

Meeting Date: 7/14/2015

Report Type: Consent

Report ID: 2015-00625

Title: Lease Agreement for 1013 L Street with Cornflower Creamery, LLC

Location: 1013 L Street, District 4

Recommendation: Pass a Resolution 1) determining that, pursuant to City Code Section 3.68.110, the leasing of 1013 L Street without bidding is in the best interest of the City; 2) authorizing the City Manager to execute a lease agreement with Cornflower Creamery, LLC for an initial lease term of five years with two additional three-year options to extend; and 3) authorizing the City Manager to execute minor lease amendments pursuant to City Code Section 3.68.120.

Contact: Erika Galang, Program Specialist (916) 808-8572; Matt Eierman, Parking Services Manager (916) 808-5849, Department of Public Works

Presenter: None

Department: Public Works Department

Division: Off-Street Parking Admin

Dept ID: 15001211

Attachments:

1-Description/Analysis

2-Background

3-Resolution

4-Lease Agreement

City Attorney Review

Approved as to Form

Gerald Hicks

7/7/2015 11:18:35 AM

Approvals/Acknowledgements

Department Director or Designee: Jerry Way - 6/26/2015 10:24:51 AM

Description/Analysis

Issue: The approximately 1,830 square foot property located at 1013 L Street, on the ground floor of the Capitol Garage, was vacated during the latter part of 2013 by former tenant, Café Roma. It is preferable that lease proposals received produce strong evidence of not only extensive business ownership in the same line of industry but also the financial ability to revive the premises without a substantial reliance on tenant improvement funding from the City. A total of five proposals were received and extensively reviewed between August 2014 and May 2015.

Cynthia Broughton, member of Cornflower Creamery, LLC, submitted an offer to lease this space at the market rate of \$1.50 per square foot, with an initial term of five years and two additional three-year options to extend. Cornflower Creamery, LLC will utilize its own finances to build out the space. Parking Services will offer 90 days of rent abatement, installation of a 208V outlet, replacement of ceiling tiles and inspection and repair of all existing electrical, HVAC and plumbing to Code standards.

Cornflower Creamery, LLC proposes to bring an artisan ice cream shop specializing in the use of farm-fresh and local ingredients to the downtown Sacramento area. The core product will be an assortment of house-made, “farm-to-scoop” ice cream, along with house-made sandwiches, salads, & soups. Cornflower Creamery, LLC promises to create a mutually supportive collaboration with local growers, producers, chefs, and business entities and envisions a magnet destination on the L Street corridor where currently, no such artisan ice cream option exists. This includes working with local schools, non-profits and other public enterprises.

Policy Considerations: The recommendation is consistent with the City’s strategic plan and goal of the City Council to expand economic development throughout the City.

Economic Impact: None

Environmental Considerations:

California Environmental Quality Act (CEQA): This project is exempt from the California Environment Equality Act (CEQA) under Section 15301, “Operation of existing public structures or facilities involving no expansion of use.”

Sustainability Considerations: There are no sustainability considerations applicable to this action.

Other: None

Commission/Committee Action: None

Rationale for Recommendation: City Code Section 3.68.110 allows the City to lease its property without bidding when a firm and complete written offer which is at or above market value is received by the City and Council finds that leasing the property without bidding is in the best interest of the City. Ms. Broughton submitted an offer at market rate and offers over 25 years of culinary knowledge and experience in the gourmet food industry. In addition, staff finds that Ms. Broughton’s expertise in

strategic management and human resources will provide her with the tools to hire competent staff and a strong marketing program to sustain her business.

Financial Considerations: The space at 1013 L Street measures approximately 1,830 square feet and based on a market rate of \$1.50 per square foot, monthly rent payments for the first Lease Term will begin at \$2,830.50 and increase 3% annually. Total rent collected during the initial 5-year term will be \$174,882.93. A commission payment in the amount of \$5,246.49, which is equal to three percent of the Gross Value of the Initial Lease Term, will be paid to Kari Bryski, Director and Realtor with Mason-McDuffie Commercial Real Estate. Rent abatement for the first 90 days amounts to \$8,491.50. Tenant improvements provided by the City will include the installation of a 208V outlet, replacement of all existing ceiling tiles, and ensure all existing electrical, HVAC and plumbing meet current code requirements. All rental income will be deposited in the Parking Fund (Fund 6004).

Local Business Enterprise (LBE): Not applicable

Background

Cynthia Broughton, a Sacramento native whose family roots in the area trace back to 1915, developed her love for gourmet food during the emergence of California Cuisine by noted chefs such as Alice Waters of Chez Panisse. This interest later spawned an extensive career in the gourmet food industry, including a series of work and sales experience with a Bay Area gourmet market and later, a gourmet specialty foods firm. In 1991, she started her own catering business, serving as a chef to large, local retreat centers and established a thriving organic berry farm on six acres of land in Lake County. For seven years, her farm supported sheep, dairy goats and a sales operation for organic berries, farm-fresh eggs, flowers, herbs, fruits and vegetables.

For the past nine years, Ms. Broughton has focused on her work in the corporate arena for various firms, serving in roles of Chief Financial Officer, Human Resources & Organizational Development Director, and now, owner and principal consultant of her own human resources and business management consulting firm, HR Business Partners, LLC. Despite this recent change in career, Ms. Broughton's true passion for gourmet foods has never wavered and she is now combining all her skills and expertise to bring a quality, artisan food experience to downtown Sacramento.

Ms. Broughton holds a bachelor's degree in Earth Sciences from UC, Berkeley, a master's degree in Somatic Psychology from Lesley University, and a PhD in Organizational Systems from Saybrook University.

RESOLUTION NO. 2015-XXX

Adopted by the Sacramento City Council
July 14, 2015

LEASE AGREEMENT FOR 1013 L STREET WITH CORNFLOWER CREAMERY, LLC

BACKGROUND

- A. 1013 L Street is located in the City's Capitol Garage. The site is approximately 1,830 square feet in size. Capitol Garage has over 21,000 square feet of commercial office and retail space.
- B. Pursuant to City Code Section 3.68.110 Cornflower Creamery, LLC. submitted a firm and complete written offer to lease 1013 L Street wherein the rent specified is at or above the fair market rate for comparable property as determined by the City's real property supervisor.
- C. The term of the lease is five years with two, three-year extended term options. Based on a market rate of \$1.50 per square foot, monthly rent payments for the Initial Term will begin at \$2,830.50 and increase 3% annually. Rent will be abated for the first 90 days while the Lessee completes their tenant improvements. Total rent collected during the Initial Term will be \$166,647.93. All rental income will be deposited in the Parking Fund (Fund 6004).
- D. A commission payment of \$5,246.49 will be paid to Mason-McDuffie Commercial Real Estate.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. Pursuant to City Code Section 3.68.110 it is in the best interests of the City to lease 1013 L Street without bidding.
- Section 2. The City Manager is authorized to execute a lease agreement with Cornflower Creamery, LLC. For retail space at 1013 L Street for a term of five years with two, three-year extended term options.
- Section 3. Pursuant to City Code Section 3.68.120 the City Manager is authorized to make minor lease amendments.

LEASE

CAPITOL GARAGE
1013 L Street

Lessee: Cornflower Creamery, LLC

THIS LEASE, ("Lease"), is executed at Sacramento, California, on _____, between the CITY OF SACRAMENTO, a municipal corporation ("Lessor"), and Cornflower Creamery, LLC ("Lessee").

1. **DESCRIPTION OF PREMISES.** Lessor leases to Lessee, and Lessee hires from Lessor, on the terms and conditions hereinafter set forth, those certain "Premises" situated in the City of Sacramento, County of Sacramento, State of California, known as a portion of the Capitol Garage and described as space consisting of approximately one thousand eight hundred thirty (1,830) square feet of floor space, shown on the diagram attached hereto and marked Exhibit "A".

