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SAN BERNARDINO COUNTY

LEASE AGREEMENT

LESSEE: Jovi's Diner Corporation
123 N. E. Street
San Bernardino, CA, 92401

COUNTY: SAN BERNARDINO COUNTY
Real Estate Services Department
385 North Arrowhead Avenue, Third Floor
San Bernardino, CA 92415-0180

PREMISES: Approximately 542 square feet of space, inclusive of the commissary, storage and janitorial areas, situated within a certain portion of the first floor of the San Bernardino County Government Center located at 385 N. Arrowhead Avenue, San Bernardino, CA 92415

TERM OF LEASE: Five years with one (1) five-year extension

COMMENCEMENT DATE OF LEASE: The later of: (i) full execution of the lease agreement; or
(ii) the COUNTY's receipt from Jovi's Diner Corporation of permit approval for the Premises from the Environmental Health Services

CONTRACT NO.

LEASE AGREEMENT

1. **PARTIES:** This lease agreement ("Lease") is made by and between San Bernardino County, as lessor ("COUNTY") and Jovi's Diner Corporation, as lessee, ("LESSEE").

2. **PREMISES:**

A. COUNTY permits LESSEE to use approximately 542 square feet of space, inclusive of the commissary, storage and janitorial areas ("Premises"), situated within a certain portion of the first floor of the building known as the San Bernardino County Government Center (CGC) located at 385 North Arrowhead Avenue, San Bernardino, CA 92415 ("Property"). LESSEE shall have exclusive use of the Premises for the operation of a food and non-alcoholic beverage service and employee cafeteria provided through grab-and-go display cases and counter orders ("Food and Beverage Service") and for no other purpose.

B. The Premises is shown in yellow highlight on Exhibit "A" which is referenced herein and made a part hereof.

C. The Premises is leased to LESSEE subject to any and all pre-existing rights and in its "AS-IS" condition without any representations or warranties by COUNTY as to its condition, compliance with applicable laws, or suitability for LESSEE's intended use. LESSEE acknowledges and agrees that LESSEE has inspected or has had the opportunity to inspect the Premises, and by its execution of this Lease, LESSEE hereby accepts the Premises and deems it fit and proper for the purposes for which LESSEE shall use the Premises.

D. LESSEE shall, at its sole cost and expense, comply with all applicable requirements of all Health, Safety, Fire and Building Codes, statutes, regulations and ordinances, including but not limited to the Americans with Disabilities Act ("ADA") and any codes, statutes, regulations, ordinances, orders, and guidelines of the County of San Bernardino and the State of California related to any pandemics, for the Premises and LESSEE's use of the Premises.

E. No inspection of the Premises has been performed by a Certified Access Specialist. A Certified Access Specialist (CASP) can inspect the Premises and determine whether the Premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Premises, COUNTY may not prohibit the LESSEE from obtaining a CASp inspection of the Premises for the use or potential use of LESSEE, if requested by LESSEE. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection for the Premises, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises. In the event LESSEE requests that a CASp inspection of the Premises be performed, the parties hereby agree that the cost of such inspection and any repairs identified by an inspection report shall be at the sole cost and expense of LESSEE.

3. **TERM:** This Lease shall be for a term of five years ("Term"), commencing the later of: (i) full execution of the lease agreement; or (ii) the COUNTY's receipt from LESSEE of permit approval for the Premises from the Environmental Health Services ("Commencement Date"); and expiring five (5) years later ("Expiration Date"), unless sooner terminated in accordance with this Lease. The Parties shall execute a Commencement Date Certificate substantially in the form of Exhibit "F," attached hereto and incorporated herein by reference, to confirm the occurrence of the actual Commencement Date, the actual Expiration Date, and any other pertinent terms of the Lease. COUNTY shall prepare the Commencement Date Certificate and LESSEE shall execute and return said certificate within ten (10) days after its receipt from COUNTY. If LESSEE does not timely execute and return said certificate, LESSEE shall be deemed to have accepted all of the terms of the Lease as confirmed in the Commencement Date Certificate prepared by COUNTY. COUNTY's Director of the Real Estate Services Department ("RESD") shall have the authority on behalf of COUNTY to execute said certificate.

4. **OPTION TO EXTEND:** LESSEE shall have the right, at its option, to extend the Lease Term for one (1) additional term of five (5) years. To exercise the option, LESSEE shall provide COUNTY with minimum 9-months but no more than 12-months, written notice at any time prior to the expiration or earlier termination of the then current Lease Term.

5. **PUBLIC SEATING AREA:** LESSEE acknowledges and agrees that no portion of the public seating area, including the County-owned tables and chairs, located adjacent to the Premises is included as part of the Premises. The public seating area is COUNTY-owned space and is available in its AS-IS condition for the non-exclusive, shared use of the general public, the COUNTY's employees, and LESSEE's customers (whether any users of the public seating area are LESSEE's customers or not). COUNTY shall not be in default of this Lease nor shall COUNTY be liable to the LESSEE in any manner arising from any matters related to the public seating area, except that COUNTY shall be responsible for custodial services for the public seating area.

6. **EARLY TERMINATION RIGHT:** Either party may terminate this Lease at any time by giving the other party written notice of any termination to the address set forth in **Paragraph 24, NOTICES**, at least ninety (90) days prior to the date of termination. The COUNTY's Director of the Real Estate Services Department (RES D) shall have the authority, on behalf of the COUNTY, to give LESSEE notice of any termination pursuant to this paragraph.

7. **HOLDING OVER:** In the event the LESSEE holds over and continues to use the Premises with the consent of the COUNTY, expressed or implied, the Lease shall be deemed to a month-to-month agreement upon the same terms and conditions as existed and prevailed at the time of the expiration of the term of this Lease. Notwithstanding **Paragraph 5, EARLY TERMINATION**, either party shall have the right to terminate the Lease with not less than thirty (30) days prior written notice to the other party during any holdover term.

8. **RENT:**

A. LESSEE shall pay to COUNTY the Annual Rent in the amount of \$1.00, as set forth in Paragraph 8.B below. Annual Rent for Year 1 shall be paid within thirty (30) days of the Commencement Date. Annual Rent for each subsequent year shall be paid in advance, prior to the anniversary of the Commencement Date. In addition to Annual Rent, LESSEE shall pay to COUNTY monthly Percentage Rent as set forth for each year of the Term in Paragraph 8.C. Percentage Rent shall be due and payable in arrears on or before the tenth (10th) day of the following calendar month, without offsets or deductions, commencing on the Commencement Date, continuing during the Initial Term.

B. The Minimum Rents due during the Initial Term are as follows:

Term	Annual Rent
Year 1	\$1.00
Year 2	\$1.00
Year 3	\$1.00
Year 4	\$1.00
Year 5	\$1.00

C. **Percent Rent:** The Percentage Rent due shall be calculated by multiplying five percent (5%) by the actual gross revenues for said previous month.

D. **Remit monthly rent to:**

San Bernardino County

Real Estate Services Department
385 N. Arrowhead Avenue, 3rd Floor
San Bernardino, CA 92415-0180
Attn: Fiscal Department

E. If any rent or any other sums due under this Lease is not paid when due and payable, LESSEE shall pay to COUNTY an additional One Hundred and 00/100 Dollars (\$100.00) for each overdue rent or other sums as an administrative processing charge. The parties agree that this administrative charge represents a fair and reasonable estimate of the costs that COUNTY will incur by reason of late payment by LESSEE. Acceptance of any administrative charge shall not constitute a waiver of LESSEE's default with respect to the overdue rent or other sums or prevent COUNTY from exercising any of the other rights and remedies available to COUNTY. In addition, rent or other sums due and not paid when due will bear simple interest from the due date until paid in full at the rate of one-half of one percent per day.

F. Gross Revenue Definition.

1. The term "Gross Revenues" as used in this Lease is defined as all money, cash, receipts, assets, property or other things of value, including, but not limited to, gross charges, sales, rentals, sponsor payments, fees, and commissions made or earned and all gross sums generated or received by LESSEE and any of its sublessees when collected or accrued from any business, use or occupation, or any combination thereof, originating, transacted, or performed, in whole or in substantial part, on the Premises, including, but not limited to, rental, the rendition or supplying of services and the sale of food, drinks, concessions, goods, wares or merchandise, and coin machines or devices of any nature. Gross Revenues in credit card transactions shall include only the actual amount received by LESSEE from the credit card issuer. Gross Revenues shall not include returns and exchanges and loans of equipment and inventory to/from entities related to LESSEE and/or repayments to/from same, revenues derived from sources/locations other than on the Premises, or the sale of all or any part of LESSEE or LESSEE's interest in the Lease.

2. There will be no deduction from Gross Revenues of any overhead or expense of operations, such as, but without limitation to, salaries, wages, cost of goods, advertising, interest, debt amortization, discount, collection, insurance and taxes, except as specifically provided for herein. Gross revenue shall not include Federal, State, Municipal or other taxes collected and paid periodically by LESSEE to a governmental agency, accompanied by a tax return or statement (regardless of whether the amount thereof is stated as a separate charge), but the amounts shall be shown on the books and records elsewhere required to be maintained by LESSEE.

3. Gross Revenues will include the amount of any manufacturer's or importer's excise tax included in the prices of any rendered or supplied services and the sale of food, drinks, concessions, goods, wares or merchandise, and coin machines or devices of any nature, even though the manufacturer or importer is also the retailer thereof; and it is immaterial whether the amount of such excise tax is stated as a separate charge.

4. Gross Revenues, however, will not include Federal, State of California, or municipal sales and excise taxes required to be collected by LESSEE or its sublessees in connection with the rendering or supplying of services and the sale of food, drinks, concessions, goods, wares or merchandise, and coin machines or devices of any nature or other taxes collected from the customer (regardless of whether the amount thereof is stated to the customer as a separate charge) and paid by LESSEE to a governmental agency, provided that LESSEE submits a copy of the relevant tax return evidencing the amount of said taxes. Notwithstanding that such taxes are excluded from Gross Revenues; the amount of such taxes will be shown on the books and records elsewhere herein required to be maintained by LESSEE.

G. AUDITS

1. **RECORDS AND ACCOUNTS:** LESSEE covenants and agrees that it will, at all times during the Term of this Lease, keep or cause to be kept at either (i) the Premises, (ii) LESSEE's address at 123 N. E. Street San Bernardino, CA 92401, or (iii) or other place agreed upon by COUNTY true and complete books, records, and accounts of all financial transactions relating to Gross Revenues. The records must be supported by documents from which the original entry of the transaction was made, including sales slips or cash register tapes, or both.

