

**EXHIBIT A**

**LEASE AGREEMENT**

1. **PARTIES:** This Lease ("Lease") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2025 ("Effective Date") by and between CITY OF ARROYO GRANDE, a California municipal corporation ("Landlord"), and Gina's Italian Restaurant ("Tenant"). The Landlord and Tenant are sometimes referred to individually as a "Party" and collectively as the "Parties."

2. **PROPERTY.** Landlord owns the commercial property located at 138 E. Branch St., Arroyo Grande, California, 93420 (the "Property"). The Property is improved with a restaurant and other improvements.

3. **PREMISES:** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord a portion of the Property consisting of approximately 425 square feet, referred to herein as the "Premises" and shown on **Exhibit A**.

4. **TERM:** The term of this Lease ("Initial Term") shall be for a period of three (3) years from and after the Effective Date of this Lease, terminating on \_\_\_\_\_, 202\_\_\_\_, unless terminated earlier. Upon expiration of the initial term of the Lease, this Lease shall automatically be extended upon the expiration of the Initial Term, or Renewal Term, as applicable, for two (2) additional terms of two (2) years (each a "Renewal Term"), subject to all terms and conditions of this License. The Initial Term and Renewal Term shall be collectively known as the "Term". Upon expiration of the Term, if no new lease agreement is executed and the Tenant remains in possession of the property with the consent of the Landlord, this Lease shall continue on a month-to-month basis under the same terms and conditions. Either party may terminate this Lease by giving the other party written notice at least ninety (90) days in advance. Notwithstanding anything in this Lease to the contrary, the total term length of this Lease, including any options to extend, shall not exceed fifteen years under any circumstances. If the Parties desire to continue this relationship after fifteen years, they will reenter a new lease document at that time.

5. **OCCUPANCY.** Tenant acknowledges it has been in occupancy of the Premises since on or about April, 2011, which entered into that certain Lease Agreement dated April 13, 2011 with Landlord ("Prior Lease"). Accordingly, the Prior Lease is hereby terminated by the execution of this Lease (except for such provisions which expressly survive). Tenant shall retain possession of the Premises on the Initial Term subject to all terms and conditions of this Lease, and provided Tenant delivers an insurance certificate to Landlord upon execution. The effectiveness of this Lease is conditional upon Tenant's delivery of the insurance certificate and first month's rent and security deposit.

6. **RENT:** Tenant shall pay to Landlord as rent for the Premises the sum of Four Hundred and Twenty-Five and 00/100 Dollars (\$425.00) per month ("Rent").

(a) **Late Charge.** Tenant acknowledges that late payment by Tenant to Landlord of rent will cause Landlord to incur costs not contemplated by this Lease. If any installment of rent due from Tenant is not received by Landlord within five (5) days after it becomes due, Tenant shall pay to Landlord an additional sum of 5% of the overdue rent as a late charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by

## SUBSTANTIALLY FINAL FORM

reason of late payment by Tenant. Acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to the overdue amount or prevent Landlord from exercising any of the other rights and remedies available to Landlord.

(b) Interest on Unpaid Rent. Rent or other charges under this Lease not paid within five (5) days of the date due shall, in addition to any late charges under Section 6(a) above, bear interest at the lesser of the maximum legal rate or 10% per annum from the date due until paid.

(c) Annual Adjustment. Beginning on the first anniversary of the Commencement Date, Base Rent shall increase annually at the end of each 12-month period by the greater of (i) four percent (4%) or (ii) increase in the Consumer Price Index ("**CPI**") as determined by the U.S. Bureau of Labor Statistics for all Urban Consumers for the Los Angeles-Long Beach-Anaheim Metropolitan Area over the previous year. Should the CPI be discontinued, the index used for comparison shall be a comparable index as designated by the Bureau. It is recognized by both parties that the Index for any month is not published for approximately two months. Tenant shall, therefore, continue to pay the current rental paid by Tenant until such time as the new rental is calculated and, at that time, Tenant shall pay within ten (10) days of notice of the new Base Rent the new amount plus arrearages. In no event shall Base Rent ever decrease below the prior year's Base Rent even if the CPI is negative. In such event, the Base Rent shall remain the same

(d) Place of Payment of Rent. Rent, and all other sums which shall become due under this Lease, including but not limited to late charges and any additional charges owed by Tenant shall be payable by hand delivery or mail at 300 E. Branch St., Arroyo Grande, CA 93420, or at such other place as Landlord may designate from time to time in writing. Mailed payments must be received (not postmarked) by Landlord by the date due.

