



REQUEST FOR PROPOSAL
FOR
1,875 SF RESTAURANT LEASE AT CENTENNIAL PLAZA

Located at
298 N. Main Street, Suites 2 & 3
Porterville, CA 93257

Issue Date: November 3, 2017



**CITY OF PORTERVILLE
NOTICE OF REQUEST FOR PROPOSALS
Centennial Plaza Restaurant Lease
RFP No. 17/18-AC1865**

SEALED PROPOSALS will be received by the City of Porterville, Purchasing Division located at 291 N. Main St., Porterville, CA 93257, until 5:00 P.M., December 4, 2017, for:

1,875 SF RESTAURANT LEASE LOCATED AT 298 N MAIN STREET SUITES 2 & 3

Proposal documents may be obtained in the office of the Purchasing Agent, 291 N. Main Street, Porterville, California 93257, by phone (559) 782-7451, or email, fin-dept@ci.porterville.ca.us.

There will be a pre-proposal inspection of the restaurant facilities located at 298 N. Main Street, on November 14, 2017 at 10:00 A.M., to be hosted by the Community Development Department.

The City hereby affirmatively ensures that Minority Business Enterprises will be afforded full opportunity to submit proposals in response to this notice and will not be discriminated against on the basis of race, color, national origin, ancestry, handicap, gender, sexual orientation, or religion in any consideration leading to the award of contract.

The right is reserved by the City of Porterville to reject any or all proposals, to waive any irregularities or informalities not affected by law, to evaluate the proposals submitted and to award the contract according to the proposal which best serves the interests of said City.

Dated this 3rd day of November 2017, at Porterville, California.

/s/Maria Bemis, Purchasing Agent, City of Porterville, California
Publication Dates: November 3, 2017 and November 10, 2017

CITY OF PORTERVILLE, CALIFORNIA
REQUEST FOR PROPOSALS - RESTAURANT LEASE 298 N. MAIN STREET 2 & 3
CITY OF PORTERVILLE

INTRODUCTION AND BACKGROUND

The City of Porterville is pleased to announce an exciting opportunity for a qualified individual or business entity to submit a proposal to lease the restaurant facility located at the Centennial Plaza building for the sole purpose of operating a public restaurant.

Centennial Plaza is located in downtown Porterville at the corner of Main Street and Thurman Avenue across from City Hall. Centennial Park, which is adjacent to the restaurant lease space, is host to community events throughout the year including but not limited to Music on Main, Iris Festival, and Santa in the Park. Main Street continues to see an influx of new businesses. Most recently San Joaquin Valley College, Deli Delicious, and Spoons Frozen Yogurt have opened new locations on Main Street.

NATURE OF SERVICES REQUIRED

The City of Porterville ("City") seeks proposals from an individual or company, hereafter referred to as "Proposer" or "Operator/Lessee", to lease and operate a restaurant at the 298 N Main Street Suites 2&3. The Proposer supplying this service must be experienced in the food, beverage, restaurant industry and be able to operate an effective, healthy, and safe public dining, kitchen and restaurant operation which complies with all applicable local, county, state and federal policies, procedures, rules, regulations, codes and laws. The Proposer must be able to obtain all pertinent kitchen, restaurant and facility operational permits and licenses and pay all associated local, county, state, and federal fees, registrations and taxes. The Proposer will be fully insurable to City established levels of coverage, name the City as policy co-insured, and keep in effect all required coverages during the term of the agreement for services; if chosen as the successful lessee.

Objectives

Proposer shall use their best efforts to propose attractive, customer-oriented operations that will support and advance downtown Porterville. The successful Proposer will be expected to meet or exceed the following goals and objectives throughout the term of the lease:

- Provide a venue where downtown patrons will have access to food and beverage options during community events.
- Provide a clean and inviting dining environment.
- Provide restaurant designs that are attractive and enhance downtown Porterville.

Facilities

The lease space is 1,875 square feet and is part of the Centennial Plaza building. The facility is a two-story, multi-tenant building, consisting of seven suites. The majority of the suites are offices

with suites two and three being a finished retail restaurant. The remainder of the building is fully leased.

The restaurant suite's floor plan includes a large dining room with booth seating for 22 customers and table seating for 24 diners, a smaller dining area with room for four customers at tables, a customer order counter, a food preparation area, a commercial kitchen (including exhaust hood with fire suppression system, refrigerators, freezers, ice machine, grill and deep fryer), a manager's office, beverage dispensing and coffee bars for customer use, a storage room, and two restrooms.

Finishes inside the suite consist of ceramic tile floor throughout the entire space. Interior demising and partition walls are framed with wood studs that are covered with sheetrock that has a textured and painted finish. In the restrooms, the walls have a 4'-0" high wainscot of ceramic tile and in the kitchen there are fiberglass reinforced panels (FRP) on some walls. Ceilings are finished with suspended T-bar grids that are fitted with acoustic or FRP tiles. Interior doors are made from solid core wood materials with stained veneer finishes, and they are hung in metal frames and outfitted with commercial hardware.