2. **RECORDATION OF SALES:** All sales and charges must be recorded by means of sales invoices, tickets or cash registers which display to the customer the amounts of the transactions and either physically or automatically issue receipts certifying the amounts recorded. The approved forms or devices used in the recording of cash or charge sale transactions are as follows:

a. **CASH REGISTERS:** Cash registers must be of a type that displays to the customer the amount of each transaction if space permits. The register must be equipped with devices, which lock in sales total, transaction records, and with counters which are not resettable, and which record on tapes the transaction numbers and sales details. Cash register readings must be recorded by LESSEE at the beginning and end of each business day.

b. **CASH RECEIPT AND CHARGE SALES BOOK:** Cash receipt and charge sales books must be of the type that is electronically printed progressively or pre numbered by the system or manufacturer of said books; and the amounts of each transaction, to include the sales tax amount, must be recorded on the original and all copies thereof. The customer must be given a copy of the sales receipt that clearly records the total amount of the transaction. Sales must be recorded consecutively; one after the other, and the beginning and ending number of the receipt books must be duly recorded at the end of each business day.

c. **CASH TICKETS:** Cash tickets may be used in conjunction with all admission charges and must be of a type that is electronically printed progressively or pre-numbered by the manufacturer or system. The price of the tickets both for adults and children must be printed on each ticket. Tickets may be procured by the customer from a cashier's booth or station. LESSEE must, at the end of each business day, record the tickets sold for that day's business. All tickets must be sold consecutively, in numerical order, one after the other. Alternatively, LESSEE may utilize an electronic debit card system rather than printed tickets, duly recorded each day. Any other form or device used in the recording of cash or charge sale transactions, e.g., LESSEE's Point of Sale electronic software system, that is approved by COUNTY.

d. **MONTHLY REPORTS:** Commencing from and after the second month of the Term and continuing through one month after the expiration or earlier termination of this Lease, regardless of whether the LESSEE Fee payable for the relevant month will be the minimum monthly Lease Fee or based on Gross Revenues, LESSEE covenants and agrees to deliver to COUNTY, along with the monthly Lease Fee due, a true and correct certified statement of all Gross Revenues and Attendance figures for the immediately preceding calendar month, showing separately the receipts from each type of revenue at the Premises ("Gross Revenues Report"). At the same time that LESSEE submits the Gross Revenues Report, LESSEE shall remit a true and correct copy of any sales and use tax return as submitted by LESSEE to the Board of Equalization (BOE), unless submitted quarterly to the BOE, in which case it shall be submitted quarterly. The obligations in this paragraph shall survive the expiration or earlier termination of the Lease.

e. **YEARLY REPORT:** LESSEE covenants and agrees to deliver to COUNTY no later than thirty (30) days after each anniversary of the commencement date of this Lease a true and correct certified statement of all Gross Revenues for the preceding lease year, showing separately the receipts from each type of revenue at the Premises and the amount of Lease Fees paid for said

year, provided that in the event the Lease is terminated prior to its expiration, LESSEE must prepare and deliver to COUNTY a report within thirty (30) days of any termination of this Lease for the period ending on the termination date.

3. **INSPECTION OF RECORDS:** All books, records, and accounts of every kind or nature kept by LESSEE or its contractors, agents or employees relating to the Gross Revenue, referred to herein as "Books and Records", must at all reasonable times be open and made available for inspection or audit by COUNTY, its agents or employees, upon request. Any costs associated with making required information available to the COUNTY for all inspection or audit shall be borne solely by LESSEE.

H. At its sole cost and expense, COUNTY shall have the right during the term to audit any or all such books, records, and accounts set forth in Paragraph 8 for the purpose of verifying the Percentage Rent payments required to be paid to COUNTY hereunder. In the event that such audit shows that the Percentage Rent payment due to COUNTY is greater than the amount reported or paid by LESSEE for the period covered by the audit, by five percent (5%) or Five Thousand and 00/100 Dollars (\$5,000.00) (whichever is less), the cost of said audit shall be borne by LESSEE. Within ten (10) days after the audit report has been furnished to LESSEE, LESSEE shall pay to COUNTY the full amount of the cost of such audit and the amount of any underpayment, and interest at the rate of one and one-half percent (1.5%) per month from the date the Percentage Rent should have been paid until said Percentage Rent are paid. COUNTY shall provide LESSEE with supporting documentation, if any, related to the audit that is reasonably requested by LESSEE. All books, records, and accounts set forth in Paragraph 8 shall be maintained and safeguarded by LESSEE for a period of five (5) years from and after the date of the latest entry into such book, record or account.

I. LESSEE covenants that it will comply with and require all its agents and employees to comply with the foregoing requirements.

J. **Survival.** The obligations of this Paragraph 8 shall survive the expiration or earlier termination of the Lease.

9. **UTILITIES:** LESSEE shall have the right to use any existing utility and service connections at the Premises at no additional cost. If any additional utility or service connections at the Premises are desired by LESSEE, such connections, if approved in writing by the COUNTY in its sole discretion, shall be at LESSEE's sole cost and expense. The cost of LESSEE's usage of water, electric, gas, and sewer at the Premises is included in the Monthly Rent payable pursuant to **Paragraph 8**. LESSEE shall be responsible for its own telephone and data usage costs. COUNTY shall not be liable for any loss or damage incurred by LESSEE arising from any failure or interruption, for any reason, including COUNTY's negligence, of any utilities or services at the Premises.

10. **FOOD AND BEVERAGE SERVICE OPERATIONS:**

A. Reserved.

B. Regular Operations: After the Initial Opening, the Concession at the Premises shall be open for business to the public from 7:30 AM – 3:00 PM, Monday through Thursday, and 8:00 AM – 2:00 PM, Friday, excluding COUNTY recognized holidays and official COUNTY closure dates. LESSEE shall not modify the operating hours for the Concession or temporarily close all or any portion of the Concession without the prior written consent of COUNTY in its sole discretion.

C. Operational Requirements: LESSEE shall comply with the following requirements:

- (1) Provide adequate staffing needs to meet customer demand.
- (2) Provide staff adequate training to provide quality customer service.

- (3) Provide food and non-alcoholic beverage products customary with similar food and beverage services.
- (4) Maintain a reasonable supply of good quality food and non-alcoholic beverages.
- (5) Price food and non-alcoholic beverages at reasonable, competitive prices and in reasonable sizes per portion that compares favorably with similar products sold by similar food and beverage services in San Bernardino County.
- (6) Prepare and dispense all food and non-alcoholic beverages in compliance with all applicable state, federal, and other health, sanitation, and environmental standards.
- (7) If the average number of persons using the Food and Beverage Service increases appreciably, LESSEE shall furnish such additional food and beverage products as the COUNTY deems necessary and proper for the prompt servicing of customers.
- (8) Maintain a clean and professional image.
- (9) Maintain the Premises and operate the Food and Beverage Service in compliance all applicable state, federal, and other health, sanitation, and environmental standards and ADA requirements.
- (10) Provide customers with ability to pay by credit/debit card.
- (11) Develop standard protocols for serving the public and payment for products.

D. Non-Disturbance. LESSEE shall operate the Food and Beverage Service at the Premises in a manner that does not disturb, annoy, or interfere with the use and enjoyment of the Premises, the CGC, or the Property by the COUNTY, its employees, contractors, agents, invitees, agents, and representatives or by other users, lessee's, licensees, or persons present therein, including, without limitation, the making or permitting of any noise or that would disturb, annoy, or interfere with such use and enjoyment. COUNTY's determination regarding disturbances, annoyances, or interference shall be conclusive.

E. Security. LESSEE understands and agrees that the COUNTY shall not be required to provide, nor shall COUNTY provide, any security for the Premises or LESSEE's personal property at the Premises and that LESSEE shall, at its cost, be responsible for such security if desired by LESSEE.

11. **ENVIRONMENTAL HEALTH & SAFETY REQUIREMENTS:**

A. As required by Health and Safety Code Section 114315, the designated restroom assigned to the Premises is located inside the main lobby corridor of the CGC.

B. LESSEE shall, at its sole expense, maintain all EHS permits and shall comply with all federal, state, and local health and safety ordinances governing the Premises and the LESSEE's operation of the Food and Beverage Service at the Premises and maintain high standards of sanitation in all aspects of its operations, including but not limited to the handling, preparation, and storage of food and beverage products and cleanliness of the Premises.

C. In the event that LESSEE receives an EHS inspection grade lower than a "B" at a frequency of two out of three inspections in any twelve consecutive month period or is closed (regardless of frequency) by any governmental authority having jurisdiction over health, or safety conditions for any reason within LESSEE'S control, such grade or closure shall be a material breach of LESSEE'S obligations under this Lease and shall be grounds for termination of this Lease immediately upon notice by COUNTY.

12. **IMPROVEMENTS:**

A. Initial Improvements: No improvements will be made to the Premises by the LESSEE as of the Commencement Date.

B. Future Improvements: Without the prior written consent of the COUNTY in its sole discretion and subject to all Applicable Laws, LESSEE shall not have the right to: (i) make any improvements, alterations, or

modifications of all or any portion of the Premises (whether structural or non-structural); (ii) except as set forth in Paragraph 11A, display any interior or exterior signage and decoration regarding orientation to any group or affiliation, and (iii) play, make, or permit any music or audio sound (individually or collectively, the "Improvements"). Any and all Improvements permitted in accordance with this Lease shall, at the option of the COUNTY, be removed by LESSEE upon the expiration or earlier termination of this Lease and any damage caused by such removal shall be repaired by LESSEE or be surrendered with the Premises (in whole or in part), in which case said Improvements (in whole or in part, as applicable) shall become the property of COUNTY without compensation to LESSEE. LESSEE shall have no right to make any Improvements to the Public Seating Area.

C. Consent Process: If LESSEE desires to make any Improvements, LESSEE shall first submit to the COUNTY all plans and specifications for its desired Improvements at the Premises to the COUNTY for COUNTY's prior review and approval. If the COUNTY, in its sole discretion, consents to the LESSEE's desired Improvements or a portion thereof, the LESSEE shall, at its sole cost and expense, complete its permitted Improvements in accordance with the plans and specifications approved by the COUNTY and to the satisfaction of the COUNTY, in the COUNTY's sole discretion. Any subsequent modifications by the LESSEE to the plans and specification approved by the COUNTY shall be subject to the COUNTY's further review and approval in accordance with this Lease. Upon completion of the LESSEE's permitted Improvements, the LESSEE shall promptly provide the COUNTY with a copy of the as-builts for the LESSEE's permitted Improvements.

