



staff report

TO: Honorable Mayor and Members of the City Council

ATTENTION: Jeffrey L. Stewart, City Manager

FROM: Jim DellaLonga, Director of Economic Development

SUBJECT: Consideration and possible action to receive and file Agreement File No. 717 with Keerat, Inc., for the lease of the City-owned property located at 16607 Bellflower Boulevard for a Subway Restaurant.

DATE: August 8, 2016

EXECUTIVE SUMMARY

On August 1, 2016, the City entered into the above referenced Agreement File No. 717 with Keerat, Inc. The purpose of this new lease agreement is to allow for the continued operation of a Subway Restaurant in the City-owned building located at 16607 Bellflower Boulevard.

RECOMMENDATION TO THE CITY COUNCIL

- 1) Receive and file Agreement File No. No. 717; or
- 2) Alternatively, discuss and take other action related to this item.

FISCAL IMPACT

The lease rate is \$1,600 per month for a term of two years with one additional 2-year option and a Consumer Price Index (CPI) increase not to exceed 3% upon the exercise of the option.

DISCUSSION

On August 1, 2016, the City and Keerat Inc. entered into a lease agreement for the 1,082-square foot space in the City-owned property located at 16607 Bellflower Boulevard for the continued operation of the existing Subway Restaurant, the terms of which are described above.

ATTACHMENT

Agreement File No. 717 2

**LEASE AGREEMENT FILE NO. 717 BETWEEN THE
CITY OF BELLFLOWER AND
KEERAT INC.**

THIS LEASE is made and executed this 1st day of August, 2016, between CITY OF BELLFLOWER, a municipal corporation and general law city ("CITY"), and KEERAT INC., a California corporation ("LESSEE").

1. **RECITALS.** This Lease is made with reference to the following facts and objectives:

- A. The Bellflower Redevelopment Agency and LESSEE entered into a Lease Agreement, effective March 14, 2006 ("Lease Agreement"), and subsequent Amendment to Lease Agreement effective May 3, 2011, regarding LESSEE's lease of the Property as defined in this Lease.
- B. The Lease Agreement term expired on March 14, 2016. Since that time, by operation of law, the Lease Agreement extended on a month to month basis.
- C. CITY acquired the subject property from the Successor Agency to the Bellflower Redevelopment Agency ("Successor Agency") on May 13, 2016 and, by operation of law, assumed the Lease Agreement from the Successor Agency.
- D. City and Lessee desire to enter into this Lease.
- E. To effectuate the benefits both parties will receive from a new lease agreement, they agree to all of the provisions of this Lease.

2. **LEASE; DESCRIPTION OF PROPERTY.** CITY leases to LESSEE to use, on the terms and conditions of this Lease, portions of real property identified in attached Exhibit "A" ("Property"), which is incorporated by reference.

3. **RENT.** LESSEE agrees to pay to CITY as rental for the Property the sum of \$1,600.00 per month, payable in advance on the first day of each month during the term. Upon LESSEE's exercise of the option described below in Section 4, the Rent will be increased, but not decreased, by a percentage equal to the applicable area Consumer Price Index ("CPI") for the immediately preceding twelve-month (12-month) reporting period, but not more than a maximum of three percent (3%).

4. **TERM.** The term of this Lease is 2 years and LESSEE has the option of extending the term for 1 additional period of 2 years.

5. **USE OF PROPERTY.** Subject to the limitations listed below, LESSEE may use the Property for a Subway Sandwich Restaurant. The Property may not be used for any other purpose.

6. **UTILITIES.**

A. LESSEE is responsible directly to the serving entities for all utilities required for its use of the Property. "Utilities" means electricity, gas, telephone services, trash, water, and cable television.

B. LESSEE agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the Property.

7. **TRASH AND GARBAGE.** LESSEE will provide and pay all costs for the complete and proper disposal and timely removal of all refuse resulting from its operations. LESSEE will provide and use appropriate covered receptacles for all refuse at the Property. Piling boxes, cartons, barrels or other similar items in view of a public area will not be permitted. LESSEE is responsible for the proper disposal of its refuse in such a manner as not to contaminate or restrict sewer lines.

