

**LEASE AGREEMENT
PLAZA TEMPORAL
ROSELAND VILLAGE CENTER**

This Lease Agreement ("Agreement"), made and entered into on _____ ("Effective Date"), is by and between the Sonoma County Community Development Commission, ("CDC"), Mid-Peninsula Housing Corporation ("Developer") and Octavio Diaz, ("Operator"). The CDC, Developer and Operator are sometimes collectively referred to herein as the "parties" and singularly, a "party."

R E C I T A L S

WHEREAS, Mid-Peninsula Housing Corporation ("Developer") was the successful respondent (in partnership with Urbanmix Development, LLC) to a Request for Qualifications and Proposals for the Development of Roseland Village Neighborhood Center issued in February 2015; and

WHEREAS, The Developer proposed a mixed-use project that contained affordable and market rate housing, civic and community uses, and a Mercado and business incubator ("Project"); and

WHEREAS. The CDC and the Developer entered into an Exclusive Negotiating Agreement for the purposes of negotiating a Disposition and Development Agreement ("DDA") for the proposed development of the Project including 100 market rate apartments, 75 affordable apartments, a 25,000 square foot civic building, a 7,200 square foot commercial building and a public plaza of approximately one acre; and

WHEREAS, the CDC desires to introduce during the first phase of the Project the development and use of a "Plaza Temporal" located on approximately 7,200 square feet of paved parking lot for the use of food trucks, public seating and other amenities; and

WHEREAS, the Developer has identified Octavio Diaz as a qualified and successful restaurateur and food service operator with a successful track record of operating high-quality food and beverage outlets and the CDC has concurred with the selection of Octavio Diaz;

WHEREAS, the Developer and Operator have each agreed to enter into the Lease with the CDC whereby the Developer being responsible for the development of

improvements for the Plaza Temporal during the initial phase of the lease and the Operator being responsible for the ongoing operator and management of the Lease following the completion of the Improvements; and

WHEREAS, the Developer has agreed to Lease the Plaza Temporal space during development of improvements for the Plaza Temporal and has agreed to transfer the lease to the Operator who has agreed to lease the Plaza Temporal space during the operations of the Plaza Temporal, upon completion of the improvements implemented by the Developer;

NOW, THEREFORE, in consideration of the Premises and of the agreements of the respective parties herein set forth, it is mutually agreed as follows:

A G R E E M E N T

1. Agreement. The CDC hereby grants Developer and Operator a Lease subject to all the terms and conditions of this Agreement, for use of that portion of CDC real property described in Section 2 below.
2. Premises. Developer and Operator are hereby permitted to use the CDC real property as specifically shown or described in Exhibit A attached hereto and made a part hereof (“Premises”), consisting of the following:
 - a) vacant land consisting of approximately 7,200 square feet of paved parking lot area located at 665 Sebastopol Road.
3. Non-exclusive License for Adjacent Parking Area. An adjacent parcel (Exhibit B) is granted for a non-exclusive license for parking, loading and other related purposes. CDC continues to maintain and control the License Area.
4. Term.
 - 4.1 Development Term. The term of this Agreement granted to Developer for development of the improvements of the Plaza Temporal (“Development Term”) shall commence upon execution of the Agreement (“Commencement Date”) and expire the earlier of (1) obtaining a Temporary Certificate of Occupancy (“TCO”) for the Improvements of the Plaza Temporal as set forth in Section 8 herein or (2) three hundred sixty (360) days from the Commencement Date, unless earlier terminated in accordance with other applicable provisions of this Agreement. Upon completion of the Development Term, Developer shall be released of all rights and obligations set forth in this Agreement. The Improvements installed during the Development Term shall be deemed to be included in the definition of the term “Premises” that is to be leased by the Operator as set forth herein.
 - 4.1.1 Access Prior to Commencement Date. Developer and Operator shall be permitted reasonable access to the Premises prior to the Commencement Date for purposes of inspection in order to prepare for the development of the Improvements and to secure required operating permits and approvals.

4.1.2 Commencement of Improvements: Developer shall commence the construction of the Improvements within thirty (30) days of the receipt of all City of Santa Rosa building permits and approvals, and shall complete the Improvements within one hundred twenty (120) days of Commencement Date.

4.1.3 Transfer of Lease: Upon completion of the Improvements and issuance of a TCO, Developer shall transfer the Lease to Operator and shall no longer be a party to Lease.

4.2 Initial Operational Term. The initial term of this Agreement granted to the Operator for operations of the Plaza Temporal shall commence upon issuance of a Temporary Certificate of Occupancy for the Improvements to the Plaza Temporal, approval from the California ABC for transfer of a liquor license and a Sonoma County Health Department Permit to Operate and expire twenty-four months later, unless earlier terminated in accordance with other applicable provisions of this Agreement.

4.1.3 Commencement of Operations. Operator shall commence food service and Plaza Activities within 30 days following commencement of the Initial Term.

4.2 Option to Extend. Operator may extend the Initial Operational Term on all the provisions contained in this Agreement, including the Rent, for a maximum period of eight (8) additional years ("Extended Term") following expiration of the Initial Term, provided Operator gives notice of exercise of the option ("Option Notice") to CDC at least ninety (90) days before the expiration of the Initial Term. Tenant must be in good standing at the time of the notice of the exercise of the option.

4.3 Duty to Surrender. At the expiration or earlier termination of the terms, Developer and/or Operator shall surrender to CDC, the possession of the real property and the improvements constituting the Premises or any portion thereof in the case of a partial termination, in good condition, ordinary wear and tear accepted. If Developer and/or Operator fails to surrender the Premises by the expiration or sooner termination of this Agreement, the party failing to surrender shall indemnify and hold CDC harmless against all loss, liability, cost or expense directly resulting from or arising out of the failure to surrender the Premises, including, without limitation, any amounts required to be paid to any tenant, operator, or prospective tenant or operator, who was to have occupied the Premises after said termination or expiration and any related attorneys' fees and brokerage commissions. Notwithstanding the foregoing, a termination of this Agreement shall not release Developer and/or Operator from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, expiration, or date of surrender if it be later.