D. Prevailing Wage. LESSEE shall comply with the California Public Contract Code Sections 22000 through 22045 regarding bidding procedures and Labor Code Sections 1720.2 and 1770 et seq. regarding general prevailing wages, including the provisions set forth in Exhibit "E", Prevailing Wage attached hereto and incorporated herein by reference. LESSEE shall indemnify and hold harmless COUNTY and its officers, employees, and agents from any claims, actions, losses, damages and/or liability arising out of the obligations set forth in this paragraph. LESSEE's indemnity obligations shall survive the expiration or earlier termination of the Lease and shall not be limited by the existence or availability of insurance.

13. MAINTENANCE AND REPAIR:

A. Premises: Subject to Paragraph 2.C. of this Lease, COUNTY shall maintain all portions of the Premises in as good a condition as existed on the Commencement Date, normal wear and tear excluded, and in accordance with all laws. LESSEE shall keep the interior of the Premises in a clean and tidy condition.

B. County-Owned Personal Property: LESSEE shall have the right to use any COUNTY-owned personal property, including the fixtures and equipment located at the Premises, which County-owned personal property are set forth on Exhibit "B", referenced herein and made a part hereof, ("County-Owned Personal Property"). All County-Owned Personal Property at the Premises, whether listed in Exhibit "B" or later installed during the term of the Lease, shall remain the sole property of the COUNTY and LESSEE shall not have the right to remove such COUNTY-Owned Personal Property at any time during the Lease or at the expiration or earlier termination thereof. LESSEE shall, at its sole cost and expense, maintain said COUNTY-Owned Personal Property in good working order, condition, and repair. In the event that LESSEE or its employees, agents, contractors, vendors or invitees damages or destroys any COUNTY-Owned Personal Property at the Premises or damage is caused by theft or vandalism, LESSEE shall, at its sole cost, report such damage to the COUNTY. Upon the expiration or earlier termination of the Lease, LESSEE shall return all COUNTY-Owned Personal Property in as good a condition as received on the Commencement Date, reasonable wear and tear excluded.

C. LESSEE-Owned Personal Property: LESSEE shall, at its sole cost and expense, maintain any LESSEE-owned personal property, including any equipment, located at the Premises which LESSEE-owned personal property are set forth on Exhibit "C", referenced herein and made a part hereof, ("LESSEE-Owned Personal Property"). "LESSEE-Owned Personal Property" shall be maintained in good working order, condition, and repair. Any LESSEE-Owned Personal Property at the Premises shall remain the sole property of the LESSEE and LESSEE shall have the right to remove such LESSEE-Owned Personal Property at the expiration or

earlier termination of this Lease, provided that any damage caused by such removal is repaired by LESSEE. If LESSEE desires to attach any LESSEE-Owned Personal Property to the Premises, such attachment shall be subject to the COUNTY's prior written consent in its sole discretion.

14. **JANITORIAL SERVICES:**

A. **Premises:** LESSEE shall, at its sole cost and expense, keep the Premises in a clean and sanitary condition and shall provide janitorial, cleaning, and trash removal services for the Premises in accordance with Applicable Laws but not less than at least once per day.

B. **County-Owned Personal Property and LESSEE's Personal Property:** LESSEE shall, at its sole cost and expense, keep all COUNTY-Owned Personal Property and all LESSEE-Owned Personal Property in a clean and sanitary condition and clean such personal property in accordance with Applicable Laws.

C. **Pest Abatement:** COUNTY shall, at its sole cost and expense, provide routine pest abatement services for the Premises.

D. **Cleaning Products:** Any cleaning and janitorial products and supplies used by the LESSEE must be of types and in quantities that are permitted by law and the use, storage, and disposal of such products and supplies shall meet all state, federal, and local requirements.

15. **LESSEE EMPLOYEES:**

A. **LESSEE Employees.** It is understood and agreed that all persons hired or engaged by the LESSEE shall be considered to be employees, contractors, agents, or vendors of the LESSEE only and not of the COUNTY.

B. **Personnel Rules.** LESSEE will ensure that its employees, contractors, agents, and vendors at all times conduct themselves in a professional manner, and that they conform to all applicable rules, regulations, and requirements now in force in the COUNTY and at the CGC or the Property, including the COUNTY's established dress code, as well as rules and regulations as hereafter may be promulgated or put into operation by the COUNTY. LESSEE must maintain a staff adequate to operate and administer the Food and Beverage Service located on the Premises in a safe and orderly manner. LESSEE agrees to replace personnel whenever requested by COUNTY, upon due cause being shown. Employees, contractors, agents, and vendors of LESSEE will wear a name tag, so the public can easily recognize this person as associated with LESSEE. COUNTY reserves the right to inspect and approve the name tag used by LESSEE to meet this requirement.

C. **Drug and Alcohol-Free Workplace.** In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this Lease, the LESSEE agrees that the LESSEE'S personnel, while on the Premises, the CGC, or the Property, or while using COUNTY-Owned Personal Property:

(1) Shall not be in any way impaired because of being under the influence of alcohol or a drug.

(2) Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal drug.

(3) Shall not sell, offer, or provide alcohol or a drug to another person.

(4) The LESSEE shall inform all its employees, contractors, agents, and vendors that are on the Premises, the CGC, or the Property of the COUNTY's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while on the Premises, the CGC, or the Property.

(5) The COUNTY may terminate for default or breach of this Lease and any other agreement the LESSEE has with the COUNTY, if the LESSEE or LESSEE'S employees, contractors, agents, and vendors are determined by the COUNTY not to be in compliance with the foregoing requirements.

D. Background Checks/Fingerprinting: Each employee, contractor, vendor, or agent of the LESSEE who has or will have access to the Premises shall, if required by the COUNTY, submit to a background check and fingerprinting, to be completed by COUNTY, at LESSEE's sole cost, prior to any initial access. If the results of a background check and fingerprinting are not satisfactory to the COUNTY at its discretion, COUNTY shall have the right to prohibit any such employee, contractor, vendor, or agent from the Premises and LESSEE shall comply with such prohibition. Each employee, contractor, vendor, or agent of the LESSEE who has or will have access to the Premises shall be required to submit any documents required by COUNTY to verify his or her identity prior to any initial access.

16. **INSURANCE SPECIFICATIONS**: LESSEE agrees to provide insurance set forth in accordance with the requirements herein. If LESSEE uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the LESSEE agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the Lease hereunder.

Without in anyway affecting the indemnity herein provided and in addition thereto, the LESSEE shall secure and maintain throughout the Lease term the following types of insurance with limits as shown:

A. Workers' Compensation/Employers Liability. A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the LESSEE and all risks to such persons under this Lease.

If LESSEE has no employees, it may certify or warrant to the COUNTY that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the COUNTY'S Director of Risk Management.

If, LESSEE is a non-profit corporation, organized under California or Federal law, volunteers for LESSEE are required to be covered by Workers' Compensation insurance.

B. Commercial/General Liability Insurance. The LESSEE shall carry General Liability Insurance covering all operations performed by or on behalf of the LESSEE providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- (1) Premises operations and mobile equipment.
- (2) Products and completed operations.
- (3) Broad form property damage (including completed operations).
- (4) Explosion, collapse and underground hazards.
- (5) Personal injury
- (6) Contractual liability.
- (7) \$2,000,000 general aggregate limit.

C. Commercial Property Insurance providing all risk coverage for the Premises, building, fixtures, equipment and all property constituting a part of the Premises. Coverage shall be sufficient to insure One Hundred percent (100%) of the replacement cost. COUNTY shall provide to LESSEE the reasonable replacement cost amounts for COUNTY owned equipment, and LESSEE shall be entitled to rely on the accuracy of such numbers without investigation.

D. Automobile Liability Insurance. Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If the LESSEE is transporting one or more non-employee passengers in the use of this Lease, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If the LESSEE owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

E. Umbrella Liability Insurance. An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

F. If LESSEE performs any construction of the Premises as permitted under this Lease, LESSEE shall also procure and maintain coverages as follows:

(1) For construction contracts for projects over One Million Dollars (\$1,000,000) and less than Three Million Dollars (\$3,000,000) require limits of not less than Three Million Dollars (\$3,000,000) in General Liability and Auto Liability coverage.

(2) For construction contracts for projects over Three Million Dollars (\$3,000,000) and less than Five Million Dollars (\$5,000,000) require limits of not less than Five Million Dollars (\$5,000,000) in General Liability and Auto Liability coverage.

(3) For construction contracts for projects over Five Million Dollars (\$5,000,000) and less than Ten Million Dollars (\$10,000,000) require limits of not less than Ten Million Dollars (\$10,000,000) in General Liability and Auto Liability coverage.

(4) Course of Construction/Installation (Builder's Risk) property insurance providing all risk, including theft coverage for all property and materials to be used on the project. The insurance policy shall not have any coinsurance penalty.

G. Subcontractor Insurance Requirements. The LESSEE agrees to require all parties or subcontractors, including architects or others it hires or contracts with related to the performance of this Lease to provide insurance covering the contracted operation with the insurance requirements in this Paragraph 16 (including waiver of subrogation rights) and naming the COUNTY as an additional insured. The LESSEE agrees to monitor and review all such coverage and assumes all responsibility ensuring that such coverage is provided as required here.

H. Additional Insured. All policies, except for the Workers' Compensation, shall contain endorsements naming the COUNTY and their officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the use under this Lease hereunder. The additional insured endorsements shall not limit the scope of coverage for the COUNTY to vicarious liability but shall allow coverage for the COUNTY to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

I. Waiver of Subrogation Rights. The LESSEE shall require the carriers of required coverages to waive all rights of subrogation against the COUNTY, their officers, employees, agents, volunteers, contractors

and subcontractors. All general or auto liability insurance coverage provided shall not prohibit LESSEE and LESSEE'S employees or agents from waiving the right of subrogation prior to a loss or claim. The LESSEE hereby waives all rights of subrogation against the COUNTY.

J. Policies Primary and Non-Contributory. All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the COUNTY.

K. Severability of Interests. The LESSEE agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross-liability exclusions that preclude coverage for suits between the LESSEE and the COUNTY or between the COUNTY and any other insured or additional insured under the policy.

L. Proof of Coverage. The LESSEE shall furnish Certificates of Insurance to the COUNTY's Real Estate Services Department (RESA) administering the Lease evidencing the insurance coverage, including endorsements, as required, prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to RESA, and LESSEE shall maintain such insurance from the time LESSEE commences use under the Lease hereunder until the end of the period of the Lease. Prior to the commencement of this Lease, the LESSEE shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

M. Acceptability of Insurance Carrier. Unless otherwise approved by the COUNTY Department of Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

N. Deductibles. Any and all deductibles or self-insured retentions in excess of \$10,000.00 shall be declared to and approved by COUNTY's Risk Management Director.