2. **PARKING SPACES.** During the term of this Lease, the Lessor agrees to make available to Lessee or its employees up to two (2) undesignated monthly parking spaces in the parking facility which houses the demised Premises at the current rental rate applicable to monthly parking in the garage by members of the public. Rental paid for said monthly parking spaces shall be in addition to the minimum monthly rental specified in Paragraph 5 of this lease. Lessor warrants that parking policies will apply equally and justly to all tenants, including monthly parkers may be directed to an alternate garage to park due to parking overflow.

3. **TERM.** The term of this Lease shall be as follows:

This Lease shall be effective upon execution by both parties. The date of execution by both parties shall be known as the "Lease Commencement Date."

- (a) Following the Lease Commencement Date, Lessee shall have a build-out period of up to ninety (90) days herein referred to as the "Build Out Period". Following this 90-day "Build-Out Period" rent and all additional charges shall commence ("Rent Commencement Date"). If Tenant opens for business prior to expiration of the "Build Out Period," rent payment will continue to be abated until the ninetieth day following the Lease Commencement Date.

- (b) The Initial Term of this Lease shall be for sixty (60) full calendar months commencing upon the beginning of the "Rent Commencement Date," The Initial Term shall expire, unless sooner terminated, at midnight on the last day of the sixtieth (60) full calendar month.
- (c) Lessee has two additional three-year options to extend this Lease ("Extended Terms") following expiration of the Initial Lease Term. Lessee may exercise the first Extended Term by giving notice to Lessor at least six (6) months, but not more than one year, before the expiration of the Initial Lease Term. If Lessee has been in default in the payment of rent as provided in the last sentence of Paragraph 6 of this Lease, more than one time in any one-year period prior to the date the first Extended Term is to commence, the Lessor, at its sole discretion, may deny commencement of the Extended Term, at which point this Lease shall expire at the end of the Initial Lease Term.
- (d) Following expiration of the first Extended Term, Lessee may exercise the second Extended Term by giving notice to Lessor at least six (6) months, but not more than one year, before the expiration of the first Extended Term. If Lessee has been in default in the payment of rent as provided in the last sentence of Paragraph 6 of this Lease, more than one time in any one year period prior to the date the second Extended Term is to commence, the Lessor, at its sole discretion, may reject Lessee's exercise of the second Extended Term, at which point this Lease shall expire at the end of the first Extended Term.

4. **OCCUPANCY** Lessee shall occupy the leased Premises upon Lease execution by Lessor and Lessee.

5. **RENT**

- (a) Rent charges shall begin upon the first day following the "Build Out Period" ("Rent Commencement Date)."
- (b) The minimum monthly rental charges shall be two thousand seven hundred forty-five dollars (\$2,745.00) per month, which is based on one dollar and fifty cents (\$1.50) per square foot, times approximately one thousand eight hundred thirty (1,830) square feet, in lawful money of the United States of America, which Lessee agrees to pay Lessor, without deduction or offset, except as otherwise set forth in this lease, at such place or places as may be designated from time to time by Lessor, in writing to the Lessee, in installments as follows: two thousand seven hundred forty-five dollars (\$2,745.00) on the

Rent Commencement Date, and two thousand, seven hundred forty-five dollars (\$2,745.00) thereafter on the first day of each and every subsequent calendar month. Rent for any partial month of occupancy shall be prorated as to the number of days in such month. The monthly rental payments shall be due and payable on the first day of each month, in advance. Rent payments shall be automatically deducted each month from Lessee's credit or debit card account.

- (c) If the credit or debit card expires and the rent payment cannot be paid by this method, Lessee is responsible for making the rent payment by check, money order or cash before the rent due date to avoid a Late Fee. Lessee will be responsible for payment of any Late Fee incurred due to the expiration of the credit or debit card. Lessee is also responsible for submitting an updated credit or debit card number for subsequent rent payments.
- (d) Every twelve (12) Months of the Initial Lease Term, the monthly rent shall increase by three percent (3%) over the prior year's lease rental rate. (See attached rent schedule Exhibit "C").
- (e) If the option for first Extended Term is exercised, rent shall be set to the **market rent**, beginning the first day of the option period. Market rent, as agreed between Lessor and Lessee, shall be determined by using comparable lease rates of other buildings within the downtown Sacramento area of similar type, locations, and demographics. If Lessor and Lessee are unable to reach a decision then, both Lessor and Lessee shall hire a real estate broker to determine the lease rates. If both parties cannot agree to a lease rate after review of both professional opinions, then both parties shall split the cost of a third real estate broker and shall use the average of all three appraisals to determine the lease rate for the first Extended Term.
- (f) If the option for second Extended Term is exercised, rent shall be set to **market rent**, beginning the first day of the option period. Market rent, as agreed between Lessor and Lessee, shall be determined by using comparable lease rates of other buildings within the downtown Sacramento area of similar type, locations, and demographics. If Lessor and Lessee are unable to reach a decision then, both Lessor and Lessee shall hire a real estate broker to determine the lease rates. If both parties cannot agree to a lease rate after review of both professional opinions, then both parties shall split the cost of a third real estate broker and shall use the average of all three appraisals to determine the lease rate for the second Extended Term.

6. **DELINQUENT RENT.** In the event that rent payment is not received by Lessor on or before the tenth (10th) day of the month for which rent is due, rent for that month shall be automatically increased by an amount equal to ten (10%) percent ("Late Fee") of the current monthly rent. The occurrence of a holiday or weekend on the tenth (10th) day of any month does not provide an exception to the assessment of a Late Fee. The Late Fee shall be in addition to and not in lieu of all other remedies of Lessor for failure to make timely payment of rentals pursuant to this Lease. In addition to the Late Fee, in the event that any rent payment is not actually received by Lessor on or before thirty (30) days after it is due, Lessee shall be considered in default under this Lease. All monetary obligations of Lessee to Lessor under the terms of this Lease, including but not limited to late fees, are deemed to be rent.

7. **LEASE GUARANTEE BOND.** Lessee is responsible for maintaining a current Lease Guarantee Bond for no less than \$45,000 to cover the cost of loss and/or damages to the Lessor resulting in Lessee's failure to pay rent or late fees, abandonment of the premises, damages to Premises, breach of the Lease or if Lessee files for bankruptcy while still owing Lessor rent and fees. The Lease Guarantee Bond must be in full effect for the duration of each Lease term that the Lessee occupies the Premises. In the event of a breach of the Lease, monetary losses, damages to the Premised or abandonment of the Premises by Lessee, the Lessor reserves the right to contact the agency maintaining the Lease Guarantee Bond to collect payments.

CNA Surety
PO Box 5077
Sioux Falls, SD 57117-5077
1-800-331-6053
www.cnasurety.com

8. **OUTDOOR AREAS**

- (a) Lessee shall not erect a barrier, restrictive structure or fencing of any type on the exterior of the Premises. Violation of this subsection will result in immediate removal of the barrier, structure or fencing at the Lessee's cost and will constitute a breach of the Lease.
- (b) The outdoor area is to be used solely for restaurant seating and public access by the customers of Lessee. No part of the outdoor area shall be used for any other purpose without the prior written consent of the Lessor.