Rent

The desired base rent is \$3,600 per month, which shall be adjusted annually by a percentage equal to the annual percentage increase or decrease in the Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor.

Taxes

The Operator/Lessee shall be responsible for all taxes and/or assessments levied by any governmental agency, including any possessory interest tax obligations which may arise as a result of this lease agreement.

MINIMUM QUALIFICATIONS

To be eligible for consideration, Proposer shall have engaged in the restaurant or general retail business for at least five years. The Proposer shall demonstrate financial responsibility and sufficient resources to finance, develop and operate the restaurant.

TERM OF AGREEMENT

The agreement shall be for a period of five (5) years with an option to request an extension of the term for additional periods of five (5) years. The successful Proposer should be prepared to begin services immediately.

PROPOSAL SUBMITTAL

Proposer shall submit one (1) original and three (3) copies of the Proposal, enclosed in an envelope which shall be sealed and addressed to the Purchasing Agent, City of Porterville, 291 N. Main Street, Porterville, CA 93257. The envelope should be clearly labeled with the proposal title and name of

individual or firm submitting the proposal. The City of Porterville will accept submissions no later than 5:00 P.M., local time, December 4, 2017. Proposals received after the specified time and date will NOT be considered. The City will not be responsible for failure of the United States Post Office, private courier or any other delivery service to deliver a proposal to the appointed place at the specified time.

FACILITY INSPECTION

There will be a pre-proposal inspection of the restaurant facilities on November 14, 2017 at 10:00 A.M., to be hosted by the Community Development Department and the Purchasing Agent.

PROPOSAL CONTENTS

Proposers are requested to organize their proposal into sections corresponding to the following selection criteria. A screening committee will evaluate the completeness of the response to the RFP.

1. Cover letter
2. Organization background and experience
3. Financial qualifications
4. Services proposal: menu, meal selection, hours of operation, etc.
5. Rent proposal

GENERAL TERMS AND CONDITIONS

A. Important Notice

Each individual or firm submitting a proposal must provide all of the information required under the terms and conditions of this RFP.

The City reserves the right to:

1. Modify or otherwise vary the terms and conditions of this RFP at any time, including but not limited to, deadlines for submission, schedules and proposal requirements.
2. Waive irregularities in the proposals.
3. Reject or refuse any or all proposals, or to cancel and withdraw this RFP at any time.
4. Negotiate with any or all proposers in order to obtain terms most beneficial to the City.
5. Accept the proposal, which in the City's sole and absolute discretion, best serves the interests of the City.

The City of Porterville will not be responsible for oral interpretations given by any City employee, representative, or others. Proposers are cautioned that any statements made that materially change any portion of the proposal documents shall not be relied upon unless subsequently ratified by a formal written amendment to the RFP document. The issuance of a written addendum is the only official method whereby interpretation, clarification, or additional information can be given. If any addenda are issued to this RFP, the City will attempt to notify all prospective proposers who have secured same. However, it will be the responsibility of each proposer, prior to submitting their proposal, to contact the Finance Department, located at 291 N. Main St., Porterville, CA

93257, (559) 782-7451 to determine if addendums were issued and to make such addendum a part of the proposal.

B. Legal Responsibilities

By submitting a proposal, Proposer certifies that he or she will comply with all Federal laws and requirements, including, but not limited to Equal Employment Opportunity, Disadvantaged Business Enterprise, Labor Protection and other laws and regulations applicable to contracts.

C. Permits and Licenses

Business License Certificate

Possession of a City of Porterville Business Tax Certificate is not required to submit a proposal in response to this invitation. *However, Operator/Lessee shall be required to possess, at his/her own expense, a valid and current City of Porterville Business Tax Certificate, prior to commencing work.* Fee is based on gross receipts for all business transactions in the City of Porterville. For additional information, contact the City of Porterville at (559) 782-7457.

Permits

Operator/Lessee shall be required to obtain and maintain at his/her own expense, any and all permits, licenses and certifications issued by any federal, state or local governmental agency, pertaining to, and necessary for providing the services required in this RFP.

D. Insurance

Prior to the commencement of restaurant operations, the successful Proposer will be responsible for acquiring and maintaining the appropriate insurance coverage against all claims which may arise from or in connection with the performance of the work or the execution of this contract by the Operator/Lessee, its agents, representatives, employees, subcontractors, or customers, as required by the lease and generally addressed as follows:

1. Commercial General Liability
\$1,000,000 per occurrence for bodily injury, personal injury and property damage
2. Automobile Liability
\$1,000,000 per accident for bodily injury and property damage
3. Workers' Compensation and Employer's Liability
\$1,000,000 per accident for bodily injury or disease

The insuring provisions, insofar as they may be judged to be against public policy shall be void and unenforceable only to the minimum extent necessary so that the remaining terms of the insuring provisions herein may be within public policy and enforceable.