4.4 Holding Over. If Developer and/or Operator shall continue to occupy or use the Premises after the termination of the Term of this Agreement that is applicable to them respectively with CDC's express written consent, then the applicable term of this Agreement shall be deemed to continue in effect on a periodic, renewing one-month basis until such time as CDC revokes its consent to such continued use, which revocation may be at any time and for any reason. All the terms, provisions and conditions of this Agreement shall apply to this month-to-month lease at the then applicable rent. The month-to-month lease shall be on the terms and conditions of this Agreement. CDC's acceptance of rent after such holding over with CDC's written consent shall not result in a renewal of

the original term of this Agreement. If Developer and/or Operator continues its use or occupation of the Premises after expiration or earlier termination of the Term of this Agreement that is applicable to them respectively without CDC's written consent, the party holding over shall pay as rent during the holdover period an amount equal to one hundred twenty-five percent (125%) of the monthly rent for the Premises in effect under this Agreement during the month which includes the day immediately prior to the date of the expiration or termination of this Agreement, but shall not be deemed to have CDC's consent to such continuing operation. Nothing in this Article 4 shall be construed as implied consent by CDC to any holding over. CDC expressly reserves the right to require Developer and/or Operator to surrender possession of the Premises to CDC as provided in this Agreement. The provisions of this Section 4.3 shall not be considered to limit or constitute a waiver of any other rights or remedies of CDC provided in this Agreement or at law.

5. Rent.

5.1 Monthly Base Rent. Developer shall not be required to pay rent during the term of the Development Term. Operator shall not be required to pay Monthly Base Rent to CDC for the first twenty-four (24) months of the Initial Operational Term, regardless of the date food service operations commence in accordance with section 4.1.2. Commencing on the first day of each month of the Extension Term Operator shall pay to CDC the following sums:

a) Fifteen Hundred Dollars (\$1,500.00) per month in Base Rent during the third, fourth and fifth Lease Year of the Extension Term.

b) Monthly Base Rent shall be increased by 3% per year during the sixth, seventh, eighth, ninth and tenth year of the Extension Term.

5.2 Operating Expenses. Developer agrees to pay all operating expenses with the exception of those identified below as "CDC Operating Expenses" including taxes (including, without limitation, any possessory interest taxes payable pursuant to the provisions of California Revenue & Taxation Code Section 107.6), insurance, maintenance and repair, janitorial, garbage and recycling and telephone/internet services. CDC agrees to pay the following operating expenses: electricity, gas, water and sewer charges ("CDC Operating Expenses").

5.3 Late Charge. Operator agrees to pay a late charge of one percent (1%) per month of the amount overdue on any unpaid Rent.

5.4 Manner of Payment of Rent. Monthly rent for any partial month shall be prorated at the rate of 1/30th of the monthly rent per day. The Rent and any other sums payable by Operator hereunder shall be paid by Operator without notice, demand or offset to the address specified in Section 30, or at such other place or places as may from time to time be designated in writing by CDC.

6. Security Deposit.

6.1 Amount of Deposit and Application. Developer shall not be required to pay any Security Deposit. Concurrently, with its execution of this Agreement, Operator shall deposit Two Thousand Dollars (\$2,000) in cash with CDC ("Security Deposit"). CDC shall hold the Security Deposit as security for performance of Operator's obligations in this Agreement. If Operator defaults on any provision of this Agreement, County may (but is not required to) apply all or part of the Security Deposit to:

- a) Any rent or other amount in default;
- b) Any amount the CDC may spend or may become obligated to spend exercising its rights under this Agreement;
- c) Any expense, loss, or damage that CDC may suffer because of Operator's default.

7. Uses, Purposes.

7.1 Use of Premises for Development of Improvements. Developer's use of the Premises shall be limited to those activities necessary to design, develop, construct and install the Improvements. No other uses by Developer shall be permitted.

7.2 Use of Premises for Food Service and Plaza Activities. Operator's use of the Premises shall be limited to operation and maintenance of a food service business, including licensed food trucks, alcoholic beverage service pursuant to a California ABC license, live entertainment, and other activities specified in the Plaza Activities Plan attached as Exhibit XX.. Various small sundries may also be offered for sale within the Premises. No other uses by Operator shall be permitted. The rules and regulations attached hereto as Exhibit B, as well as such rules and regulations as may be adopted by CDC and provided to Operator for the safety, care and cleanliness of the Premises and the preservation of good order thereon are hereby expressly made a part hereof, and Operator hereby agrees to comply with them. Operator shall comply with all local, state and federal laws and regulations.

7.2.1 Continuous Operation Requirement and Hours of Operation. Unless otherwise set forth in this paragraph, Operator shall continuously use the Premises for the uses specified in this Agreement, a minimum of two (2) days per week. Hours of operation are up to the discretion of the Operator and are subject to any limitations by the City of Santa Rosa or the California ABC.

7.2.2 The hours set forth in the previous subparagraph are the minimum operating hours and Operator may keep services available beyond these times. Operator may operate seven (7) days a week from 6 am to 2 am. The hours set forth in this section may be changed from time to time upon the mutual written agreement of the parties.

7.2.3 Required Food Services. Operator shall solicit licensed food truck vendors to participate in the Plaza Activities and food service operations. Food trucks will be sought that, at a minimum, offer a variety of foods and snack items for sale and consumption within the Premises, and provide qualified staffing and supervision at levels sufficient to conduct business in a timely and professional manner, Storage and sales of alcoholic beverages within the Premises is subject to the possession of a valid Permit from the California ABC. Operator shall strive to provide access to healthy, locally-produced,

and reasonably-priced food options. The CDC reserves the right to prohibit the sale of any item which it deems objectionable or beyond the scope of merchandise deemed suitable for proper service to the public, or does not meet minimum safety standards.

