etc., and shall provide the Director of Property a written plan/drawing showing the location and design of the temporary landscaping. If the duration of the Permit Term exceeds two years, then Permittee shall obtain Approval from the Civic Design Committee for any temporary improvements and landscaping as required.

## **4.4 Hazardous Material**

Permittee shall not cause, nor shall Permittee allow any of its Agents or Invitees (as defined in Section 18 below) to cause, any Hazardous Material (as defined below) to be brought upon, kept, used, stored, generated or disposed of in, on or about the Permit Area, or transported to or from the Permit Area. Permittee shall immediately notify City when Permittee learns of, or has reason to believe that, a release of Hazardous Material has occurred in, on or about the Permit Area. Permittee shall further comply with all laws requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary to mitigate the release or minimize the spread of contamination. In the event that Permittee or its Agents or Invitees cause a release of Hazardous Material, Permittee shall, without cost to City and in accordance with all laws and regulations, return the Permit Area to the condition immediately prior to the release. In connection therewith, Permittee shall afford 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. For purposes hereof, "Hazardous Material" means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter 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" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq., or pursuant to Section 25316 of the California Health & Safety Code; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Permit Area or are naturally occurring substances in the Permit 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 shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Permit Area.

## **4.5 Nuisances**

Permittee shall not conduct any activities on or about the Permit 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.

**4.6 Damage**

Permittee shall not do anything about the Permit Area that will cause damage to any of City's property.

**4.7 Driving on Permit Area**

Permittee agrees and represents to City that it has no employees or vehicles. If Permittee's Agents, Vendors, or independent contractors need to use vehicles to bring the Event Improvements or other materials needed for an Event onto the Permit Area, Permittee shall restrict such vehicles to such uses, and only use such vehicles between the Event Hours for such Event. There shall be no parking on the Permit Area. Permittee shall not drive, nor permit its Agents and Vendors to drive, in reverse without a guide. Permittee shall ensure its Agents and Vendors drive the speed as required for safety. Permittee shall be held liable for any damage caused by the vehicles of its Vendors or Permittee on the Permit Area.

**4.8 Sale of Foods and Beverages**

Except as permitted under this Permit, Permittee shall not sell, nor permit its Agents or Vendors to sell, any food or beverage products without the prior written approval of the Director of Property or his or her designee, which approval shall be conditioned on complying with City's requirements for the sale of food or beverage products on City property. Such permission shall be conditioned, among other things, on all pre-packaged foods having a label containing the company name, business address, contact number and the weight of the product, and the posting of menus and pricing at a prominent area for public viewing.

**4.9 No Smoking**

Smoking is prohibited on any unenclosed area of property in the City and County of San Francisco that is open to the public and under the jurisdiction of any City department if the property is a park, square, or other property used for recreational purposes pursuant to San Francisco Health Code Section 1009.81. Permittee shall not knowingly or intentionally permit, or allow its Vendors to permit, smoking in the Permit Area.

**5. PERMIT FEE AND SECURITY DEPOSIT**

In consideration of the Permittee's performance of its obligations under the permit and delivery of the Security Deposit (defined as follows), City has waived the permit fee for this Permit. The City shall require a deposit in the sum of ONE THOUSAND DOLLARS AND NO CENTS (\$1,000.00) (the "Security Deposit"), as security for the faithful performance of all terms, covenants and conditions of this Permit, which City acknowledges Permittee has paid as of City's execution of this Permit. Permittee agrees that City may (but shall not be required to) call upon or apply the Security Deposit in whole or in part to remedy damage to the Permit Area caused by Permittee, its Agents, or Invitees, to pay fines assessed against Permittee or indemnity owed by Permittee to City under this Permit, or for any other failure of Permittee to perform any other terms, covenants, or conditions contained herein, without waiving any of City's other rights

and remedies hereunder or at law or in equity and without any obligation. City's obligation with respect to the Security Deposit are solely that of debtor and not trustee. Permittee waives the provisions of Section 1950.7 of California Civil Code or any similar law, statute or ordinance now or hereafter in effect and 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 acts or omissions of Permittee, its Agents, or Invitees. City shall not be required to keep any such Security Deposit separate from its general funds and Permittee is not entitled to any interest on such Security Deposit. In the event that the City uses, applies or draws upon all or a portion of the Security Deposit. Permittee shall restore the Security Deposit to its original amount within ten (10) days following written demand from the City. The amount of the Security Deposit shall in no way limit the liability of Permittee under any provisions of the Permit.