Additional Insured

The General Liability and Auto Liability policy(ies) is(are) to contain or be endorsed to name the City, its officers, appointed and elected officials, agents and employees as Additional

Insured as respects the liability arising out of the activities performed in connection with this contract. The coverage shall (a) be primary with respect to any insurance or self-insurance programs maintained by the City; (b) shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability; and (c) contain Standard Cross-liability provisions. Such additional insured endorsements maintained by the Operator/Lessee and its subcontractors shall not be required to provide coverage for City for the active negligence of City. Original endorsements, signed by a person authorized to bind coverage on its behalf, shall be furnished to the City by the successful proposer.

Indemnification

Operator/Lessee shall indemnify and save harmless the City, its officers, officials, agents and employees, from and against any and all claims, demands, suits, loss, damage, injury and liability, including cost and expenses incurred in connection therewith, resulting from, arising out of, or in any way connected with the performance of the contract, including delivery and unloading of supplies and equipment, regardless of the passive, concurrent negligence on the part of the City or anyone acting under its direction or control or on its behalf. It is further the intent of the parties that this indemnification requirement is not intended to relieve the City from liability for the active negligence of the City, its officers, appointed and elected officials, agents and employees. This hold harmless clause is in no way an admission of liability on the part of the City of Porterville or any of its agents or employees.

The successful proposer acknowledges that he/she has fully informed himself of the contents and meaning of this hold harmless agreement and has so executed it with full knowledge thereof and that the terms are contractual and not a mere recital. These requirements shall also apply to any subcontractor whose hazards are not covered by the Operator/Lessee's insurance policies.

Deductibles and Self-Insured Retention

Any deductibles or self-insured retention must be declared to, and approved by, the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the City, its officials, employees, agents and Consultants; or the Operator/Lessee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City.

Separate endorsements are required, naming the City as additional insured, for liability insurance and providing a waiver of subrogation for Worker's Compensation Insurance. The successful proposer shall maintain the insurance for the life of the contract. Said insurance shall contain a provision that coverage afforded under the policies will not be canceled unless and until thirty (30) days prior written notice has been given to the City.

Endorsements are to be received and approved by the City before work commences. Should Operator/Lessee cease to have insurance as required during any time, all work by Operator/Lessee pursuant to this agreement shall cease until insurance acceptable to the City is provided.

Original insurance certificates and endorsements are to be mailed or delivered to: City of Porterville, Finance Department, 291 N. Main Street, Porterville, CA 93257.

E. Assignment and Subletting

No assignment or subletting by the Operator/Lessee of the contract or any part hereof, or of funds to be received there under, will be binding upon the City unless such assignment or subletting had prior written approval and consent of the City. In the event the City gives such consent, the terms and conditions of the agreement shall apply to, and bind the party or parties to whom such work is assigned, sublet or transferred.

F. Equal Employment Opportunity

During the term of the contract, Operator/Lessee agrees to the following:

1. Operator/Lessee shall comply with all the requirements, when applicable, of the California Fair Employment Practice Commission and provisions of, when applicable, all Federal, State of California, County of Tulare and City of Porterville laws and ordinances related to employment practices.
2. Operator/Lessee shall not discriminate against any employee or applicant for employment on the basis of race, sex, religion, color, gender, age, handicap, sexual orientation, national origin, or ancestry, except when such a condition is a bona fide occupational qualification reasonably necessary for the normal operations. Operator/Lessee agrees to post in conspicuous places, visible to the employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
3. Operator/Lessee, in all solicitations or advertisements for employees, placed by, or on behalf of the firm, shall state that the Consultant is an Equal Opportunity Employer.