### 7. CONDITION OF, AND IMPROVEMENTS TO, PREMISES.

(a) Improvements. Under this Lease, Landlord shall have no obligation or responsibility, actual or implied, to install, construct, accommodate, or make any improvements to the Premises prior to, or as a condition of, Tenant's occupation of the Premises. Notwithstanding anything in this Lease to the contrary, Tenant shall not engage in or permit any development or demolition on the Premises. For purposes of this section, the definitions of "development" and "demolition" shall be derived from the most current definitions set forth in the California Surplus Land Act (Government Code section 54220 et seq.) and the California Department of Housing and Community Development's Surplus Land Act Guidelines, both of which may be amended and updated from time to time. For clarity, at the time of drafting the definitions of development and demolition are as follows:

Development means the process of changing the character of the land from its existing condition to a more useable condition by constructing or placing a building or buildings on the land, preparing the land for such construction, or reusing an existing building for a purpose other than the purpose for which it was originally built or designed.

Demolition means the deliberate dismantling, destruction, or removal of an entire building or significant portions of a building, rendering it unfit for use. Development and demolition do not include making improvements, renovations, or updates to an existing building, while preserving its structural integrity, or replacing an existing building that has reached the end of its structural life with a building that will be used for the same purpose.

(b) As-Is Condition. Tenant warrants and agrees that Tenant is currently in possession of the Premises. Tenant agrees to take possession of the Premises under this Lease in its AS-IS condition (which exists on the date this Lease is signed). Landlord makes no representations

SUBSTANTIALLY FINAL FORM

regarding the condition, status, compliance with laws or suitability for a particular purpose for Tenant's use.

(c) Condition Upon Surrender. Upon termination of this Lease, Tenant shall surrender the Premises to Landlord in as good condition as when originally received, ordinary wear and tear and damage by fire, earthquake, flood or act of God excepted, and including any repairs or improvements made by Tenant. If Tenant fails to maintain the Premises in good order and repair, after thirty (30) days' prior written notice, Landlord may, at its option, make such repairs, and Tenant shall pay the reasonable cost thereof as additional rent hereunder within ten (10) days after receipt of a written statement therefor. In the event the giving of thirty (30) days' prior notice may result in additional damage to the Premises, Landlord may make such repairs, at Tenant's expense, without thirty days' prior written notice.

(d) Inspection by Certified Access Specialist. Landlord discloses that the Premises have not undergone inspection by a Certified Access Specialist as referenced in California Civil Code Section 1938 subsection (e) which provides: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." Pursuant to the foregoing Section 1938(e), Tenant acknowledges and agrees that, if Tenant wishes to have the Premises inspected by a CASp: (i) Tenant must notify Landlord on or before the date when Tenant executes this Lease pursuant to the election below; (ii) the inspection will be at Tenant's sole cost and expense; (iii) the inspection must be scheduled through Landlord and in coordination with the Building's property manager; (iv) any repairs or modifications necessary to correct any violation of construction-related accessibility standards that is noted in the CASp report shall be Tenant's responsibility; and (v) Tenant must provide a copy of the CASp report to Landlord on completion. By initialing below, Tenant represents that:

Tenant wishes to have a CASp inspection of the Premises Initials: \_\_\_\_\_

Tenant hereby waives its right to have a CASp inspection of the Premises Initials: \_\_\_\_\_

8. **USE:** Tenant shall use and occupy the Premises only for outdoor dining (the "Agreed Use"), or any other legal use which is reasonably comparable thereto, and for no other purpose. Tenant shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs owners and/or occupants of, or causes damage to neighboring properties.

