



Office of the City Manager

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CONSENT CALENDAR
May 25, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Liam Garland, Director, Public Works

Subject: Lease Agreement: 2010 Addison Street at Center Street Garage with Vito Loconte and Alexie LeCount d.b.a Lexie's Frozen Custard

RECOMMENDATION

Adopt first reading of an Ordinance authorizing the City Manager to execute a lease agreement for 2010 Addison Street at the Center Street Garage with Vito Loconte and Alexie LeCount d.b.a Lexie's Frozen Custard, a sole proprietorship, for an initial term of ten (10) years with one optional five-year lease extension AND approve payment of a commission of \$9,331.23 to Colliers International for commercial brokerage fees for locating a tenant for the premises.

FISCAL IMPACTS OF RECOMMENDATION

The lease agreement anticipates total revenue of \$205,909 for the initial ten (10) year term for the premises consisting of 480 square feet total. The initial monthly price per square foot is \$3.25 with an annual adjustment of 2.75% beginning the second year after the Commencement Date of the lease. The City agrees to a) pay for a water meter and oversee its installation; b) enable pouring of a concrete floor once tenant's contractor lays pipes and drains; and c) place conduit through which tenant may pull electrical lines to its premises.

The City also agrees to abate the base rent and all additional charges associated with the base rent for four months following the Lease Term Commencement Date established when the *Agreement Specifying Term of Lease* (Exhibit B to Lease) is executed. This abatement totals \$6,240 in savings for the proposed tenant in support of completing permanent improvements to the leased space. Revenue will be deposited into the Off-Street Parking Fund.

Per City Contract No. 32100136 with Colliers International, Public Works is also asking that City Council approve payment of \$9,331.23 to Colliers. This amount is calculated by adding 6% of the first five years to 3% of the second five years of rent. A payment of \$6,317.97 is due upon City Council approval of the lease and the remaining \$3,013.26 due once Lexie's commences operations at the premises. Payment for Colliers will be deducted from Expenditure Account No.: 673-54-624-697-0000-000-472-612990-.

CURRENT SITUATION AND ITS EFFECTS

Prospective tenant, Lexie’s Frozen Custard (Lexie’s) has applied to lease 2010 Addison Street as this location will be an ideal venue for the organization’s first retail space. Lexie’s currently produces its custard in Emeryville, CA and delivers and sells from a mobile food truck. The tenant has been informed and agrees to accept delivery of the space and commence the ten year Lease Term once a concrete floor and conduit are in place and a water meter is installed and operational. Staff has evaluated Lexie’s and considers it to be a good fit for the Center Street Garage space. The owners of Lexie’s are enthusiastic about having a location in Berkeley and look forward to the return of live music and theater productions and schools in neighboring venues.

BACKGROUND

The City of Berkeley completed construction of the new Center Street Garage (CSG) in late 2018. The retail space 2010 Addison Street was planned to be a commercial retail space that would cater to the customers attending classes, performances and other events in the theater district in which it is located. The ideal tenant was envisioned to be one operated by a local business owner and focused on serving dessert. 2010 Addison Street is located next to the Art Cube which regularly displays new installations of public and other art.

Due to the unfinished nature of the space (no water meter, no floor, no electricity and no plumbing) and no provision allowing the installation or use of equipment with ventilation hoods, the Director of Public Works approved hiring a commercial broker to assist with locating a suitable tenant.

ENVIRONMENTAL SUSTAINABILITY

The proposed lease requires the tenant to follow all environmental rules and regulations applicable to City agencies, specifically the City of Berkeley Municipal Electric Load Curtailment Policy and the City of Berkeley Indoor Heating Policy and their amendments. Further, the City adheres to procedures for energy conservation and load curtailment, and sets building thermostats at 68 degrees during occupied hours, and 55 degrees during unoccupied hours.

RATIONALE FOR RECOMMENDATION

As part of the lease application process, Lexie’s Frozen Custard provided the City acceptable business and financial plans, satisfactory supporting documentation for the business’s starting capital and demonstrated business experience in food service exceeding five years.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Liam Garland, Director, Department of Public Works, (510) 981-6303

Dionne E. Early, Community Development Project Coordinator, Public Works, (510)
981-6453

Attachments:

1: Ordinance

Exhibit A: Lease Agreement

ORDINANCE NO. -N.S.

LEASE AGREEMENT: LEXIE'S FROZEN CUSTARD AT THE CENTER STREET
GARAGE, 2010 ADDISON STREET

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. FINDINGS:

The City owns the Center Street Garage, and Vito Loconte and Alexie LeCount d.b.a Lexie's Frozen Custard, a sole proprietorship, seeks to lease 2010 Addison Street at the premises for the purpose of operating a retail food service business.

Section 2. AUTHORIZATION FOR CITY MANAGER TO ENTER INTO LEASE AT 2010 Addison Street, Berkeley, CA:

The City Manager is hereby authorized to enter into a ten (10) year lease agreement with one optional five-year lease extension with Lexie's Frozen Custard for real property located at 2010 Addison Street, a ground floor retail space in the City of Berkeley Center Street Garage. Such lease shall be on substantially the terms set forth in Exhibit A.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

Exhibit

A: Lease Agreement

CENTER STREET GARAGE LEASE

This lease is made on _____ 2021 (“Lease Approval Date”), between the CITY OF BERKELEY ("Landlord"), a Charter City organized and existing under the laws of the State of California and VITO LOCONTE III AND ALEXIS LECOUNT DBA LEXIE’S FROZEN CUSTARD ("Tenant"), a SOLE PROPRIETORSHIP, who agree as follows:

This lease is made with reference to the following facts and objectives:

- A. Landlord is the owner of the real property consisting of approximately 480 square feet of leasable space located at 2010 Addison Street, Berkeley, California, ("**Premises**") as further described in Exhibit A-1, attached to and made a part of this lease.
- B. Tenant is willing to lease the Premises from Landlord pursuant to the provisions stated in this lease.
- C. Tenant wishes to lease the Premises for the purpose of operating a retail dessert cafe.
- D. Tenant has examined the Premises and is fully informed of the condition thereof.

1. DESCRIPTION OF PREMISES

Landlord leases to Tenant and Tenant leases from Landlord the Premises described above.