## **6. TERM OF PERMIT; REVOCABILITY**

The privilege given to Permittee pursuant to this Permit is temporary only and shall commence on the date this permit is fully executed, and shall expire on 5:00 p.m. on December 31, 2019, unless sooner terminated pursuant to the terms hereof. Without limiting any of its rights hereunder, City may at its sole option freely revoke this Permit at any time prior to such expiration date, without cause and without any obligation to pay any consideration to Permittee.

## **7. INSURANCE**

**(a)** Permittee shall procure and keep in effect at all times during the term of this Permit, at Permittee's expense, 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 Permittees, Explosion, Collapse and Underground (XCU), Broad Form Property Damage, 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

**(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 required hereunder shall 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 such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Permit and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period

(c) All insurance policies required to be maintained by Permittee hereunder shall be endorsed to provide for thirty (30) days' prior written notice of cancellation for any reason, non-renewal, or reduction in coverage to both Permittee and City. Notice to City shall be mailed to the address(es) for City set forth in Section 35 below.

(d) Prior to the commencement date of this Permit, Permittee shall deliver to City certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to City, evidencing the coverages required hereunder, together with complete copies of the policies at City's request. In the event Permittee shall fail to procure such insurance, or to deliver such policies or certificates, City may procure, at its option, the same for the account of Permittee, and the cost thereof shall be paid to City within five (5) days after delivery to Permittee of bills therefor.

(e) Should any of the required insurance be 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 such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

(f) Should any of the required insurance be provided under a claims made form, Permittee shall maintain such coverage continuously throughout the term of this Permit and, without lapse, for a period of three (3) years beyond the Permit expiration, to the effect that, should any occurrences during the Permit term give rise to claims made after expiration of the Permit, such claims shall be covered by such claims-made policies.

(g) Upon City's request, Permittee and City shall periodically review the limits and types of insurance carried pursuant to 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 Permittee for risks comparable to those associated with the Permit Area, then City in its sole discretion may require Permittee to increase the amounts or coverage carried by Permittee hereunder to conform to such general commercial practice.

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

## **8. COMPLIANCE WITH LAWS**

Permittee shall, at its expense, conduct and cause to be conducted all activities on the Permit Area allowed hereunder 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. Permittee shall, at its sole expense, procure and maintain in force at all times during its use of the Permit Area any and all business and other licenses or approvals necessary to conduct the activities allowed hereunder. Permittee understands and agrees that City

is entering into this Permit in its capacity as a property owner with a proprietary interest in the Permit Area and not as a regulatory agency with police powers. Nothing herein shall limit in any way Permittee'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.

## **9. COVENANT TO MAINTAIN PERMIT AREA**

In connection with its use hereunder, Permittee shall at all times, at its sole cost, maintain the Permit Area in a good, clean, safe, secure, sanitary, and slightly condition.

## **10. REMOVAL OR ALTERATION OF IMPROVEMENTS**

Without limiting any of City's other rights hereunder, Permittee shall promptly, at City's request, alter or remove at its sole expense any and all improvements or other property installed or placed in, on, under or about the Permit Area by Permittee, 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 Permit Area, with the maintenance or repair thereof, 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 Permittee's sole expense, any and all facilities, improvements, plantings or other property installed or placed in, on, under or about the Permit Area by Permittee.

## **11. SURRENDER**

Before the expiration of this Permit or within ten (10) days after any sooner revocation or other termination of this Permit, Permittee shall (i) remove any Event Improvements and any other property, debris, waste, recyclables, compost, and excess dirt placed on the Permit Area by Permittee or its Agents, Vendors, or Invitees and surrender the Permit Area in the same condition as received on the commencement of the Permit Term, free from hazards, and clear of all debris, and (ii) repair, at its sole cost, any damage to the Permit Area caused by Permittee, its Agents, Vendors, or Invitees during the Permit Term. At such time, Permittee shall remove all of its property from the Permit Area and any signs permitted hereunder, and shall repair, at its cost, any damage to the Permit Area caused by such removal. Permittee's obligations under this Section shall survive any termination of this Permit.

## **12. WAIVER OF CLAIMS**

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

(b) Permittee acknowledges that this Permit is freely revocable by City and in view of such fact, Permittee expressly assumes the risk of making any expenditures in connection with this Permit, even if such expenditures are substantial. Without limiting any indemnification obligations of Permittee or other waivers contained in this Permit and as a material part of the consideration for this Permit, Permittee 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, in the event that City exercises its right to revoke or terminate this Permit.