9. **USES PROHIBITED.** In addition to uses prohibited pursuant to Paragraph 7, Tenant shall not do or permit anything to be done in or about the Premises nor bring or keep anything therein which is not within the permitted use of the Premises which will in any way increase the existing rate of or affect any fire or other insurance upon the Property or any of its contents, or cause a cancellation of any insurance policy covering the Property or any part thereof or any of its contents. Tenant shall not use the Premises for any cannabis related uses, dispensary, manufacture, assembly, the sale of cannabis or accessories related to cannabis products. Tenant shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the Property or injure or annoy them or use or allow the Premises to

## SUBSTANTIALLY FINAL FORM

be used for any improper, immoral, unlawful or objectionable purpose; nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or allow to be committed

any waste in or upon the Premises. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to sell or solicit in any manner or store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Landlord or Landlord's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur then Landlord shall have the right, without notice, in addition to any other rights and remedies that it may have, to remove the property and charge the cost to Tenant, which cost shall be payable as additional rent immediately upon demand by Landlord.

### 10. COMPLIANCE WITH LAWS/HAZARDOUS MATERIALS.

(a) Tenant, at Tenant's expense, shall comply with and cause all of Tenant's agents to comply with all applicable laws, ordinances, rules and regulations of governmental authorities applicable to the Premises or the use or occupancy thereof, including, without limitation, the law commonly known as the Americans With Disabilities Act and California Code of Regulations Title 8, Sections 3281 through 3299 (collectively, "Laws").

(b) Tenant shall not cause or permit any Hazardous Materials, as defined below, to be brought upon, kept, used, discharged, deposited or leaked in or about the Premises or the Property by Tenant or any of Tenant's agents or by anyone in the Premises (other than Landlord or its agents, employees or contractors), except to the extent such Hazardous Materials are cleaning or office supplies customarily kept or used by typical tenants similar to Tenant and are kept and used in accordance with all applicable laws. If Tenant breaches the obligations stated in the preceding sentence, or if the presence of any Hazardous Material on the Premises or the Property caused or suffered or permitted by Tenant or any of Tenant's agents or by anyone in the Premises (other than Landlord or its agents, employees or contractors) results in contamination of the Premises or the Property, or if contamination of the Premises or the Property by any Hazardous Material otherwise occurs for which Tenant is legally liable, then Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, damages, costs, liabilities and expenses (including, without limitation, diminution in value or use of the Property, attorneys' fees, consultant fees and expert fees) which arise during or after the Term as a result of such contamination. This indemnification shall include, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work on or under the Premises. "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local, state or federal governmental authority or by common law decisions, including without limitation (i) all chlorinated solvents, (ii) petroleum products or by-products, (iii) asbestos and (iv) polychlorinated biphenyls.

11. WASTE; NUISANCE; QUIET ENJOYMENT. Tenant shall not suffer or commit any waste or nuisance on the Premises, nor shall Tenant interfere with or obstruct the rights of or disturb the quiet enjoyment of any other tenant or occupant of the building or injure or annoy them. Tenant shall not use or allow the Premises to be used for any improper, immoral, or objectionable purposes, to be determined Landlord's sole and absolute judgment.

(a) Tenant shall, at Tenant's sole cost and expense, maintain the Premises above, in good condition and repair. Said maintenance shall include but not be limited to, the interior of the Premises, exterior doors, walls and windows, all fixtures and equipment, including without limitation, heating and ventilation systems, plate glass, electrical wiring, plumbing fixtures, plumbing

## SUBSTANTIALLY FINAL FORM

drains (from the interior of the Premises to the point of connection of Tenant's drainage system with the sanitary sewer system owned, managed, and/or maintained by the local municipality). Tenant hereby waives California Civil Code Sections 1932(1), 1941 and 1942 and any other applicable existing or future law, ordinance or governmental regulation permitting Tenant to make repairs at Landlord's expense.

12. **SIGNS.** All signs and graphics of every kind visible in or from public view or corridors, or the exterior of the Premises, whether inside or outside the Premises, shall be subject to Landlord's prior written approval and shall be subject to compliance with any applicable Laws, including local sign ordinances and Historic Preservation laws.