O. Insurance Review. Insurance requirements are subject to periodic review by the COUNTY. The COUNTY'S Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever the COUNTY'S Department of Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the COUNTY. In addition, the COUNTY'S Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the COUNTY, inflation, or any other item reasonably related to the COUNTY'S risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Lease. LESSEE agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of RESA or COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of RESA or the COUNTY.

P. Failure to Procure Insurance. All insurance required must be maintained in force at all times by LESSEE. Failure to maintain said insurance, due to expiration, cancellation, etc., shall be cause for the COUNTY to give notice to immediately suspend all LESSEE'S business activities on the Premises. Failure to reinstate said insurance within the (10) days of notice to do so shall be cause for termination and for forfeiture of this Lease, and/or COUNTY, at its discretion, may procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by COUNTY shall be repaid by LESSEE to COUNTY upon demand but only for the pro rata period of non-compliance.

Q. COUNTY shall have no liability for any premiums charged for such coverage(s). The inclusion of COUNTY as additional named insured is not intended to and shall not make a partner or joint venturer with LESSEE in LESSEE'S operations.

R. The LESSEE agrees to require all parties or subcontractors, or others it hires or contracts related to the use of this Lease to provide insurance covering such use with the basic requirements and naming the COUNTY as additional insured. LESSEE agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided as required herein.

17. **INDEMNIFICATION:** The LESSEE agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless the COUNTY and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this Lease from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the COUNTY on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The LESSEE'S indemnification obligation applies to the COUNTY'S "active" as well as "passive" negligence but does not apply to the COUNTY'S "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782. This paragraph shall survive the expiration or earlier termination of this Lease.

18. **TAXES:** The LESSEE shall before delinquency pay any and all sales, use, excise, property, and income taxes, assessments, fees, or charges attributable to the Food and Beverage Service at the Premises. The LESSEE must reimburse COUNTY for any penalties or costs incurred by the COUNTY resulting from the LESSEE's failure to promptly pay said taxes. LESSEE recognizes and understands that this Lease may create a possessory interest subject to property taxation and that the LESSEE may be subject to the payment of property taxes levied on such interest.

19. **COMPLIANCE WITH LAWS:** LESSEE use of the Premises and LESSEE's operation of the Food and Beverage Service at the Premises must comply with and conform to all applicable rules, regulations, laws, ordinances, codes, statutes or orders, including but not limited to the Constitutions of the State of California and the United States of America, of any governmental authority, including but not limited to the City of San Bernardino, San Bernardino County, the State of California, and the United States of America ("Applicable Laws"). In the event that the LESSEE's use of the Premises or operation of the Food and Beverage Service at the Premises conflicts in any way, or is in violation of any of said Applicable Laws, the LESSEE shall modify its use and/or operations to comply with and/or conform to the Applicable Laws within seven (7) days of receipt of written notice to do so from the COUNTY. COUNTY's determination of any use in violation of Applicable Laws shall be conclusive. COUNTY shall have the right to enter into the Premises at all times during this Lease to ensure LESSEE's compliance with the terms of this Lease.

20. **LICENSES OR CERTIFICATIONS:** LESSEE must obtain and maintain current status any and all permits and/or licenses required by any San Bernardino County department, local, state, and/or federal authority, which is required to engage in the Leased herein before such use is undertaken. LESSEE shall reimburse the COUNTY for any penalties or expenses incurred by COUNTY due to the LESSEE's failure to obtain and maintain any of the required permits and/licenses.

21. **LESSEE'S DEFAULT:** The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by LESSEE: (i) LESSEE's failure to pay Rent or other sums due by the due date where such failure continues for three (3) days or more after notice from COUNTY; (ii) LESSEE'S failure to fulfill its obligations in Paragraphs 9, 10, 19, 22, 23, 25, or 34 of the Lease; (iii) LESSEE's failure to fulfill its obligations in Paragraph 9B where such failure continues within seven (7) days or more after notice from COUNTY; (iii) LESSEE's failure to fulfill its obligations in Paragraphs 12 and 13 where such failure continues for seven (7) days or more after notice from COUNTY; (iv) LESSEE's failure to fulfill any other obligations in the Lease where such failure continues for ten (10) days or more after written notice from COUNTY; and (vi) filing of any voluntary

bankruptcy or appointment of any receiver to take possession of substantially all of LESSEE's assets located at the Premises or LESSEE's interest in this Lease.

22. **COUNTY REMEDIES:**

A. In the event of a breach of LESSEE's obligations in this Lease, LESSEE shall have seven (7) days (unless another time period is specified in the relevant provision of this Lease) after notice from COUNTY to perform its obligations under the Lease, except that in all instances of default, LESSEE shall perform its obligations immediately if the nature of the problem presents a material hazard or emergency. If, however, the nature and/or extent of LESSEE's obligation is such that more than seven (7) days are reasonably required to remedy the breach, then LESSEE shall not be in default if LESSEE commences its obligation within said seven (7) day period and thereafter diligently prosecutes its obligation to completion. If LESSEE does not timely perform its obligations, COUNTY shall have the right, at its option in its sole discretion, to remedy LESSEE's breach and/or to terminate the Lease upon written notice to the LESSEE. Any notice or demand concerning a material hazard or emergency may be made orally, by telephone or otherwise. In the event COUNTY opts to remedy LESSEE's breach of its obligations (but COUNTY is not obligated to do so), LESSEE shall reimburse COUNTY for all costs and expenses expended for such remedy upon written notice from COUNTY. The costs and expenses of any such remedy by COUNTY shall be due and payable by LESSEE to COUNTY within ten (10) days of COUNTY's demand.

B. In addition to the rights set forth in Paragraph 22.A, in the event of any default by LESSEE that is not timely remedied by LESSEE in accordance with this Lease, COUNTY shall have the right to:

(1) Terminate LESSEE's right to possession of the Premises by any lawful means, in which case this Lease and the term hereof shall terminate, and LESSEE shall immediately surrender possession of the Premises to COUNTY. In such event COUNTY shall be entitled to recover from LESSEE any and all damages which may be the direct or indirect result of such default, including but not limited to the following: (i) the worth at the time of the award of the unpaid rent that had been earned at the time of termination of this lease, and; (ii) the worth at the time of the award of the amount by which the unpaid rent that would have been earned after the date of termination of this lease until the time of award exceeds the amount of the loss of rent that LESSEE proves could have been reasonably avoided, and; (iii) the worth at the time of the award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of the loss of rent that LESSEE proves could have been reasonably avoided, and; (iv) any other amount and court costs necessary to compensate COUNTY for all detriment proximately caused by LESSEE's default, except those amounts LESSEE proves could have been reasonably avoided. "The worth at the time of the award", as used in (i) and (ii) of this sub-paragraph, is to be computed by allowing interest at the maximum rate an individual is permitted by law to charge. "The worth at the time of the award", as referred to in (iii) of this sub-paragraph, is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%). COUNTY's attempt to mitigate damages caused by LESSEE's default shall not waive COUNTY's right to recover damages under this paragraph. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, COUNTY shall have the right to recover in such proceeding the unpaid rent and damages as are recoverable therein, or COUNTY may reserve the right to recover all or any part thereof in a separate suit for such rent and/or damages.

(2) Continue the Lease and LESSEE'S right to possession in effect under California Civil Code Section 1951.4 after LESSEE's default and recover the Rent as it becomes due, provided LESSEE has the right to sublet or assign, subject to the terms and conditions of this Lease, which the parties agree are reasonable. COUNTY's maintenance of the Premises or efforts to relet the Premises, or the appointment of a receiver to protect the COUNTY's interest under this Lease, shall not constitute a termination of the LESSEE'S right to possession.

(3) Pursue any other remedy now or hereafter available to COUNTY under the laws or judicial decisions of the State of California.

C. Notwithstanding anything in the contrary in the Lease, if, at any time LESSEE is in default of any Rent or other sums for forty-five (45) days or more, or if LESSEE defaults on any provision(s) of the Lease three (3) times or more within any twelve (12) consecutive months, COUNTY may terminate this Lease on ten (10) days' notice.

23. **GENERAL COVENANTS AND AGREEMENTS:**

A. LESSEE agrees not to use said Premises, or any part thereof, for any purpose which causes injury to the Premises, the CGC, or the Property, nor for any purpose in violation of Applicable Laws.

B. No political signs shall be permitted on the Premises and no postings regarding any orientation to any group or affiliation shall be posted on or within the Premises.

C. At any time during the term of the Lease, the COUNTY may revise, modify, or add provisions to the Lease as may be required to meet the COUNTY's obligations for electric and water conservation purposes so long as any revisions, modifications or additions, do not substantially interfere with LESSEE's use of the Premises.

D. If the LESSEE should refuse or neglect to comply with the provisions of the Lease, or the orders of the COUNTY, the COUNTY may have such provisions or orders carried out by others at the expense of the LESSEE. All the terms, covenants and conditions set forth herein are to be strictly complied with by LESSEE. Any failure to comply therewith shall be grounds for immediate termination of the Lease.

E. Neither Party shall, in any way or for any purpose, become a partner of the other Party in the conduct of its business, or otherwise, or joint venturer or a member of a joint enterprise with the other Party as a result of execution of the Lease.

24. **NOTICES:** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party, or any other person shall be in writing and either served personally or sent by postage prepaid, first-class United States mail, certified or registered, return receipt requested or sent by reputable overnight delivery service. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notices shall be deemed delivered upon the earlier of: (i) actual receipt; or (ii) the date of delivery or refusal of the addressee to accept delivery if such notice is sent by postage pre-paid, first-class United States mail, certified or registered, return receipt requested or reputable overnight delivery services. Any notices received on a non-business day or after business hours on a business day shall be deemed received on the immediately following business day.

LESSEE'S Notice address: Jovi's Diner
123 N. E. Street
San Bernardino, CA 92401

COUNTY'S Notice address: SAN BERNARDINO COUNTY
Real Estate Services Department
385 North Arrowhead Avenue, Third Floor
San Bernardino, CA 92415-0180

25. **ASSIGNMENT:** LESSEE shall have no right to assign or otherwise transfer this Lease or sublease the Premises in whole or in part or permit the use of all or any portion of the Premises with any other person or entity, voluntarily or involuntarily and any such assignment, transfer, sublease, or third-party use without COUNTY's

consent shall be deemed a default under this Lease and shall not be binding upon the COUNTY. For purposes hereof, a transfer of any equity/ownership interests in LESSEE shall be deemed an assignment requiring COUNTY's consent.

26. **RETURN OF PREMISES:** LESSEE agrees that it will upon any termination of this Lease return the Premises in as good condition and repair as the Premises is as of the Commencement Date or shall hereafter be improved, reasonable wear and tear excluded.