2. TERM

- a. Lease Approval Date. The date City Council gives approval for the City Manager to execute the Lease.
- b. Lease Commencement Date. The date City Council specifies the Tenant may take possession of the space for the purpose of beginning tenant improvements in coordination with the Department of Public Works.
- c. Lease Term Commencement Date. The first day of the month following completion of the City’s improvements to and for the Tenant’s space as outlined in Section 11 (d) of this lease. This is the date that begins the initial ten (10) year term and the first of four months of free rent. The term shall be for a period of ten (10) years plus an option to extend for one (1) five- year term as outlined in Section 32 of this lease.
- d. Rent Commencement Date. The first day of the month following four months of free rent (or four months after the Lease Term Commencement Date). Following the completion of Landlord’s work prerequisite to Tenant’s improvements to the Premises, Landlord and Tenant agree to sign and date Exhibit B, *Agreement Specifying Term of Lease* attached hereto and acknowledge the Lease Commencement Date, Lease Term

Commencement Date, Rent Commencement Date, and Expiration Date of the initial term of the lease.

3. RENT

- a. Tenant shall pay to Landlord as monthly rent, without deduction, setoff, prior notice, or demand, the sum of \$1,560.00 per month in advance of the first day of each month, commencing on the date the term commences, and continuing during the term. Rent for the first four (4) months after the Lease Term Commence Date shall be abated. Monthly rent for the fifth month shall be paid on the Rent Commencement Date and continue until the Lease Expiration Date as agreed to in Exhibit B, *Agreement Specifying Term of Lease*. Monthly rent for any partial month shall be prorated at the rate of 1/30th of the monthly rent per day. All rent shall be paid to Landlord at the address to which notices to Landlord are given.
- b. In accordance with California Civil Code 1947.3, Tenant may pay the monthly rent by check or by electronic transfer of funds from their bank account into a bank account of the Landlord. If Tenant plans to pay by electronic transfer of funds then Tenant will request this in writing to Landlord and together the parties shall provide the necessary information for this to happen.

4. PERIODIC RENT INCREASES

The monthly rent shall be increased at the commencement of the second year, one year after the Lease Term Commencement and each year thereafter ("the adjustment date") to the monthly rent in effect immediately preceding the adjustment date plus two and seven fifth percent (2.75%).

5. SECURITY DEPOSIT

a. As security for the full and faithful performance by Tenant of each and every term, provision, covenant, and condition of this lease, Tenant shall deposit with Landlord cash in an amount equal to one month's payment of rent. Such security shall be deposited on or before the effective date of the Ordinance authorizing this lease.

b. If Tenant defaults in respect to any of the terms, provisions, covenants and conditions of this lease, including but not limited to the payment of rent, Landlord may use the security deposit or any portion of it to cure the default or compensate the Landlord for all damage sustained by Landlord resulting from Tenant's default. If Landlord so uses any portion of the security deposit, Tenant will restore the security deposit to its original amount within ten (10) days after written demand from Landlord.

c. Landlord will not be required to keep the security deposit separate from its own funds and Tenant shall not be entitled to interest on the security deposit. The security deposit will not be a limitation on Landlord's damages or other rights under this lease, or a payment of liquidated damages, or an advance payment of the rent. If Tenant pays the rent and performs all of its other obligations under this lease, Landlord shall return the unused portion of the security deposit to Tenant within sixty (60) days after the end of the term; however, if Landlord has evidence that the security deposit has been assigned to an assignee of the Tenant, Landlord shall return the security deposit to the assignee. Landlord may deliver the security deposit to a purchaser of the Premises and be discharged from further liability with respect to it. Tenant waives the provisions of California Civil Code section 1950.7, and all laws in force or that become in force after the date of execution of this Lease, that provide that Landlord shall return the security deposit no later than thirty (30) days after the Landlord receives possession of the premises.

d. Tenant waives the provisions of California Civil Code section 1950.7, and all laws in force or that become in force after the date of execution of this Lease, that provide that Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by Tenant, or to clean the Premises.

6. LATE CHARGES

Tenant acknowledges that late payment by Tenant to Landlord of rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this lease, the exact amount of which will be extremely difficult to ascertain. Therefore, if any installment of rent or any other sum due from Tenant is not received by Landlord within ten (10) days after such amount is due, then, without any requirement for notice to Tenant, Tenant shall pay to Landlord a late charge equal to ten percent (10%) of such overdue amount. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies available to it.

7. USE OF PREMISES; OPERATION

a. Tenant will use the Premises for the purpose of a retail dessert café and agrees to continuously and uninterruptedly occupy and use the entire leased Premises for said purpose and to maintain adequate personnel for the efficient service of clients or customers. Tenant shall not use nor permit the use of the whole or any part of the Premises for any other purpose without the Landlord's prior written consent.

b. Business may be conducted with the public on the leased premises at any time on any day, provided that, 1) to do business after 10:00 p.m. on any day Tenant shall have obtained any permit required by federal, state or local law; and 2) Tenant hours of operation, including vacation, holiday, and

seasonal schedule changes and/or closures (if any) have been approved of the Director of Public Works or his/her designee.

c. Tenant agrees to abide by all facility “Rules and Regulations.” The current version is attached hereto as Exhibit B, and may be amended by the City from time to time.

d. In addition to Tenant’s agreement to abide by all other restrictions on Tenant’s use. Tenant agrees that any violation of use restriction shall constitute a default by Tenant under the lease, and that Landlord’s notice to Lessee of this or any use restriction shall not be deemed a waiver by Landlord of any other use restriction imposed on the Tenant for the use of the demised premises.

8. TAXES AND ASSESSMENTS

a. Tenant recognizes and understands that this lease may create a possessory interest subject to property taxation and assessment and utility taxation, and that the Tenant will be responsible for the payment of any property taxes and assessments, and utility taxes levied on such interest.

b. Tenant shall pay all taxes on its personal property, fixtures and on its leasehold or possessory interest in the leased Premises and any other assessment that may be lawfully levied.

9. UTILITIES

Tenant agrees to pay any and all charges for telephone, water, and other utilities used in the Premises. Tenant shall arrange for basic refuse collection services by the City of Berkeley. Landlord agrees to pay for electricity and basic refuse collection services. If Tenant’s business exceeds the basic refuse collection service, then Tenant shall be responsible and pay for any additional charges associated with its usage.

10. MAINTENANCE AND REPAIR

a. Tenant is responsible for ensuring that the Premises meet all applicable City of Berkeley codes prior to occupancy under this lease.

b. Tenant shall keep and maintain in good order, condition and repair (except for reasonable wear and tear) all portions of the Premises including without limitation, all fixtures, interior walls, floors, ceilings, plumbing, glass, roof, heating, ventilating and sewage facilities serving the leased Premises, landscaping, and the sidewalk adjacent to the Premises.

c. Tenant shall make all required repairs upon demand by Landlord. Failure to make such

repairs within thirty (30) days of the Landlord's demand shall constitute a default by Tenant.