7.3 Operational Requirements of Operator. Operator agrees throughout the term to abide by the following conditions and requirements:

7.3.1 Cancellation of Insurance; Increase in Insurance Rates. Operator shall not knowingly and intentionally do, bring, or keep anything in or about the Premises that will cause a cancellation of any insurance covering the Operator's activities hereunder. If the rate of any insurance carried by CDC specifically related to the Premises is increased as a result of Operator's use, other than and except as authorized, permitted and/or contemplated by this Agreement, Operator shall pay to CDC within thirty (30) days before the date CDC is obligated to pay a premium on the insurance or within thirty (30) days after CDC delivers to Operator a certified statement from CDC insurance carrier stating that the rate increase was caused by an activity of Operator at the Premises other than and except as authorized, permitted, and/or contemplated by this Agreement, whichever date is later, a sum equal to the difference between the original premium and the increased premium.

7.3.2 Waste Management. Operator will provide a sufficient number of trash receptacles in a designated area for trash collection and cover costs of trash pick-up services. Trash shall be placed within the provided dumpster by Operator daily, and dumpster lids shall be kept closed. Recyclable items shall be separated from trash and disposed of in specified collection containers if available. Operator shall not place items outside the collection dumpsters and shall be responsible for appropriate disposal of items that do not fit or are prohibited by the waste disposal contractor from being placed in dumpsters for pick up.

Operator shall dispose of all sewage and operational waste in accordance with applicable regulations and laws of those governmental agencies having jurisdiction or authority over the Premises. Operator shall ensure that all solid waste materials are placed in appropriate covered containers designed for use with the type of waste involved, which shall remain covered, and that said containers are maintained within enclosures located on the Premises and designated to keep said trash containers out of the flow of traffic and obscured from view. Operator shall not knowingly or intentionally use the Premises in any manner that will constitute waste.

7.3.3 Hazardous Materials.

(a) Except as set forth in Exhibit D attached hereto, Operator shall not cause or permit any Hazardous Materials (as subsequently defined) to be brought upon, kept or used in or about the Premises by Operator, its agents, employees, contractors or invitees, without the prior written consent of CDC, which CDC shall not unreasonably withhold as long as Operator demonstrates to CDC's satisfaction that such Hazardous Materials: (i) are necessary or useful to Operator's business and will be used, kept and stored in a manner that complies with all laws, statutes, ordinances, rules, regulations, orders, requirements, and policies of any and all governmental agencies and authorities and any fire insurance underwriters applicable to any such Hazardous Materials ("Hazardous Materials Laws"); and (ii) do not otherwise, due to the quantity, nature or use of such Hazardous Materials, substantially increase the risk of fire or other casualty to the Premises. Operator shall update Exhibit C annually, on July 1 of each year.

(b) To the extent any Hazardous Materials are used, kept, or become present in or on the Premises on or after the Effective Date (as defined above), Operator shall ensure that all such Hazardous Materials, and all uses thereof, are in full compliance with all Hazardous Materials Laws.

(c) If Operator breaches the obligations stated in subparagraphs (a) or (b) of this Section 5.2.3 then Operator shall indemnify, defend (with counsel approved by CDC) and hold CDC harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities and losses which arise during or after the term of this Agreement as a result of such breach, contamination, discharge, or release, but excluding liability due to the negligence or willful misconduct of CDC, its employees, agents, contractors and representatives. Upon the termination of this Agreement, Operator shall surrender the Premises to County free of any and all Hazardous Materials (except any Hazardous Materials existing on the Premises prior to the Effective Date and in compliance with all Hazardous Materials Laws applicable to Hazardous Materials that become present on or after the Effective Date). This indemnification shall survive the termination or expiration of this Agreement.

(d) For the purpose of this Section 5.2.3, the term "Hazardous Materials" includes, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §1801 et seq.), the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. §6901 et seq.), Section 25117 of the California Health & Safety Code, Section 25316 of the California Health & Safety Code, and in the regulations adopted and publications promulgated pursuant to them, or any other federal, state, or local environmental laws, ordinances, rules, or regulations concerning the environment, industrial hygiene or public health or safety now in effect or enacted after this date.

(e) Hazardous materials exist in the soil and groundwater under the site. Operator shall not disturb the materials during the operation of the Premises.

7.3.4 Billboards and Signs. Operator shall work with CDC staff in developing a program for installation of reasonable and appropriate directional and business identification signage at key locations on the Roseland Village Site. Operator agrees not to construct, install, maintain or to allow upon the Premises or elsewhere on the Roseland Village Site, any billboards, signs, banners or like displays in such manner as to be visible from the outside of the Premises or common areas thereof, without first obtaining written CDC approval, which shall not be unreasonably withheld. Operator shall prepare and submit a reasonably detailed and dimensioned signage plan including proposed color scheme, graphics content, locations for placement, and methods of attachment, for CDC approval within 30 days following execution of this Agreement.

7.3.5 Marketing Program. CDC agrees to provide limited assistance to Operator in disseminating information intended to promote the project. Operator shall be permitted to post informational content on the CDC website and intra/internet, including hours of operation and address, sample listing of food trucks, menu items and pricing, periodic specials, special event schedule and other reasonable notifications of broad interest.

Operator shall submit proposed marketing communications and webpage content to CDC staff for approval and coordination.

7.3.6 Janitorial Services. Operator is responsible for cleaning the Premises and retaining appropriate janitorial services.

7.4 Reservations to CDC. CDC maintains and controls the Premises, and retains all rights and interests therein, including but not limited to those rights set forth herein below:

7.4.2 New Development. CDC expressly reserves the right to develop the remainder of the Roseland Village site, including the affordable housing, market rate housing, civic building, public infrastructure, public plaza and another other necessary activity to implement the Roseland Village Development project. The development activities will include, but not be limited to, grading, underground construction, utility installation, road and sidewalk construction, building and site demolition, vertical building construction, foundations, framing and any and all other activities associated with construction.