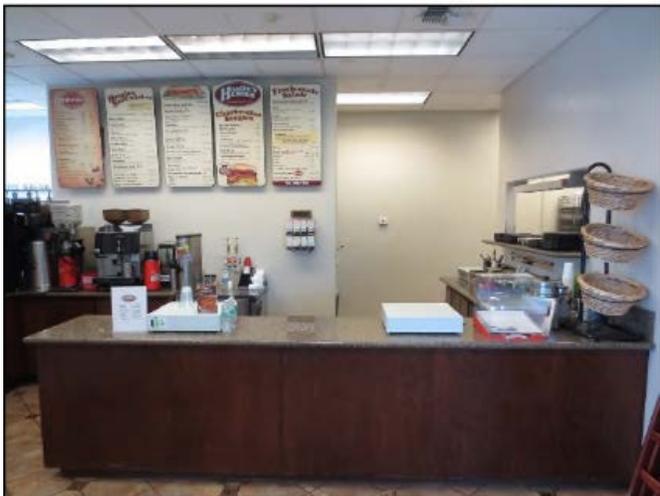
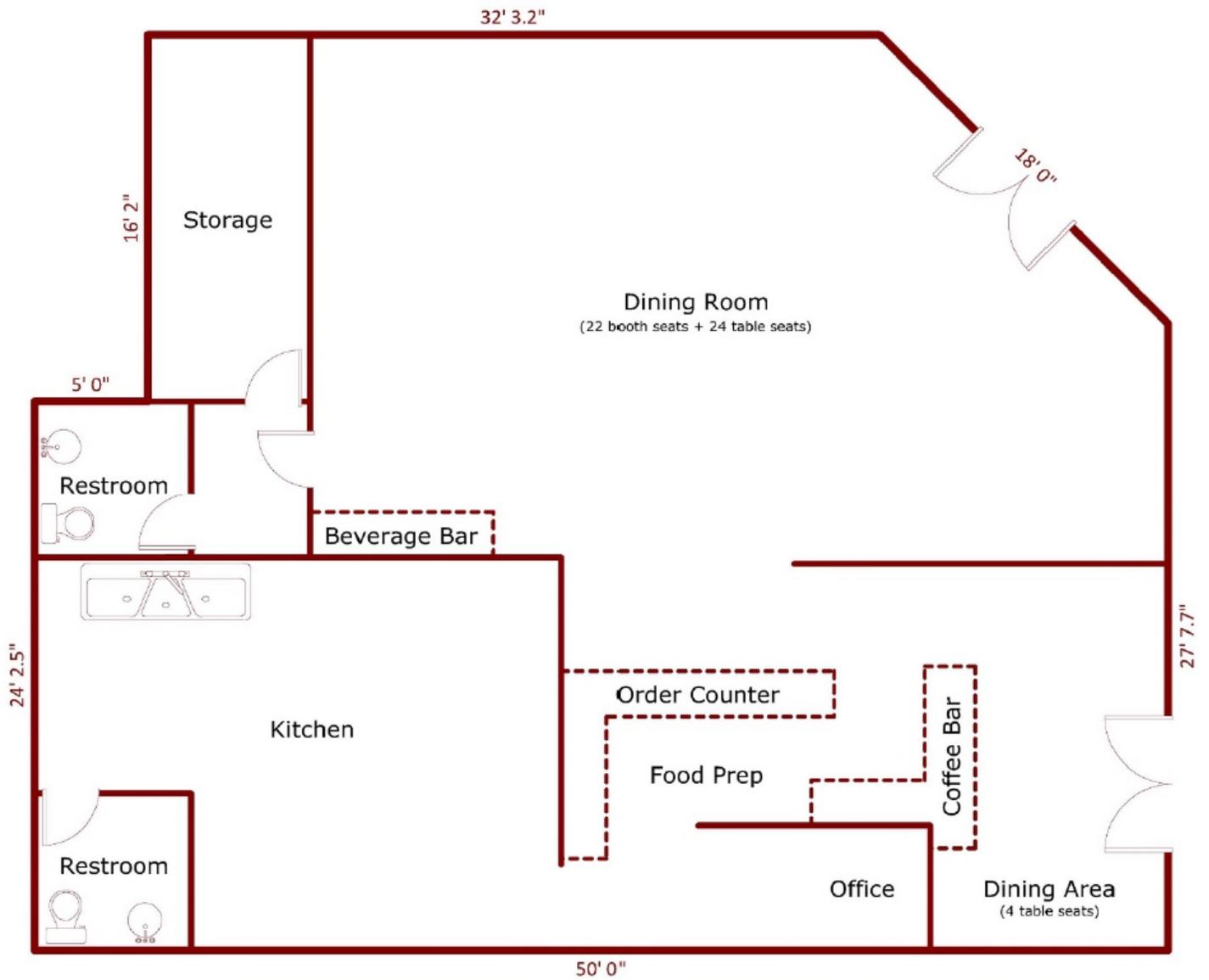
G. Proprietary information

The proposals received shall become the property of the City of Porterville and are subject to public disclosure. Proposal prices and information submitted by proposers will be made available to proposers after City Council has approved award of contract. Proposers are to indicate any restrictions on the use of data contained in their responses. Those parts of a proposal which are defined by the proposer as business or trade secrets, as that term is defined in California Government Code, Section 6254.7, and are reasonably marked as "Trade Secrets", "Confidential" or "Proprietary" shall only be disclosed to the public if such disclosure is required or permitted under the California Public Records Act or otherwise by law. Proposers who indiscriminately and without justification identify most, or all, of their proposal as exempt from disclosure may be deemed non-responsive.

H. Incurring costs

The City of Porterville is not liable for any cost incurred by proposers in responding to this RFP.

Floor Plan



AGREEMENT FOR LEASE OF PREMISES

THIS AGREEMENT is entered into as of this _____ day of _____, 201__ by and between the CITY OF PORTERVILLE, hereinafter referred to as "Lessor", and _____, hereinafter referred to as "Lessee", with respect to the following:

WHEREAS, Lessor owns the real property located at 298 North Main Street, Suites 2 and 3, in the City of Porterville, County of Tulare, California and more particularly described in Exhibit A, attached hereto, and of which the premises is a part; and

WHEREAS, Lessee desires to lease the premises (hereinafter "Premises"), more particularly described in Exhibit B for a restaurant; and

WHEREAS, Lessor is willing to enter into a lease with Lessee under the terms and conditions set forth below.

ACCORDINGLY, IT IS AGREED:

PART 1.