(c) Permittee acknowledges that it will not be a displaced person at the time this Permit is terminated or revoked or expires by its own terms, and Permittee 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, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws.

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

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

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

Permittee acknowledges that the releases contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Permittee realizes and acknowledges that it has agreed upon this Permit in light of this realization and, being fully aware of this situation, it nevertheless 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 herein shall survive any termination of this Permit.

### **13. REPAIR OF DAMAGE**

If any portion of the Permit Area or any property of City located on or about the Permit Area is damaged by any of the activities conducted by Permittee hereunder, Permittee shall

immediately, at its sole cost, repair any and all such damage and restore the Permit Area or property to its previous condition.

#### **14. SIGNS**

Permittee shall not, not allow its Agents or Vendors to mar, or deface any part of the Permit Area, or display, place, erect, or maintain any signs, pictures, notices, advertisements, banners or similar objects on or about the Permit Area, except for any temporary sign that is necessary for Permittee's use so long as Permittee first obtains the City's or his or her designee's written consent, which the City may give or withhold in its sole discretion.

#### **15. UTILITIES**

City has no responsibility or liability of any kind with respect to any utilities that may be on, in or under the Permit Area. Permittee has the sole responsibility to locate such utilities and protect them from damage. Permittee shall 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 such utility companies of any such relocation. Permittee shall be solely responsible for arranging and paying directly for any utilities or services necessary for its activities hereunder; provided, however, that pursuant to San Francisco Administrative Code Section 99.3, Permittee shall only receive electricity at the Permit Area from the San Francisco Public Utilities Commission ("SFPUC") unless SFPUC determines that such service is not feasible.

#### **16. CITY'S RIGHT TO CURE DEFAULTS BY PERMITTEE**

If Permittee fails to perform any of its obligations under this Permit, to restore the Permit Area or repair damage, or if Permittee defaults in the performance of any of its other obligations under this Permit, then City may, at its sole option, remedy such failure for Permittee's account and at Permittee's expense by providing Permittee with three (3) days' prior written or oral notice of City's intention to cure such default (except that no such prior notice shall be required in the event of an emergency as determined by City). Such action by City shall not be construed as a waiver of any rights or remedies of City under this Permit, and nothing herein shall imply any duty of City to do any act that Permittee is obligated to perform. Permittee shall pay to City upon demand, all costs, damages, expenses, or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such default. Permittee's obligations under this Section shall survive the termination of this Permit.

#### **17. NO COSTS TO CITY**

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

#### **18. INDEMNITY**

Permittee shall 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 any and 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 Permit Area, or any part thereof, whether the person or property of Permittee, its Agents, its invitees, guests, or business visitors (collectively, "Invitees"), or third persons, relating in any manner to any use or activity under this Permit, (b) any failure by Permittee to faithfully observe or perform any of the terms, covenants or conditions of this Permit, (c) the use of the Permit Area or any activities conducted thereon by Permittee, its Agents or Invitees, or (d) any release or discharge, or threatened release or discharge, of any Hazardous Material caused or allowed by Permittee, its Agents or Invitees, on, in, under or about the Permit Area, any improvements permitted thereon, or into the environment; except solely to the extent of Losses resulting directly from the [gross negligence or] willful misconduct of City or City's authorized representatives. The foregoing indemnity shall include, 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 Permit Area and claims for damages or decreases in the value of adjoining property. Permittee specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Permittee by City and continues at all times thereafter. Permittee's obligations under this Section shall survive the expiration or other termination of this Permit.

**19. "AS IS" CONDITION OF PERMIT AREA; DISABILITY ACCESS;  
DISCLAIMER OF REPRESENTATIONS**

Permittee accepts the Permit 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 Permit Area or any facilities on the Permit Area for Permittee's use. Without limiting the foregoing, this Permit is made subject to all applicable laws, rules and ordinances governing the use of the Permit Area, and to any and all covenants, conditions, restrictions, easements, encumbrances, claims of title and other title matters affecting the Permit Area, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey. It is Permittee's sole obligation to conduct an independent investigation of the Permit Area and all matters relating to its use of the Permit Area hereunder, including, without limitation, the suitability of the Permit Area for such uses. Permittee, at its own expense, shall obtain such permission or other approvals from any third parties with existing rights as may be necessary for Permittee to make use of the Permit Area in the manner contemplated hereby.