7.4.3 Other Rights. All oil, gas, geothermal and mineral rights are expressly reserved from this Agreement.

7.4.4 CDC's Right to Inspections. CDC shall have the right to enter upon the Premises at any and all reasonable times during the normal business day throughout the Agreement term (Development Term and Initial & Extended Terms) for the purpose of inspecting the same and posting any notices required or permitted under law.

8. Improvements – Scope of Development.

8.0 As-Is Condition. Developer hereby acknowledges that, except as may be expressly set forth elsewhere in this Agreement, neither the CDC nor anyone acting for or on behalf of the CDC, has made any representation, warranty or promise to Developer concerning the physical aspects or condition of any portion or part of the Premises or Improvements, the feasibility, desirability or convertibility of the Premises into any particular use, the fixtures, the conditions of the soil, subsoils, ground water, or surface waters or the presence or absence of any toxic waste or hazardous substances or material, and that by entering into this Agreement, Developer has not relied on any representation, statement or warranty of the CDC, or anyone acting for or on behalf of the CDC, and that all matters concerning the Premises shall be independently verified by Developer, and that Developer shall improve the Premises on Developer's own examination thereof, AND THAT DEVELOPER IS OCCUPYING THE PREMISES IN "AS IS" PHYSICAL CONDITION AND "AS IS" STATE OF REPAIR. To the extent applicable to this Agreement, Developer does hereby waive, with respect to conditions existing as of the date of this Agreement, and the CDC does hereby disclaim all warranties of any type or kind of description, with respect to conditions existing as of the date of this Agreement, including, without limitation, but only those with respect to conditions existing as of the date of this Agreement, those of fitness for particular purpose, tenantability, habitability and use. Except as set forth in this Agreement, Developer hereby expressly assumes the risk that adverse physical conditions existing as of the date of this Agreement and the full extent thereof, may not be revealed by Developer's inspections, reviews and studies of the Premises. It is an expressly

bargained-for agreement herein that Developer shall be responsible for causing the Scope of Development improvements constructed by Developer on the Premises to comply in all respects with all applicable federal, state or local laws, rules, ordinances, policies and guidelines.

8.1 Scope of Development. During the Development Term, Developer shall be responsible for constructing the Improvements as outlined in the attached "Scope of Development".

8.1.1 CDC Contribution to Improvements: Developer shall be reimbursed an amount not to exceed \$350,000 (Three Hundred Fifty Thousand Dollars) for Improvement Costs related to the construction and development of the Improvements.

8.1.2 Reimbursement for Improvement Costs. Developer shall deliver to CDC monthly construction progress invoices for the Improvements. CDC shall pay Developer within 30 days of receipt of each progress invoice. Invoices shall include a description of the work performed and preliminary lien waivers from all contractors. Upon completion of the Improvements Developer shall submit an itemized statement of the actual costs expended by Developer on the Improvements, accompanied by documentation reasonably satisfactory to the CDC evidencing all expenditures. Such appropriate proofs of expenditure include: (i) copies of cancelled checks; (ii) copies of executed contracts; (iii) invoices, contracts or bills of lading, for labor or services marked "Paid" or otherwise evidenced of having been paid; and (iv) other such proof that the CDC shall deem acceptable; (v) unconditional lien waivers from all general contractors and subcontractors for the particular items covered by the reimbursement agreement. . In no event shall Developer be eligible for reimbursement if Developer is in Default of the Lease.

8.1.3 Upon Completion of the Improvements, Developer shall obtain a Certificate of Occupancy for the approved use of the Improvements. Developer shall provide a copy of its Certificate of Occupancy to the CDC within three (3) business days of obtaining the Certificate of Occupancy.

8.1.2 Upon obtaining the Certificate of Occupancy for the Improvements the Development Term of this Agreement shall expire and the Initial Term of the Agreement shall commence. Upon the end of the Development Term, the rights and obligations of this Lease shall be transferred from the Developer to the Operator and Developer shall be released from all future rights and obligations under this Agreement other than defects or faults in the construction of the Improvements.

8.3 Operator Improvements. If after commencement of the Initial Term Operator chooses to improve the Premises, Operator shall strictly adhere to all of the following:

8.3.1 Advance Written Approval. Operator shall submit four (4) complete sets of all improvement plans to the CDC for advance written approval. Operator shall not change the plans without the CDC advance written approval. A proposed written work schedule outlining dates for commencement and completion of construction, along with key milestones shall be submitted for CDC approval in conjunction with plans. The work schedule shall identify all contractors, contact information, qualifications and the proposed scopes of work to be performed. CDC insurance requirements shall be met prior to commencement of any construction activities.

8.3.2 Laws and Permits. Operator shall obtain all permits required by law prior to performing work for which permits are required, and shall comply with all applicable law in the performance of such work.

8.3.3 Notice of Intent to Construct. Operator shall provide ten (10) days advance written notice of its intent to construct improvements. This notice shall specify the location of all improvements. The CDC may waive the ten (10) day notice requirement of this subparagraph.

8.3.4 Build to Plans. Operator shall build all improvements in accordance with the plans submitted to the CDC for approval and as approved by the permitting agency. Any CDC-authorized deviations made during the course of construction due to unforeseen circumstances shall be reflected in "as-built" drawings submitted to the CDC within fifteen (15) days following completion of improvements.

8.3.5 Improvements Part of Premises. All improvements constructed by Operator on the Premises shall be deemed to be included in the definition of the term "Premises."

8.3.6 Certificate of Occupancy. Should Operator elect to make any improvements to the Premises under this Section 8, Operator shall complete all improvements and obtain a Certificate of Occupancy, at Operator's sole cost and expense. Operator shall provide a copy of its Certificate of Occupancy to the CDC within three (3) business days of obtaining the Certificate of Occupancy.

8.4 Operator Equipment and Personal Property. Operator shall obtain written CDC approval prior to installation and operation of any of its personal equipment or property within the Premises. Operator's equipment shall be installed, operated and maintained at its sole cost and expense, in accordance with regulatory requirements and current industry standards and best practices now or hereafter generally employed for similar equipment. In the event the installation, operation or maintenance of said equipment causes any direct or indirect interference with the operation of CDC's facilities, equipment or the equipment of CDC's tenants, Operator shall correct said interference, at its sole cost and expense, to the satisfaction of County. In the event said interference cannot be corrected, Operator shall promptly remove said equipment. CDC shall not be liable for costs of any damage to or loss of Operator's personal property stored within the Premises.