- (c) Lessee shall comply with all statutes, ordinances, regulations, and other requirements of all governmental entities that apply to the occupancy or use of the building and the Premises, and with all rules and regulations that are adopted by Lessor for the safety, care, and cleanliness of the Premises and the preservation of good order on the Premises.
- (d) Lessor must be notified of and approve all equipment, structures, furniture, plants, banners signs, trees planters or decorative items prior to installation in the outdoor space. Installation of any items not approved by Lessor will require immediate removal at the cost of the Lessee. Any fees or violations incurred by Lessee for installation of items that are in violation of local or state ordinances shall be the responsibility of the Lessee. Any permits required by local ordinances or state law to install any item in the outdoor lease space shall be the responsibility of the Lessee.
- (e) Lessee shall maintain the outdoor lease space in a clean and attractive condition consistent with the use of the premises as a restaurant. All trash and debris, including leaves and branches from the trees, shall be removed daily from the outdoor lease space area. The space shall be swept frequently to attraction of rodents, insects and other vermin and pests, or unpleasant odors and trip hazards.
- (f) The City of Sacramento does not assume any liability for the loss, damage or theft caused to any property belonging to Lessee within the outdoor seating area. Insurances maintained on the interior lease space areas must also cover the outdoor lease space area.
- (g) All tables and chairs and any other furniture of Lessee located in the outdoor lease space shall be durable and attractive and designed to complement the existing tables and chairs and any other furniture used in the outdoor lease space. No furniture shall be used in the outdoor lease space which may cause damage to, or discoloration of, the pavement when moved or stored. All tables and chairs and any other furniture in the outdoor lease space shall be secured by Lessee at night after the restaurant is closed to discourage loitering and vandalism. Violation of these furniture design and use requirements shall be a breach of this Lease and, at the option of Lessor, shall be cause for termination of this Lease.
- (h) Violation of any of the use limitations and prohibitions, anti-discrimination covenant, maintenance requirements, or signage and tree lighting provisions in this Paragraph 8 shall be a breach of this Lease and, at the option of Lessor, shall be cause for termination of this Lease.

9. **UTILITIES AND SERVICES**

- (a) Lessor shall pay water, sanitary sewer and storm drainage charges that are associated with Lessee's use of the Premises.
- (b) Except as otherwise provided for above and in Exhibit "C" of this Lease, Lessee shall pay for all other utilities and services serving the Premises, including, but not limited to, trash removal, natural gas and electricity.

10. **SERVICE AREAS AND GARBAGE REMOVAL.**

- (a) Lessee agrees that all removal of garbage and refuse from the Premises shall be made only by way of loading areas, or such portion of the parking areas within the parking structure operated by Lessor, as Lessor may designate from time to time for such use by Lessee, and at such hours as may be designated by Lessor from time to time. Lessee shall comply with all applicable provisions of the Sacramento City Code related to refuse, garbage storage, removal and collection.
- (b) Lessee shall tie all trash bags prior to placing trash bags in garbage receptacle(s). Lessee shall ensure that the lid on the garbage receptacle(s) into which Lessee's trash is placed is closed at all times the receptacle is not receiving trash. Lessee shall ensure that trash is not dragged on any surface.
- (c) Lessee agrees to arrange and pay for trash removal on a regular schedule of at least once every three (3) days. Lessee shall arrange for trash to be removed more frequently if, in Lessor's reasonable discretion, odor, health, or safety problems caused by Lessee's garbage develop. If, in Lessor's reasonable discretion, odor, health, or safety problems caused by Lessee's garbage develop and Lessee has not arranged for Lessee's garbage to be picked up in accordance with this Lease, Lessor reserves the right to arrange for pickup of Lessee's garbage and charge the reasonable cost of that removal to Lessee. In no event shall Lessor arrange the pickup of Lessee's garbage at the cost of the Lessee, without providing a minimum of 24 hours' notice to Lessee.
- (d) Lessee's trash area will be located directly behind Capitol Garage between 10th and 11th Streets (See Exhibit A). Lessee will ensure the receptacle is stored in a location that does not impede the flow of vehicle traffic through the alley and does not block access to other garbage receptacles located in the alley. All receptacles must be secured and locked at all times to prevent theft, vandalism or unauthorized dumping.

11. **TAXES.** Lessee shall, in addition to other sums to be paid under this Lease, pay to the County of Sacramento all personal property taxes which shall be levied against the personal property of the Lessee. Lessee is also responsible for the payment of possessory interest tax. Pursuant to Section 107.6 of the California Revenue and Taxation Code, there may be a possessory interest tax levied by virtue of this Lease. Lessee shall be billed and shall pay the possessory interest tax directly to the County Assessor's Office.

12. **USE.** The Premises are leased to the Lessee for the purpose of operation of a restaurant and event room. Lessee shall not use or permit said Premises, or any part thereof, to be used for any other purpose(s). Lessor makes no warranty, express or implied, as to the suitability of the Premises for the specified use. Lessee is responsible for any permits and/or fees required by local, state or federal agencies to conduct events or activities on the Premises, including any Entertainment Permit required by the City of Sacramento to conduct specific entertainment activities.

13. **INSURANCE HAZARDS.** Other than the approved use set forth in Paragraph 11 of this Lease, no use shall be made or permitted to be made of the Premises, nor acts done, which will increase the existing rate of insurance upon the building in which the Premises are located, or cause a cancellation of any insurance policy covering said building, or any part thereof, nor shall Lessee sell, or permit to be kept, used, or sold, in or about the Premises, any article which may be prohibited by the standard form of fire insurance policies. Lessee shall, at its sole cost and expense, comply with any and all requirements, pertaining to the Premises, of any insurance organization or company, necessary for the maintenance of reasonable fire and public liability insurance, covering the building and appurtenances.

14. LESSOR/LESSEE INITIAL IMPROVEMENTS TO PREMISES.

- (a) Lessee shall bear the cost of the improvements and the cost of architectural and engineering consultants in connection with tenant improvements, except that Lessor shall contribute to Lessee 90 days of rent abatement in lieu of requested Tenant Improvements, installation of a 208V outlet in the rear of the Premises to support equipment necessary for the operation of the business and replacement of all ceiling tiles to conform with code regulations.
- (b) The Lessee Improvements may be commenced any time after the Lease Commencement Date and in advance of the Rent Commencement Date and shall be completed within a reasonable period of time following commencement of such improvements. However, no delay in completion of the Lessee Improvements shall change or extend the Rent Commencement Date or change or extend the date of the expiration of the Lease Term unless such delay is caused by Lessor's acts or omission

- (c) Lessor has determined that at the time of delivery of space to Lessee, no substandard work exists which adversely affects the mechanical, electrical, plumbing, heating, ventilation and air conditioning, life-safety or other systems of the Building, the curtain wall of the Building, and the structure or exterior appearance of the Building. Lessor shall have no responsibility to make any improvements to the structure of the Premises including those required by federal and state disability access laws. Lessor will determine that the building shell meets all current federal and state disability access laws at time of delivery. Any of Lessee's specific changes to interior space that trigger additional requirements under federal and state disability access laws shall be Lessee's sole responsibility.
- (d) Except for the Lessee Improvement Allowance, Lessor shall have no liability or responsibility for repairs to, changes to or code upgrades required in connection with the construction of the Lessee Improvements.
- (e) Within thirty (30) business days after the execution of this Lease, Lessee shall provide Lessor with a set of floor plans and within sixty (60) days after the execution of this lease, Lessee will provide Lessor with a set of detailed drawings showing Lessee's proposed improvements to the Leased Premises. Within ten (10) business days after receipt of Lessee's plans, Lessor shall provide Lessee with written approval or disapproval of the improvements, with reasons for disapproval. Lessor may post a notice of non-responsibility prior to the start of any improvements. Lessee Improvements shall include, at a minimum, the improvements described in "Exhibit B".
- (f) All construction work required or permitted by this Lease shall be done in a good and workmanlike manner, and in compliance with all applicable laws and ordinances, regulations, and orders of governmental authority and insurers of the Premises. Lessor may inspect the Lessee's work at reasonable times and shall promptly give notice of observed defects.
- (g) Before starting any work, Lessee shall:
 - (i) Obtain all required governmental approvals and permits required to start construction; and
 - (ii) Satisfy all requirements regarding insurance imposed by this Lease; and

- (iii) Deliver to Lessor a statement of the names of all contractors and subcontractors and the estimated cost of all labor and material to be furnished by them;
- (iv) Cause Lessee's contractors to carry worker's compensation insurance covering all the contractors' and subcontractors' employees, and public liability insurance with limits of One Million Dollars (\$1,000,000) and property damage insurance with limits of One Million Dollars (\$1,000,000), both general and vehicular (all insurance to be written by companies licensed to do business in the State of California, and insuring Lessor and Lessee as well as the contractors);
- (v) Deliver to Lessor certificates of all insurance, providing that insurance may not be canceled without thirty (30) days' prior written notice to Lessor. Lessor shall have the right during the term to increase the minimum liability limits specified above, to meet reasonable changed circumstances. Lessor shall be reasonable as to the cost of said changes. At all times Lessee shall keep the Premises free from and clear of mechanics' liens.