13. **TRADE FIXTURES AND EQUIPMENT.** Tenant at its own expense shall provide and maintain all trade fixtures and equipment reasonably required to enable it to conduct its business in the Premises in a business-like manner. Tenant shall keep all trade fixtures and equipment clean and in good repair. Kitchens or other food preparation facilities shall be steam cleaned annually. Landlord may inspect the Premises in its sole discretion to ensure good maintenance practices and review the current condition of the Premises. Such fixtures and equipment shall remain the property of Tenant, and Tenant may remove or if required to do so by Landlord, shall remove the same or any part thereof upon the termination of this Lease. Prior to lease expiration or earlier termination, Tenant shall repair at its own expense any damage to the Premises caused by its removal of said fixtures or equipment. All trade fixtures and equipment installed by Tenant pursuant thereto shall not be subject to, and shall be free of any lien for payment of rent by Tenant or for the performance of any other obligation of Tenant. Tenant shall keep Tenant's fixtures and equipment insured for full replacement value.

14. **TAXES:** Tenant will be and remain responsible for all property taxes and assessments, if any, which may be due or levied against the real property. Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxes and that, if a possessory interest is created, Tenant shall be responsible for payment of property taxes levied against such possessory interest, and shall pay such possessory interest taxes directly to the taxing authority prior to delinquency.

### 15. **DEFAULT AND LANDLORD'S REMEDIES.**

(a) **Default.** The occurrence of any of the following shall constitute a default by Tenant:

(i) Tenant shall fail to pay when due any rent or any other monetary sum payable under this Lease.

(ii) Tenant shall fail to observe, keep or perform any of the other terms, covenants, agreements or conditions contained in this Lease if such default continues for a period of ten (10) days after written notice by Landlord specifying the nature of the default with reasonable particularity, unless the nature of the default is such that more than ten (10) days is required to cure it and Tenant commences to cure it within such ten (10) -day period and thereafter diligently pursues it to completion.

(iii) Tenant shall become bankrupt or insolvent or make a transfer in fraud of creditors, or make an assignment for the benefit of creditors, or take or have taken against Tenant any proceedings of any kind under any provision of the Federal Bankruptcy Act or under any other insolvency, bankruptcy or reorganization act and, in the event any such proceedings are involuntary, Tenant is not discharged from the same within thirty (30) days thereafter.

SUBSTANTIALLY FINAL FORM

(iv) A receiver is appointed for a substantial part of the assets of Tenant, and such receivership is not released within thirty (30) days.

(v) The abandonment of the Premises by Tenant, or the vacation (hereby defined to be thirty (30) or more consecutive days of continual absence from the Premises) of the Premises by Tenant.

(vi) This Lease or any estate of Tenant hereunder shall be levied upon by any attachment or execution and such levy is not released within thirty (30) days.

Notices given under this Section shall specify the alleged default and the applicable Lease provisions, and shall demand that Tenant perform the provisions of this Lease or pay the rent that is in arrears, as the case may be, within the applicable period of time, or quit the Premises.

(b) Landlord's Remedies. If any default by Tenant shall occur, and following notice of default as required by this Lease (for the period applicable to the default under the applicable provision of this Lease), Landlord shall have the following remedies in addition to all other rights and remedies provided by law or equity, to which Landlord may resort cumulatively or in the alternative.

(i) Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder by giving written notice of such intention to terminate. In the event that Landlord shall so elect to terminate this Lease, then Landlord may recover from Tenant:

(1) The worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus

(2) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss Tenant proves could have been reasonably avoided; plus

(3) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(4) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom; and

(5) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

As used in Subparagraphs (a) and (b) above of this Section, the "worth at the time of award" is computed by allowing interest at the maximum rate an individual is permitted by law to charge. As used in subparagraph (c) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

(ii) In the event of the vacation or abandonment of the Premises by Tenant, or in the event that Landlord shall elect to reenter as provided herein or shall take possession of the Premises pursuant to legal proceeding or pursuant to any notice provided by law, then Landlord shall have the remedy specified by Civil Code Section 1951.4, in which Landlord may from time to time recover all rental as it becomes due or relet the Premises or any part thereof for the account of Tenant