8. **MAINTENANCE QUALITY.** CITY's designees may, at any reasonable time and without notice, enter the Property to determine if satisfactory maintenance is being performed. If the quality of maintenance is unreasonable, CITY will provide written notice to LESSEE which includes the specific nature of the complaint. Should LESSEE fail to improve and sustain quality maintenance within 30 days of CITY's notice, CITY may enter upon the Property and perform such maintenance. LESSEE will promptly reimburse CITY for the cost of maintenance, plus ten percent (10%) for CITY's administrative overhead.

9. **HAZARDOUS WASTE.** CITY has not, nor, to CITY's knowledge, has any third party used, generated, stored, or disposed of, or permitted the use, generation, storage, or disposal of, any hazardous material (as defined below) on, under, or within the Property in violation of any law or regulation. LESSEE agrees that it will not use, generate, store, or dispose of any hazardous material (as defined below) on, under, or within the Property in violation of any law or regulation. LESSEE agrees to defend and indemnify CITY, as provided in this Lease, against any and all losses, liabilities, claims, and/or costs arising from any breach by LESSEE of any warranty or agreement contained in this section. As used in this section, "hazardous material" means any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation (including petroleum and asbestos).

10. **POSSESSORY INTEREST TAXES.** LESSEE is informed by CITY pursuant to Revenue & Taxation Code § 107.6 that its property interest in the Property may be subject to property taxation if created and that LESSEE may be subject to the payment of property taxes levied on its interest. LESSEE may not deduct such amount from payments to CITY.

11. **QUIET ENJOYMENT.** CITY agrees that LESSEE, upon making payments to be paid by LESSEE under the terms of this Lease and upon observing and keeping the agreements and each of the covenants of this Lease will lawfully and quietly hold, occupy, and enjoy the Property during the term of this Lease.

12. **CITY'S LIMITED WARRANTY.** CITY warrants that it is under no disability, restriction or prohibition, whether contractual or otherwise, with respect to its right to execute this agreement and perform its terms and conditions and has the legal right, power and authority to grant all of the rights granted herein.

13. **TERMINATION.** This Lease may be terminated as follows:

- A. At the expiration of the term;
- B. Upon mutual written agreement between the parties;
- C. Upon the Property being condemned; or
- D. Should LESSEE materially breach this Lease and fail to cure such breach within 30 days of being notified by CITY regarding such breach to CITY's reasonable satisfaction.

14. **CONDITION OF PROPERTY UPON TERMINATION.** Upon termination of this Lease for any reason, LESSEE will vacate the Property and deliver it to CITY in good order and condition, damage by the elements, earthquake, and ordinary wear and tear excepted.

15. **SALE OR TRANSFER BY CITY.** Should CITY, at any time during the term of this Lease, sell, lease, transfer, or otherwise convey all or any part of the Property to any transferee other than LESSEE, then such transfer will be under and subject to this Lease and all of LESSEE's rights hereunder.

16. **CONDEMNATION.** If all or part of the Property is acquired by eminent domain or purchase in lieu thereof, LESSEE acknowledges that it will have no claim to any compensation awarded for the taking of the Property or any portion thereof or for loss of or damage to LESSEE's improvements.

17. **RELOCATION BENEFITS.** LESSEE acknowledges that it was informed that CITY is a public entity and that the Property was previously acquired by CITY for a public purpose. LESSEE further acknowledges that any rights acquired under this Lease arose after the date of acquisition of the Property and that said rights are subject to termination when the Property is needed by CITY. LESSEE acknowledges that at the time of any termination of this Lease, LESSEE will not be a "displaced person" entitled to any of the relocation assistance or benefits offered to displaced persons under State or Federal law.

18. **NO PUBLIC PROJECT.** All rights given to LESSEE pursuant to this Lease are for LESSEE's use of the public property identified herein. Any trespass, use, or other

utilization of private property by LESSEE is done at its own risk; LESSEE is not an agent of CITY and this Lease is not intended, nor should it be construed, to constitute a public project.

19. **FORCE MAJEURE.** Should performance of this Lease be prevented due to fire, flood, explosion, war, embargo, government action, civil or military authority, the natural elements, or other similar causes beyond the Parties' control, then it will immediately terminate without obligation of either party to the other.