11. IMPROVEMENTS

a. Tenant shall not erect additions or structures nor make nor cause to be made any alterations, improvements, additions, or fixtures that affect the exterior or interior of the Premises nor shall Tenant mark, paint, drill or in any way deface any floors, walls, ceilings, or partitions of the Premises, without first providing thirty (30) days' written notice to Landlord. If Landlord raises no objections within thirty (30) days after receipt of such notice, Tenant may proceed.

b. Tenant shall require all contractors to provide a labor and materials bond for the full amount of the contract. Tenant shall pay, when due, all sums of money that may be due or become due for any labor, services, materials, supplies or equipment furnished to or for Tenant, in, at, upon or about the leased Premises and which may be secured by any mechanic's, materialmen's or other lien against the Premises or Landlord's interest therein.

c. All alterations, improvements or additions that are now or in the future attached permanently to the Premises shall be the property of Landlord and remain with the Premises at the termination of this lease, except that Landlord can elect within thirty (30) days of the termination of the lease to require Tenant, at its cost, to remove any alterations, improvements or additions Tenant has made to the Premises.

d. Tenant shall pay for any heat and air conditioning equipment to be installed in the Premises and shall be responsible for any repairs and maintenance of said equipment during the Term of this lease and during any extension periods and Landlord agrees to install a water meter for the leased Premises and install a finished concrete floor with conduit for a water drain, as provided by Tenant's design of the leased Premises.

e. Tenant shall have the right, but not the obligation, at any time during the term of this lease, to install a back door to the Premises, subject to the approval of Director of Public Works or his/her designee, and City's Planning Department and the Fire Marshall.

12. INDEMNIFICATION

Tenant shall indemnify, defend and hold Landlord, its officers, agents, volunteers and employees harmless from: 1) all claims of liability for any damage to property or injury or death to any person occurring in, on, or about the Premises; 2) all claims of liability arising out of Tenant's failure to perform any provision of this lease, or any act or omission by Tenant, its agents, contractors, invitees or employees; and 3) all damages, liability, fines, penalties, and any other consequences arising from any noncompliance or violation of any laws, Ordinances, codes, or regulations, including but not limited to the Occupational Safety and Health Act of 1979 and the Americans with Disabilities Act of 1990.

Except, however, that Landlord shall hold Tenant harmless from all claims of liability for damage resulting from the acts or omissions of Landlord or its authorized representatives.

13. INSURANCE

a. Tenant at its cost shall maintain public liability and property damage insurance with a single combined liability limit of \$2,000,000, and property insurance against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision, insuring against all liability of Tenant and its authorized representatives arising out of and in connection with Tenant's use or occupancy of the Premises. All such insurance shall insure performance by Tenant of the preceding indemnity provisions. All insurance shall name the City of Berkeley, its officers, agents, volunteers and employees as additional insureds and shall provide primary coverage with respect to the City.

b. If the insurance referred to above is written on a Claims Made Form, then following termination of this lease, coverage shall survive for a period of not less than five years. Coverage shall also provide for a retroactive date of placement coinciding with the effective date of this lease.

c. Tenant at its cost shall maintain on all its personal property, tenant's improvements, and alterations, in on, or about the Premises, a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements. This coverage shall be considered primary, and the proceeds from any such policy shall be used by Tenant for the replacement of personal property or the restoration of tenant's improvements or alterations.

d. If Tenant employs any person, it shall carry workers' compensation and employer's liability insurance and shall provide a certificate of insurance to the Landlord. The workers' compensation insurance shall: provide that the insurance carrier shall not cancel, terminate, or otherwise modify the terms and conditions of said insurance except upon thirty (30) days prior written notice to the Landlord; provide for a waiver of any right of subrogation against Landlord to the extent permitted by law; and be approved as to form and sufficiency by the Landlord's Risk Manager.

e. Tenant shall forward all insurance documents to: Department of Public Works, Real Property Division, 1947 Center Street, Fifth Floor, Ste. 521, Berkeley, California, 94704.

14. COMPLIANCE WITH LAW AND SAFETY

a. Tenant shall observe and comply with all applicable laws, Ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the Tenant's activities, including all provisions of the Occupational Safety and Health Act of 1979 and all amendments thereto, and all applicable federal, state, municipal, and local safety regulations. All Tenant's activities must be in accordance with these laws, Ordinances,

codes, and regulations.

b. If a death, serious personal injury, or substantial property damage occurs in, on, or about the Premises, Tenant shall immediately notify the Landlord's Risk Management Office by telephone. If any accident occurs on the Premises, Tenant shall promptly submit a written report to Landlord, in such form as Landlord may require. This report shall include the following information: 1) name and address of the injured or deceased person(s), (2) name and address of Tenant's contractor, if any, (3) name and address of Tenant's liability insurance carrier, and (4) a detailed description of the accident.

c. Tenant shall report all existing hazardous materials handled at the site and any hazardous wastes generated at the site to the Toxics Management Division (TMD) on an annual basis and abide by all requirements of the TMD and other state and local environmental agencies. Upon release of hazardous materials or hazardous waste at the property or adjacent to the property, Tenant shall immediately notify the City of Berkeley Toxics Management Division. If the release is significant, the Tenant must report it to the 911 and the Office of Emergency Services.

d. To Landlord's actual knowledge, neither the common area of the Building nor the Premises have undergone inspection by a Certified Access Specialist (CASP). The foregoing disclosure does not affect Landlord's or Tenant's respective responsibilities for compliance of construction-related accessibility standards as provided under this lease. A 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, Landlord may not prohibit Tenant from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of Tenant, if requested by Tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, 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.

e. Landlord represents to Tenant that, as of the Lease Approval Date, the restrooms in the building will be available to Tenant and its customers and invitees.

15. **NON-DISCRIMINATION AGAINST PERSONS WITH DISABILITIES**

a. If Tenant provides any aid, service or benefit to others on the City's behalf, Tenant shall, in the provision of such aid, service or benefit, observe and comply with all applicable provisions of Title II of the Americans with Disabilities Act of 1990 and any amendments thereto. Tenant shall further observe and comply with all applicable federal, state, municipal and local laws, Ordinances, codes and regulations prohibiting discrimination against individuals with disabilities or ensuring that individuals with disabilities are not excluded from participating in or receiving benefits, services or activities of the City.

b. If Tenant is or becomes a "public accommodation" as defined in Title III of the Americans with Disabilities Act of 1990, Tenant shall observe and comply with all applicable provisions of the Act and any amendments thereto, and all applicable federal, state, municipal and local laws, Ordinances, codes and regulations prohibiting discrimination on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations offered by the Tenant. All Tenant's activities must be in accordance with these laws, Ordinances, codes, and regulations, and Tenant shall be solely responsible for complying therewith.