15. **ACCEPTANCE OF PREMISES. SURRENDER AT END OF TERM.** By signature hereto, Lessee accepts the Premises as being in good and sanitary order, condition and repair, and in the size and condition represented by Lessor, and agrees on the last day of the term, or sooner termination, of this Lease, to surrender the premises with appurtenances to the Lessor in broom clean condition reasonable use and wear excepted, and to remove all of Lessee's signs and personal property, not affixed to the premises, from the premises.

16. **WASTE. QUIET CONDUCT/QUIET ENJOYMENT.** Lessee shall not commit, or suffer to be committed, any waste upon the premises, or any nuisance or other act or thing which may disturb the quiet enjoyment of any other Lessee in the building in which the Premises are located. Lessor covenants and represents that it has full right and lawful authority to enter into and perform the Lessor's obligations under this lease and that it has a fee simple title, in the building of which the premises is a part, free and clear of all conditions, covenants, restrictions, mortgages and other liens or defects in title of any nature whatsoever affecting the premises, or the rights granted Lessee in this Lease. Lessor further covenants that if Lessee shall discharge the obligations set forth to be performed by Lessee, Lessee shall have and enjoy, during the term hereof, and all extensions herein provided, the quiet and undisturbed possession of the premises and all appurtenances appertaining thereto, together with the right to use the areas common to all lessees as in the this lease contemplated.

17. LESSEE ALTERATIONS; MECHANICS' LIENS

- (a) Lessee shall not make, or suffer to be made, any alterations of the premises, or any part thereof, without the prior written consent of Lessor, which consent shall not be unreasonably withheld. All alterations, improvements, additions, or fixtures, other than trade fixtures not permanently affixed to realty, that may be made or installed upon the premises by either of the parties and that in any manner are attached to the floors, walls, or ceilings, shall be the property of the Lessor, and, at the termination of this Lease, shall remain upon and be surrendered with the premises as a part of the premises, without disturbance, molestation, or injury; provided, however, Lessee may remove trade fixtures, if Lessee repairs any damage to the premises caused by such removal.

- (b) Lessee shall pay, when, due, all sums of money that may become due or purportedly due for any labor, services, materials, supplies, or equipment alleged to have been furnished or to be furnished to or for Lessee in, at, upon or about the premises and which may be secured by any mechanics', material men's or other lien against the premises or Lessor's interest in the premises, and Lessee shall cause each such lien to be fully discharged and released at the time performance of the obligation secured matures or becomes due. Alternatively, Lessee shall have the right to contest the correctness of the validity of any such lien if, immediately on demand by Lessor, Lessee procures and records a lien release bond issued by a corporation authorized to issue surety bonds in California in an amount equal to one and one-half times the amount of the claim of lien. The bond shall meet the requirements of California Civil Code Section 3143 and shall provide for the payment of any sum that the claimant may recover on the claim (together with costs of suit, if it recovers in the action). Lessor shall have the right to post and maintain on the premises such notices of non-responsibility as are provided for under the mechanics' lien law of California.

18. CARE AND MAINTENANCE OF THE DEMISED PREMISES.

- (a) Lessee shall maintain the premises, except all structural portions thereof, in the same order and condition as when received, wear and tear in the usual and ordinary operation of Lessee's business, and action of the elements, excepted. The term "structural portions" as used in this Paragraph, shall mean and include the foundations, exterior walls, concrete slabs, the beams and columns bearing the main load on the roof, of the premises. Lessee shall maintain the exterior and interior of doors, windows, and plate glass located on the premises.

- (b) Lessor shall keep in good order, condition and repair (i) the structural portions of the premises, as hereinabove defined, (ii) the plumbing and sewage system serving up to the premises, and (iii) the heating, air conditioning and ventilating equipment provided for the premises by the Lessor; except (as to all items) for any damage caused by any negligent or intentional act or omission of Lessee or its employees, agents, invitee, licensees, or contractors. In addition to Lessee's responsibilities under Paragraph 8, Lessor shall maintain the cleanliness and maintenance of all areas common to retail Lessees at Capitol Garage including, but not limited to the exterior of premises, any common garbage areas, pedestrian walkways, patios, landscaped areas, sidewalks, service corridors, stairways, non-structural portions of the roofs and exterior walls, and loading areas. Lessee shall maintain and clean the cooking hood, grease trap and exhaust system serving the premises.
- (c) Lessee and Lessor shall complete all repairs for which they are respectively responsible in a timely manner, not to exceed five (5) working days in the event of an emergency repair. In an emergency situation where Lessor is required to make the repair and is unable to make the repair so as to prohibit Lessee from conducting Lessee's normal business, Lessee shall be permitted to make the repair itself and deduct the reasonable and documented cost of such repair from Lessee's next rental payment. The amount of such repair shall not exceed the fair market rate(s) for the pertinent industry from which the repair is performed. For the purposes of this Subparagraph, "emergency" shall mean a condition affecting the health, safety or security of Lessee or Lessee's invitees.
- (d) The plumbing facilities serving the premises shall not be used for any other purpose than that for which they are constructed. No foreign substance of any kind shall be thrown in the plumbing facilities. The expense of any breakage, stoppage, or damage resulting from a violation of this provision shall be borne by Lessee if Lessee or its employees, agents, contractors, or invitees shall have caused it.

19. **ABANDONMENT OF PREMISES, TRADE FIXTURES.** Lessee shall not vacate or abandon the premises at any time during the term, and if Lessee shall abandon, vacate, or surrender said premises, or be dispossessed by process of law, or otherwise, any personal property belonging to Lessee and left on the premises shall be deemed to be abandoned at the option of Lessor, subject to Lessee's mortgage company security interest. Lessor reserves right to collect from the Lease Guarantee Bond pursuant to Paragraph 7 to mitigate any damage due to abandonment or loss.

19. **COMPLIANCE WITH LAW.**

- (a) Lessee shall, at its sole cost and expense, comply with all of the requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the specific activity of Lessee on the premises. The judgment of any court of competent jurisdiction, or the admission of Lessee in any action or proceeding against Lessee, whether Lessor be a party thereto or not, that Lessee has violated any such ordinance or statute in the use of the premises shall be conclusive of the fact as between Lessor and Lessee.

- (b) Lessee represents, warrants and covenants that Lessee will remain in compliance with all applicable federal, state and local laws, ordinances and regulations (including consent decrees and administrative orders) relating to public health and safety and protection of the environment ("Environmental Laws"), and that Lessee will not permit to occur any release, generation, storage, disposal or treatment of any hazardous material as that term is defined in any of the Environmental Laws. Lessee shall immediately notify Lessor of any such release, generation, storage, disposal or treatment and Lessee shall take such necessary remediation measures at Lessee's expense to the complete satisfaction of Lessor. Lessee shall immediately notify Lessor of any complaints, citations, inquires or notices from any governmental entity relating to compliance with Environmental Laws. Lessee represents, warrants and covenants that all governmental permits relating to the use or operation of the premises required by applicable Environmental Laws are and will remain in effect, and Lessee will comply with them.