27. **COUNTY'S ACCESS TO PREMISES:** COUNTY shall have the right to enter into the Premises at all times during this Lease to ensure LESSEE's compliance with the terms of this Lease; to perform any inspection of the Premises; to perform any obligations of the COUNTY in this Lease; to serve, post, or keep posted any signs or notices required by Applicable Laws or any "for sale" or "for lease" signs desired by COUNTY; or to show the Premises to prospective brokers, agents, buyers, lessees, lenders, or other third parties.

28. **HAZARDOUS SUBSTANCES:** The LESSEE shall comply with all Applicable Laws related to any hazardous substance regulated by any applicable governmental or regulatory agency and shall not bring, generate, use, or dispose of any hazardous substances at the Premises except those materials that are customarily used for cleaning and only in quantities permitted by law. LESSEE agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless the COUNTY and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this Lease from any hazardous substances brought, generated, used, or disposed of any at the Premises, the CGC, or the Property by LESSEE or its employees, agents, contractors, vendors, invitees, or others under LESSEE's control and for any costs or expenses incurred by the COUNTY on account of such claims, actions, losses, damages, and/or liability. The provisions of this paragraph shall survive the expiration or earlier termination of this Lease.

29. **DESTRUCTION OF PREMISES:** In the event that the entirety or any portion of the Premises is damaged or destroyed by a casualty event, this Lease shall terminate on the date of such damage or destruction.

30. **PUBLIC RECORDS DISCLOSURE:** All information received by the COUNTY from the LESSEE or any source concerning this Lease, including the Lease itself, may be treated by the COUNTY as public information subject to disclosure under the provisions of the California Public Records Act, Government Code Section 7920.000 et seq. (the "Public Records Act"). LESSEE understands that although all materials received by the COUNTY in connection with this Lease are intended for the exclusive use of the COUNTY, they are potentially subject to disclosure under the provisions of the Public Records Act. In the event a request for disclosure of any part or all of any information which a LESSEE has reasonably requested COUNTY to hold in confidence is made to the COUNTY, the COUNTY shall notify the LESSEE of the request and shall thereafter disclose the requested information unless the LESSEE, within five (5) days of receiving notice of the disclosure request, requests nondisclosure, provides COUNTY a legally sound basis for the nondisclosure, and agrees to indemnify, defend (with counsel reasonably approved by COUNTY), and hold the DISTRICT harmless in any/all actions brought to require disclosure. LESSEE waives any and all claims for damages, lost profits, or other injuries of any and all kinds in the event COUNTY fails to notify LESSEE of any such disclosure request and/or releases any information concerning this Lease received from the LESSEE or any other source.

31. **FORMER COUNTY OFFICIALS:** LESSEE agrees to provide or has already provided information on former COUNTY administrative officials (as defined below) who are employed by or represent LESSEE. The information provided includes a list of former COUNTY administrative officials who terminated COUNTY employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of LESSEE. For purposes of this provision, "COUNTY administrative official" is defined as a member of the Board of Supervisors or such officer's staff, COUNTY Administrative Officer or member of such officer's staff, COUNTY department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit. (See Exhibit "D", List of Former County Officials.)

32. **ATTORNEYS' FEES AND COSTS:** If any legal action is instituted to enforce or declare any party's rights hereunder, each party including the prevailing party, must bear its own costs and attorneys' fees. This paragraph shall not apply to those costs and attorneys' fees directly arising from any third-party legal action against a party hereto and payable under **Paragraph 12, IMPROVEMENTS, Paragraph 16, INSURANCE SPECIFICATIONS, Paragraph 17, INDEMNIFICATION, Paragraph 28, HAZARDOUS SUBSTANCES, and Paragraph 30, PUBLIC RECORDS DISCLOSURE.**

33. **VENUE:** The parties acknowledge and agree that the Lease was entered into and intended to be performed in the San Bernardino County, California. The parties agree that the venue for any action or claim brought by any party to the Lease will be the Superior Court of California, San Bernardino County. Each party hereby waives any law, statute (including but not limited to Code of Civil Procedure section 394), or rule of court that would allow them to request or demand a change of venue. If any third party brings an action or claim concerning the Lease, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County.

34. **MATERIAL MISREPRESENTATIONS:** If during the course of the administration of this Lease, the COUNTY determines that the LESSEE has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the COUNTY, this Lease may be immediately terminated. If this Lease is terminated according to this provision, the COUNTY is entitled to pursue any available legal remedies.

35. **INCORPORATION OF PRIOR AGREEMENT:** This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose.

36. **WAIVERS:** No waiver by either party of any provisions of this Lease shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by either party of the same or any other provisions.

37. **AMENDMENTS:** No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successor in interest, expressing by its terms an intention to modify this Lease.

38. **SUCCESSORS:** This Lease shall inure to the benefit of and be binding upon the permitted successors and assigns of the parties hereto.

39. **PROVISIONS ARE COVENANTS AND CONDITIONS:** All provisions, whether covenants or conditions, on the part of either party shall be deemed to be both covenants and conditions.

40. **EXHIBITS:** All exhibits referred to are attached to this Lease and incorporated by reference.

41. **LAW:** This Lease shall be construed and interpreted in accordance with all Applicable Laws but in the event of conflict, the laws and the constitution of the State of California shall control.

42. **CAPTIONS AND COVER PAGE:** The paragraph captions and the cover page of this Lease shall have no effect on its interpretations.

43. **SEVERANCE:** If any provision of this Lease is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Lease, and all such other provisions shall remain in full force and effect provided, however, that the purpose of the Lease is not frustrated. It is the intention of the parties hereto that if any provision of this Lease is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

44. **SURVIVAL:** The obligations of the parties which, by their nature, continue beyond the term of this Lease, including but not limited to any indemnity obligations in this Lease, will survive the termination of this Lease.

45. **INTERPRETATIONS:** As this Lease was jointly prepared by both parties, the language in all parts of this Lease shall be construed, in all cases, according to its fair meaning, and not for or against either party hereto.

46. **COUNTERPARTS:** This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF, or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

47. **LEVINE ACT CAMPAIGN CONTRIBUTION DISCLOSURE:** LESSEE has disclosed to the COUNTY using Exhibit "D" – Levine Act Campaign Contribution Disclosure, whether it has made any campaign contributions of more than \$500 to any member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, Auditor-Controller/Treasurer/Tax Collector and the District Attorney] within the earlier of: (1) the date of the submission of LESSEE's proposal to the COUNTY, or (2) 12 months before the date this Lease was approved by the Board of Supervisors. LESSEE acknowledges that under Government Code section 84308, LESSEE is prohibited from making campaign contributions of more than \$500 to any member of the Board of Supervisors or other COUNTY elected officer for 12 months after the COUNTY's consideration of the Lease.

In the event of a proposed amendment to this Lease, the LESSEE will provide the COUNTY a written statement disclosing any campaign contribution(s) of more than \$500 to any member of the Board of Supervisors or other COUNTY elected officer within the preceding 12 months of the date of the proposed amendment.

Campaign contributions include those made by any agent/person/entity on behalf of the LESSEE or by a parent, subsidiary or otherwise related business entity of LESSEE.

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

48. **AUTHORIZED SIGNATORS:** Both parties to this Lease represent that the signators executing this document are fully authorized to enter into this agreement.

END OF LEASE TERMS.

SAN BERNARDINO COUNTY

Jovi's Diner Corporation

By: _____
Dawn Rowe, Chair
Board of Supervisors

By: _____
Jovanna Rodriguez

Title: Owner

Date: _____

Date: _____

SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Lynna Monell
Clerk of the Board of Supervisors
San Bernardino County

By: _____
Deputy

Date: _____

Approved as to Legal Form:

TOM BUNTON, County Counsel
San Bernardino County, California

By: _____
John Tubbs II, Deputy County Counsel

Date: _____

EXHIBIT "A"
Premises
Use Area (shown within red border)

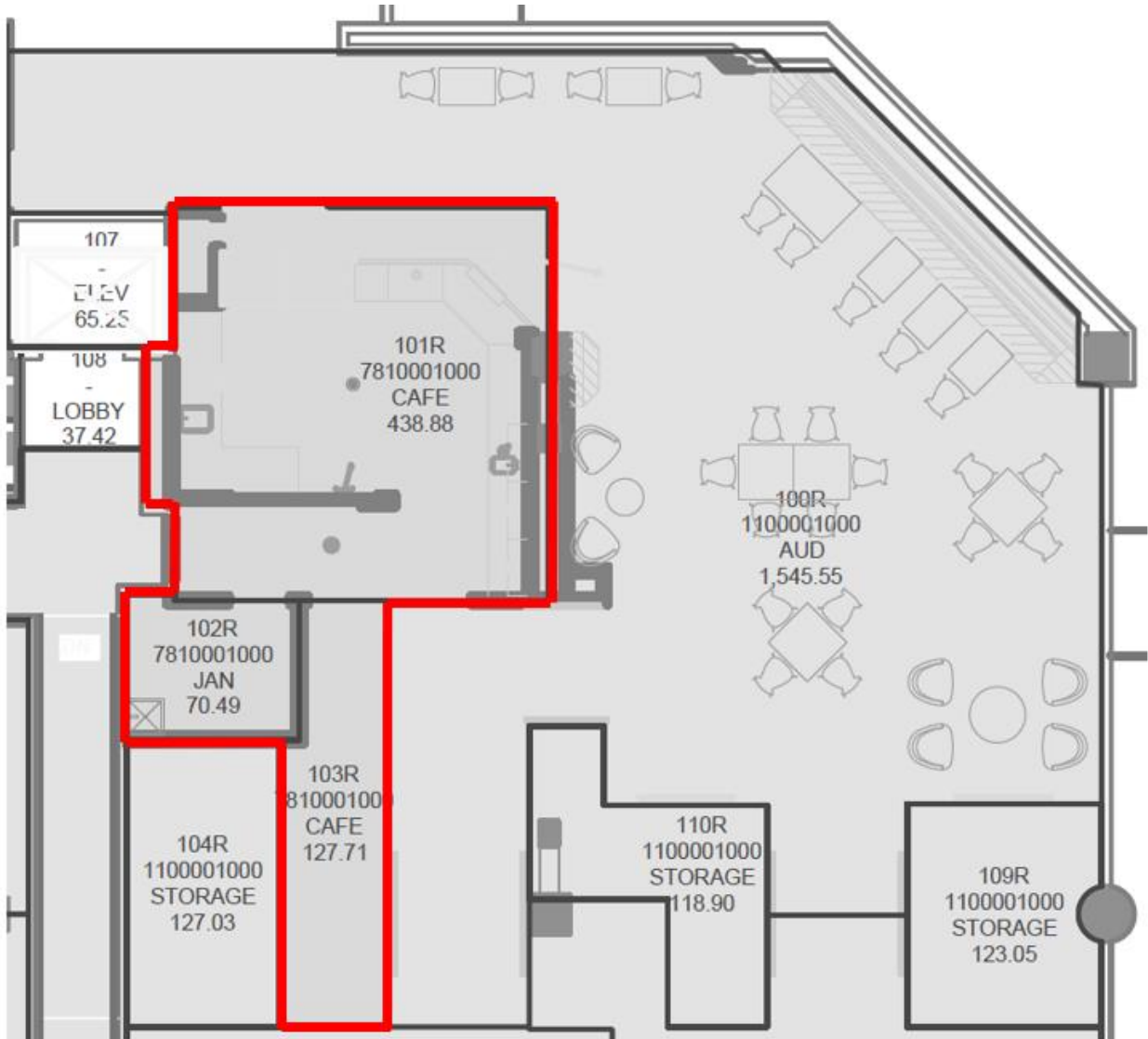


EXHIBIT "B" –LIST OF COUNTY-OWNED CONCESSION EQUIPMENT

One (1) three-compartment sink
One (1) hand sink
One (1) mop sink
One (1) Combination Refrigerated Case
One (1) Under Counter Refrigerator
One (1) Under Counter Double Refrigerator
One (1) Grab and Go Refrigerated Display Case