Under California Civil Code Section 1938, to the extent applicable to this Permit, Permittee is hereby advised that the Permit 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 Permit 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 Permit Area, City may not prohibit Permittee from obtaining a CASp inspection of the Permit Area for the occupancy or potential occupancy of Permittee if requested by Permittee. City and Permittee shall mutually agree on the arrangements for the time and manner of such 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 Permit Area.

Permittee acknowledges that prior to the execution of this Permit, City provided Permittee with, and Permittee signed, the Disability Access Obligations Notice described in Section 38.3 of the San Francisco Administrative Code. City and Permittee each agree to use reasonable efforts to notify the other party if making any alterations or improvements that might impact accessibility to the Permit Area under any disability access laws.

**20. NO ASSIGNMENT**

This Permit is personal to Permittee and shall not be assigned, conveyed or otherwise transferred by Permittee under any circumstances. Any attempt to assign, convey, or otherwise transfer this Permit shall be null and void and cause the immediate termination and revocation of this Permit.

**21. CESSATION OF USE**

Permittee will not terminate its activities on the Permit Area pursuant hereto without prior written notice to City.

**22. NO JOINT VENTURES OR PARTNERSHIP; NO AUTHORIZATION**

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

**23. MACBRIDE PRINCIPLES - NORTHERN IRELAND**

The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Permit. By signing this Permit, Permittee confirms that Permittee 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.

**24. NON-DISCRIMINATION**

**24.1 Covenant Not to Discriminate**

In the performance of this Permit, Permittee agrees not to discriminate against any employee of, any City employee working with Permittee, or applicant for employment with Permittee, 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 such protected classes, or in retaliation for opposition to discrimination against such classes.

## **24.2 Subcontracts**

Permittee shall include in all subcontracts relating to the Permit Area a non-discrimination clause applicable to such subcontractor in substantially the form of Subsection 25.1 above. In addition, Permittee shall 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 shall require all subcontractors to comply with such provisions. Permittee's failure to comply with the obligations in this Subsection shall constitute a material breach of this Permit.

## **24.3 Non-Discrimination in Benefits**

Permittee does not as of the date of this Permit and will not during the term of this Permit, 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 such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

## **24.4 Condition to Permit**

As a condition to this Permit, Permittee shall 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"). Permittee hereby represents that prior to execution of this Permit, (i) Permittee executed and submitted to the CMD Form CMD-12B-101 with supporting documentation, and (ii) the CMD approved such form.

## **24.5 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 Permit as though fully set forth herein. Permittee shall comply fully with and be bound by all of the provisions that apply to this Permit under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Permittee understands that pursuant to 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 such person was discriminated against in violation of the provisions of this Permit may be assessed against Permittee and/or deducted from any payments due Permittee.

## **25. 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 Sections 802(b) and 803(b) of the San Francisco Environment Code. Permittee agrees that, except as permitted by the application of Sections 802(b) and 803(b), Permittee shall not use or incorporate any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product in the performance of this Permit.

## **26. NOTIFICATION OF LIMITATIONS ON CONTRIBUTIONS**

Through its execution of this Permit, Permittee acknowledges that it is familiar with 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 such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Permittee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Permittee further acknowledges that the prohibition on contributions applies to each Permittee; each member of Permittee's board of directors, and Permittee's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Permittee; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Permittee. Additionally, Permittee acknowledges that Permittee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Permittee further agrees to provide to City the names of each person, entity, or committee described above.

## **27. POSSESSORY INTEREST TAXES**

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

## **28. 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. Permittee shall not use or apply or allow the use or application of any pesticides on the Permit Area or contract with any party to provide pest abatement or control services to the Permit 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 Permittee may need to apply to the Permit Area during the term of this Permit,

(ii) describes the steps Permittee 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 Permittee's primary IPM contact person with the City. Permittee shall comply, and shall require all of Permittee's contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Permittee were a City department. Among other matters, such 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 Permittee to keep certain records and to report to City all pesticide use at the Permit Area by Permittee's staff or contractors.

If Permittee or Permittee's contractor will apply pesticides to outdoor areas at the Permit Area, Permittee 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 such pesticide application shall 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>.

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

Permittee acknowledges and agrees that no sale or advertising of cigarettes or tobacco products is allowed on the Permit 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.

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

Permittee acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Permit Area. For purposes of this Section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. 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.