20. **INDEMNITY.** This lease is made upon the express condition that Lessee shall indemnify and hold harmless Lessor from and against any and all claims, damages, causes of action, suits, or damages (including costs and expenses incurred in connection therewith) for death or injury to persons or for loss of or damage to property arising out of or in connection with the use and occupancy of the premises by Lessee, its agents, servants, employees, or invitees and to the extent not caused by Lessor's or Lessor's employees' negligence or willful misconduct; provided, however, Lessor shall be liable for loss, damages, or injury resulting from structural defects of the building in which the premises are situated which are not caused by negligence or intentional act of Lessee, its agents, servants, employees, or invitees. Lessor shall indemnify and hold harmless Lessee from and against any and all claims, causes of action, suits or damages (including costs and expenses incurred in connection therewith) for death or injury to persons or for loss of or damage to property arising out of or in connection with Lessor's or Lessor's employees' negligence or willful misconduct or resulting from structural defects of the building in which the Premises are situated which are not caused by the negligence or intentional act of Lessee, its agents, servants, employees

or invitees. In the event of any claims made or suits filed, Lessor shall give Lessee notice thereof.

21. INSURANCE REQUIREMENTS.

During the term of this Lease Agreement, and until final completion and acceptance of any work required by this Agreement, Lessee shall maintain in full force and effect at its own cost and expense the following insurance coverage. By requiring the insurance herein, the CITY does not represent that the coverage and limits will necessarily be adequate to protect the LESSEE. It is understood and agreed by the LESSEE that the required insurance coverage and limits shall not be deemed as a limitation on LESSEE'S liability under the indemnities granted to the CITY in this Lease Agreement.

Insurance requirements are subject to review and revision every five (5) years to assure that policy terms, conditions and limits are maintained in accordance with current insurance industry standards for comparable premises and buildings.

A. Minimum Scope & Limits of Insurance Coverage

- (1) General Liability Insurance is required providing coverage at least as broad as ISO GL Form 00 01 on an occurrence basis for bodily injury including death of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000). The policy shall include coverage for premises, operations, products and completed operations and contractual liability for the term of the policy. The policy shall include a fire legal liability limit of \$50,000 for a small leased space or \$250,000 for a large leased space.
- (2) All Risk Property Insurance including coverage for special perils is required all improvements, fixtures and equipment. All property insurance must be for replacement value and name the City as loss payee.
- (3) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000) are required. The Worker's Compensation policy shall include a waiver of subrogation.
- (4) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the LESSEE.

No automobile liability insurance shall be required if LESSEE completes the following certification:

"I certify that a motor vehicle will not be used in the performance of any work or services under this agreement." CB (LESSEE initials)

B. Additional Insured Coverage

General Liability Insurance The CITY, its officers, employees and volunteers shall be covered by policy terms or endorsement as additional insured as respects general liability arising out of activities performed by or on behalf of the LESSEE including products and completed operations of LESSEE and premises owned, leased or used by LESSEE.

C. Other Insurance Provisions

The policies are to contain or be endorsed to contain the following provisions.

- (1) LESSEE's insurance shall be primary as respects the CITY, its officers, employees and volunteers. Any insurance or self-insurance maintained by the CITY, its officials, employees or volunteers shall be in excess of LESSEE's insurance and shall not contribute with it.
- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the CITY, its officers, employees and volunteers.
- (3) Coverage shall state that LESSEE'S insurance shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.
- (4) The CITY will be provided with thirty (30) days written notice of cancellation or material change in the policy terms or language.

D. Acceptability of Insurers

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this section must be declared to CITY's representative and approved by the CITY Risk Management Division.

E. Verification of Coverage

- (1) LESSEE shall provide initial insurance documents to the CITY representative upon request, prior to execution of the final contract. All future insurance renewal documents shall be sent to:

EBIX BPO
212 Kent Street
Portland, MI, 48875
Phone: (517) 647-1700
Fax: (517) 647-7900
Email: CertsOnly@periculum.com

- (2) The CITY may withdraw its offer or cancel this Lease Agreement if the certificates of insurance and endorsements required have not been provided prior to execution of this Lease. Failure to provide insurance certificates and endorsements and keep such certificates and endorsements current will be considered a material breach by LESSEE of this Lease Agreement.

F. Contractors

Lessee shall require and verify that all contractors and subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsections A, C and D above.

22. **AUCTIONS. SIGNS.** Lessee shall not conduct or permit to be conducted any sale by auction on the premises. Lessee shall not place or permit to be placed any sign, decoration, marquee or awning on the front of the premises, or any other portion of the building in which the premises is a part, without the prior written consent of Lessor. Lessee shall not place or permit to be placed upon any wall, sidewall, rear wall, or roof, any sign, advertisement, or notice without the prior written consent of Lessor. All signage shall be agreed to between Lessor and Lessee; however, Lessor shall not unreasonably withhold said approval. Lessee's signage must meet all applicable governmental codes and regulations. Lessor further grants to Lessee during the term of this lease a non-exclusive right and easement over that portion of the Center as may be required by Lessee to improve, renovate, repair, replace, and maintain the Premises or replace its signage. Tenant shall have the right, at its own cost, to change or alter such signage at any time during the term of this Lease provided such signage is in compliance with all applicable governmental codes and regulations. Signage must reflect the business name reflected on this Lease Agreement.

23. **ENTRY BY OWNER.** Lessee shall permit Lessor and its agents to enter the premises at all reasonable times when given a minimum of 24-hours' notice from Lessor, (except in the case of emergency, in which case Lessor may enter as reasonably necessary) for the purpose of inspecting the same or for the purpose of maintaining the building in which premises are situated, or for the purpose of making repairs, alterations, or additions to any other portion of said building in which the premises are located, including the erection and maintenance of such scaffolding, canopies, fences and props as may be required, for the purpose of posting notices of non-liability for alterations, additions or repairs, or for the purpose of enforcing the provisions of Paragraph 22 of this Lease, without any rebate of rent and without any liability to Lessee for any loss of occupation or quiet enjoyment of the premises thereby occasioned. Provided, however, that if Lessor's repairs/alterations interrupt Lessee's operations for longer than five (5) business days, rent shall abate until repairs are completed. Lessee shall permit Lessor, at any time within sixty (60) days prior to the expiration of this Lease, to place upon premises any usual or ordinary "to let" or "to lease" signs. If there is an emergency however Lessor shall have the right to immediate access. Lessor shall use its best efforts to interfere with operation of Lessee as little as is reasonably possible.

24. **DESTRUCTION OF PREMISES.** In the event of a partial destruction of the premises during the term of this Lease, from any cause for which Lessor is responsible for repair according to the terms and conditions of this Lease, Lessor shall forthwith repair the same, provided such repairs can be made within one hundred twenty (120) days under the laws and regulations of state, federal, or municipal authorities, but such partial destruction shall in no way annul or void this Lease, except that Lessee shall be entitled to a proportionate reduction in rent to be based upon the extent to which the making of such repairs shall interfere with the occupancy of the premises by Lessee. If such repairs cannot be made within one hundred twenty (120) days, Lessor may, at its option, make same within a time mutually agreeable between Lessor and Lessee, this Lease continuing in full force and effect, and the rent will be proportionately reduced as aforesaid in this Paragraph. In the event that Lessor does not so elect to make such repairs, or repairs cannot be made in one hundred twenty (120) days, or such repairs cannot be made under such laws or regulations, this Lease may be terminated at the option of either party upon thirty (30) days' notice to other party. In respect to any partial destruction which Lessor is obligated to repair or may elect to repair under the terms of this paragraph, the provisions of section 1932, subdivision 2, and of section 1933, subdivision 4, of the Civil Code of the State of California are waived by Lessee. A total destruction of the building in which the premises are situated shall terminate this Lease.

25. **ASSIGNMENT OR SUBLETTING.** Lessee shall not assign this Lease, or any interest therein, and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person (the agents, employees and invitees of Lessee excepted) to occupy or use the Premises, or any portion thereof, without the prior written consent of Lessor, which consent shall not be unreasonably withheld. Any consent to one assignment, subletting, occupation or use by another person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any such assignment or subletting without such consent shall be void, and shall at the option of Lessor, terminate this Lease. This Lease shall not, nor shall any interest therein, be assignable, as to the interest of Lessee, by operation of law, without the prior written consent of Lessor.