20. **NO FIXTURES.** Improvements and facilities that currently exist, or may be constructed during the term of this Lease, will not constitute fixtures attached to the Property. Any such facilities may be removed by LESSEE upon termination of the Lease.

21. **ALTERATIONS, MECHANICS' LIENS.** Except as provided by this Lease, LESSEE will not make, or cause to be made, any alterations to the property, or any part thereof, without CITY's prior written consent. LESSEE will keep the property free from any liens arising out of any work performed, material furnished, or obligations incurred by LESSEE.

22. **ASSIGNMENT AND SUBLETTING.** This Lease may not be assigned, transferred, or sublet by LESSEE, court order, or through any other means, except to another Subway franchisee for continued use of the Property as a Subway Sandwich Restaurant. LESSEE will provide a written request to CITY at least 30 days before the effective date of any assignment, transfer, or sublet. CITY will not unreasonably withhold approval of LESSEE's request. Any other such purported transfer will be null and void.

23. **HOLDOVER.** If LESSEE holds possession of the Property after the initial term, or any option, expires, with CITY's written consent, LESSEE will become a tenant from month-to-month at the fair market rental rate per month. Such tenancy will be subject to all of the terms and conditions of this Lease.

15. INDEMNIFICATION.

A. LESSEE indemnifies and holds CITY harmless from and against any claim, action, damages, costs (including, without limitation, attorney's fees), injuries, or liability, arising out of this Lease, or its performance, except for such loss or damage arising from CITY's sole negligence or willful misconduct. Should CITY be named in any suit, or should any claim be against it, by suit or otherwise, whether the same be groundless or not, arising out of this Lease, or its performance, pursuant to this Lease, LESSEE will defend CITY (at CITY's request and with counsel satisfactory to CITY) and will indemnify it for any judgment rendered against it or any sums paid out in settlement or otherwise.

B. For purposes of this section "CITY" includes CITY's officers, officials, employees, agents, representatives, and volunteers.

C. LESSEE expressly agrees that this hold harmless and indemnification provision is intended to be as broad and inclusive as is permitted by the law of the State of California and that if any portion is held invalid, it is agreed that the balance will, notwithstanding, continue in full legal force and effect.

D. It is expressly understood and agreed that the foregoing provisions will survive termination of this Lease.

E. The requirements as to the types and limits of insurance coverage to be maintained by LESSEE as required by Section 24 below, and any approval of such insurance by CITY, are not intended to and will not in any manner limit or qualify the liabilities and obligations otherwise assumed by LESSEE pursuant to this Lease, including but not limited to the provisions concerning indemnification.

24. INSURANCE. LESSEE must procure and maintain insurance of the type, for the period, with the coverages and limits, and in accordance with the terms, conditions, and requirements that follow:

- A. LESSEE will provide Commercial General Liability, Broad Form General Liability and Business Automobile Liability insurance that meet or exceed the requirement of ISO Forms GL0002, GL0404 and CA0001, Code 1, respectively, in the most current State of California approved forms, in connection with LESSEE's performance in the amount of not less than \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage for each policy coverage.
- B. Commercial General Liability, Broad Form General Liability and Business Automobile Liability policies required in this Lease will be endorsed to name CITY, its officials, volunteers, and employees as "additional insureds" under said insurance coverage, to state that such insurance will be deemed "primary" such that any other insurance that may be carried by CITY will be excess thereto, and to state that the policy(ies) will not be cancelable or subject to reduction except upon thirty (30) days prior written notice to CITY.
- C. LESSEE will furnish to CITY a certificate of insurance, in the standard form required by CITY, duly authenticated, evidencing maintenance of the insurance required under this Lease and such other evidence of insurance or copies of policies as may be reasonably required by CITY from time to time. Insurance must be placed with insurers with a current A.M. Best Company Rating equivalent to at least a Rating of "A:VII."

25. COMPLIANCE WITH LAW. LESSEE will, at its sole cost and expense, comply with all of the requirements of all federal, state, and local authorities now in force, or which may hereafter be in force, pertaining to the Property and will faithfully observe in the use of the Property all applicable laws. The judgment of any court of competent

jurisdiction that LESSEE has violated any such ordinance or statute in the use of the Property will be conclusive of that fact as between CITY and LESSEE.