16. **CITY NON-DISCRIMINATION ORDINANCE**

Tenant agrees to comply with the provisions of Berkeley Municipal Code Chapter 13.26 as amended from time to time. In the performance of this lease, the Tenant agrees as follows:

a. The Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

b. The Tenant shall permit the Landlord access to records of employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the opinion of the Landlord, are necessary to monitor compliance with this non-discrimination provision, and will, in addition, fill-out in a timely fashion, forms supplied by the Landlord to monitor these non-discrimination provisions.

17. **NUCLEAR FREE BERKELEY**

Tenant agrees to comply with Berkeley Municipal Code Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

18. **OPPRESSIVE STATES**

a. In accordance with Resolution No. 59,853-N.S., Tenant certifies that it has no contractual relations with, and agrees during the term of this Lease to forego contractual relations to provide personal services to or to purchase, sell, lease or distribute commodities in the conduct of business with, the following entities:

- (1) The governing regime in any Oppressive State.
- (2) Any business or corporation organized under the authority of the governing regime of any Oppressive State.

- (3) Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of its contract with the City), for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

b. For purposes of this lease, the Tibet Autonomous Region and the provinces of Amdo, Kham, and U-Tsang shall be deemed oppressive states.

c. Tenant's failure to comply with this section shall constitute a default of this lease and Landlord may terminate this lease pursuant to Section 26. In the event that the City terminates this lease due to a default under this provision, City may deem Tenant a non-responsible bidder for five (5) years from the date this lease is terminated.

19. BERKELEY LIVING WAGE ORDINANCE

a. Tenant agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance. If Tenant employs six (6) or more part-time, full-time or stipend employees, and generates \$350,000 or more in annual gross receipts, Tenant will be required to provide all eligible employees with City mandated minimum compensation during the term of this lease, as defined in B.M.C. Chapter 13.27, and well as comply with the terms enumerated herein.

b. Tenant shall be required to maintain all reasonable records and documents that would establish whether Tenant is subject to Berkeley's Living Wage Ordinance (LWO). If Tenant is subject to the LWO, as defined therein, Tenant shall be further required to maintain monthly records of those employees located on the leased Premises. These records shall include the total number of hours worked, the number of hours spent providing service on the leased property, the hourly rate paid, and the amount paid by Tenant for health benefits, if any, for each of its employees providing services under the lease. The records described in this Section shall be made available upon the City's request. The failure to produce these records upon demand shall be considered a default, subject to the provisions contained in sections 27 and 28 herein.

c. If Tenant is subject to the LWO, Tenant shall include the requirements of the Ordinance, as defined in B.M.C. Chapter 13.27, in any and all subleases in which Tenant enters with regard to the subject Premises. Subtenants shall be required to comply with this Ordinance with regard to any employees who spend 25% or more of their compensated time on the leased property.

d. If Tenant fails to comply with the requirements of this the LWO and this lease, the City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

Tenant's failure to comply with this Section shall constitute default of the lease, upon which City may terminate this lease pursuant to Section 28.

In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Tenant's failure to pay any of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty of forfeiture for Tenant's breach.

20. BERKELEY EQUAL BENEFITS ORDINANCE

a. Tenant hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Tenant is currently subject to the Berkeley Equal Benefits Ordinance, Tenant will be required to provide all eligible employees with City mandated equal benefits during the term of this lease, as defined in B.M.C. Chapter 13.29, as well as comply with the terms enumerated herein.

b. If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant agrees to supply the City with any records the City deems necessary to determine compliance with this provision. Failure to do so shall be considered a default, subject to the provisions of Sections 27 and 28 of this lease.

c. If Tenant fails to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

Tenant's failure to comply with this Section shall constitute default of the lease, upon which City may terminate this lease pursuant to Section 28.

In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Tenant's failure to provide its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Tenant's breach.

21. SANCTUARY CITY CONTRACTING ORDINANCE

Tenant hereby agrees to comply with the provisions of the Sanctuary City Contracting Ordinance, B.M.C. Chapter 13.105. In accordance with this Chapter, Tenant agrees not to provide the U.S. Immigration and Customs Enforcement Division of the United States Department of Homeland Security with any Data Broker or Extreme Vetting Services as defined herein:

- a. “Data Broker” means either of the following:
The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector business and government agencies;
The aggregation of data that was collected for another purpose from that for which it is ultimately used.
- b. “Extreme Vetting” means data mining, threat modeling, predictive risk analysis, or other similar services. Extreme Vetting does not include:
The City’s computer-network health and performance tools;
Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, monitor for, prevent, and protect technology infrastructure and systems owned and operated by the City of Berkeley from potential cybersecurity events and cyber-forensic based investigations and prosecutions of illegal computer-based activity.

22. CONFLICT OF INTEREST PROHIBITED

- a. In accordance with California Government Code Section 1090, Berkeley City Charter Section 36 and B.M.C. Chapter 3.64, neither Tenant nor any employee, officer, director, partner or member of Tenant, or immediate family member of any of the preceding, shall have served as an elected officer, an employee, or a committee or commission member of Landlord, who has directly or indirectly influenced the making of this Lease.
- b. In accordance with California Government Code Section 1090 and the Political Reform Act, (Government Code Section 87100 et seq.,) no person who is a director, officer, partner, trustee, employee or consultant of Tenant, or immediate family member of any of the preceding, shall make or participate in a decision made by Landlord or any of its boards, commissions or committees, if it is reasonable foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Tenant, except to the extent permitted by 2 California Code of Regulations, Section 18700(c)(2).
- c. Interpretation of this paragraph shall be governed by the definitions and provisions use in the Political Reform Act, Government Code section 87100 et seq., its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64, as amended from time to time.

23. PESTICIDES

All use of pesticides on the Premises shall be in compliance with the City of Berkeley's Pesticide Use Policy as it exists at the time of such use.

24. SIGNS

Tenant shall not install or letter any signs on the Premises without the prior written consent of the Director of Public Works or his/her designee. All signs on the Premises shall conform to the provisions of Berkeley Municipal Code Chapter 20.04.

25. DAMAGE OR DESTRUCTION

If the Premises are totally or partially destroyed from any cause, rendering the Premises totally or partially inaccessible or unusable, Landlord may elect to terminate this lease or continue this lease in effect by giving notice to Tenant within thirty (30) days of the date of destruction. If Landlord elects to continue this lease in full force and effect, then Landlord shall restore the Premises and the rent shall be abated, from the date of destruction until the date restoration is completed, in an amount proportionate to the extent to which the destruction interferes with Tenant's use of the Premises. If Landlord fails to give notice of its decision to terminate or continue this lease within the period stated, Tenant may elect to terminate this lease. Tenant waives the provisions of Civil Code sections 1932(2) and 1933(4) with respect to any destruction of the Premises.