26. **INSOLVENCY. RECEIVER.** Either (a) the appointment of a receiver to take possession of all or substantially all of the assets of Lessee, or (b) a general assignment by Lessee for the benefit of creditors, or (c) any action taken or suffered by Lessee under any insolvency or bankruptcy act, shall constitute a breach of this Lease by Lessee. Should such action occur against Lessee, Lessee shall have thirty (30) days to cure the action or suit prior to being considered in default of this Lease.

27. **REMEDIES OF LESSOR.** The following rights and remedies shall be available to Lessor in the event Lessee commits any act of default during the term. Unless a different time period is set forth elsewhere in this Lease, Lessee shall be deemed to be in default only after receipt of written notice from Lessor specifying the nature of the violation and not having cured said violation within thirty (30) days after receipt of the notice. These rights and remedies shall not be exclusive, but shall be cumulative subject to Paragraph 39 of this Lease, and in addition to any and all rights and remedies now or hereafter allowed by law:

- (a) Even though Lessee breaches this Lease, or abandons the premises, this Lease shall continue in full force and effect for so long as Lessor does not terminate Lessee's right to possession of the premises; and Lessor shall be entitled to enforce all its rights and remedies under this Lease, including the right to collect rent as it becomes due. It is hereby specifically agreed between the parties that acts of maintenance or efforts to relet the premises, and/or the appointment of a receiver on initiative of Lessor to protect Lessor's interest under this Lease, will not constitute a termination of Lessee's right to possession. Lessor shall not be deemed to have elected to terminate Lessee's right to possession of the premises unless Lessor gives written notice of such election to terminate.
- (b) Lessor may elect, by written notice to Lessee, to terminate Lessee's right to possession of the premises at any time after the occurrence of any act of monetary default by Lessee, if said default is not cured within thirty (30) days of written notice of said default, and in such event may, at Lessor's option, declare this Lease and Lessee's right

to possession terminated. It is hereby specifically agreed between the parties that acts of maintenance or efforts to relet the Leased premises, and/or the appointment of a receiver on initiative of Lessor to protect Lessor's interest under this Lease will not constitute a termination of Lessee's right to possession. In the event Lessor elects to terminate this Lease and Lessee's right to possession as aforesaid, Lessor may recover as damages from Lessee the following:

- (i) The worth at the time of award of the unpaid rental which has been earned at the time of termination of the Lease; and
 - (ii) The worth at the time of award of the amount by which the unpaid rental which would have been earned after the date of termination of this Lease until the time of award exceeds the amount of such loss of rental that Lessee proves Lessor could have reasonably avoided; and
 - (iii) The worth at the time of the award of the amount by which the unpaid rental for the balance of the term after the time of award exceeds the amount of the loss of such rental that Lessee proves Lessor could have reasonably avoided; and
 - (iv) Any other amount necessary to compensate Lessor for all detriment proximately caused by Lessee's act or default or which in the ordinary course of things would be likely to result therefrom. The phrase "the worth at the time of the award" as referred to in this paragraph is to be computed by the allowing interest at the rate of ten (10) percent annually. The phrase "the worth at the time of the award" as referred to in this paragraph shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one (1) percent.
- (c) Efforts by Lessor to mitigate the damages caused by Lessee's breach of this Lease shall not waive Lessor's right to recover damages under this Paragraph.
 - (d) Nothing in this Paragraph shall affect the right of Lessor to indemnification against liability arising from or related to acts or events occurring prior to the termination of this Lease for personal injuries or property damage, or against mechanic's liens or other liens, claims or expenses.
 - (e) Lessor reserves the right to collect from the Lease Guarantee Bond pursuant to Paragraph 7.

28. **SURRENDER OF LEASE NOT MERGER.** The voluntary or other surrender of this Lease by Lessee, or mutual cancellation thereof, shall not work a merger, and shall, at the option of Lessor, terminate all or any existing subleases or subtenancies, or may, at the option of Lessor, operate as an assignment to it of any or all such subleases or subtenancies.

29. **JOINT & SEVERAL OBLIGATIONS.** If more than one individual or entity comprises Lessee, the obligations imposed on each individual or entity that comprises Lessee under this Lease shall be joint and several.

30. **NOTICES.** Any and all notices or demands by or from Lessor to Lessee, or Lessee to Lessor, shall be in writing. They shall be served either personally or by mail. If served personally, service shall be conclusively deemed made at the time of service. If served by mail, service of notices or demands shall be conclusively deemed made as of the time of deposit in the United States mail, postage paid, certified mail, return receipt requested.

Any notice or demand to Lessor or Lessee may be given to:

LESSOR:

City of Sacramento
Parking Services Division
Attn: Properties Coordinator
And Parking Manager
300 Richards Blvd, 2nd Floor
Sacramento, CA 95811
(916) 808-5110

LESSEE:

Cornflower Creamery, LLC
Cynthia Broughton, Member
5150 Fair Oaks Blvd, #101-129
Carmichael, CA 95608
(916) 223-8584

Any party hereto shall change the address for notice by giving written notice to the other party according to this Paragraph.

31. **WAIVER.** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition or any subsequent breach of the same or any other term, covenant, or condition herein contained. The subsequent acceptance of any delinquent rental payment by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant, or condition of this Lease, other than the failure of Lessee to pay the particular rental so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent.

32. **BINDING ON SUCCESSORS.** The covenants and conditions herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all of the parties hereto.

33. **TIME**. Time is of the essence of this Lease.

34. **CONDEMNATION**. In the event any entity with the power of eminent domain shall take the premises, or any part thereof, actually using the power of eminent domain or negotiating under the threat of the use of the power of eminent domain, then:

- (a) In the event of taking of the entire premises, this Lease shall be terminated when title passes to the condemner or when possession is obtained by the condemner, whichever shall first occur; or
- (b) In the event of a taking any area of the Premises less than the entire Premises, the rent shall be reduced in the same proportion as the area taken bears to the remainder and the Lease shall continue in full force and effect, unless within ten (10) days of the date the condemner takes possession or legal title vests in the condemner, Lessee shall give written notice of termination, which assigns and transfers to the Lessor any right to compensation or damages to which the Lessee may become entitled during the term hereof by reason of the condemnation of all, or a part of the premises. Lessee shall have the right to petition the condemning authority for Lessee's relocation costs.

35. **EXCUSABLE DELAYS**. If the performance of any act required by this lease to be performed by either Lessor or Lessee is prevented or delayed by reason of an act of God, strike, lockout, labor troubles, inability to secure materials or permits, restrictive governmental laws or regulations, or any other cause except financial inability that is not the fault of the party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay, and performance of the act during the period of delay will be excused. If any said delays or restrictions occur during the 120 day Build Out Period, and prevent Lessee from opening its business by Rent Commencement date, Lessee has the option to terminate lease agreement. However, nothing contained in this section shall excuse the prompt payment of rent by Tenant as required by this lease or the performance of any act rendered difficult solely because of the financial condition of the party required to perform the act.

36. **RIGHT TO MEASURE FLOOR SPACE OF PREMISES**. Within thirty (30) days following delivery of possession of the premises to Lessee, Lessee, at its sole cost and expense, or Lessor, at its sole cost and expense, may elect to cause the net usable floor space of the premises to be measured by a licensed architect. In the event such calculation reflects a deviation from the floor space set forth in Paragraph 1, and the other party approves the calculation, this Lease shall be amended to reflect the recalculated floor space. If the parties do not exercise their right to measure the floor space as provided herein, both Lessor and Lessee hereby acknowledge and agree that each party shall automatically be deemed to have absolutely and unconditionally (i) waived such right, (ii) accepted the floor space calculation as set forth in Paragraph 1, and (iii) released and waived any rights the

parties may have against one another in the event the floor space calculation set forth in Paragraph 1 is different from the actual floor space.

