

COMMERCIAL LEASE AGREEMENT

THIS AGREEMENT MADE and entered into on this ____ day of _____ 2011 by and between the City of Milpitas, hereinafter called Lessor, and Milpitas Food Pantry, hereinafter called Lessee. Lessor hereby leases to Lessee the premises situated in the City of Milpitas, County of Santa Clara, State of California, described in Exhibit A, with the street address of 1440 S. Main Street (hereinafter the "Premises") upon the following terms and conditions:

1. TERM.

The term ("Term") will commence on June 1, 2011 and continue until June 30, 2013.

2. POSSESSION.

If Lessor is unable to deliver possession of the premises at the commencement hereof, Lessor shall not be liable for any damage caused thereby nor shall this agreement be void or voidable, but Lessee shall not be liable for any rent until possession is delivered. Lessee may terminate this agreement if possession is not delivered within 10 days of the commencement of the term hereof.

3. RENT. Rent will be \$1,600.00 per month, payable in advance, upon the first day of each calendar month to Lessor or its authorized agent, at 455 E. Calaveras Blvd., Milpitas, California 95035 (Attn: Jane Corpus) or at such other places as may be designated in writing by Lessor from time to time. The rent check will identify the address of the Premises. In the event the rent is not received within five (5) days after the due date, Lessee agrees to pay a late charge of \$100. If payment is not received by the fifteenth (15th) of any month for which rent is due, the payment will be subject to an additional late fee of \$50. Any check tendered in payment of rent that is returned NSF will be subject to a service charge of \$25.00 which may be changed by written notice from Lessor.

4. DEFAULT OF LEASE AGREEMENT.

If rent is not received by the fifteenth (15th) of any month for which rent is due, or the Lessee fails to perform any term hereof, after no more than (3) days of the default or failure, written notice of the default or failure will be given to the Lessee in the manner required by law, and the Lessor at his/her option may terminate all rights of the Lessee hereunder, unless Lessee, within said time, shall cure such default. If Lessee abandons or vacates the property while in default of payment of rent, Lessor may consider any property left on the Premises to be abandoned and may dispose of the same in any manner allowed by law. In the event the Lessor reasonably believes that such abandoned property has no value, it may be discarded.

5. UTILITIES.

Lessee shall pay all charges for sewer, gas, electricity, telephone, garbage and other services and utilities used by Lessee on the Leased Premises during the term of this Lease except for water costs. In the event that any utility or service provided to the Leased

Premises is not separately metered, Lessor shall pay the amount due and separately invoice Lessee for Lessee's pro rata share of the charges.

Lessee shall pay such all such utility charges prior to the due date. Lessee acknowledges that the Leased Premises are designed to provide standard office use electrical facilities and standard office lighting. Lessee shall not use any equipment or devices that utilizes excessive electrical energy or which may, in Lessor's reasonable opinion, over load the wiring or interfere with electrical services to other Lessees.

6. USE.

6.1. Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. The Agreed Use shall mean all actions necessary to conduct a community service business providing emergency food and assistance to residents of Milpitas. Lessee 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. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvements on the Premises or the mechanical or electrical systems therein, is not significantly more burdensome to the Premises. If Lessor elects to withhold consent, Lessor shall within five (5) business days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in use.

6.2. Hazardous Substances.

(a) Uses Require Consent. The term " Hazardous Substance" as used in this LEASE shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. " Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of

the Agreed Use, so long as such use is in compliance with all Applicable Requirements, is not a Reportable unless such is done compliant to all applicable regulations Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefore. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before LEASE expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) Duty to Inform Lessor. If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) Lessee Remediation. Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this LEASE by or for Lessee, or any third party.

(d) Lessee Indemnification. Lessee shall indemnify, defend and hold Lessor, its agents, employees, elected officials and volunteers harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this LEASE with respect to underground migration of any Hazardous Substance under the Premises from adjacent properties). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this LEASE. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this LEASE with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement

(e) Lessor Indemnification. Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which existed as a result of Hazardous Substances on the Premises or which are caused by the gross negligence or

willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this LEASE

(f) Investigations and Remediation's. Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to the Term, unless such remediation measure is required as a result of Lessee's use (including " Alterations", as defined in Paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) Lessor Termination Option Hazardous Notice. If a Hazardous Substance Condition occurs during the term of this LEASE unless Lessee is legally responsible therefore (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this LEASE shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this LEASE shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds twelve (12) times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within thirty (30) days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this LEASE as of the date sixty (60) days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within ten (10) days thereafter, give written notice to Lessor of Lessee's intention to continue occupancy with full knowledge of Hazardous Substance Condition. Commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to twelve (12) times the then monthly Base Rent or \$100,000, whichever is greater, Lessee shall provide Lessor with said funds or satisfactory assurance thereof within thirty (30) days following such commitment. In such event, this LEASE shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this LEASE shall terminate as of the date specified in Lessor's notice of termination.