EXHIBIT "C"
LIST OF FORMER COUNTY OFFICIALS

INSTRUCTIONS: List the full name of the former COUNTY Administrative Official, the title/description of the Official's last position with the COUNTY, the date the Official terminated COUNTY employment, the Official's current employment and/or representative capacity with the LESEE, the date the Official entered LESEE's employment and/or representation.

OFFICIAL'S NAME:

REQUIRED INFORMATION



EXHIBIT D

Levine Act –

Campaign Contribution Disclosure

(formerly referred to as Senate Bill 1439)

The following is a list of items that are not covered by the Levine Act. A Campaign Contribution Disclosure Form will not be required for the following:

- Contracts that are competitively bid and awarded as required by law or County policy
- Contracts with labor unions regarding employee salaries and benefits
- Personal employment contracts
- Contracts under \$50,000
- Contracts where no party receives financial compensation
- Contracts between two or more public agencies
- The review or renewal of development agreements unless there is a material modification or amendment to the agreement
- The review or renewal of competitively bid contracts unless there is a material modification or amendment to the agreement that is worth more than 10% of the value of the contract or \$50,000, whichever is less
- Any modification or amendment to a matter listed above, except for competitively bid contracts.

DEFINITIONS

Actively supporting or opposing the matter: (a) Communicate directly with a member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, District Attorney, Auditor-Controller/Treasurer/Tax Collector] for the purpose of influencing the decision on the matter; or (b) testifies or makes an oral statement before the County in a proceeding on the matter for the purpose of influencing the County's decision on the matter; or (c) communicates with County employees, for the purpose of influencing the County's decision on the matter; or (d) when the person/company's agent lobbies in person, testifies in person or otherwise communicates with the Board or County employees for purposes of influencing the County's decision in a matter.

Agent: A third-party individual or firm who, for compensation, is representing a party or a participant in the matter submitted to the Board of Supervisors. If an agent is an employee or member of a third-party law, architectural, engineering or consulting firm, or a similar entity, both the entity and the individual are considered agents.

Otherwise related entity: An otherwise related entity is any for-profit organization/company which does not have a parent-subsidary relationship but meets one of the following criteria:

- (1) One business entity has a controlling ownership interest in the other business entity;
- (2) there is shared management and control between the entities; or
- (3) a controlling owner (50% or greater interest as a shareholder or as a general partner) in one entity also is a controlling owner in the other entity.

For purposes of (2), "shared management and control" can be found when the same person or substantially the same persons own and manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis; or there is otherwise a regular and close working relationship between the entities.

Parent-Subsidiary Relationship: A parent-subsidiary relationship exists when one corporation has more than 50 percent of the voting power of another corporation.

Lessee must respond to the questions on the following page. If a question does not apply respond N/A or Not Applicable.

1. Name of Lessee: Jovi's Diner Corporation

2. Is the entity listed in Question No. 1 a nonprofit organization under Internal Revenue Code section 501(c)(3)?

Yes ☐ If yes, skip Question Nos. 3-4 and go to Question No. 5 No ☒

3. Name of Principal (i.e., CEO/President) of entity listed in Question No. 1, if the individual actively supports the matter and has a financial interest in the decision: Javanna Rodriguez

4. If the entity identified in Question No. 1 is a corporation held by 35 or less shareholders, and not publicly traded ("closed corporation"), identify the major shareholder(s):

Javanna Rodriguez

5. Name of any parent, subsidiary, or otherwise related entity for the entity listed in Question No. 1 (see definitions above): N/A

Company Name	Relationship

6. Name of agent(s) of Lessee: N/A

Company Name	Agent(s)	Date Agent Retained (if less than 12 months prior)

7. Name of Subcontractor(s) (including Principal and Agent(s)) that will be providing services/work under the awarded contract if the subcontractor (1) actively supports the matter and (2) has a financial interest in the decision and (3) will be possibly identified in the contract with the County or board governed special district.

Company Name	Subcontractor(s):	Principal and/or Agent(s):
<u>N/A</u>		

8. Name of any known individuals/companies who are not listed in Questions 1-7, but who may (1) actively support or oppose the matter submitted to the Board and (2) have a financial interest in the outcome of the decision:

Company Name	Individual(s) Name
<u>N/A</u>	

9. Was a campaign contribution, of more than \$500, made to any member of the San Bernardino County Board of Supervisors or other County elected officer involved with this Contract within the prior 12 months, by any of

the individuals or entities listed in Question Nos. 1-8?

No ☒

Yes ☐ If yes, please provide the contribution information in Question 11.

10. Has an agent of Contractor made a campaign contribution of any amount to any member of the San Bernardino County Board of Supervisors or other elected officer involved with this Contract while award of this Contract is being considered?

No ☒ If no, please skip question 11.

Yes ☐ If yes, please provide the contribution information in Question 11.

11. Name of Board of Supervisor Member or other County elected officer: _____

Name of Contributor: _____

Date(s) of Contribution(s): _____

Amount(s): _____

Please add an additional sheet(s) to identify additional Board Members or other County elected officers to whom anyone listed made campaign contributions.

By signing the Contract, Lessee certifies that the statements made herein are true and correct. Lessee acknowledges that agents are prohibited from making any campaign contributions, regardless of amount, to any member of the Board of Supervisors or other County elected officer involved with this Contract, while award of this Contract is being considered and for 12 months after a final decision by the County. Lessee understands that the other individuals and entities (excluding agents) listed in Question Nos. 1-8 are prohibited from making campaign contributions of more than \$500 to any member of the Board of Supervisors or other County elected officer involved with this Contract, while award of this Contract is being considered and for 12 months after a final decision by the County.


 9/3/2025

EXHIBIT "E"

PREVAILING WAGE REQUIREMENTS

- A. All or a portion of the Lessee Improvements in the Lease requires the payment of prevailing wages and compliance with the following requirements. As used in this exhibit, the term "Contractor" shall include Tenant and Tenant's contractor and/or subcontractors and the term "Lessee Improvements" shall include the improvements made by or on behalf of Tenant pursuant to the Lease.**

1. Determination of Prevailing Rates:

Pursuant to Labor Code sections 1770, et seq., the Tenant will obtain from the Director of the Department of Industrial Relations (DIR) pursuant to the California Labor Code, the general prevailing rates of per diem wages and the prevailing rates for holiday and overtime work in the locality in which the Lessee Improvements is to be performed. Copies of said rates are on file with the Tenant, will be made available for inspection during regular business hours, may be included elsewhere in the specifications for the Lessee Improvements, and are also available online at www.dir.ca.gov. The wage rate for any classification not listed, but which may be required to execute the Lessee Improvements, shall be commensurate and in accord with specified rates for similar or comparable classifications for those performing similar or comparable duties. In accordance with Labor Code section 1773.2, the Contractor shall post, at appropriate and conspicuous locations on the job site, a schedule showing all applicable prevailing wage rates and shall comply with the requirements of Labor Code sections 1773, et seq.

2. Payment of Prevailing Rates

Each worker of the Contractor, or any subcontractor, engaged in the Lessee Improvements, shall be paid not less than the general prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor, and such worker.

3. Prevailing Rate Penalty

The Contractor shall, as a penalty, forfeit two hundred dollars (\$200.00) to the County for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of the DIR for such work or craft in which such worker is employed by the Contractor or by any subcontractor in connection with the Lessee Improvements. Pursuant to California Labor Code section 1775, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

4. Ineligible Contractors:

Pursuant to the provisions of Labor Code section 1777.1, the Labor Commissioner publishes and distributes a list of contractors ineligible to perform work as a contractor or subcontractor on a public works project. This list of debarred contractors is available from the DIR website at <http://www.dir.ca.gov/Public-Works/PublicWorks.html>. Any contract entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract, and any public money that may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the County. The Contractor shall be responsible for the payment of wages to workers as a debarred subcontractor who has been allowed to work on the Lessee Improvements.

5. Payroll Records:

a. Pursuant to California Labor Code section 1776, the Contractor and each subcontractor, shall keep accurate certified payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by them in connection with the Lessee Improvements. The payroll records enumerated herein shall be verified by a written declaration made under penalty of perjury that the information contained in the payroll record is true and correct and that the Contractor or subcontractor has complied with the requirements of the California Labor Code sections 1771, 1811, and 1815 for any Lessee Improvements performed by his or her employees. The payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

- i. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his/her authorized representative on request;
- ii. A certified copy of all payroll records shall be made available for inspection or furnished upon request to the County, the Division of Labor Standards Enforcement of the DIR;
- iii. A certified copy of payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the County or the Division of Labor Standards Enforcement. If the requested payroll records have not been previously provided to the County or the Division of Labor Standards Enforcement,

the requesting party shall, prior to being provided the records, reimburse the cost of preparation by the Contractor, subcontractor and the entity through which the request was made; the public shall not be given access to such records at the principal office of the Contractor;

- iv. The Contractor shall file a certified copy of the payroll records with the entity that requested such records within ten (10) days after receipt of a written request; and
 - v. Copies provided to the public, by the County or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor or any subcontractor, performing a part of the Lessee Improvements shall not be marked or obliterated. The Contractor shall inform the County of the location of payroll records, including the street address, city and county and shall, within five (5) working days, provide a notice of a change of location and address.
- b. The Contractor shall have ten (10) days from receipt of the written notice specifying in what respects the Contractor must comply with the above requirements. In the event Contractor does not comply with the requirements of this section within the ten (10) day period, the Contractor shall, as a penalty to the County, forfeit one-hundred dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, such penalty shall be withheld from any portion of the payments then due or to become due to the Contractor.