## SUBSTANTIALLY FINAL FORM

on such term or terms and at such rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable, with the right to make alterations and repairs to the Premises. In the event that Landlord shall elect so to relet, then rentals received by Landlord from such reletting shall be applied first, to the payment of any indebtedness, other than rent due hereunder, owed by Tenant to Landlord; second, to the payment of any cost (including commissions) of such reletting; third, to the payment of the cost of any alterations and repairs to the Premises; fourth, to the payment of rent due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied in payment of future rent as the same may become due and payable hereunder. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of rent hereunder, be less than the rent payable during that month by Tenant hereunder, then Tenant shall pay such deficiency to Landlord upon demand. Tenant shall also pay to Landlord, as soon as ascertained, any and all costs and expenses incurred by Landlord in such reletting or in making such alterations and repairs not covered by the rentals received from such reletting.

No reentry or taking possession of the Premises by Landlord pursuant to this Section shall be construed as an election to terminate this Lease unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction.

16. **ASSIGNMENT AND SUBLETTING.** Tenant shall not either voluntarily, or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease or any interest therein, and shall not sublet the said Premises or any part thereof, or any right or privilege appurtenant thereto, or allow any other person (the employees, agents, servants and invitees of Tenant excepted) to occupy or use the said Premises, or any portion thereof, without first obtaining the written consent of Landlord which may be withheld in Landlord's sole discretion. If an assignment or subletting involves a use other than that permitted in this Lease, Tenant must comply with said use. Consent to one assignment, subletting, occupation or use by another person shall not be deemed to be consent to any subsequent assignment, subletting, occupation or use by another person. Consent to any such assignment or subletting shall in no way relieve Tenant of any liability under this Lease. Any such assignment or subletting without such consent shall be void, and shall, at the option of the Landlord, constitute a default under the terms of this Lease. No sublease or assignment shall release Tenant from continuing liability hereunder. In the event that Landlord shall consent to a sublease or assignment hereunder, Tenant shall pay Landlord reasonable attorney fees and costs incurred in connection with the processing of documents necessary to giving of such consent. Any excess consideration above the rental rate provided in this Lease Tenant is entitled to as a result of any assignment or sublease shall be divided and paid 50% to Tenant and 50% to Landlord; provided, however, that if Tenant is in default under this Lease, Landlord shall be entitled to all such excess consideration.

(a) **Procedures.** Should Tenant desire to assign, transfer, sublet, mortgage, pledge, hypothecate or encumber this Lease or any interest therein (a "Transfer"), Tenant shall request, in writing, Landlord's consent to the proposed Transfer at least 60 days before the intended effective date of the proposed Transfer (which request shall be accompanied by a payment of Five Hundred Dollars (\$500.00) to reimburse Landlord for costs incurred in connection with reviewing such proposed Assignment), which request shall include any information reasonably requested by Landlord to evaluate the proposed Transfer. Within 30 days after receipt of Tenant's request for consent to the proposed Transfer together with all of the above-required information, Landlord shall respond and shall have the right to: (a) consent to the proposed Transfer; (b) refuse to consent to the proposed Transfer; or (c) terminate this Lease, such termination to be effective 30 days after Tenant's receipt of Landlord's notice electing to so terminate. If Landlord shall exercise its termination right hereunder, Landlord shall have the right to enter into a lease or other occupancy agreement directly with the proposed transferee, and Tenant shall have no right to any of the rents or other consideration payable by such proposed transferee under such other lease or occupancy agreement. A consent to one Transfer by Landlord

## SUBSTANTIALLY FINAL FORM

shall not be deemed to be a consent to any subsequent Transfer to any other party.