9. Maintenance, Alterations.

9.1 Acceptance of the Improvements by the Operator. Operator shall accept possession of the Premises following completion of the Scope of Development improvements by the Developer. Developer and Operator shall coordinate the design, permitting and construction of the Improvements.

9.2 Operator's Duty to Maintain Premises. Throughout the Initial Term and any extension thereto, Operator shall, at Operator's sole cost and expense, maintain the Premises, the Improvements, fixtures, and trade fixtures in good condition and repair, and

in accordance with (a) all applicable federal, state and local laws, rules, ordinances, orders, regulations and other requirements, and (b) the requirements of all applicable insurance policies. It is the specific, bargained-for intent of the Parties hereto that Operator's maintenance and repair obligations shall be absolute and total, except for any maintenance or repair work caused by or arising from the negligence or willful misconduct of CDC, its agents, employees, or representatives, and that CDC shall have no obligation or responsibility for such work, and that this provision has been specifically negotiated by the Parties and the rent payable by Operator reflects this negotiation. Operator shall be solely responsible for the design and function of all improvements constructed on the Premises by Operator.

9.3 Damage and Destruction. It is the intent of the Parties that Operator shall be responsible for the repair and restoration of the Premises, and any part thereof, in the event of any Casualty Loss, regardless of when it occurs after commencement of the Initial Term. No damages, compensation or claim shall be payable by CDC for any inconvenience, any interruption or cessation of Operator's business, or any annoyance, arising from any damage to or any destruction of all or any portion of the Premises, except and excluding any damage or any destruction caused by the negligence or willful misconduct of CDC, its officers, agents, employees or representatives. Operator shall be entitled to a proportional abatement and reduction in rent during the entire period of any loss of use and/or enjoyment of the Premises caused by the negligence or willful misconduct of CDC, its officers, agents, employees, or representatives.

9.3.1 Damage During Term. Operator shall promptly and diligently repair, restore and replace at its sole cost and expense any part of the Premises affected as required to maintain or comply with the terms of this Agreement, or to remedy any Casualty Loss to all or any part of the improvements (in no event shall such work be commenced later than one hundred eighty (180) days following such Casualty Loss). In the event of any Casualty Loss rendering either reasonable access to or use of the Premises commercially impracticable for two hundred seventy (270) days or more (based upon a certificate of an architect chosen and paid by Operator and reasonably acceptable to CDC), Operator may elect, in its sole discretion, either (i) not to repair or restore the Premises after such Casualty Loss, and instead Operator may by notice to CDC elect to demolish and rebuild the damaged or destroyed Premises, or (ii) to demolish the improvements constructed by Developer and restore the Premises to its original condition, wear and tear excepted, on the Commencement Date and terminate this Agreement. Operator shall make such election by providing CDC written notice within sixty (60) days of CDC accepting the certificate of Operator's architect. In the event Operator elects to demolish the improvements constructed by Developer and restore the Premises to its original condition, this Agreement shall be deemed terminated sixty (60) days following Operator's election. Demolition shall be done in accordance with industry standards and otherwise in accordance with the provisions of this Agreement. The completed work of maintenance, compliance, repair, restoration or replacement shall be at least equal in cost to the original cost of the improvements, except as expressly provided to the contrary in this Agreement. CDC shall not be required to furnish any services or facilities, or to make any repairs or alterations of any kind in or on the Premises. In the event that Operator does not commence such repair or restoration within sixty (60) days of the Casualty Loss, CDC may (but shall not be obligated to) undertake at Operator's sole cost and expense (which shall be payable as additional rent) such repairs or restoration. CDC's election to perform any obligation of Operator under this provision on Operator's failure or refusal to do so shall not constitute a waiver of any right or remedy for Operator's default, and Operator shall promptly

reimburse, defend, and indemnify CDC against all liability, loss, costs and expense (including attorneys' fees) arising from it. Nothing in this provision defining the duty of maintenance shall be construed as limiting any right given elsewhere in this Agreement to alter, modify, demolish, remove or replace any improvement, or as limiting provisions relating to condemnation or as otherwise set forth in this Agreement. Except where expressly provided otherwise in this Agreement, no deprivation, impairment or limitation of use resulting from any event or work contemplated by this Section 7.3 shall entitle Operator to any offset, abatement, or reduction in rent nor to any extension of the term.

9.3.2 Funds Available for Repair. Within sixty (60) days after any Casualty Loss, Operator shall provide CDC with proof that it has reasonably sufficient funds available to complete restoration or repair as required by this Agreement.

9.3.3 Definition of Casualty Loss. For purposes of this Agreement, the term "Casualty Loss" shall mean any casualty, injury, damage, or destruction to the Premises or any part thereof.

10. Ownership of Improvements.

10.1 During Term. All improvements constructed on the Premises by Operator as permitted by this Agreement shall be owned by Operator until expiration of the term and all extensions thereof. Operator shall not, however, remove any improvements from the Premises during the term or any extension thereof, except as otherwise provided in this Agreement, unless immediately replaced with a substitute improvement of equal or greater value on a depreciated basis, nor waste or destroy any improvements on the Premises except as permitted by this Agreement.

10.2 Improvements - Treatment at End of Term. All improvements made by or for Developer and Operator, whether temporary or permanent in character, shall automatically at the end of the term during which the improvements were installed, regardless of whether termination is by expiration or earlier termination, become CDC's property, and shall be surrendered to CDC in good condition upon expiration of the term or termination of the applicable Term without further compensation to Developer or Operator and without further instrument of transfer; provided, however, that CDC, by notice to Operator (in the manner provided in this Section), may specify all or any of the improvements and Operator shall, at Operator's sole expense remove from the Premises such improvements (or that portion of the improvements required by CDC to be removed by Operator) and repair all damage to the Premises caused by such removal. CDC shall provide Operator with ninety (90) days' written notice of any improvements requiring removals. Operator shall comply with the notice before the expiration date for normal termination, provided CDC provided such notice at least ninety (90) days prior to the normal termination, and within ninety (90) days after receiving the notice in all other circumstances.