26. EMINENT DOMAIN

If the whole or any portion of the Premises is taken by any paramount public authority under the power of eminent domain, then the rights and obligations of the parties shall be determined as follows: If the Premises are totally taken by condemnation, this lease shall terminate on the date of taking. If any portion of the Premises is taken by condemnation, Tenant shall have the right to either terminate this lease or to continue in possession of the remainder of the Premises under the terms of this lease. Such right to terminate must be exercised by notifying Landlord within thirty (30) days after possession of the part taken by eminent domain. If Tenant does not terminate this lease within the thirty (30) day period, this lease shall remain in full force and effect except that the fixed rent shall be reduced in the same proportion that the square footage of the Premises taken bears to the square footage of the Premises immediately before the taking. All damages awarded for such taking shall belong to and be the property of Landlord; provided, however, that Landlord shall not be entitled to any portion of the award made for loss of business and of business installations or improvements made by Tenant in accordance with this lease.

27. DEFAULT BY TENANT

a. The occurrence of any of the following shall constitute a default by Tenant:

1. Failure to pay rent when due, if the failure continues for 10 days after notice has been given to Tenant.
2. Abandonment and vacation of the Premises (failure to occupy and operate the Premises for 14 consecutive days, without prior written notice from Tenant of a planned closure, shall be deemed an abandonment and vacation).
3. Failure to perform any other provision of this lease if the failure to perform is not cured within 30 days after notice has been given to Tenant. If the default cannot reasonably be cured within 30 days, Tenant shall not be in default of this lease if Tenant commences to cure the default within the 30-day period and diligently and in good faith continues to cure the default.

b. Notices given under this paragraph shall specify the alleged default and the applicable lease provisions, and shall demand that Tenant perform the provisions of this lease or pay the rent that is in arrears, as the case may be, within the applicable period of time, or quit the Premises. No such notice shall be deemed a forfeiture or a termination of this lease unless Landlord so elects in the notice. The purpose of the notice requirements set forth in this section is to extend the notice requirements of the unlawful detainer statutes of California.

28. LANDLORD'S REMEDIES

Landlord shall have the following remedies if Tenant commits a default. These remedies are not exclusive; they are cumulative in addition to any remedies now or later allowed by law.

a. Tenant's Right to Possession Not Terminated. Landlord can continue this lease in full force and effect, and the lease will continue in effect as long as Landlord does not terminate Tenant's right to possession, and Landlord shall have the right to collect rent when due. During the period Tenant is in default, Landlord can enter the Premises and relet them, or any part of them, to third parties for Tenant's account. Tenant shall be liable immediately to Landlord for all costs Landlord incurs in reletting the Premises. Reletting can be for a period shorter or longer than the remaining term of this lease. Tenant shall pay to Landlord the rent due under this lease on the dates the rent is due, less the rent Landlord receives from any reletting. No act by Landlord allowed by this paragraph shall terminate this lease unless Landlord notifies Tenant that Landlord elects to terminate this lease. After Tenant's default and for as long as Landlord does not terminate Tenant's right to possession of the Premises, Tenant shall have the right to assign or sublet its interest in this lease if Tenant obtains Landlord's consent, but Tenant shall not be released from liability.

If Landlord elects to relet the Premises as provided in this paragraph, rent that Landlord receives from reletting shall be applied to the payment of: first, any indebtedness from Tenant to Landlord other than rent due from Tenant; second, all costs, including for maintenance, incurred by Landlord in reletting; third, rent due and unpaid under this lease. After deducting the payments referred to in this paragraph, any sum remaining from the rent Landlord receives from reletting shall be held by Landlord and applied in payment of future rent as rent becomes due under this lease. In no event shall Tenant be entitled to any excess rent received by Landlord. If, on the date rent is due under this lease, the rent received from the reletting is less than the rent due on that date, Tenant shall pay to Landlord, in addition to the remaining rent due, all costs, including for maintenance, Landlord incurred in reletting that remain after applying the rent received from the reletting as provided in this paragraph.

b. Termination of Tenant's Right to Possession. Landlord can terminate Tenant's right to possession of the Premises at any time. No act by Landlord other than giving notice to Tenant shall terminate this lease. Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on Landlord's initiative to protect Landlord's interest under this lease shall not constitute a termination of Tenant's right to possession. On termination, Landlord has the right to recover from Tenant:

i. The worth, at the time of award, of the unpaid rent that had been earned at the time of termination of this lease;

ii. The worth, at the time of 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 Tenant proves could have been reasonably avoided;

iii. The worth, at the time of 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 Tenant proves could have been reasonably avoided; and

iv. Any other amount, and court costs, necessary to compensate Landlord for all detriment proximately caused by Tenant's default.

"The worth, at the time of award," as used in i and ii of this section, 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 award," as referred to in iii of this section, 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 1%.

c. Appointment of Receiver. If Tenant is in default of this lease Landlord shall have the right to have a receiver appointed to collect rent and conduct Tenant's business. Neither the filing of a petition for the appointment of a receiver nor the appointment itself shall constitute an election by

Landlord to terminate this lease.

d. Landlord's Right to Cure. Landlord, at any time after Tenant commits a default, can cure the default at Tenant's cost. If Landlord at any time, by reason of Tenant's default, pays any sum or does any act that requires the payment of any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord at the time the sum is paid, and if paid at a later date shall bear interest at the maximum rate an individual is permitted by law to charge from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. The sum, together with interest on it, shall be additional rent.

28. ASSIGNMENT AND SUBLETTING

Tenant shall not voluntarily assign or encumber its interest in this lease or in the Premises, or sublease all or any part of the Premises, or allow any other person or entity (except Tenant's authorized representative) to occupy or use all or any part of the Premises, without first obtaining Landlord's consent. Assignment, encumbrance, or sublease shall not be permitted if Tenant is behind on Rent payments or is otherwise in default of this Lease. Any assignments, encumbrance, or sublease without Landlord's consent shall be voidable and, at Landlord's election, shall constitute a default. No consent to any assignment, encumbrance, or sublease shall constitute a further waiver of the provisions of this paragraph.

29. ENTRY

Landlord and its authorized representatives shall have the right to enter the Premises at all reasonable times, provided Landlord gives a 24-hour prior notice to Tenant, for any of the following purposes: to determine whether the Premises are in good condition and whether Tenant is complying with its obligations under the lease; to do any acts that may be necessary to protect Landlord's interest in the Premises; or to perform Landlord's duties under this lease. Landlord shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of Landlord's entry on the Premises as provided in this section, except damage resulting from the acts or omissions of Landlord or its authorized representatives.