(b) Standard for Consent. Tenant agrees that Landlord may refuse its consent to the proposed transfer on any reasonable grounds, and (by way of example and without limitation) Tenant agrees that it shall be reasonable for Landlord to withhold its consent if any of the following situations exist or may exist: (a) the proposed assignee, subtenant or transferee (each a "Transferee") proposes to change the use of the Premises from the permitted use pursuant to Section 8, and the new proposed use of the Premises (i) is a non-retail use; or (ii) is a use which would breach any exclusive use rights granted in writing to another tenant in the Property; or (iii) is a use which would duplicate the primary use of any other tenant or occupant in the Property; or (iv) in Landlord's reasonable opinion, is inconsistent with the tenant mix in the Property at the time of the request for Landlord's consent (excepting the use specified in Section 8 above); (b) the proposed Transferee's financial condition, net worth or liquidity is inadequate, based upon Landlord's reasonable business judgment consistent with generally accepted industry standards necessary to support all of the financial and other obligations of Tenant under this Lease; (c) the business reputation or character of the proposed Transferee is not reasonably acceptable to Landlord; (d) the proposed Transferee is not likely to conduct on the Premises a business of a quality substantially equal to that conducted by Tenant, including Landlord's ability to obtain Percentage Rent; or (e) the business of the proposed Transferee is not, in Landlord's reasonable judgment, a business that is likely to attract patrons to the Property, based on the demographics and clientele of the Property, or the business or reputation of the proposed Transferee is inconsistent with the image of the Property; (f) the proposed Transferee would, in Landlord's reasonable judgment, be unlikely to generate revenues in sufficient amounts to sustain the level of percentage rent obligations then being incurred by Tenant; (g) the proposed Transferee will create a vacancy elsewhere in the Property; (h) the proposed Transferee is a person with whom Landlord is, or recently has been, within the past three (3) months, negotiating to lease space in property owned by Landlord, including the Property; (i) Tenant is in default under the Lease, or has defaulted hereunder on more than three (3) occasions during the twelve (12) months preceding the request by Tenant; (j) the proposed business plan (or past business history) of the proposed Transferee indicates a possible likelihood of detriment to any portion of the Property or to the Rent to be received by Landlord hereunder; (k) the proposed Transferee will operate under a trade name other than that stated in this Lease; and/or (l) the proposed Transferee does not, in Landlord's reasonable judgment, have sufficient business experience (including substantial experience in comparable retail centers) to successfully operate a retail establishment in the Premises in the manner contemplated in the Lease.

### 17. DESTRUCTION OF PREMISES.

(a) Destruction Due to Risk Covered by Insurance. If, during the term of this Lease and any renewal term, the Premises or the Property and other improvements in which the Premises are located are totally or partially destroyed from a risk covered by insurance carried by either Tenant or Landlord for the Property, rendering the Premises totally or partially inaccessible or unusable, Landlord shall restore the Premises or the Property, and other improvements in which the Premises are located, to substantially the same condition as they were immediately before destruction if they can be repaired within 270 days from date of destruction. Such destruction shall not terminate this Lease. If the existing laws do not permit the restoration, either party can terminate this Lease immediately by giving notice to the other party. Provided, however, if the cost of the restoration exceeds the amount of proceeds received from the insurance, or the estimate of time to fully restore the Premises exceeds the lesser of 270 days or the remaining Term of the Lease, Landlord can elect to terminate this Lease by giving notice to Tenant within fifteen (15) days after determining that the restoration cost will exceed the insurance proceeds.

(b) Destruction Due to Risk Not Covered by Insurance. If, during the term



## SUBSTANTIALLY FINAL FORM

of this Lease and any renewal term, the Premises or the Property and other improvements in which the Premises are located are totally or partially destroyed by a risk not covered by the insurance, rendering the Premises totally or partially inaccessible or unusable, Landlord can elect to terminate this Lease by giving notice to Tenant within fifteen (15) days after determining the restoration cost and replacement value.

(c) **Abatement or Reduction of Rent.** In case of destruction, there shall be an abatement or reduction of rent between the date of destruction and the date of substantial completion of restoration based on the extent to which the destruction interferes with Tenant's use of the Premises.

(d) **Waiver of Civil Code Sections.** Tenant waives the provisions of California Civil Code Section 1932(2) and California Civil Code Section 1933(4) with respect to any destruction of the Premises.