10.3 Trade Fixtures and Personal Property - Treatment at End of Agreement. On expiration or termination of the Agreement, Operator shall, without expense to CDC, remove or cause to be removed on or before the expiration or termination of the Agreement term any trade fixtures, items of furniture, equipment, freestanding cabinetry work, and other items of personal property installed by Operator at the commencement of the term. Operator shall, at Operator's sole expense, repair all damage or injury that may occur to the Premises caused by Operator's removal of those items and shall restore the Premises to their original condition considering normal wear and tear of the Premises.

11. Insurance Requirements. With respect to the rights granted hereunder, Operator and Developer shall maintain and shall require all of its subcontractors to maintain insurance as described in Exhibit C attached hereto and made a part hereof.

12. CDC's Representations and Warranties.

12.1 CDC Ownership. CDC represents and warrants that it owns the Premises in fee simple and the property is free from encumbrances. County further represents and warrants that it has the right to make this Agreement.

12.2 Operator Access. CDC represents and warrants that Developer and/or Operator, and its agents, employees, and invitees shall, subject to the limitations of this Agreement, at all times have access to the Premises and shall be authorized and permitted to travel upon and cross over other CDC property in connection therewith, subject to the reasonable and necessary regulations, applicable to all persons, which are or have been duly adopted for the governance of the CDC.

13. Suspension, Termination of Agreement.

13.1 CDC Termination.

13.1.1 CDC Termination for Cause – Development Term. CDC may terminate this Agreement during the Development Term if the Developer fails to complete the Improvements within one hundred eighty (180) days of Commencement.

13.1.2 CDC Termination for Cause – Operating Term. CDC may terminate this Agreement following delivery of thirty (30) days written notice to Operator upon occurrence of any of the following which shall constitute a default by Operator:

- a. Operator's failure to pay rent when due if the failure continues for thirty (30) days after the date such rent is due.
- b. Operator's abandonment of the Premises, including Operator's absence from the Premises for more than thirty (30) consecutive days.

c. Operator's failure to perform any other obligation under this Agreement, including but not limited to compliance with operational requirements specified under Article 7, and compliance with laws as specified under Article 16, if the failure continues for thirty (30) days after written notice of the failure from CDC.

13.1.3 Termination for Threat to Public Safety or Property. Notwithstanding any other provision of this Section 13.1, if the Executive Director, in consultation with County Counsel, determines that a breach of Article 16 of this Agreement has resulted in an immediate and material threat to public health, safety, or property, CDC shall have the right to terminate this Agreement by delivery of written notice to Developer and/or Operator, effective immediately upon delivery.

13.1.4 Termination Related to Commercial Parcel. At any time after the conclusion of the Fifth Year of the Term, CDC may terminate this Agreement following

delivery of One Hundred Eighty (180) days written notice to Operator in the event that the Parties have been unable to successfully negotiate a mutually agreeable Purchase and Sale Agreement for the Commercial Parcel adjacent to the Leasehold Premises and the CDC has identified another bona fide purchaser of the Commercial parcel.

13.2 Developer Termination.

13.2.1 Developer may terminate this Agreement during the Development Term for any reason whatsoever upon delivery of one hundred eighty (180) days written notice to CDC with Operator written consent. In the event of Developer Termination, Developer shall be responsible for removing any Improvements to the Premises at Developer's sole cost and expense.

13.2.2 Developer Termination for Cause. Developer may terminate this Agreement during the Development Term following delivery of thirty (30) days written notice to CDC upon CDC's failure to perform any of its obligations under this Agreement if the failure continues for thirty (30) days after written notice of the failure from Developer.

13.3 Operator Termination.

13.3.1 After commencement of the Initial Term, Operator may terminate this Agreement for any reason whatsoever upon delivery of sixty (60) days written notice to CDC.

13.3.2 Operator Termination for Cause. After commencement of the Initial Term Operator may terminate this Agreement following delivery of thirty (30) days written notice to CDC upon CDC's failure to perform any of its obligations under this Agreement if the failure continues for thirty (30) days after written notice of the failure from Operator.

13.4 Effect of Termination. Upon the effective date of the termination of this Agreement by either party, Developer and/or Operator's permission to conduct business activities upon the Premises shall cease, and Developer and/or Operator's right to use or occupy any portion of the Premises shall concurrently and immediately terminate. CDC shall provide Developer and/or Operator with reasonable access to the Premises after termination to the extent necessary for Developer/Operator's compliance with the requirements of Articles 9 and 10 hereof.

14. Taxes. Operator agrees to pay any and all lawful taxes, assessments, or charges which may at any time be levied by any public entity upon any improvements made as a result of this Agreement.
15. Possessory Interest. Operator expressly recognizes and understands that this Agreement may create a possessory interest subject to property taxation and that Operator may be subject to the payment of property taxes levied on such interest.
16. Compliance with Laws. Developer and Operator have represented to CDC and hereby warrants that they have complied with all laws applicable to the acceptance and use of the

leases herein granted. Developer and/or Operator shall respectively observe and comply at all times with all applicable federal, state and county statutes and ordinances, rules, regulations, directives, and orders of governmental agencies now in force or which may hereinafter be in force relating to or affecting the use of the leases herein granted.

16.1 Compliance Inspections. Developer and Operator acknowledges that the Premises shall be subject to inspection for compliance with all applicable federal, state and county statutes and ordinances, rules, regulations, directors, and orders of governmental agencies, including the City of Santa Rosa. Developer and/or Operator shall respectively be solely responsible for payment of compliance inspection fees associated with their respective operations during the specific lease terms. Developer and/or Operator shall provide evidence of its compliance with such regulatory inspections upon request by CDC.