30. NOTICES

A written notice is deemed served when a party sends the notice in an envelope addressed to the other party to this lease and either: i) deposits it with the U.S. Postal Service, registered mail, postage prepaid; or ii) emails it to the other party followed, no later than the next business day, by depositing it with the U.S. Postal Service for delivery by regular mail. For purposes of this lease, notices shall be addressed as follows, as appropriate:

To the Landlord: City of Berkeley

Department of Public Works,
2180 Milvia Street, Third Floor
Berkeley, CA 94704

With a copy to: City of Berkeley
Real Property Division
1947 Center Street, Fifth Floor
Berkeley, CA 94704
Email Address: real_property@cityofberkeley.info

To the Tenant: Vito LoConte III with a copy to: Lexie's Frozen Custard
Alexis LeCount 2010 Addison Street
834 Talbot Avenue Berkeley, CA 94704
Albany, CA 94706
Telephone: 415-846-6973
Email Address: lexiesfrozcustard@gmail.com

30. WAIVER

No delay or omission in the exercise of any right or remedy of Landlord on any default by Tenant shall impair such a right or remedy or be construed as a waiver. The receipt and acceptance by Landlord of delinquent rent shall not constitute a waiver of any other default; it shall constitute only a waiver of timely payment for the particular rent payment involved. Any waiver by Landlord of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of the lease.

No act or conduct of Landlord, including, without limitation, the acceptance of the keys to the Premises, shall constitute an acceptance of the surrender of the Premises by Tenant before the expiration of the term. Only a notice from Landlord to Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of the lease.

Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent act by Tenant.

31. EXCUSABLE DELAYS

If the performance of any act required of Landlord or Tenant is prevented or delayed by reason of strikes, lockouts, labor disputes, act of God, acts of the public enemy, fire, floods, epidemics, freight embargoes or other cause beyond the control of the party required to perform an act, the performance of such act shall be excused for the period of the delay and the period for the performance of

such act shall be extended for one hundred and eighty (180) days and if the performance of such act is further delayed, Landlord or Tenant may terminate this lease by giving a thirty (30) day written notice to the other party. Prior to the Rent Commencement Date, and during any delay in performance as described above, Tenant shall be excused from the payment of any rent due under this Lease.

32. OPTION TO RENEW

a. Option Period. So long as Tenant is not in default under this lease, either at the time of exercise or at the time the extended term commences, Tenant will have the option to extend the initial term of this lease for an additional period of five (5) years (the "option period") on the same terms, covenants, and conditions of this lease, except that the initial monthly rent and yearly rent increases during the option period will be determined as described below. In order to exercise this option, Tenant must give written notice of its election to do so to Landlord at least 180 days, but not more than one year, prior to the expiration date of the initial lease term. Tenant shall have no other right to extend the term beyond the option period.

b. Option Period Monthly Rent. The Monthly Rent at the commencement of the first year of the Option Period and each year thereafter will be the monthly rent in effect at the end of the initial Term of this Lease plus two and three quarters percent (2.75%).

33. HOLDING OVER

If Tenant remains in possession of the Premises with Landlord's consent after the expiration of the term of this lease without having exercised any option to renew this lease, or after the termination of any such option period, such possession by Tenant shall be construed to be a tenancy from month-to-month, terminable on thirty (30) days' notice given at any time by either party. All provisions of this lease, except those pertaining to term, shall apply to the month-to-month tenancy.

34. SURRENDER OF PREMISES, REMOVAL OF PERSONAL PROPERTY

At the termination of this lease, Tenant shall: 1) give up and surrender the Premises, in as good state and condition as reasonable use and wear and tear thereof will permit, damage by fire and the elements excepted; and 2) remove all property which is not a fixture of or permanent attachment to the Premises and which is owned and was installed by Tenant during the term of this lease.

35. TERMS BINDING ON SUCCESSORS

All the terms, covenants and conditions of this lease shall inure to the benefit of and be binding upon the successors and assigns of the parties to this lease. The provisions of this section shall not be deemed as a waiver of any of the conditions against assignment set forth above.

36. **TIME OF ESSENCE**

Time shall be of the essence of each provision of this lease.

37. **COVENANTS AND CONDITIONS**

Each term and each provision of this lease performable by Tenant shall be construed to be both a covenant and condition.

38. **GOVERNING LAW**

The laws of the State of California shall govern this lease.

39. **ENTIRE AGREEMENT, AMENDMENTS**

This lease and all exhibits attached and any documents expressly incorporated by reference contain the entire agreement between the parties regarding the lease of the Premises described herein and shall supersede any and all prior agreements, oral or written, between the parties regarding the lease of these Premises. This lease cannot be altered or otherwise modified except by a written amendment.

40. **CONSENT OF PARTIES**

Whenever consent or approval of either party is required, that party shall not unreasonably withhold such consent or approval.

41. **BUSINESS LICENSE**

Tenant certifies that it has obtained or applied for a City of Berkeley business license number as required by Berkeley Municipal Code Chapter 9.04; or Tenant claims that it is exempt from the provisions of B.M.C. Ch. 9.04 and has written below the specific B.M.C. section under which it is exempt.

IN WITNESS WHEREOF, Landlord and Tenant have executed this lease as of the date written on the first paragraph of this lease.

LANDLORD
CITY OF BERKELEY

By:
City Manager

THIS LEASE HAS BEEN
APPROVED AS TO FORM
BY THE CITY ATTORNEY
OF THE CITY OF BERKELEY
Date: _____

REGISTERED BY:

City Auditor

ATTEST:

Deputy City Clerk

TENANT
VITO LOCONTE III AND ALEXIS LECOUNT
DBA LEXIE'S FROZEN CUSTARD,
A Sole Proprietorship