### 18. INDEMNITY.

(a) **Waiver of Claims.** To the extent permitted by law, Tenant waives all claims against Landlord for damage to person or property arising for any reason. Tenant assumes all such risks for Tenant and any employees, licensees, invitees, agents, or contractors.

(b) **General Indemnity.** Tenant shall indemnify, protect, defend (at Tenant's sole cost and with legal counsel acceptable to Landlord) and hold harmless, Landlord and Landlord's affiliated entities, and each of their respective members, managers, partners, officers, employees, volunteers, council members, board members, lenders, agents, contractors, successors and assigns from and against any and all claims, judgments, causes of action, damages, penalties, costs, liabilities, and expenses, including all court costs and attorney fees, arising at any time during or after the Term, as a result (directly or indirectly) of or in connection with (i) default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or (ii) Tenant's use of the Premises, the conduct of Tenant's business or any activity, work or things done, permitted or suffered by Tenant or Tenant's employees, agents, customers, visitors, invitees, licensees, contractors, assignees or subtenants (individually, a "Tenant Party" and collectively "Tenant Parties") in or about the Premises, the Property, the Common Area or other portions of the Premises except as provided by law or for claims caused solely by Landlord's gross negligence or willful misconduct. Tenant's indemnity is not intended to nor shall it relieve any insurance carrier of its obligations under policies required to be carried by Tenant pursuant to the provisions of this Lease to the extent such policies cover the results of negligent acts or omissions of Landlord, its employees, agents, volunteers, contractors, council members, board members and officers or the failure of Landlord to perform any of its obligations under this Lease. The obligations of Tenant under this Section 20(b) shall survive the termination or earlier expiration of this Lease.

(c) **Exemption of Landlord from Liability.** Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to the Premises and its property including, but not limited to, Tenant's fixtures, equipment, furniture and alterations, or illness or injury to persons in, upon or about the Premises, arising from any cause, and Tenant hereby expressly releases Landlord and waives all claims in respect thereof against Landlord, except only such claims as are caused solely by Landlord's gross negligence or willful misconduct. Tenant hereby agrees that Landlord shall not be liable for injury to Tenant's business or any loss of income therefrom or for damage to the property of Tenant, or injury to or illness or death of Tenant or any Tenant Party or any other person in or about the Premises, whether such damage, illness or injury is caused by fire, steam, electricity, gas, water or rain, or from the breakage, leakage or other defects of sprinklers, wires, appliances, ventilation, plumbing, air conditioning or lighting fixtures, or from any other cause, and whether said damage, illness or injury results from conditions arising upon the Premises, upon other portions of the Property

SUBSTANTIALLY FINAL FORM

or from other sources or places, and regardless of whether the cause of such damage, illness or injury or the means of repairing the same is inaccessible to Tenant, except only damage, illness or injury caused solely by Landlord's gross negligence or willful misconduct.

19. ENTRY BY LANDLORD. Except for emergencies such as fire, water intrusion and the like which may be at any time, Landlord and its agents shall have the right to enter the Premises at reasonable times to inspect and examine the same and to make such repairs to the Premises as the Landlord shall deem advisable, and to show the Premises to prospective tenants, buyers or lenders.

20. ATTORNEY'S FEES AND COURT COSTS: In the event of any legal action arising out of or concerning this Lease or any performance or nonperformance hereunder, the prevailing party shall be entitled to recover reasonable attorney's fees and all other costs incurred in connection therewith or as a result thereof.

21. WAIVER; ACCORD AND SATISFACTION. No delay or omission in the exercise of any right or remedy of Landlord on any default by Tenant shall impair such right or be construed as a waiver. The receipt and acceptance by Landlord of delinquent rent shall not constitute a waiver of any other default; it shall constitute only a waiver of timely payment for the particular rent payment involved. No payment by Tenant or receipt by Landlord of a lesser amount than the rent payment herein stipulated shall be deemed to be other than on account of the rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided in this Lease.