LEASE, TERM, OPTION TO EXTEND, HOLDOVER, ASSIGNMENT, SUBLETTING

1.1 Lease.

Lessee will lease the Premises located at ____ North Main Street, in the City of Porterville, County of Tulare, California, as shown in Exhibit B, from Lessor on the terms and conditions set forth below.

1.2 Lessee's Possession Date and Term.

Lessee will be entitled to exclusive possession of the Premises on the date to be mutually agreed upon by Lessee and Lessor. The term hereof shall commence on _____, and expire on _____ (note – ____ year term). Lessee has the option to renew the Lease for an additional ____ year period, provided that Lessee has provided written notice to Lessor of its intention to renew at least 90 days in advance of the expiration of the term, and the parties can agree to the amount of rent to be paid, based on fair market rental value. In the event the parties cannot agree to the amount of rent to be paid, the parties agree to informal resolution via mediation with a mutually agreed-upon mediator. Notwithstanding the stated term of the lease, either party may terminate this Lease without cause with 180 days prior written notice. Notwithstanding the 180 day period, in accordance with Porterville City Charter Section 68, Lessor may terminate this Lease with 90 days prior written notice provided it pays Lessee for improvements as required by that Section.

1.3 Holdover without Consent.

If Lessee holds over beyond the expiration of the initial term of this Lease without the written consent of Lessor, the holding over will be deemed a month-to-month tenancy including the annual percentage rent increase, until the tenancy is terminated in a manner provided by law.

1.4 Assignment and Subletting.

Lessee shall not assign this lease or sublet any portion of the Premises without prior written consent of the Lessor, which shall not be unreasonably withheld. Any such assignment or subletting without consent shall be void and, at the option of the Lessor, may terminate this lease.

2. RENT

2.1 Amount.

Lessee will pay the following rent to Lessor for the exclusive use and occupancy of the Premises.

2.1.1 Monthly Rent.

On the first day of each month, the sum of **\$3,600** will be due, per month, in advance. Payments not made by the fifth day of the month for which the rent is owed shall be subject to a \$50.00 late fee.

2.1.2 Annual Adjustment.

Commencing on the second Lease Year and for all subsequent Lease Years during the Term the then-current Rent shall be adjusted annually by the product of (i) the Rent last paid by Tenant pursuant to the terms of this Lease which is applicable to the first Lease Year, and (ii) a “**CPI Adjustment**,” which shall be a fraction, the numerator of which is the “**Adjustment Month CPI**,” as that term is defined below, and the denominator of which is either (a) for the first such adjustment during the Term, the “**Base Month CPI**,” as that term is defined below, or (b) for all subsequent adjustments, the Adjustment Month CPI used as the numerator for the previous adjustment. For purposes of this Lease, the “**Base Month CPI**” shall mean the “**CPI**,” as that term is defined below, for the calendar month which is three (3) months prior to the Commencement Date; the “**Adjustment Month CPI**” shall mean the CPI for the same month as the Base Month CPI prior to the first (and each succeeding) anniversary of the Commencement Date. For purposes of this Lease, “**CPI**” shall be deemed to mean The United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), San Francisco-Oakland-San Jose, CA Average, Subgroup “All Items” (1982-1984 = 100). If at any time there shall not exist the CPI in the format recited herein, Landlord shall substitute any official index published by the Bureau of Labor Statistics or successor or similar governmental agency as may then be in existence and shall, in both parties’ opinion, be most nearly equivalent thereto.

2.1.3 Place of Payment.

Lessee will pay all rent at the City of Porterville Finance Department, located at 291 North Main Street, Porterville, California 93257.

3. USE OF PREMISES.

3.1 Allowed Uses.

Lessee and Lessee's subtenants will use the Premises only for a restaurant and uses incident for that purpose, unless Lessee first obtains Lessor's written consent for other uses. Lessee will use the Premises in compliance with all laws, ordinances, and other governmental regulations now in force or which may hereafter be in force relating thereto, including, but not limited to all building, safety and public health requirements and regulations.

3.2 Prohibited Uses.

Lessee will not commit or permit the commission of any acts on the Premises that:

1. Increase Lessor's existing rates for, or causes the cancellation of, any fire, casualty, liability, or other policy of Lessor insuring the Premises or its contents; or
2. Violate or conflict with any law, statute, ordinance, or governmental rule or regulation, whether now in force or hereafter enacted, applicable to the Premises; or
3. Constitute waste on the Premises, or the maintenance of a nuisance as defined by the laws of California.