Signature _____
Title _____ 2/21/21

Signature _____
Title Alexis Lecount 2/21/21
owner

City of Berkeley Business License No. 000664

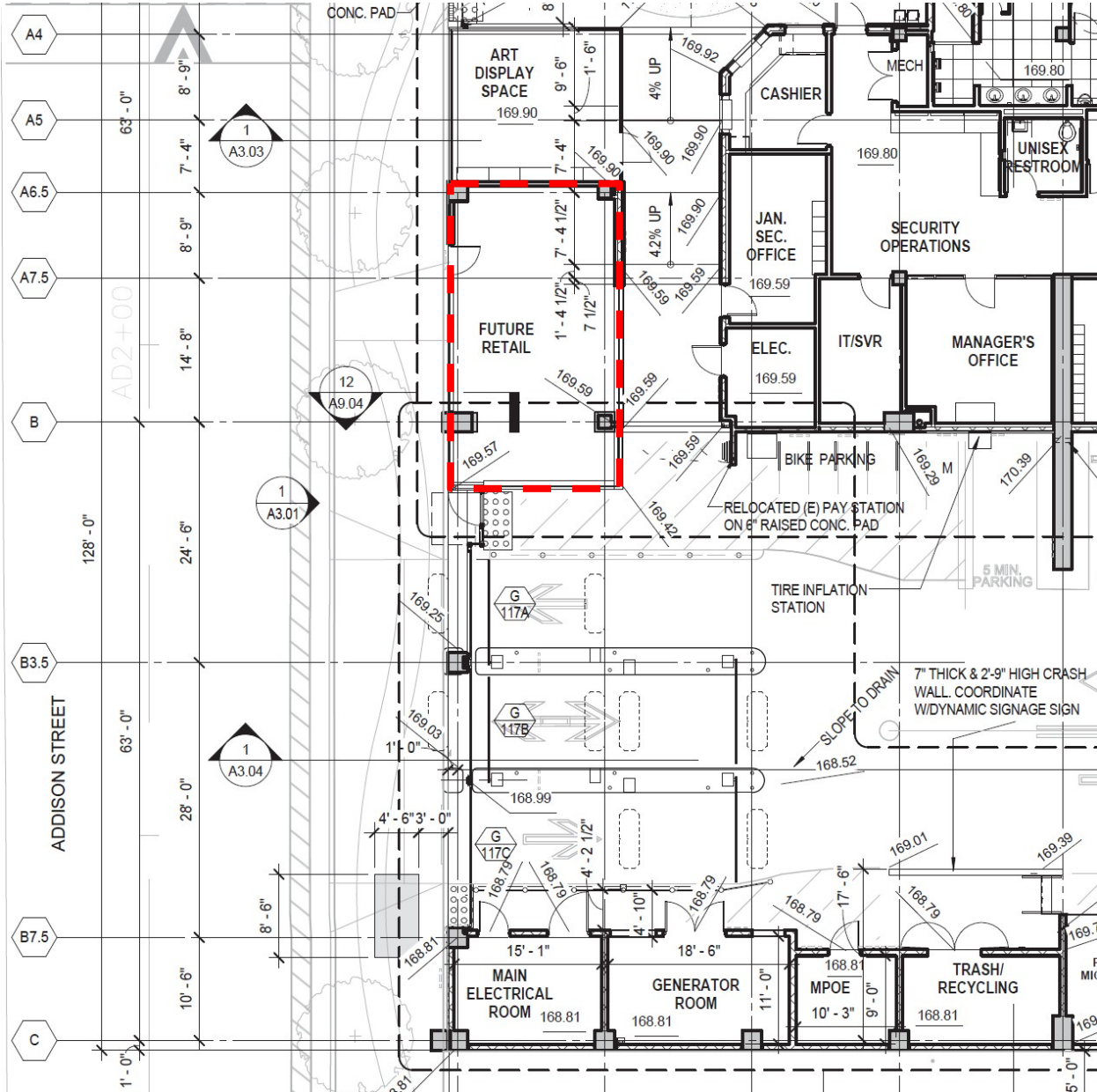
EXHIBIT A
TO
LEASE

Location of Garage



EXHIBIT A-1
TO LEASE

Site Plan of Premises (Lease Space outlined in bold dash marks)



- Occupation of 480 square feet retail space;
- Use of public restrooms at the Garage; and
- Use of the shared Trash/Recycling Room located on the west wall of the first floor of garage.

**EXHIBIT B
TO
LEASE**

Agreement Specifying Term of Lease

Attached to and made part of the Lease approved on the _____ day of _____, 20____, ("Lease Approval Date") by and between the CITY OF BERKELEY, a municipal corporation, as Landlord, and VITO LOCONTE III AND ALEXIS LECOUNT D.B.A., LEXIE'S FROZEN CUSTARD, a sole proprietorship, as Tenant ("**Lease**"). Landlord and Tenant do hereby confirm and acknowledge the following dates:

Lease Commencement Date is _____, 20____, the date City Council specifies the Tenant may take possession of the space for the purpose of beginning tenant improvements in coordination with the Department of Public Works.

Lease Term Commencement Date is _____, 20____, the first day of the month following completion of the City's improvements to and for the Tenant's space.

Rent Commencement Date is _____, 20____, the first day of fifth month after the Lease Term Commencement Date.

Expiration Date is _____, 20____, subject to extension as provided in the Lease.

This Agreement shall be binding on the parties hereto, their successor and assigns and all subtenants of Tenant and any other party claiming under or through Tenant. The Lease is in full force and effect as of the date hereof in accordance with its terms, and Tenant is in possession of the Premises. Landlord has fulfilled all of its obligations under the Lease that were required to be fulfilled by Landlord on or prior to the Rent Commencement Date and Tenant has no claim or right of set-off against any Rent (as defined in the Lease) under the Lease.

This Agreement was entered into as of the _____ day of _____, 20____.

ATTEST/WITNESS:

LANDLORD:

CITY OF BERKELEY, a municipal corporation

By: _____
Its: City Manager

By: _____
Its: City Attorney

By: _____
Its: City Auditor

ATTEST/WITNESS:

TENANT:

LEXIE'S FROZEN CUSTARD
a Sole Proprietorship.