17. Waste; Nuisance. Developer and or Operator shall during their respective lease terms not commit, suffer, or permit the commission by others of: (I) any waste or nuisance on the Premises; (ii) any action or use of the Premises which interferes or conflicts with the use of the Premises by CDC or any authorized person; or (iii) any action on the Premises in violation of any laws or ordinances.
18. CDC Inspection. CDC shall have the right to enter and inspect the licensed Premises at all times.
19. Extent of Grant of Lease. This Agreement is valid only to the extent of CDC's jurisdiction as the landowner of the Premises. Acquisition of any other necessary permits or entitlements for use is the responsibility of Developer and/or Operator during their respective lease terms. NOTHING CONTAINED IN THIS AGREEMENT SHALL BE CONSTRUED AS A RELINQUISHMENT OF ANY RIGHTS NOW HELD BY CDC.
20. Security Deposit Refund. Operator agrees that the Security Deposit shall be refundable provided there is no damage done to the Premises and the Tenant is not in default.
21. Bankruptcy. In the event of bankruptcy of Operator or writ of attachment of execution against Operator, this Agreement shall, at the option of the CDC, immediately terminate.
22. Non-liability of CDC. CDC, its officers, agents, and employees shall not be liable to Operator for any loss or damage to Operator or Operator's property from any cause. Operator expressly waives all claims against CDC, its officers, agents, and employees, unless such injury or damage is caused by or due to the sole negligence or willful misconduct of CDC, its officers, agents, and employees acting in their official capacity. Operator hereby agrees to accept the Premises in its "as-is" physical condition and its "as-is" state of repair.
23. Indemnification. Operator agrees to accept all responsibility for loss or damage to any person or entity, including but not limited to CDC, and to defend, indemnify, hold harmless, reimburse and release CDC its officers, agents, and employees, from and against any and all actions, claims, damages, disabilities, liabilities and expense, including but not limited to attorneys' fees and the cost of litigation incurred in the defense of claims as to which this indemnity applies or incurred in an action by CDC to enforce the indemnity provisions herein, whether arising from personal injury, property damage or economic loss of any type, that may be asserted by any person or entity, including Operator, arising out of or in connection with any of the circumstances described in Sections 23.1, 23.2, 23.3

and 23.4, whether or not there is concurrent negligence on the part of CDC, but, to the extent required by law, excluding to the extent liability due to the negligence or due to the willful misconduct of CDC. If there is a possible obligation to indemnify, Operator's duty to defend exists regardless of whether it is ultimately determined that there is not a duty to indemnify. CDC shall have the right to select its own legal counsel at the expense of Operator, subject to Operator's approval, which approval shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Operator or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

23.1 Use of Premises. Use of the Premises in any manner by Operator, its agents, employees, invitees, any purported subtenant or sub-operator, and contractors, and the agents, employees, patrons, contractors and invitees of same, including any use of the Premises not allowed under this Agreement. Operator, its agents, employees and/or contractors shall not cause any lien to be filed or recorded against the Premises.

23.2 Breach by Operator. Any breach by Operator of the terms, covenants or conditions herein contained.

23.3 Approval of Agreement. The approval of this Agreement by CDC.

23.4 Other Activities. Any other activities of Operator, its agents, employees and invitees.

24 Intentionally omitted

25. Nondiscrimination. In the performance of this Agreement, Developer and/or Operator shall during their respective lease terms comply with all applicable federal, state and local laws, rules and regulations regarding nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, sexual orientation, marital status, age, medical condition or disability.

26. Transfer and Subletting. The lease herein granted is personal to Developer and/or Operator during their respective lease terms and except as set forth herein no right hereunder may be assigned, sublet, or otherwise transferred in whole or in part without the prior written consent of CDC, and any attempt to assign, sublet or transfer shall be of no force or effect whatsoever unless and until CDC shall have given its written consent thereto. The assignment, sublease or other transfer of the lease shall be subject to the reasonable discretion of the CDC.

Tenant may sublet the portion of the Premises shown on Exhibit XX to other licensed food trucks, according to the Plaza Temporal Operations Plan. Food truck subtenants shall enter into a form of license approved by the CDC in its reasonable discretion shall have all required permits to operate as required by the Sonoma County Health Department, the City of Santa Rosa and all other applicable regulatory and permitting agencies, and shall have and maintain the insurance specified in Exhibit XX.

27. Provisions are Conditions of Use/Occupancy. Each provision of this Agreement shall be deemed a condition of the right of Operator to use or continue to occupy the Premises. Notwithstanding anything stated to the contrary herein, if Operator fails to perform any provision of this Agreement at the time and in the manner herein provided, CDC may at its

option immediately terminate this Agreement; this right to terminate shall be cumulative to any other legal right or remedy available to CDC.

28. Operator to Act in Independent Capacity. Developer and /or Operator, its officers, agents, and employees shall act in an independent capacity and shall not represent themselves to be or be construed to be officers, agents, or employees of CDC.
29. Notice. Any notice required or permitted to be given under this Agreement shall be in writing. Delivery of such written notice shall be conclusively taken as sufficiently given forty-eight (48) hours after deposit in the United States Mail, registered or certified, return receipt requested, with the postage thereon fully prepaid, addressed as follows:

If to CDC: Sonoma County Community Development Commission
 Affordable Housing Division,
 Attn: Manager, Affordable Housing Division
 1440 Guerneville Road
 Santa Rosa, CA 95403

If to DEVELOPER: Mid-Peninsula Housing Corporation
 Attention: Director of Affordable Housing
 320 College Avenue, Suite 200
 Santa Rosa, CA 95403

If to OPERATOR: Octavio Diaz
 3970 Grange Road
 Santa Rosa, CA 95404

Either party may at any time change its address for notices by giving written notice of such change to the other party in the manner provided in this Section 30.