3. MAINTENANCE, REPAIR AND UPKEEP.

3.1 Lessee's Responsibilities.

Lessee accepts the Premises, as well as the Improvements located thereon, in their present condition. Lessee will be responsible for all maintenance, repair, *replacement* and upkeep of the Premises including all building interiors, all interior structures and attached equipment and fixtures, including fire extinguishers, whether furnished or constructed by Lessor or by Lessee, and all pest control. Lessee will be responsible for complying with all codes or laws requiring alterations, maintenance or restoration of the Premises during the term of the lease, at no cost to Lessor, including codes requiring fire extinguishers or other fire suppression equipment. If Lessee is required by any code or regulation to construct any alteration as a result of Lessee's, or any subtenant's particular and specific use of the Premises, or if Lessee is required to repair any deterioration or damage to the Premises caused by Lessee's clients, invitees, or subtenants, or by Lessee's lack of ordinary care, Lessee will either directly pay, or will reimburse Lessor for, the reasonable cost thereof. Lessee may remove additional fixtures and equipment it installs over the life of the Lease, with prior notice to and consent by the Lessor, which will not unreasonably be withheld, so long as Lessee repairs/restores the premises to its original condition. Any additional fixtures or equipment installed during the Lease term and not removed pursuant to this section will become the property of the Lessor at the end of the Lease.

Lessee will be responsible *for* providing all custodial service and supplies for the Premises, including the common eating area on the patio. On the expiration or termination of this Lease, Lessee will deliver the Premises to Lessor in as good condition and repair as existed upon possession of Premises, reasonable wear and tear and damage by the elements excepted.

5. UTILITIES AND TAXES.

5.1 Lessee's Responsibilities.

Lessee shall be responsible for and will pay for all utilities and services furnished to the Premises, including gas, electricity, telephone, water, trash collection, and all related connection charges.

5.2 Property/Possessory Interest Taxes. All property and/or possessory interest taxes and assessments against the Premises, by any governmental entity shall be the responsibility of Lessee and shall be paid by the Lessee before they become delinquent.

6. LESSEE'S ALTERATIONS.

6.1 Alterations Permitted.

Lessee may make such alterations, additions or improvements to the interior of the building on the Premises as Lessee deems necessary in order to conduct Lessee's business on the Premises, including the addition, rerouting or expansion of electrical circuits, telephone and data lines. Lessee may install such signs, awnings, canopies, marquees or other advertising of Lessee's or any subtenant's services on any exterior wall, door or window on the building, provided that such changes must not weaken or cause structural damage to the building or reduce the value of the Premises or result in a lien upon the Premises. All signs, awnings, canopies, or marquees displayed on any exterior wall, door or window on the building shall comply with City Codes. Lessor will be notified in writing before any alterations, additions or improvements are undertaken by Lessee. All such alterations, additions or improvements will be at Lessee's sole expense.

6.2 Permits.

Lessee will obtain all governmental permits required for such changes, and such changes must comply with all applicable laws and regulations. Lessor as permitting authority for the City of Porterville agrees to treat Lessee the same as it would any other landlord or tenant seeking a permit for alterations, additions, improvements, signs, awnings, canopies, or marquees involving property not owned by the City of Porterville.

6.3 Lessor's Inspection.

Lessor may, at Lessor's own expense, inspect any of Lessee's work carried out under the terms of this paragraph 6, and may consult with any contractor, subcontractor or architect, as to any aspect of such work.

6.4 Ownership and Removal.

All alterations, additions, improvements, signs, awnings, canopies, marquees or other advertising provided by Lessee or and subtenant and not removed by Lessee within 30 days of the expiration or other termination of the lease will become the property of Lessor, unless Lessor instructs Lessee in writing to remove the same at Lessee's sole expense. Lessee will promptly repair any damage to the Premises caused by any such removal, at no cost to Lessor.

7. INSURANCE.

7.1 Lessee's Insurance

Lessee, at its own expense, shall procure and maintain, throughout the term of this Lease, public liability insurance including bodily injury and property damage insuring Lessee and Lessor with minimum coverage as follows:

- \$1,000,000 for personal injury or each person
- \$1,000,000 for personal injury or death of two or more persons in each accident or event.

The policy must contain, or be endorsed to contain the following:

City of Porterville

The City of Porterville, its officers, employees, agents and subtenants must be covered as additional insured as respects liability arising out of activities performed by or on behalf of Lessee; and premises owned, occupied or used by Lessee. The coverage must contain no

special limitations on the scope of protection afforded to Lessor, its officers, employees, or agents.

Lessee shall also procure and maintain, at its expense, throughout the term of this Lease, insurance against loss and damage to any structures constituting any part of the demised Premises, by fire or other casualty, with extended insurance.

Lessee will provide Lessor with a certificate or certificates of coverage showing the policy or policies are issued by insurers admitted to conduct business in the State of California.

The policy must not be suspended, voided, canceled, or reduced in coverage or in limits, except after 30 days prior written notice has been given to Lessor.

7.2 Proof of Insurance

Throughout Lessee's occupancy of the Premises, Lessee will provide Lessor with a certificate or certificates acceptable to Lessor showing compliance with the provisions required above, and on written request of Lessor, will provide Lessor with a true and complete copy of any policy or policies required above.

8. DESTRUCTION OF PREMISES

8.1 Repair.

If the Premises are damaged or destroyed from any cause due to no fault and beyond the control of Lessee during the initial term, with the exception that follows, Lessor will proceed with due diligence to repair or reconstruct the Premises to a condition substantially equivalent to their condition immediately before the damage or destruction. If such damage or destruction occurs during the last year of any term of this Lease, Lessor will not be obligated to repair or reconstruct the Premises.