7. SUBLEASE AND ASSIGNMENT.

Lessee shall have the right without Lessor's consent, to assign this Lease to a corporation with which Lessee may merge or consolidate, to any subsidiary of Lessee, to any corporation under common control with Lessee, or to a purchaser of substantially all of Lessee's assets. Except as set forth above, Lessee shall not sublease all or any part of the

Leased Premises, or assign this Lease in whole or in part without Lessor's consent, such consent not to be unreasonably withheld or delayed.

8. REPAIRS.

Lessee shall, at Lessee's sole expense, keep the Premises in good order condition and repair. During the Lease term, Lessee shall make, at Lessee's sole expense, all necessary repairs to the Leased Premises. Repairs shall include such items as routine repairs of floors, walls, ceilings, and other parts of the Leased Premises damaged or worn through normal occupancy, except for major mechanical systems or the roof, subject to the obligations of the parties otherwise set forth in this Lease.

It is intended by the Parties that Lessor have only the obligation to repair and maintain the Premises, including the walls (interior and exterior), foundations, ceilings, roofs, floors. All other obligations are intended to be that of the Lessee. It is the intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises, and they expressly waive the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

9. ALTERATIONS AND IMPROVEMENTS.

Lessee, at Lessee's expense, shall have the right following Lessor's consent to remodel, redecorate, and make additions, improvements and replacements of and to all or any part of the Leased Premises from time to time as Lessee may deem desirable, provided the same are made in a workmanlike manner and utilizing good quality materials. Lessee shall have the right to place and install personal property, trade fixtures, equipment and other temporary installations in and upon the Leased Premises, and fasten the same to the premises. All personal property, equipment, machinery, trade fixtures and temporary installations, whether acquired by Lessee at the commencement of the Lease term or placed or installed on the Leased Premises by Lessee thereafter, shall remain Lessee's property free and clear of any claim by Lessor. Lessee shall have the right to remove the same at any time during the term of this Lease provided that all damage to the Leased Premises caused by such removal shall be repaired by Lessee at Lessee's expense.

10. INSURANCE.

A. If the Leased Premises or any other part of the Building is damaged by fire or other casualty resulting from any act or negligence of Lessee or any of Lessee's agents, employees or invitees, rent shall not be diminished or abated while such damages are under repair, and Lessee shall be responsible for the costs of repair not covered by insurance.

B. Lessor shall maintain fire and property coverage insurance on the Premises in such amounts as Lessor shall deem appropriate. Lessee shall be responsible, at its expense, for fire and property coverage insurance on all of its personal property, including removable trade fixtures, located in the Premises.

C. Lessee and Lessor shall, each at its own expense, maintain a policy or policies of comprehensive general liability insurance with respect to the respective activities of each on the Premises with the premiums thereon fully paid on or before due date, issued by

and binding upon some insurance company approved by Lessor, such insurance to afford minimum protection of not less than \$1,000,000 combined single limit coverage of bodily injury, property damage or combination thereof. Lessor shall be listed as an additional insured on Lessee's policy or policies of comprehensive general liability insurance, and Lessee shall provide Lessor with current endorsements and Certificates of Insurance evidencing Lessee's compliance with this Paragraph. Lessee shall obtain the agreement of Lessee's insurers to notify Lessor that a policy is due to expire at least thirty (30) days prior to such expiration. Lessor shall not be required to maintain insurance against thefts within the Leased Premises or the Building.

11. SIGNS.

Following Lessor's consent, Lessee shall have the right to place on the Leased Premises, at locations selected by Lessee, any signs which are permitted by applicable zoning ordinances and private restrictions. Lessor may refuse consent to any proposed signage that is in Lessor's opinion too large, deceptive, unattractive or otherwise inconsistent with or inappropriate to the Leased Premises or use of any other Lessee. Lessor shall assist and cooperate with Lessee in obtaining any necessary permission from governmental authorities or adjoining owners and occupants for Lessee to place or construct the foregoing signs. Lessee shall repair all damage to the Leased Premises resulting from the removal of signs installed by Lessee unless Lessor waives such requirement.