## **31. CONFLICTS OF INTEREST**

Through its execution of this Permit, Permittee 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 said provision, and agrees that if Permittee becomes aware of any such fact during the term of this Permit, Permittee shall immediately notify the City.

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

Permittee agrees to 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 therein, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Permit as though fully set forth herein. This provision is a material term of this Permit. By entering into this Permit, Permittee agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine. Without limiting City's other rights and remedies, Permittee agrees that the sum of One Hundred Dollars (\$100.00) liquidated damages for the first breach, Two Hundred Dollars (\$200.00) liquidated damages for the second breach in the same year, and Five Hundred Dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Permit was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Permittee's failure to comply with this provision.

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

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

### **34. VENDING MACHINES; NUTRITIONAL STANDARDS**

Permittee may not install or permit any vending machine on the Premises without the prior written consent of the City. Any permitted vending machine must comply with the food nutritional and calorie labeling requirements set forth in San Francisco Administrative Code section 4.9-1(c), as may be amended from time to time (the "Nutritional Standards Requirements"). Permittee agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Permit Area or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section 34 will be deemed a material breach of this Permit. Without limiting the City's other rights and remedies under this Permit, Landlord will have the right to require the immediate removal of any vending machine on the Permit Area that is not permitted or that violates the Nutritional Standards Requirements.

### **34. NOTICES**

Except as otherwise expressly provided herein, any notices given under this Permit shall 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: **Parcel R & S**

Permittee: Hayes Valley Neighborhood Association  
1800 Market Street PMB  
San Francisco, California 94102  
Attn: Gail Baugh  
Re: **Parcel R & S**

Notices herein shall be deemed given two (2) days after the date when it shall have been mailed if sent by first class, certified or overnight courier, or upon the date personal delivery is made.

### **35. SEVERABILITY**

If any provision of this Permit or the application thereof to any person, entity or circumstance shall be invalid or unenforceable, the remainder of this Permit, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Permit shall be valid and be enforceable to the fullest extent permitted by law, except to the extent that enforcement of this Permit without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Permit.

### **36. SUPERVISION OF MINORS**

Permittee, and any of its Vendors or Agents, shall comply with California Penal Code section 11105.3 and request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in Welfare and Institution Code section 15660(a) of any person who applies for employment or volunteer position with Permittee, any Vendors or Agents, in which he or she would have supervisory or disciplinary power over a minor under his or her care. If Permittee, or any Vendors or Agents, is providing services at a City park, playground, recreational center or beach (separately and collectively, "Recreational Site"), Permittee shall not hire, and shall prevent its Vendors and Agents from hiring, any person for employment or volunteer position to provide those services if that person has been convicted of any offense that was listed in former Penal Code section 11105.3 (h)(l) or 11105.3 (h)(3). If Permittee, or any of its Vendors or Agents, hires an employee or volunteer to provide services to minors at any location other than a Recreational Site, and that employee or volunteer has been convicted of an offense specified in Penal Code section 11105.3 then Permittee shall comply, and cause its Vendors and Agents to comply with that section and provide written notice to the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer not less than ten (10) days prior to the day the employee or volunteer begins his or her duties or tasks. Permittee shall provide, or cause its Vendors and Agents to provide City with a copy of any such notice at the same time that it provides notice to any parent or guardian. Permittee shall expressly require any of its Vendors and Agents with supervisory or disciplinary power over a minor to comply with this section of the Permit as a condition of its contract with the Vendor or Agent. Permittee acknowledges and

agrees, that failure by Permittee or any of its Vendors or Agents to comply with any provision of this section of the Permit shall constitute a default under this Permit.

**37. COUNTERPARTS**

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

**38. COOPERATIVE DRAFTING**

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

**39. SUGAR-SWEETENED BEVERAGE PROHIBITION**

Permittee agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Permit.

**39. GENERAL PROVISIONS**

(a) This Permit may be amended or modified only by a writing signed by City and Permittee. (b) No waiver by any party of any of the provisions of this Permit shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. (c) All approvals and determinations of City requested, required, or permitted hereunder 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) hereto) contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. (e) The section and other headings of this Permit are for convenience of reference only and shall be disregarded in the interpretation of this Permit. (f) Time is of the essence. (g) This Permit shall be governed by California law and the City's Charter. (h) If either party commences an action against the other or a dispute arises under this Permit, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes hereof, reasonable attorneys' fees of City shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience. (i) If Permittee consists of more than one person then the obligations of each person shall be joint and several. (j) Permittee may not record this Permit or any memorandum hereof. (k) Subject to the prohibition against assignments or other transfers by Permittee hereunder, this Permit shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns. (l) In the event City sells or otherwise conveys the property burdened by this Permit this Permit shall automatically be revoked.