8.2 Rent Adjustment.

In the event of damage per Section 8.1 above, Lessor will, for any period of time during which Lessee was unable to use the Premises, provide a pro-rata rent reduction based on square footage or other appropriate criteria during the period of non-use. If 30% or more of the Premises is damaged or destroyed and cannot be repaired in 90 days or less, the Lessee will have the option to terminate the Lease.

9. INDEMNITY.

9.1 Lessee's Indemnity.

To the fullest extent permitted by law, Lessee will hold harmless, defend and indemnify Lessor from and against any liability, claims, actions, costs, damages, losses and expenses (including, without limitation, reasonable attorney's fees and expenses) for injury, including death, to any person, damage to any property, or enforcement actions under any other applicable statute or ordinance, resulting from Lessee's occupation of the Premises or use of the Property, or Lessee's acts or omissions with respect to the Premises or Property or breach of lease by Lessee. Lessee's obligation will continue beyond the expiration or termination of this Agreement as to any act or omission which occurred before expiration or termination.

9.2 Lessor's Indemnity.

To the fullest extent permitted by law, Lessor will hold harmless, defend and indemnify Lessee from and against any liability, claims, actions, costs, damages, losses and expenses (including, without limitation, reasonable attorney's fees and expenses) for injury, including death, to any

person, damage to any property, or enforcement actions under California Prevailing Wage laws or any other applicable statute or ordinance, resulting from Lessor's occupation of the Building or use of the Property, or Lessor's acts or omissions with respect to the Building or Property or breach of lease by Lessor. Lessor's obligation will continue beyond the expiration or termination of this Agreement as to any act or omission which occurred before expiration or termination.

10. CONDEMNATION.

10.1 Lessee's Right to Terminate.

In the event of a total or partial taking of the Premises by an entity other than Lessee, exercising the right of eminent domain, which taking renders the majority of the Premises useless for the uses permitted under this Lease, Lessee will have the option of terminating this Lease.

10.2 Reduction of Rent.

If only a portion of the Premises is taken, and Lessee does not terminate this Lease as provided in paragraph 10.1, above, Lessor will reduce the rent thereafter payable by a pro-rata reduction based on square footage or other appropriate criteria.

11. TERMINATION FOR CAUSE.

11.1 Cause.

Either party may terminate this Agreement for cause without prejudice to any other right or remedy to which the terminating party may be entitled at law or under this Agreement. Cause for the purpose of this Agreement exists if a party:

- (a) is adjudged as bankrupt, or
- (b) becomes insolvent or has a receiver appointed, or
- (c) makes a general assignment for the benefit of creditors, or
- (d) suffers any final judgment which remains unsatisfied for 30 days, unless

enforcement is stayed or bonded, and which would substantively impair the ability of the judgment debtor to perform under this Agreement,

or

- (e) materially breaches this Agreement.

11.2 Notices to Defaulting Party.

For any of the above occurrences except item (e), termination may be effected upon written notice by the terminating party specifying the date of the termination. Upon a material breach, the Agreement may be terminated only after the failure of the defaulting party to remedy the breach to the satisfaction of the non-defaulting party within 5 calendar days of delivery of a written notice specifying the nature of the breach. If the breach is not remedied within that 5-day period, the non-defaulting party may terminate this Agreement by delivering a further written notice specifying the date of termination. If the nature of the breach is such that it cannot be cured within the 5-day period, the defaulting party may deliver a written proposal to the non-defaulting party within that period which sets forth a specific means to resolve the default. If the non-defaulting party consents to that proposal in writing, which consent will not be unreasonably withheld, the defaulting party will immediately embark on its plan to cure. If the default is not cured within the time agreed, the

non-defaulting party may terminate after delivering a written notice specifying the date of termination.

11.3 Delivery of Notices.

Notices given under paragraph 11.2 will be deemed delivered as provided in paragraph 12.17 below.

11.4 Obligations Surviving Termination.

Termination of this Agreement will not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities.

11.5 Unlawful Detainer.

The notices provided for in paragraph 11.2 are in addition to any required statutory notices for unlawful detainer proceedings under Code of Civil Procedure section 1161 et seq.

12. MISCELLANEOUS.

12.1 Quiet Enjoyment.

Upon the payment of the rent and Reimbursables and the performance of all the terms, covenants and conditions by Lessee to be performed as herein provided, Lessee will be allowed to peaceably and quietly hold and enjoy the Premises during the term of this lease, or any extended term thereof.

12.2 Surrender.

Lessee will peaceably surrender possession of the Premises upon the expiration or other termination of this lease, and will return the Premises to Lessor in as good a condition as when received, reasonable wear and tear and damage from the elements excepted, except for so much of said Premises as may be injured or destroyed by fire, earthquake or other casualty not the fault of Lessee (See Section 8.1).

12.3 Amendment.

This Agreement may be modified, amended or terminated at any time by mutual consent in writing of the parties hereto.