6. Limits on Hours of Work:

Pursuant to California Labor Code section 1810, eight (8) hours of labor shall constitute a legal day's work. Pursuant to California Labor Code section 1811, the time of service of any worker employed at any time by the Contractor or by a subcontractor, upon the Lessee Improvements or upon any part of the Lessee Improvements, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as provided for under Labor Code section 1815. Notwithstanding the foregoing provisions, work performed by employees of Contractor or any subcontractor, in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1½) times the basic rate of pay.

7. Penalty for Excess Hours:

The Contractor shall pay to the County a penalty of twenty-five dollars (\$25.00) for each worker employed on the Lessee Improvements by the Contractor or any subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week, in violation of the provisions of the California Labor Code, unless compensation to the worker so employed by the Contractor is not less than one and one-half (1½) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

8. Senate Bill 854 (Chapter 28, Statutes of 2014) and Senate Bill 96 (Chapter 28, Statutes of 2017) Requirements:

- a. Contractor shall comply with Senate Bill 854 and Senate Bill 96. The requirements include, but are not limited to, the following:
 - i. No contractor or subcontractor may be listed on a bid proposal (submitted on or after March 1, 2015) for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5, with limited exceptions from this requirements for bid purposes only as allowed under Labor Code section 1771.1(a).
 - ii. No contractor or subcontractor may be awarded a contract for public work or perform work on a public works project (awarded on or after April 1, 2015) unless registered with the DIR pursuant to Labor Code section 1725.5.
 - iii. This project is subject to compliance monitoring and enforcement by the DIR.
 - iv. As required by the DIR, Contractor is required to post job site notices, as prescribed by regulation, regarding compliance monitoring and enforcement by the DIR.
 - v. Contractors and all subcontractors must submit certified payroll records online to the Labor Commissioner for all new public works projects issued on or after April 1, 2015, and for all public works projects, new or ongoing, on or after January 1, 2016.
 - 1) The certified payroll must be submitted at least monthly to the Labor Commissioner.
 - 2) The County reserves the right to require Contractor and all subcontractors to submit certified payroll records more frequently than monthly to the Labor Commissioner.
 - 3) The certified payroll records must be in a format prescribed by the Labor Commissioner.
 - vi. Registration with the DIR and the submission of certified payroll records to the Labor Commissioner are not required if the public works project is \$25,000 or less when the project is for construction, alteration, demolition, installation or repair work, or if the public works project is \$15,000 or less when the project is for maintenance work.

b. Labor Code section 1725.5 states the following:

"A contractor shall be registered pursuant to this section to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code or engage in the performance of any public work contract that is subject to the requirements of this chapter. For the purposes of this section, "contractor" includes a subcontractor as defined by Section 1722.1.

(a) To qualify for registration under this section, a contractor shall do all of the following:

(1) (A) Register with the Department of Industrial Relations in the manner prescribed by the department and pay an initial nonrefundable application fee of four hundred dollars (\$400) to qualify for registration under this section and an annual renewal fee on or before July 1 of each year thereafter. The annual renewal fee shall be in a uniform amount set by the Director of Industrial Relations, and the initial registration and renewal fees may be adjusted no more than annually by the director to support the costs specified in Section 1771.3.

(B) Beginning June 1, 2019, a contractor may register or renew according to this subdivision in annual increments up to three years from the date of registration. Contractors who wish to do so will be required to prepay the applicable nonrefundable application or renewal fees to qualify for the number of years for which they wish to preregister.

(2) Provide evidence, disclosures, or releases as are necessary to establish all of the following:

(A) Workers' compensation coverage that meets the requirements of Division 4 (commencing with Section 3200) and includes sufficient coverage for any worker whom the contractor employs to perform work that is subject to prevailing wage requirements other than a contractor who is separately registered under this section. Coverage may be evidenced by a current and valid certificate of workers' compensation insurance or certification of self-insurance required under Section 7125 of the Business and Professions Code.

(B) If applicable, the contractor is licensed in accordance with Chapter 9 (commencing with Section 7000) of the Business and Professions Code.

(C) The contractor does not have any delinquent liability to an employee or the state for any assessment of back wages or related damages, interest, fines, or penalties pursuant to any final judgment, order, or determination by a court or any federal, state, or local administrative agency, including a confirmed arbitration award. However, for purposes of this paragraph, the contractor shall not be disqualified for any judgment, order, or determination that is under appeal, provided that the contractor has secured the payment of any amount eventually found due through a bond or other appropriate means.

(D) The contractor is not currently debarred under Section 1777.1 or under any other federal or state law providing for the debarment of contractors from public works.

(E) The contractor has not bid on a public works contract, been listed in a bid proposal, or engaged in the performance of a contract for public works without being lawfully registered in accordance with this section, within the preceding 12 months or since the effective date of the requirements set forth in subdivision (e), whichever is earlier. If a contractor is found to be in violation of the requirements of this paragraph, the period of disqualification shall be waived if both of the following are true:

(i) The contractor has not previously been found to be in violation of the requirements of this paragraph within the preceding 12 months.

(ii) The contractor pays an additional nonrefundable penalty registration fee of two thousand dollars (\$2,000).

(b) Fees received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(c) A contractor who fails to pay the renewal fee required under paragraph (1) of subdivision (a) on or before the expiration of any prior period of registration shall be prohibited from bidding on or engaging in the performance of any contract for public work until once again registered pursuant to this section. If the failure to pay the renewal fee was inadvertent, the contractor may renew its registration retroactively by paying an additional nonrefundable penalty renewal fee equal to the amount of the renewal fee within 90 days of the due date of the renewal fee.

(d) If, after a body awarding a contract accepts the contractor's bid or awards the contract, the work covered by the bid or contract is determined to be a public work to which Section 1771 applies, either as the result of a determination by the director pursuant to Section 1773.5 or a court decision, the requirements of this section shall not apply, subject to the following requirements:

(1) The body that awarded the contract failed, in the bid specification or in the contract documents, to identify as a public work that portion of the work that the determination or decision subsequently classifies as a public work.

(2) Within 20 days following service of notice on the awarding body of a determination by the Director of Industrial Relations pursuant to Section 1773.5 or a decision by a court that the contract was for public work as defined in this chapter, the contractor and any subcontractors are registered under this section or are replaced by a contractor or subcontractors who are registered under this section.

(3) The requirements of this section shall apply prospectively only to any subsequent bid, bid proposal, contract, or work performed after the awarding body is served with notice of the determination or decision referred to in paragraph (2).

(e) The requirements of this section shall apply to any bid proposal submitted on or after March 1, 2015, to any contract for public work, as defined in this chapter, executed on or after April 1, 2015, and to any work performed under a contract for public work on or after January 1, 2018, regardless of when the contract for public work was executed.

(f) This section does not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work."

c. Labor Code section 1771.1 states the following:

"(a) A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

(b) Notice of the requirement described in subdivision (a) shall be included in all bid invitations and public works contracts, and a bid shall not be accepted, nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5.

(c) An inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:

(1) The subcontractor is registered prior to the bid opening.

(2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.

(d) Failure by a subcontractor to be registered to perform public work as required by subdivision (a) shall be grounds under Section 4107 of the Public Contract Code for the contractor, with the consent of the awarding authority, to substitute a subcontractor who is registered to perform public work pursuant to Section 1725.5 in place of the unregistered subcontractor.

(e) The department shall maintain on its Internet Web site a list of contractors who are currently registered to perform public work pursuant to Section 1725.5.

(f) A contract entered into with any contractor or subcontractor in violation of subdivision (a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of Section 1725.5 or this section.

(g) If the Labor Commissioner or his or her designee determines that a contractor or subcontractor engaged in the performance of any public work contract without having been registered in accordance with this section, the contractor or subcontractor shall forfeit, as a civil penalty to the state, one hundred dollars (\$100) for each day of work performed in violation of the registration requirement, not to exceed an aggregate penalty of eight thousand dollars (\$8,000) in addition to any penalty registration fee assessed pursuant to clause (ii) of subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(h)(1) In addition to, or in lieu of, any other penalty or sanction authorized pursuant to this chapter, a higher tiered public works contractor or subcontractor who is found to have entered into a subcontract with an unregistered lower tier subcontractor to perform any public work in violation of the requirements of Section 1725.5 or this section shall be subject to forfeiture, as a civil penalty to the state, of one hundred dollars (\$100) for each day the unregistered lower tier subcontractor performs work in violation of the registration requirement, not to exceed an aggregate penalty of ten thousand dollars (\$10,000).

(2) The Labor Commissioner shall use the same standards specified in subparagraph (A) of paragraph (2) of subdivision (a) of Section 1775 when determining the severity of the violation and what penalty to assess and may waive the penalty for a first-time violation that was unintentional and did not hinder the Labor Commissioner's ability to monitor and enforce compliance with the requirements of this chapter.

(3) A higher tiered public works contractor or subcontractor shall not be liable for penalties assessed pursuant to paragraph (1) if the lower tier subcontractor's performance is in violation of the requirements of Section 1725.5 due to the revocation of a previously approved registration.

(4) A subcontractor shall not be liable for any penalties assessed against a higher tiered public works contractor or subcontractor pursuant to paragraph (1). A higher tiered public works contractor or subcontractor may not require a lower tiered subcontractor to indemnify or otherwise be liable for any penalties pursuant to paragraph (1).

(i) The Labor Commissioner or his or her designee shall issue a civil wage and penalty assessment, in accordance with the provisions of Section 1741, upon determination of penalties pursuant to subdivision (g) and subparagraph (B) of paragraph (1) of subdivision (h). Review of a civil wage and penalty assessment issued under this subdivision may be requested in accordance with the provisions of Section 1742. The regulations of the Director of Industrial Relations, which govern proceedings for review of civil wage and penalty assessments and the withholding of contract payments under Article 1 (commencing with Section 1720) and Article 2 (commencing with Section 1770), shall apply.

(j)(1) Where a contractor or subcontractor engages in the performance of any public work contract without having been registered in violation of the requirements of Section 1725.5 or this section, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor or the unregistered subcontractor on all public works until the unregistered contractor or unregistered subcontractor is registered. The stop order shall not apply to work by registered contractors or subcontractors on the public work.

(2) A stop order may be personally served upon the contractor or subcontractor by either of the following methods:

(A) Manual delivery of the order to the contractor or subcontractor personally.