12. ENTRY AND INSPECTION. Lessor will have the right to enter the Premises: (a) in case of emergency; (b) to make necessary or agreed repairs, decorations, alterations, improvements, supply necessary or agreed services, show the Premises to prospective or actual buyers, lenders, Lessees, workers or contractors; and (c) when Lessee has abandoned or surrendered the Premises. Except under (a) and (c), entry may be made only during normal business hours, and with at least twenty-four (24) hours' prior notice to Lessee.

13. PARKING.

During the term of this Lease, Lessee shall have the non-exclusive use in common with Lessor of the common automobile parking areas located behind the privacy fence and shall have the non-exclusive use of driveways, and footways, subject to rules and regulations for the use thereof as prescribed from time to time by Lessor as shown on Exhibit A. Lessee shall provide Lessor with a list of all license numbers for the cars owned by Lessee, its agents and employees.

14. DAMAGE AND DESTRUCTION.

Subject to Section 10 A. above, if the Leased Premises or any part thereof or any appurtenance thereto is so damaged by fire, casualty or structural defects that the same cannot be used for Lessee's purposes, then Lessee shall have the right within ninety (90) days following damage to elect by notice to Lessor to terminate this Lease as of the date of such damage. In the event of minor damage to any part of the Leased Premises, and if such damage does not render the Leased Premises unusable for Lessee's purposes, Lessor shall promptly repair such damage at the cost of the Lessor. In making the repairs called for in this paragraph, Lessor shall not be liable for any delays resulting from strikes,

governmental restrictions, inability to obtain necessary materials or labor or other matters which are beyond the reasonable control of Lessor. Lessee shall be relieved from paying rent and other charges during any portion of the Lease term that the Leased Premises are inoperable or unfit for occupancy, or use, in whole or in part, for Lessee's purposes. Rentals and other charges paid in advance for any such periods shall be credited on the next ensuing payments, if any, but if no further payments are to be made, any such advance payments shall be refunded to Lessee. The provisions of this paragraph extend not only to the matters aforesaid, but also to any occurrence which is beyond Lessee's reasonable control and which renders the Leased Premises, or any appurtenance thereto, inoperable or unfit for occupancy or use, in whole or in part, for Lessee's purposes.

15. WAIVER.

No waiver of any default of Lessor or Lessee hereunder shall be implied from any omission to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by Lessor or Lessee shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

Lessee recognizes that Lessor may not renew the lease after the expiration of this lease and waives and releases all right to any relocation benefits Lessee may be entitled to under Health & Safety Code Section 33410 *et seq.*, Government Code Section 7260 *et seq.* and 42 U.S.C. § 4601 *et seq.*

16. QUITE POSSESSION.

Lessor covenants and warrants that upon performance by Lessee of its obligations hereunder, Lessor will keep and maintain Lessee in exclusive, quiet, peaceable and undisturbed and uninterrupted possession of the Leased Premises during the term of this Lease.

17. CONDEMNATION.

If any legally, constituted authority condemns the Building or such part thereof which shall make the Leased Premises unsuitable for leasing, this Lease shall cease when the public authority takes possession, and Lessor and Lessee shall account for rental as of that date. Such termination shall be without prejudice to the rights of either party to recover compensation from the condemning authority for any loss or damage caused by the condemnation. Neither party shall have any rights in or to any award made to the other by the condemning authority.

18. ATTORNEY FEES.

The prevailing party shall be entitled to all costs incurred in connection with any legal action brought by either party to enforce the terms hereof or relating to the premises, including reasonable attorneys' fees.

19. SECURITY DEPOSIT.

The Security Deposit of \$1000.00 shall be paid by the Lessee at the signing of this Agreement and shall be held by Lessor without liability for interest and as security for the performance by Lessee of Lessee's covenants and obligations under this Lease, it being expressly understood that the Security Deposit shall not be considered an advance payment of rental or a measure of Lessor's damages in case of default by Lessee. Unless otherwise provided by mandatory non-waivable law or regulation, Lessor may commingle the Security Deposit with Lessor's other funds. Lessor may, from time to time, without prejudice to any other remedy, use the Security Deposit to the extent necessary to make good any arrearages of rent or to satisfy any other covenant or obligation of Lessee hereunder. Following any such application of the Security Deposit, Lessee shall pay to Lessor on demand the amount so applied in order to restore the Security Deposit to its original amount. If Lessee is not in default at the termination of this Lease, the balance of the Security Deposit remaining after any such application shall be returned by Lessor to Lessee. If Lessor transfers its interest in the Premises during the term of this Lease, Lessor may assign the Security Deposit to the transferee and thereafter shall have no further liability for the return of such Security Deposit.