22. BINDING ON SUCCESSORS AND ASSIGNS: The terms and conditions of this Lease shall be binding upon and shall inure to the benefit of each of the parties hereto, their heirs, personal representatives, successors and assigns.

23. TIME OF ESSENCE: Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

24. NOTICE: All notices, statements, demands, requests, consents, approvals, authorizations, appointments or designations hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party, if sent by United States registered mail, return receipt requested, postage prepaid and addressed as follows:

TO TENANT: Gina's Italian  
Cuisine Attn:  
  
\_\_\_\_\_, CA

TO LANDLORD: City of Arroyo Grande  
Attn: City Manager  
300 E. Branch St.,  
Arroyo Grande, CA 93420

Any Party may change its address by giving notice to the other Party in the manner provided for in this Section.

SUBSTANTIALLY FINAL FORM

25. WAIVERS: No waiver by Landlord or Tenant of any breach hereof or of any provisions hereof shall be deemed a waiver of any subsequent breach or provision (even if the subsequent breach is the same as said previous breach or provision).

26. DELIVERY OF RELATED DOCUMENTS: Tenant will execute or provide, as requested by Landlord, such other documents and information as may be reasonably necessary to carry out the purpose of this Lease.

27. NO RIGHT TO HOLDOVER: Tenant has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Tenant holds over, then the Rent shall be increased to one hundred fifty percent (150%) of the Rent in effect during the last month of the Term. Nothing contained herein shall be construed as consent by Landlord to any holding over by Tenant. The foregoing provisions of this Section are in addition to and do not affect Landlord's right of re-entry or any rights of Landlord hereunder or as otherwise

## SUBSTANTIALLY FINAL FORM

provided by law. If Tenant fails to surrender the Premises upon the expiration of this Lease, Tenant shall indemnify, protect, defend and hold Landlord harmless from all loss or liability, including without limitation, any claim made by any succeeding tenant founded on or resulting from such failure to surrender. Such indemnity shall survive the expiration of this Lease.

### 28. COVENANTS AND CONDITIONS; CONSTRUCTION OF AGREEMENT:

All provisions of this Lease to be observed or performed by Tenant are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the parties, but rather according to its fair meaning as a whole, as if both parties had prepared it.

29. ESTOPPEL CERTIFICATE. Tenant shall execute and deliver to Landlord within ten (10) days of request a commercially reasonable estoppel statement. Landlord and Tenant intend that any estoppel statement delivered pursuant to this Section may be relied upon by any mortgagee, beneficiary, purchaser or prospective purchaser of the building or any interest therein and failure to execute and return such estoppel shall be a material breach of the Lease.

30. BINDING EFFECT; CHOICE OF LAW: This Lease shall be binding upon the parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

31. SEVERABILITY. If, for any reason whatsoever, any of the provisions hereof shall be unenforceable or ineffective, all of the other provisions shall be and remain in full force and effect.

32. AUTHORITY/CONSENTS & APPROVALS. Each of the persons executing this Lease on behalf of Tenant warrants and represents that Tenant is a duly organized and validly existing entity, that Tenant has full right and authority to enter into this Lease and that the persons signing on behalf of Tenant are authorized to do so and have the power to bind Tenant to this Lease. Tenant shall provide Landlord upon request with evidence reasonably satisfactory to Landlord confirming the foregoing representations. The approval of Landlord, wherever required in this Lease, shall mean the approval of the City Council.

33. ENTIRE AGREEMENT; AMENDMENT: This Lease constitutes the entire agreement between the Parties with respect to the lease of the Premises, and this Lease shall not be modified, amended, altered, or changed except with the written consent of Landlord and Tenant. Any provision of this Lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Lease.

**[SIGNATURES ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, the Parties hereto have caused this Lease to be executed and attested to by their proper officers hereunto duly authorized and their official seals to be hereto affixed, on the day and year first set forth above.

**TENANT:**

Gina's Italian Restaurant

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**LANDLORD:**

CITY OF ARROYO GRANDE,  
a California municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO LEGAL FORM:**

BEST, BEST & KRIEGER LLP

By: \_\_\_\_\_

Name: \_\_\_\_\_