*[SIGNATURES ON FOLLOWING PAGE]*

Permittee represents and warrants to City that it has read and understands the contents of this Permit and agrees to comply with and be bound by all of its provisions.

PERMITTEE:

HAYES VALLEY NEIGHBORHOOD  
ASSOCIATION, a California corporation,

By: Gail Baugh Dec. 20, 2017  
Gail Baugh  
Its: President

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: [Signature]  
John Updike  
Director of Property  
(pursuant to San Francisco Administrative  
Code Section 23.31)

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: [Signature]  
Eileen Chauvet  
Deputy City Attorney



Exhibit A

The fenced lot on Octavia Street, between Lily and Page Street, Commonly referred to as Parcel "S" and depicted below:

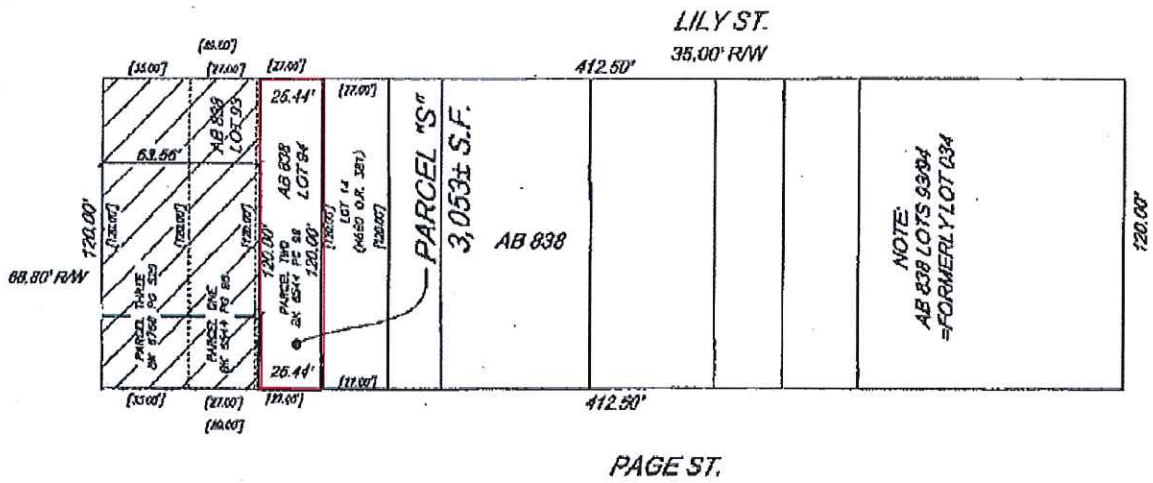


Exhibit A



EXHIBIT B

Vendor Waiver and Release

In consideration for being granted permission to operate \_\_\_\_\_ on property owned by the City and County of San Francisco ("City") at Octavia Street between Oak and Lily Street, commonly known as Parcel R, and/or the property located along Octavia Street between Page and Lily Streets known as Parcel S (collectively, the "City Property"), on \_\_\_\_\_, I the undersigned ("Vendor"), agree that the City, and any and all of its officers, directors, agents, employees, contractors, or subcontractors (collectively, the "Released Parties") shall not be responsible or liable to Vendor for and, to the fullest extent allowed by law, Vendor hereby waives all rights against the Released Parties and releases them from, any and all claims, demands, losses, liabilities, damages, costs, liens, injuries, penalties, fines, lawsuits, or other proceedings, including, but not limited to, incidental or consequential damages and attorneys' fees, relating to any injury, accident or death of any person, or loss or damage to any property (collectively, "Losses"), arising out of or in any way relating to, such operations or my entry onto or use of the City Property. I understand that the City makes no representations or warranties, express or implied, regarding the condition of the City Property on which my operations will occur and I agree to enter and operate on the City Property at my sole risk.

In executing this Waiver and Release, I have not relied on any representations or warranties as to the safety of the City Property or the market operations at the City Property..

"VENDOR"

\_\_\_\_\_

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

Date: \_\_\_\_\_