31. No Continuing Waiver. The waiver by any party herein of any breach of any of the provisions of this Agreement shall not constitute a continuing waiver of any subsequent breach of the same, or of any other provision of this Agreement.
32. Surrender. Upon the expiration or sooner termination of this Agreement, Operator, at its sole cost and expense, shall remove, revise, or relocate such of its structures and equipment as is designated by CDC, restore the Premises to its condition following the Completion of the Improvements by Developer and the Transfer of the Lease to Operator, and vacate the Premises. Should Operator neglect to restore the Premises to a condition satisfactory to CDC, CDC may perform such work or have the work performed, and Operator shall immediately reimburse CDC for all direct and indirect costs associated with such work upon receipt of a statement therefor.
33. General Provisions.

33.1 Time of Essence. Time is and shall be of the essence of this Agreement and of each provision contained in this Agreement.

33.2 Incorporation of Prior Agreements; Amendments. This Agreement contains all the agreements of the parties with respect to any matter mentioned herein. No prior agreement

or understanding pertaining to any such matter shall be effective. This Agreement may be modified in writing only, signed by the parties in interest at the time of the modification, and this sentence may not be modified or waived by any oral agreement, whether executed or unexecuted.

33.3 Binding Effect; Choice of Law. This Agreement shall be binding upon and inure to the benefit of the parties, their personal representatives, successors, and assigns. The laws of the State of California shall govern this Agreement and any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Sonoma.

33.4 Amount Due Payable in U.S. Money. All sums payable under this Agreement must be paid in lawful money of the United States of America.

33.5 No Third-Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

33.6 Construction of Agreement; Severability. To the extent allowed by law, the provisions in this Agreement shall be construed and given effect in a manner that avoids any violation of statute, regulation, or law. The parties agree that in the event any provision in this Agreement is held to be invalid or void by any court of competent jurisdiction, the invalidity of any such provision shall in no way affect any other provision in this Agreement. The parties acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. The parties further acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

33.7 Captions. The captions in this Agreement are for convenience only and are not a part of this Agreement. The captions do not in any way limit or amplify the provisions hereof, and shall have no effect upon the construction or interpretation of any part hereof.

33.8 Taxes. Operator is fully responsible for and agrees to pay all possessory interest and personal property taxes (including any tax levied on a possessory interest, as defined in California Revenue and Taxation Code Section 107 or successor statute, if applicable), general and special assessments, and other charges of every description (collectively "Taxes"), levied on or assessed against any and all interests held by Operator, including personal property of Operator located on CDC property, to the full extent incurred during the term of this Agreement.

OPERATOR HAS CAREFULLY READ AND CONSIDERED THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND HEREBY AGREES THAT OPERATOR SHALL BE BOUND BY ALL SAID TERMS AND CONDITIONS.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

“OPERATOR”: Octavio Diaz, a sole proprietor

By: _____

Print Name:_____

Title: _____

“DEVELOPER”: Mid-Peninsula Housing Corporation, a non-profit California Corporation

By: _____

Print Name:_____

Title: _____

“CDC”: Sonoma County Community Development Commission

By: _____

Margaret Van Vliet, Executive Director

APPROVED AS TO FORM
FOR COUNTY:

Deputy County Counsel

Exhibit A

Scope of Improvements to be completed by Developer and Funded by CDC

1. Perimeter fence and gates sufficient for ABC barrier around exterior of Premises
2. Two ADA restrooms in a shipping container and required utility connections including water and sewer, electrical and fire sprinklers (if required)
3. Resurfaced asphalt paving
4. Lighting
5. Trash enclosure
6. Box trees (number and location to be determined)
7. Planter boxes with wire panels at Sebastopol Road frontage and to delineate areas within Premises
8. Utility connections to bar container (electric, water and sewer)
9. Play area and structure – relocated play equipment from elsewhere on site
10. Picnic Tables

Exhibit B

RULES AND REGULATIONS

1. No sign, placard, picture, advertisement, name or notice shall be inscribed, displayed, printed or affixed on or to any part of Property or Improvements without the written consent of CDC, and CDC shall have the right to remove any such sign, placard, picture, advertisement, name or notice without notice to and at the expense of Operator.
2. The driveways and parking lots on the remainder of the Roseland Village Property shall not be obstructed by Operator or used for any purpose other than for ingress to and egress from the Premises.
3. The toilet rooms, urinals, washbowls and other apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein and the expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by Operator.
5. Operator shall not use, keep or permit to be used or kept any foul or noxious gas or substance in the Premises, or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to the CDC because of noise or odors
6. Premises shall not be used for the storage of materials unrelated to food service operations or Plaza Activities, or for lodging.
7. Operator shall not use or keep in the Premises any kerosene, gasoline or inflammable or combustible fluid or other hazardous material other than materials permitted as part of food trucks occupying the Premises or outdoor heaters that are approved by the City of Santa Rosa Fire Department.
8. Operator shall receive approval from the CDC for the placement of any telecommunications or telephone equipment on the Premises.
9. Hours of operation are subject to approval by the CDC, not to be unreasonably withheld and subject to all City of Santa Rosa ordinances and regulations. Hours of operation may be modified from time to time upon written consent by the CDC.
10. CDC reserves the right to exclude or expel from the Premises any person who, in the judgment of CDC, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of these rules and regulations or the Agreement to which these rules and regulations are made a part.
11. No vending machine or machines of any description shall be installed, maintained or operated upon the Premises without the written consent of the CDC.

12. CDC shall have the right, exercisable without notice and without liability to Operator, to change the name and street address of the building of which the Premises are comprised or are a part.
15. CDC shall have the right to control and operate the remainder of the Roseland Village Property as it deems appropriate, including but not limited to the following uses.

Dollar Tree

Boys and Girls Club

Sonoma County Library

Other invitees subject to the CDC permitting process

Exhibit C

Insurance Requirements

Exhibit D

List of Hazardous Materials Used on Premises

Date: _____

Prepared by: _____

[See attached MSDS]

I certify, under penalty of perjury of the laws of the State of California, that the List of Hazardous Materials used on Premises is true, accurate and complete.

Operator