37. **CAPTIONS.** The title or headings to the paragraphs of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part of this Lease.

38. **RULES AND REGULATIONS.** Lessor shall have the right from time to time to promulgate reasonable rules and regulations and amendments thereto for the safety, care and cleanliness of the building in which the Premises are located and for the preservation of good order. Upon delivery of a copy of such rules and regulations or upon receiving written notice of such rules and regulations, together with a copy thereof, Lessee will comply with the rules and regulations, and a violation of any of them shall constitute a breach and default of this Lease as provided in Paragraph 27 of the Lease. If there is a conflict between the Lease and any rule or regulation, the Lease shall prevail. Lessor shall make all reasonable efforts to enforce any such rules and regulations uniformly against all Lessees in the building. No such rules and regulations shall require Lessee to pay any additional rent under this Lease.

LESSOR: _____

LESSEE: CB _____

39. **BROKERS** Mason-McDuffie Commercial Real Estate, Sacramento is acting as the broker for the Lessee in this transaction and as such, shall be paid, by Lessor, a commission equal to five thousand two hundred forty-six dollars and 49 cents (\$5,246.49) which is based on 3% of the Gross Value of the Lease for the Initial Term.

40. **MERCHANT VALIDATION PROGRAM.** Lessee agrees to participate in Lessor's Merchant Validation Program.

41. **NON-DISCRIMINATION IN EMPLOYEE BENEFITS.** This Agreement is subject to the provisions of Sacramento City Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. The requirements of Sacramento City Code Chapter 3.54 are summarized in Exhibit E. Lessee is required to sign the attached Declaration of Compliance (Equal Benefits Ordinance), Attachment B, to assure compliance with these requirements.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease on the date herein above first written.

LESSEE:

Cornflower Creamery, LLC

BY: Cynthia Broughton
Cynthia Broughton

Its: SOLE MEMBER

Date: 6-23-15

LESSOR:

CITY OF SACRAMENTO
A Municipal Corporation

BY: _____
CITY MANAGER

APPROVED AS TO FORM:

BY: [Signature]
DEPUTY CITY ATTORNEY

ATTEST:

BY: _____
CITY CLERK

EXHIBIT "A"

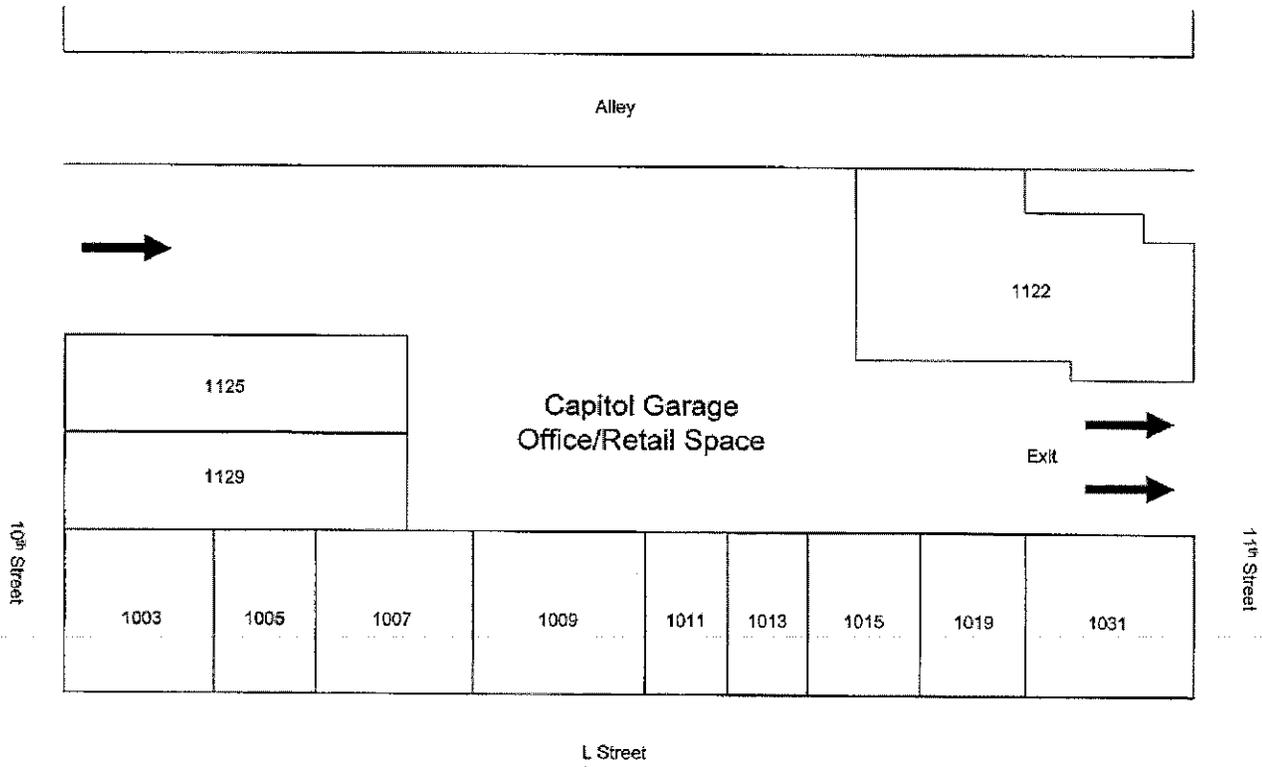


EXHIBIT "B"

DECLARATION OF COMPLIANCE Equal Benefits Ordinance

Name of Lessee: Cornflower Creamery, LLC

Address: 1000 I Street, Sacramento, CA 95814

The above named Lessee ("Lessee") hereby declares and agrees as follows:

1. I have read and understand the Requirements of the Non-Discrimination In Employee Benefits Code (the "Requirements") provided to me by the City of Sacramento ("City") and attached as Exhibit E to my City contract or agreement ("Contract").
2. As a condition of receiving the City Contract, I agree to fully comply with the Requirements, as well as any additional requirements that may be specified in the City's Non-Discrimination In Employee Benefits Code codified at Chapter 3.54 of the Sacramento City Code (the "Ordinance").
3. I understand, to the extent that such benefits are not preempted or prohibited by federal or state law, employee benefits covered by the Ordinance, are any of the following:
 - a. Bereavement Leave
 - b. Disability, life, and other types of insurance
 - c. Family medical leave
 - d. Health benefits
 - e. Membership or membership discounts
 - f. Moving expenses
 - g. Pension and retirement benefits
 - h. Vacation
 - i. Travel benefits
 - j. Any other benefit offered to employees

I agree that should I offer any of the above listed employee benefits, that I will offer those benefits, without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouses and domestic partners of such employees.

4. I understand that I will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:
 - a. In the event that the actual cost of providing a benefit to a domestic partner or spouse, exceeds the cost of providing the same benefit to a spouse or domestic partner of an employee, I will not be required to provide the benefit, nor shall it be deemed discriminatory, if I require the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse.
 - b. In the event I am unable to provide a certain benefit, despite taking reasonable measures to do so, if I provide the employee with a cash equivalent, I will not be deemed to be discriminating in the application of that benefit.
 - c. If I provide employee benefits neither to employee's spouses nor to employee's domestic partners.
 - d. If I provide employee benefits to employees on a basis unrelated to marital or domestic partner

status.

- e. If I submit, to the Program Coordinator, written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies which are to be enacted before the first effective date after the first open enrollment process following the date the Contract is executed with the City.

I understand that any delay in the implementation of such policies may not exceed one (1) year from the date the Contract is executed with the City, and applies only to those employee benefits for which an open enrollment process is applicable.

- f. Until administrative steps can be taken to incorporate, in the infrastructure, nondiscrimination in employee benefits.