12.4 Entire Agreement Represented.

This Agreement represents the entire understanding between Lessor and Lessee as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified, waived or repealed without the written consent of both parties.

12.5. Headings.

Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings.

12.6 Interpretation.

This Agreement reflects the contributions of both parties and accordingly the provisions of Civil Code section 1654 shall not apply to address and interpret any uncertainty.

12.7 No Third Party Beneficiaries.

Unless specifically set forth, the parties to this Agreement do not intend to provide any third party with any benefit or enforceable legal or equitable right or remedy.

12.8 Governing Law.

This Agreement will be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. This Lease is entered into and to be performed in Tulare County, California. Lessor waives the removal provisions of California code of Civil Procedure Section 394.

12.9 Waivers.

The failure of either party to insist on strict compliance with any provision of this Agreement will not be considered a waiver of any right to do so, for any subsequent breach. The acceptance by either party of either performance or payment will not be considered to be a waiver of any breach of the Agreement by the other party, unless otherwise explicitly agreed to in writing by the parties.

12.10 Exhibits and Recitals.

All Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

12.11 Conflict with Laws or Regulations; Severability.

This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties, to be in conflict with any code or regulation governing its subject, the conflicting provision will be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement will continue in full force and effect. If either party, exercising its sole discretion, elects to defend this agreement against a third party suit alleging any invalidity in this Agreement, they must do so at their own expense.

12.12 Further Assurances.

Each party will execute any additional documents and will perform any further acts which may be reasonably required to effect the purposes of this Agreement. Lessee will, on request by Lessor, execute appropriate estoppel certificates and attornments in favor of any trust deed holders or encumbrances.

12.13 Assurances of Non-discrimination.

Lessor will not discriminate in employment or the performance of the Work or in the provision of services called for under this Agreement on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.

Lessee herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through it, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, sexual orientation or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the Premises herein leased.

12.14 Lessor's Right to Enter to Inspect and Post.

Lessee will permit Lessor and its agents to enter upon the Premises at all reasonable times for the purpose of posting notices of non-responsibility for alterations or additions made by Lessee, or for the purpose of inspecting the Premises, and, within six (6) months prior to the expiration of the term of this Lease, will permit Lessor to enter for the purpose of placing ordinary for sale or for lease signs.

12.15 Brokers.

All negotiations relative to this Agreement have been carried out directly by representatives of Lessor and Lessee without the participation of brokers and each party represents to the other that there are no unpaid broker's fees in connection with this Agreement.

12.16 Encumbrance of Premises.

Lessor may encumber the Premises so long as Lessee's quiet enjoyment of the Premises is not disturbed thereby.

12.17 Notices.

All notices required to be given under this Agreement must be delivered to the addresses set forth below, unless otherwise instructed in writing, and will be deemed delivered on the following dates:

12.17.1 Notice to Lessor.

When delivered to Lessor in person, or 3 days after date of mailing when mailed by certified mail, postage prepaid, to the City Manager, City of Porterville, at 291 North Main Street, Porterville, California 93257.

12.17.2 Notice to Lessee.

When delivered to Lessee in person, or 3 days date of mailing when mailed by certified mail, postage prepaid, to the _____.

12.19 Successors and Assigns.

This Agreement is binding on and will inure to the benefit of the successors and assigns of the parties, but nothing in this section shall be construed as consent by Lessor to any sublease or assignment by Lessee if such consent is otherwise required by the terms of this Agreement.

12.20 Duplicate Originals.

This Agreement will be executed in duplicate originals.

12.21 Time of the Essence.

Time is of the essence of this Agreement.

12.22 Attorneys Fees. If any litigation is commenced between the parties to this lease concerning the Premises, this lease, or the right and duties of either in relation to the Premises or to this lease, the party prevailing in that litigation shall be entitled to, in addition to any other relief that may be granted in the litigation, a reasonable sum as and for its attorneys' fees in that litigation that are determined by the court in that litigation or in a separate action brought for that purpose.

12.23 Authority to Execute Lease.

The signer for each entity has the approval of the entity's governing body to execute this Agreement.

12.24 “Goodwill” Value. It is hereby agreed and understood by both parties that any “goodwill” value acquired by Lessee during the term of this agreement will bear no value in terms of consideration to Lessee at the termination of this Agreement.

12.25 Liens and Encumbrances. Lessee shall keep the premises and all structures and improvement situated thereon free from any liens or encumbrances arising out of the service performed or obligations incurred by Lessee, or from any other cause.

12.26 Negation of Partnership. Lessor shall become or be deemed a partner or joint venture with Lessee or associate in any relationship with Lessee’s operations thereon.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF PORTERVILLE

Date: _____ By: _____
Milt Stowe, Mayor
LESSOR

ATTEST:

By: _____
John D. Lollis, City Manager

Approved as to form:

By: _____
Julia Lew, City Attorney

[LESSEE]

Date: _____ By: _____

LESSEE

Approved as to form:

By: _____
_____, Attorney for Lessee

Date: _____