26. WAIVER OF BREACH. Any express or implied waiver of a breach of any term of this Lease will not constitute a waiver of any further breach of the same or other term of this Lease.

27. INSOLVENCY; RECEIVER. Either the appointment of a receiver to take possession of all or substantially all of the assets of LESSEE, or a general assignment by LESSEE for the benefit of creditors, or any action taken or offered by LESSEE under any insolvency or bankruptcy action, will constitute a breach of this Lease by LESSEE, and in such event this Lease will automatically cease and terminate.

28. NOTICES. Except as otherwise expressly provided by law, all notices or other communications required or permitted by this Lease or by law to be served on or given to either party to this Lease by the other party will be in writing and will be deemed served when personally delivered to the party to whom they are directed, or in lieu of the personal service, upon deposit in the United States Mail, certified or registered mail, return receipt requested, postage prepaid, addressed to:

LESSEE at:
Keerat Inc.
16607 Bellflower Boulevard
Bellflower, CA 90706
Attn: Prit Singh

CITY at:

City of Bellflower
16600 Civic Center Drive
Bellflower, CA 90706
Attn: City Manager

Either party may change its address for the purpose of this Section by giving written notice of the change to the other party.

29. ACCEPTANCE OF FACSIMILE SIGNATURES. The Parties agree that agreements ancillary to this Lease and related documents to be entered into in connection with this Lease will be considered signed when the signature of a party is delivered by facsimile transmission. Such facsimile signature will be treated in all respects as having the same effect as an original signature.

30. **GOVERNING LAW.** This Lease has been made in and will be construed in accordance with the laws of the State of California and exclusive venue for any action involving this Lease will be in Los Angeles County.

31. **PARTIAL INVALIDITY.** Should any provision of this Lease be held by a court of competent jurisdiction to be either invalid or unenforceable, the remaining provisions of this Lease will remain in effect, unimpaired by the holding.

32. **INTEGRATION.** This instrument and its attachments constitute the sole agreement between CITY and LESSEE respecting the Property, the use of the Property by LESSEE, and the specified term, and correctly sets forth the obligations of CITY and LESSEE. Any Lease or representations respecting the Property or its licensing by CITY to LESSEE not expressly set forth in this instrument are void. There is one attachment to this Lease.

33. **CONSTRUCTION.** The language of each part of this Lease will be construed simply and according to its fair meaning, and this Lease will never be construed either for or against either party.

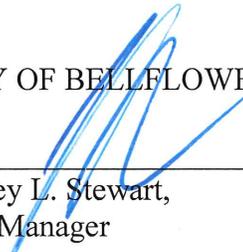
34. **AUTHORITY/MODIFICATION.** The Parties represent and warrant that all necessary action has been taken by the Parties to authorize the undersigned to execute this Lease and to engage in the actions described herein. This Lease may be modified by written amendment. CITY's city manager, or designee, may execute any such amendment on behalf of CITY.

35. **COUNTERPARTS.** This Lease may be executed in any number or counterparts, each of which will be an original, but all of which together will constitute one instrument executed on the same date.

[Signatures on next page]

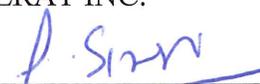
IN WITNESS WHEREOF the parties hereto have executed this contract the day and year first hereinabove written.

CITY OF BELLFLOWER



Jeffrey L. Stewart,
City Manager

KEERAT INC.



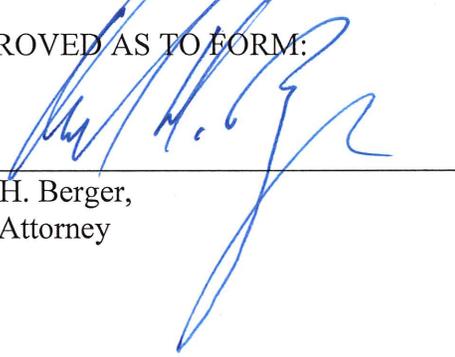
Prit Singh,
Owner

ATTEST:



Mayra Ochiqi,
City Clerk

APPROVED AS TO FORM:



Karl H. Berger,
City Attorney

EXHIBIT "A"

NARRATIVE DESCRIPTION OF PROPERTY

The 1,082-square foot square foot interior leasable floor space with the address of 16607 Bellflower Boulevard.