20. NOTICE.

Any notice required or permitted under this Lease shall be deemed sufficiently given or served if sent by United States certified mail, return receipt requested, addressed as follows:

Lessor: City of Milpitas
 455 East Calaveras
 Milpitas, CA 95035
 Attention: City Manager
 Facsimile: (408) 586-3056

Lessee: Milpitas Food Pantry
 1440 South Main Street
 Milpitas, CA 95035
 Attention: Executive Director

21. MEMORANDUM OF LEASE.

The parties hereto contemplate that this Lease should not and shall not be filed for record, but in lieu thereof, at the request of either party, Lessor and Lessee shall execute a Memorandum of Lease to be recorded for the purpose of giving record notice of the appropriate provisions of this Lease.

22. HEADINGS.

The headings used in this Lease are for convenience of the parties only and shall not be considered in interpreting the meaning of any provision of this Lease.

23. SUCCESSORS.

The provisions of this Lease shall extend to and be binding upon Lessor and Lessee and their respective legal representatives, successors and assigns.

24. CONSENT.

Lessor shall not unreasonably withhold or delay its consent with respect to any matter for which Lessor's consent is required or desirable under this Lease.

25. PERFORMANCE.

If there is a default with respect to any of Lessor's covenants, warranties or representations under this Lease, and if the default continues more than fifteen (15) days after notice in writing from Lessee to Lessor specifying the default, Lessee may, at its option and without affecting any other remedy hereunder, cure such default and deduct the cost thereof from the next accruing installment or installments of rent payable hereunder until Lessee shall have been fully reimbursed for such expenditures. If this Lease terminates prior to Lessee's receiving full reimbursement, Lessor shall pay the unreimbursed.

26. ORDINANCES AND STATUTES.

Lessee will comply with all statutes, ordinances, and requirements of all municipal, state and federal authorities now in force, or which may later be in force, regarding the use of the Premises.

27. ENTIRE AGREEMENT; MODIFICATION.

This document sets forth the entire agreement and understanding between the parties relating to the subject matter herein and supersedes all prior discussions between the parties. No modification of or amendment to this Lease, nor any waiver of any rights under this Lease, will be effective unless in writing signed by the party to be charged.

28. LESSOR'S REMEDIES. In the event that:

- a. Lessee shall on three or more occasions be in default in the payment of rent or other charges herein required to be paid by Lessee (default herein being defined as payment received by Lessor fifteen or more days subsequent to the due date), regardless of whether or not such default has occurred on consecutive or non-consecutive months; or
- b. Lessee has caused a lien to be filed against the Lessor's property and said lien is not removed within thirty (30) days of recordation thereof; or
- c. Lessee shall default in the observance or performance of any of the covenants and agreements required to be performed and observed by Lessee hereunder for a period of thirty (30) days after notice to Lessee in writing of such default (or if such default shall reasonably take more than thirty (30) days to cure, Lessee shall not have commenced the same within the thirty (30) days and diligently prosecuted the same to completion); or

d. Sixty (60) days have elapsed after the commencement of any proceeding by or against Lessee, whether by the filing of a petition or otherwise, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or future Federal Bankruptcy Act or any other present or future applicable federal, state or other statute or law, whereby such proceeding shall not have been dismissed (provided, however, that the non-dismissal of any such proceeding shall not be a default hereunder so long as all of Lessee's covenants and obligations hereunder are being performed by or on behalf of Lessee); then Lessor shall be entitled to its election (unless Lessee shall cure such default prior to such election), to exercise concurrently or successively, any one or more of the following rights:

i.. Terminate this Lease by giving Lessee notice of termination, in which event this Lease shall expire and terminate on the date specified in such notice of termination, with the same force and effect as though the date so specified were the date herein originally fixed as the termination date of the term of this Lease, and all rights of Lessee under this Lease and in and to the Premises shall expire and terminate, and Lessee shall remain liable for all obligations under this Lease arising up to the date of such termination, and Lessee shall surrender the Premises to Lessor on the date specified in such notice; or

ii. Terminate this Lease as provided herein and recover from Lessee all damages Lessor may incur by reason of Lessee's default, including, without limitation, a sum which, at the date of such termination, represents the then value of the excess, if any, of (a) the Minimum Rent, Percentage Rent, Taxes and all other sums which would have been payable hereunder by Lessee for the period commencing with the day following the date of such termination and ending with the date herein before set for the expiration of the full term hereby granted, over (b) the aggregate reasonable rental value of the Premises for the same period, all of which excess sum shall be deemed immediately due and payable; or