The time allotted for these administrative steps will apply only to those employee benefits for which administrative steps are necessary and may not exceed three (3) months from the date the Contract is executed with the City.

- g. Until the expiration of a current collective bargaining agreement(s) where, in fact, employee benefits are governed by a collective bargaining agreement(s).

- h. I take all reasonable measures to end discrimination in employee benefits by either requesting the union(s) involved agree to reopen the agreement(s) in order for me to take whatever steps are necessary to end discrimination in employee benefits or by my ending discrimination in employee benefits without reopening the collective bargaining agreement(s).

- i. In the event I cannot end discrimination in employee benefits despite taking all reasonable measures to do so, I provide a cash equivalent to eligible employees for whom employee benefits (as listed previously), are not available.

Unless otherwise authorized in writing by the City Manager, I understand this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened or no longer than three (3) months from the date the Contract is executed with the City.

- 5. I understand that failure to comply with the provisions of Section 4. (a) through 4. (i), above, will subject me to possible suspension and/or termination of this Contract for cause; repayment of any or all of the Contract amount disbursed by the City; debarment for future contracts until all penalties and restitution have been paid in full; deemed ineligible for future contracts for up to two (2) years; the imposition of a penalty, payable to the City, in the sum of \$50.00 for each employee, for each calendar day during which the employee was discriminated against in violation of the provisions of the Ordinance.

- 6. I understand and do hereby agree to provide each current employee and, within ten (10) days of hire, each new employee, of their rights under the Ordinance. I further agree to maintain a copy of each such letter provided, in an appropriate file for possible inspection by an authorized representative of the City. I also agree to prominently display a poster informing each employee of these rights.

- 7. I understand that I have the right to request an exemption to the benefit provisions of the Ordinance when such a request is submitted to the Procurement Services Division, in writing with sufficient justification for resolution, prior to contract award.

I further understand that the City may request a waiver or exemption to the provisions or requirements of the Ordinance, when only one lessee is available to enter into a contract or agreement to occupy and use City property on terms and conditions established by the City; when sole source conditions exist for goods, services, public project or improvements and related construction services; when there are no responsive bidders to the Ordinance requirements and the contract is for essential goods or services; when emergency conditions with public health and safety implications exist; or when the contract is for specialized legal services if in the best interest of the City.

9. In consideration of the foregoing, I shall defend, indemnify and hold harmless, the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorney fees), or other liabilities of any kind arising from any violation of the Requirements or of the Ordinance by me.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind the Contractor to the provisions of this Declaration.

Signature of Authorized Representative

Date

Print Name

Title

REQUIREMENTS OF THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

INTRODUCTION

The Sacramento Non-Discrimination In Employee Benefits Code (the "Ordinance"), codified as Sacramento City Code Chapter 3.54, prohibits City contractors from discriminating in the provision of employee benefits between employees with spouses and employees with domestic partners, and between the spouses and domestic partners of employees.

APPLICATION

The provisions of the Ordinance apply to any contract or agreement (as defined below), between a Contractor and the City of Sacramento, in an amount exceeding \$25,000.00. The Ordinance applies to that portion of a contractor's operations that occur: (i) within the City of Sacramento; (ii) on real property outside the City of Sacramento if the property is owned by the City or if the City has a right to occupy the property; or (iii) at any location where a significant amount of work related to a City contract is being performed.

The Ordinance does not apply: to subcontractors or subcontracts of any Contractor or contractors; to transactions entered into pursuant to cooperative purchasing agreements approved by the Sacramento City Council; to legal contracts of other governmental jurisdictions or public agencies without separate competitive bidding by the City; where the requirements of the ordinance will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement; to permits for excavation or street construction; or to agreements for the use of City right-of-way where a contracting utility has the power of eminent domain.

DEFINITIONS

As set forth in the Ordinance, the following definitions apply:

"Contract" means an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the City or to be paid out of moneys deposited in the treasury or out of the trust money under the control or collected by the City. "Contract" also means a written agreement for the exclusive use ("exclusive use" means the right to use or occupy real property to the exclusion of others, other than the right reserved by the fee owner) or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements.

"Contract" shall not include: a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit; excavation, street construction or street use permits; agreements for the use of City right-of-way where a contracting utility has the power of eminent domain; or agreements governing the use of City property that constitute a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally protected by the First Amendment to the United States Constitution or that are primarily recreational in nature.

"Contractor" means any person or persons, firm partnership or corporation, company, or combination thereof, that enters into a Contract with the City. "Contractor" does not include a public entity.

"Domestic Partner" means any person who has a currently registered domestic partnership with a governmental entity pursuant to state or local law authorizing the registration.

"Employee Benefits" means bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefit given to employees;. "Employee benefits" shall not include benefits to the extent that the application of the requirements of this chapter to such benefits may be preempted by federal or state.

CONTRACTOR'S OBLIGATION TO PROVIDE THE CITY WITH DOCUMENTATION AND INFORMATION

Contractor shall provide the City with documentation and information verifying its compliance with the requirements of the Ordinance within ten (10) days of receipt of a request from the City. Contractors shall keep accurate payroll records, showing, for each City Contract, the employee's name, address, Social Security number, work classification, straight time pay rate, overtime pay rate, overtime hours worked, status and exemptions, and benefits for each day and pay period that the employee works on the City Contract. Each request for payroll records shall be accompanied by an affidavit to be completed and returned by the Contractor, as stated, attesting that the information contained in the payroll records is true and correct, and that the Contractor has complied with the requirements of the Ordinance. A violation of the Ordinance or noncompliance with the requirements of the Ordinance shall constitute a breach of contract.

EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS

(a) All contractors seeking a Contract subject to the Ordinance shall submit a completed Declaration of Compliance Form, signed by an authorized representative, with each proposal, bid or application. The Declaration of Compliance shall be made a part of the executed contract, and will be made available for public inspection and copying during regular business hours.

(b) The Contractor shall give each existing employee working directing on a City contract, and (at the time of hire), each new employee, a copy of the notification provided as attachment "A."

(c) Contractor shall post, in a place visible to all employees, a copy of the notice provided as attachment "B."

Attachment B



YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

On (date), your employer (the "Employer") entered into a contract with the City of Sacramento (the "City") for (contract details), and as a condition of that contract, agreed to abide by the requirements of the City's Non-Discrimination In Employee Benefits Code (Sacramento City Code Section 3.54).

The Ordinance does not require the Employer to provide employee benefits. The Ordinance does require that if certain employee benefits are provided by the Employer, that those benefits be provided without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouse or domestic partner of employees.

The Ordinance covers any employee working on the specific contract referenced above, but only for the period of time while those employees are actually working on this specific contract.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Any other benefits given to employees
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits

(Employee Benefits does not include benefits that may be preempted by federal or state law.)

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, or in the application of these employee benefits, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of the Ordinance, and after having exhausted all remedies with your employer,

You May . . .

- Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:

City of Sacramento
Contract Services Unit
915 I St., 2nd Floor

Sacramento, CA 95814

- Bring an action in the appropriate division of the Superior Court of the State of California against the Employer and obtain the following remedies:
 - Reinstatement, injunctive relief, compensatory damages and punitive damages
 - Reasonable attorney's fees and costs

Exhibit "C"

Rent Schedule
(Calculations based on 1,830 square feet)

| MONTHS | RENT PER SQ. FT (ROUNDED) | MONTHLY RENT | RENT COLLECTED ANNUALLY |
|---------------|--------------------------------------|---------------------|------------------------------------|
| 1-12 | \$1.50 | \$2,745.00 | \$32,940.00 |
| 13-24 | \$1.55 | \$2,827.35 | \$33,928.20 |
| 25-36 | \$1.59 | \$2,912.17 | \$34,946.05 |
| 37-48 | \$1.64 | \$2,999.54 | \$35,994.43 |
| 49-60 | \$1.69 | \$3,089.52 | \$37,074.26 |