By: _____
Vito Loconte III

By: _____
Alexis LeCount

LEASE PAYMENT SCHEDULE FOR 2010 ADDISON

	YEAR	1	2	3	4	5	6	7	8	9	10
MONTH	1	\$ 1,560.00	\$ 1,602.90	\$ 1,646.98	\$ 1,692.27	\$ 1,738.81	\$ 1,786.63	\$ 1,835.76	\$ 1,886.24	\$ 1,938.11	\$ 1,991.41
MONTH	2	\$ 1,560.00	\$ 1,602.90	\$ 1,646.98	\$ 1,692.27	\$ 1,738.81	\$ 1,786.63	\$ 1,835.76	\$ 1,886.24	\$ 1,938.11	\$ 1,991.41
MONTH	3	\$ 1,560.00	\$ 1,602.90	\$ 1,646.98	\$ 1,692.27	\$ 1,738.81	\$ 1,786.63	\$ 1,835.76	\$ 1,886.24	\$ 1,938.11	\$ 1,991.41
MONTH	4	\$ 1,560.00	\$ 1,602.90	\$ 1,646.98	\$ 1,692.27	\$ 1,738.81	\$ 1,786.63	\$ 1,835.76	\$ 1,886.24	\$ 1,938.11	\$ 1,991.41
MONTH	5	\$ 1,560.00	\$ 1,602.90	\$ 1,646.98	\$ 1,692.27	\$ 1,738.81	\$ 1,786.63	\$ 1,835.76	\$ 1,886.24	\$ 1,938.11	\$ 1,991.41
MONTH	6	\$ 1,560.00	\$ 1,602.90	\$ 1,646.98	\$ 1,692.27	\$ 1,738.81	\$ 1,786.63	\$ 1,835.76	\$ 1,886.24	\$ 1,938.11	\$ 1,991.41
MONTH	7	\$ 1,560.00	\$ 1,602.90	\$ 1,646.98	\$ 1,692.27	\$ 1,738.81	\$ 1,786.63	\$ 1,835.76	\$ 1,886.24	\$ 1,938.11	\$ 1,991.41
MONTH	8	\$ 1,560.00	\$ 1,602.90	\$ 1,646.98	\$ 1,692.27	\$ 1,738.81	\$ 1,786.63	\$ 1,835.76	\$ 1,886.24	\$ 1,938.11	\$ 1,991.41
MONTH	9	\$ 1,560.00	\$ 1,602.90	\$ 1,646.98	\$ 1,692.27	\$ 1,738.81	\$ 1,786.63	\$ 1,835.76	\$ 1,886.24	\$ 1,938.11	\$ 1,991.41
MONTH	10	\$ 1,560.00	\$ 1,602.90	\$ 1,646.98	\$ 1,692.27	\$ 1,738.81	\$ 1,786.63	\$ 1,835.76	\$ 1,886.24	\$ 1,938.11	\$ 1,991.41
MONTH	11	\$ 1,560.00	\$ 1,602.90	\$ 1,646.98	\$ 1,692.27	\$ 1,738.81	\$ 1,786.63	\$ 1,835.76	\$ 1,886.24	\$ 1,938.11	\$ 1,991.41
MONTH	12	\$ 1,560.00	\$ 1,602.90	\$ 1,646.98	\$ 1,692.27	\$ 1,738.81	\$ 1,786.63	\$ 1,835.76	\$ 1,886.24	\$ 1,938.11	\$ 1,991.41
		\$ 18,720.00									
		\$ (6,240.00)	(FOUR MONTH RENT FREE)								
ANNUAL TOTAL:		\$ 12,480.00	\$ 19,234.80	\$ 19,763.76	\$ 20,307.26	\$ 20,865.71	\$ 21,439.52	\$ 22,029.10	\$ 22,634.90	\$ 23,257.36	\$ 23,896.94
										TEN YEAR TOTAL:	\$ 205,909.36

ANNUAL INCREASE: 2.75%

MONTH 1 DATE: _____

LEASE TERMINATION DATE: _____

**EXHIBIT C
TO
LEASE**

Restrictions and Prohibited Uses

Tenant shall not use or permit the use of the Premises for any other business or purpose, except as set forth in this Lease and in strict accordance with the Rules and Regulations. No part of the exterior shall be used for an automatic teller machine. No part of the Premises shall be used for any use that would increase the demand or requirement for parking in the Garage in excess of that required by the Permitted Use. No part of the Premises shall be used in a way that endangers the health or safety of any user of the Garage. **THESE PROHIBITIONS AND RESTRICTIONS SHALL NOT BE DEEMED TO APPLY TO LANDLORD, BUT ONLY TO TENANT UNDER THIS LEASE.** Landlord shall have the right, in Landlord's sole and absolute discretion, to waive all or any of the prohibitions set forth herein upon such matters, terms and conditions as Landlord, in its sole discretion, may determine.

**EXHIBIT D
TO
LEASE**

Center Street Garage Rules and Regulations

Landlord has the right to change Center Street Garage Rules and Regulations at any time.

A. Tenant shall be obligated to do the following:

- i. Keep the Premises, including both sides of all glass clean, orderly and sanitary;
- ii. Keep the outside areas adjacent to the Premises clean, orderly and free of debris, rubbish, obstructions and merchandise;
- iii. Display the certificate of occupancy (if required by applicable law) for the Premises in the Premises and provide Landlord with a copy of the Certificate of Occupancy (or jurisdictional equivalent) for the Premises;
- iv. Keep the Premises free of garbage and trash and remove the same from the Premises to containers approved by Landlord;
- v. Maintain the Premises free of insects, rodents, vermin and other pests;
- vi. Keep all mechanical apparatus free of vibration and noise -- live music or any other use of amplifiers or speakers is prohibited;
- vii. Procure and maintain at its sole cost and expense any permits and licenses required in the transaction of Tenant's business;
- viii. Conduct its business in all respects in a manner in accordance with first-class store operations;
- ix. Load and unload goods at such times in the areas and through such entrances as may be designated by Landlord;
- x. Keep its show windows dressed, using only professionally prepared signage which must be submitted to Landlord for approval prior to installation;
- xi. Keep its show windows and exterior signs illuminated from dusk to 10:00 p.m. every day;
- xii. No office equipment of any kind (other than normal office equipment) shall be operated by Tenant without Landlord's prior written consent, nor shall Tenant use or keep in the Retail Space any flammable or explosive fluid or substance.

- xiii. Landlord will not be responsible for lost or stolen personal property, money or jewelry from the Premises or Common Areas.
- xiv. Restrooms, toilets, urinals and wash basins shall not be used for any purpose other than those for which they were constructed, and no rubbish, newspapers, food or other substance of any kind shall be thrown into them. Tenant shall not mark, drive nails, screw or drill into, paint or in any way deface the exterior walls, floor foundations, bearing walls or pillars without the prior written consent of Landlord. The expense of repairing any breakage, stoppage or damage resulting from a violation of this rule shall be borne by Tenant.
- xv. Tenant shall not sell merchandise from vending machines or allow any coin or token operated vending machine on the Premises, except those provided for the convenience of Tenant's employees and pay telephones provided for the convenience of its customers.
- xvi. Landlord has the right to require that Tenant provide a copy of the key to the Premises for access by Landlord, or as otherwise required by applicable Laws.
- xvii. Abide by all Rules and Regulations set forth in this **Exhibit D** as may be changed by Landlord from time to time provided that such change not materially impact Tenant's rights or responsibilities under the Lease.

B. Tenant agrees not to do the following:

- i. Display any sign visible outside the Premises without first having obtained Landlord's written permission;
- ii. Use the Premises or any other part of the Garage for any use other than allowed by the Lease;
- iii. Cause the accumulation of garbage, trash, rubbish or refuse in the Premises or the Garage;
- iv. Display or store merchandise outside the Premises;
- v. Distribute hand bills or other advertising matter or solicit business in the Common Area;
- vi. If parking is otherwise expressly permitted pursuant to the Lease, permit parking of any vehicle for more than 24 hours;
- vii. Attach any awning, antenna, or other projection to the roof or the outside walls of the Premises or the Garage;
and
- viii. Use or permit the use of objectionable advertising mediums such as loud speakers or other mediums that irritate or have the tendency to irritate other tenants within the Retail Space or their customers or invitees.