(B) Leaving signed copies of the order with the person who is apparently in charge at the site of the public work and by thereafter mailing copies of the order by first class mail, postage prepaid to the contractor or subcontractor at one of the following:

(i) The address of the contractor or subcontractor on file with either the Secretary of State or the Contractors' State License Board.

(ii) If the contractor or subcontractor has no address on file with the Secretary of State or the Contractors' State License Board, the address of the site of the public work.

(3) The stop order shall be effective immediately upon service and shall be subject to appeal by the party contracting with the unregistered contractor or subcontractor, by the unregistered contractor or subcontractor, or both. The appeal, hearing, and any further review of the hearing decision shall be governed by the procedures, time limits, and other requirements specified in subdivision (a) of Section 238.1.

(4) Any employee of an unregistered contractor or subcontractor who is affected by a work stoppage ordered by the commissioner pursuant to this subdivision shall be paid at his or her regular hourly prevailing wage rate by that employer for any hours the employee would have worked but for the work stoppage, not to exceed 10 days.

(k) Failure of a contractor or subcontractor, owner, director, officer, or managing agent of the contractor or subcontractor to observe a stop order issued and served upon him or her pursuant to subdivision (j) is guilty of a misdemeanor punishable by imprisonment in county jail not exceeding 60 days or by a fine not exceeding ten thousand dollars (\$10,000), or both.

(l) This section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into on or after April 1, 2015. This section shall also apply to the performance of any public work, as defined in this chapter, on or after January 1, 2018, regardless of when the contract for public work was entered.

(m) Penalties received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(n) This section shall not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work."

d. Labor Code section 1771.4 states the following:

"a) All of the following are applicable to all public works projects that are otherwise subject to the requirements of this chapter:

(1) The call for bids and contract documents shall specify that the project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

(2) The awarding body shall post or require the prime contractor to post job site notices, as prescribed by regulation.

(3) Each contractor and subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner, in the following manner:

(A) At least monthly or more frequently if specified in the contract with the awarding body.

(B) In a format prescribed by the Labor Commissioner.

(4) If the contractor or subcontractor is not registered pursuant to Section 1725.5 and is performing work on a project for which registration is not required because of subdivision (f) of Section 1725.5, the unregistered contractor or subcontractor is not required to furnish the records specified in Section 1776 directly to the Labor Commissioner but shall retain the records specified in Section 1776 for at least three years after completion of the work.

(5) The department shall undertake those activities it deems necessary to monitor and enforce compliance with prevailing wage requirements.

(b) The Labor Commissioner may exempt a public works project from compliance with all or part of the requirements of subdivision (a) if either of the following occurs:

(1) The awarding body has enforced an approved labor compliance program, as defined in Section 1771.5, on all public works projects under its authority, except those deemed exempt pursuant to subdivision (a) of Section 1771.5, continuously since December 31, 2011.

(2) The awarding body has entered into a collective bargaining agreement that binds all contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

(c) The requirements of paragraph (1) of subdivision (a) shall only apply to contracts for public works projects awarded on or after January 1, 2015.

(d) The requirements of paragraph (3) of subdivision (a) shall apply to all contracts for public work, whether new or ongoing, on or after January 1, 2016.”

B. STATE PUBLIC WORKS APPRENTICESHIP REQUIREMENTS

1. State Public Works Apprenticeship Requirements:

- a. The Contractor is responsible for compliance with Labor Code section 1777.5 and the California Code of Regulations, title 8, sections 230 – 230.2 for all apprenticeable occupations (denoted with “#” symbol next to craft name in DIR Prevailing Wage Determination), whether employed by the Contractor, subcontractor, vendor or consultant. Included in these requirements is (1) the Contractor’s requirement to provide notification (i.e. DAS-140) to the appropriate apprenticeship committees; (2) pay training fund contributions for each apprenticeable hour employed on the Contract; and (3) utilize apprentices in a minimum ratio of not less than one apprentice hour for each five journeyman hours by completion of Contract work (unless an exception is granted in accordance with Labor Code section 1777.5) or request for the dispatch of apprentices.
- b. Any apprentices employed to perform any of the Lessee Improvements shall be paid the standard wage to apprentices under the regulations of the craft or trade for which such apprentice is employed, and such individual shall be employed only for the work of the craft or trade to which such individual is registered. Only apprentices, as defined in California Labor Code section 3077, who are in training under apprenticeship standards and written apprenticeship agreements under California Labor Code sections 3070 et seq. are eligible to be employed for the Lessee Improvements. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which such apprentice is training.

2. Compliance with [California Labor Code section 1777.5](#) requires all public works contractors to:

- a. Submit Contract Award Information (DAS-140):
 - i. Although there are a few exemptions (identified below), all Contractors, regardless of union affiliation, must submit contract award information when performing on a California public works project.
 - ii. The DAS-140 is a notification “announcement” of the Contractor’s participation on a public works project—*it is not a request for the dispatch of an apprentice.*
 - iii. Contractors shall submit the contract award information (you may use form DAS 140) within 10 days of the execution of the prime contract or subcontract, but in no event later than the first day in which the Contractor has workers employed on the public work.
 - iv. Contractors who are already approved to train apprentices (i.e., check “Box 1” on the DAS-140) shall only be required to submit the form to their approved program.

- v. Contractors who are NOT approved to train apprentices (i.e., those that check either "Box 2" or "Box 3" on the DAS-140) shall submit the DAS-140 TO EACH of the apprenticeship program sponsors in the area of your public works project. For a listing of apprenticeship programs see <http://www.dir.ca.gov/Databases/das/pwaddrstart.asp>.
- b. Employ Registered Apprentices
 - i. Labor Code section 1777.5 requires that a contractor performing work in an "apprenticeable" craft must employ one (1) hour of apprentice work for every five (5) hours performed by a journeyman. This ratio shall be met prior to the Contractor's completion of work on the project. "Apprenticeable" crafts are denoted with a pound symbol "#" in front of the craft name on the prevailing wage determination.
 - ii. All Contractors who do not fall within an exemption category (see below) must request for dispatch of an apprentice from an apprenticeship program (for each apprenticeable craft or trade) by giving the program actual notice of at least 72 hours (business days only) before the date on which apprentices are required.
 - iii. Contractors may use the "DAS-142" form for making a request for the dispatch of an apprentice.
 - iv. Contractors who are participating in an approved apprenticeship training program and who did not receive sufficient number of apprentices from their initial request must request dispatch of apprentices from ALL OTHER apprenticeship committees in the project area in order to fulfill this requirement.
 - v. Contractor should maintain and submit proof (when requested) of its DAS-142 submittal to the apprenticeship committees (e.g., fax transmittal confirmation). A Contractor has met its requirement to employ apprentices only after it has successfully made a dispatch request to all apprenticeship programs in the project area.
 - vi. Only "registered" apprentices may be paid the prevailing apprentice rates and must, at all times work under the supervision of a Journeyman (Cal. Code Regs., tit 8, § 230.1).
- c. Make Training Fund Contributions
 - i. Contractors performing in apprenticeable crafts on public works projects, must make training fund contributions in the amount established in the prevailing wage rate publication for journeymen and apprentices.
 - ii. Contractors may use the "CAC-2" form for submittal of their training fund contributions.
 - iii. Contractors who do not submit their training fund contributions to an approved apprenticeship training program must submit their contributions to the California Apprenticeship Council (CAC), PO Box 420603, San Francisco, CA 94142-0603.
 - iv. Training fund contributions to the CAC are due and payable on the 15th day of the month for work performed during the preceding month.
 - v. The "training" contribution amount identified on the prevailing wage determination shall not be paid to the worker, unless the worker falls within one of the exemption categories listed below.

3. Exemptions to Apprenticeship Requirements:

- a. The following are exempt from having to comply with California apprenticeship requirements. These types of contractors do not need to submit a DAS-140, DAS-142, make training fund contributions, or utilize apprentices:
 - i. When the Contractor holds a sole proprietor license ("Owner-Operator"), and no workers were employed by the Contractor. In other words, the contractor performed the entire work from start to finish and worked alone.
 - ii. Contractors performing in non-apprenticeable crafts. "Apprenticeable" crafts are denoted with a pound symbol "#" in front of the craft name on the prevailing wage determination.
 - iii. When the Contractor has a direct contract with the Public Agency that is under \$30,000.
 - iv. When the project is 100% federally-funded and the funding of the project does not contain any city, county, and/or state monies (unless the project is administered by a state agency in which case the apprenticeship requirements apply).
 - v. When the project is a private project not covered by the definition of public works as found in Labor Code section 1720.

4. Exemption from Apprenticeship Ratios:

- a. The Joint Apprenticeship Committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the Contractor from the 1-to-5 ratio set forth in this Section when it finds that any one of the following conditions are met:
 - i. Unemployment for the previous three-month period in such area exceeds an average of fifteen percent (15%); or

- ii. The number of apprentices in training in such area exceeds a ratio of 1-to-5 in relation to journeymen; or
 - iii. The Apprenticeable Craft or Trade is replacing at least one-thirtieth (1/30) of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis; or
 - iv. If assignment of an apprentice to any work performed under the Contract Documents would create a condition which would jeopardize such apprentice's life or the life, safety or property of fellow employees or the public at large, or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.
- b. When such exemptions from the 1-to-5 ratio between apprentices and journeymen are granted to an organization which represents contractors in a specific trade on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local Joint Apprenticeship Committees, provided they are already covered by the local apprenticeship standards.

5. Contractor's Compliance:

- a. The responsibility of compliance with this Section for all Apprenticeable Trades or Crafts is solely and exclusively that of the Contractor. All decisions of the Joint Apprenticeship Committee(s) under this Section are subject to the provisions of California Labor Code section 3081 and penalties are pursuant to Labor Code section 1777.7 and the determination of the Labor Commissioner.

EXHIBIT "F"

COMMENCEMENT DATE CERTIFICATE

To: _____

Re: Lease Agreement No. _____

In accordance with the terms and conditions of the above referenced Lease, the parties hereby acknowledges and agrees to the following:

1. The Commencement Date of the Lease Term is _____;
2. The Expiration Date of the Lease Term is _____.
3. Monthly Rent commenced to accrue on _____, 20____, and the rent schedule during the Lease Term is as follows:

_____ to _____	Monthly Rent of \$_____
_____ to _____	Monthly Rent of \$_____
_____ to _____	Monthly Rent of \$_____
_____ to _____	Monthly Rent of \$_____
_____ to _____	Monthly Rent of \$_____

4. All other provision and terms of the Lease Agreement, Contract No _____, shall remain the same and are hereby incorporated by reference. In the event of any conflict between the Lease, and this Commencement Date Certificate, the terms and conditions of this Commencement Date Certificate shall control.

LESSEE:

COUNTY:

Date:_____

Date:_____