iii. Without terminating this Lease, declare immediately due and payable all Minimum Rent, Taxes, and other rents and amounts due and coming due under this Lease for the entire remaining term hereof, together with all other amounts previously due, at once; provided, however, that such payment shall not be deemed a penalty or liquidated damages but shall merely constitute payment in advance of rent for the remainder of said term. Upon making such payment, Lessee shall be entitled to receive from Lessor all rents received by Lessor from other assignees, Lessees, and subLessees on account of said Premises during the term of this Lease, provided that the monies to which Lessee shall so become entitled shall in no event exceed the entire amount actually paid by Lessee to Lessor pursuant to the preceding sentence less all costs, expenses and attorney's fees of Lessor incurred in connection with the re-letting of the Premises; or

iv. Without terminating this Lease, and with or without notice to Lessee, Lessor may in its own name but as agent for Lessee enter into and upon and take possession of the Premises or any part thereof, and, at Lessor's option, remove persons and property therefrom, and such property, if any, may be removed and stored in a warehouse or

elsewhere at the cost of, and for the account of Lessee, all without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby, and Lessor may rent the Premises or any portion thereof as the agent of Lessee with or without advertisement, and by private negotiations and for any term upon such terms and conditions as Lessor may deem necessary or desirable in order to re-let the Premises. Lessor shall in no way be responsible or liable for any rental concessions or any failure to rent the Premises or any part thereof, or for any failure to collect any rent due upon such re-letting. Upon such re-letting, all rentals received by Lessor from such re-letting shall be applied: first, to the payment of any indebtedness (other than any rent due hereunder) from Lessee to Lessor; second, to the payment of any costs and expenses of such re-letting, including, without limitation, brokerage fees and attorney's fees and costs of alterations and repairs; third, to the payment of rent and other charges then due and unpaid hereunder; and the residue, if any shall be held by Lessor to the extent of and for application in payment of future rent as the same may become due and payable hereunder. In re-letting the Premises as aforesaid, Lessor may grant rent concessions and Lessee shall not be credited therefore. If such rentals received from such re-letting shall at any time or from time to time be less than sufficient to pay to Lessor the entire sums then due from Lessee hereunder, Lessee shall pay any such deficiency to Lessor. Such deficiency shall, at Lessor's option, be calculated and paid monthly. No such re-letting shall be construed as an election by Lessor to terminate this Lease unless a written notice of such election has been given to Lessee by Lessor. Notwithstanding any such re-letting without termination, Lessor may at any time thereafter elect to terminate this Lease for any such previous default provided same has not been cured; or

v. Without liability to Lessee or any other party and without constituting a constructive or actual eviction, suspend or discontinue furnishing or rendering to Lessee any property, material, labor, Utilities or other service, whether Lessor is obligated to furnish or render the same, so long as Lessee is in default under this Lease; or

vi. Allow the Premises to remain unoccupied and collect rent from Lessee as it comes due; or

vii. Foreclose the security interest described herein, including the immediate taking of possession of all property on or in the Premises; or

viii. Pursue such other remedies as are available at law or equity.

e. Lessor's pursuit of any remedy or remedies, including without limitation, any one or more of the remedies stated herein shall not (1) constitute an election of remedies or preclude pursuit of any other remedy or remedies provided in this Lease or any other remedy or remedies provided by law or in equity, separately or concurrently or in any combination, or (2) sever as the basis for any claim of constructive eviction, or allow Lessee to withhold any payments under this Lease.

29. LESSOR'S SELF HELP. If in the performance or observance of any agreement or condition in this Lease contained on its part to be performed or observed and shall not

cure such default within thirty (30) days after notice from Lessor specifying the default (or if such default shall reasonably take more than thirty (30) days to cure, shall diligently prosecuted the same to completion), Lessor may, at its option, without waiving any claim for damages for breach of agreement, at any time thereafter cure such default for the account of Lessee, and any amount paid or contractual liability incurred by Lessor in so doing shall be deemed paid or incurred for the account of Lessee and Lessee agrees to reimburse Lessor therefore and save Lessor harmless therefrom. Provided, however, that Lessor may cure any such default as aforesaid prior to the expiration of said waiting period, without notice to Lessee if any emergency situation exists, or after notice to Lessee, if the curing of such default prior to the expiration of said waiting period is reasonably necessary to protect the Leased Premises or Lessor's interest therein, or to prevent injury or damage to persons or property. If Lessee shall fail to reimburse Lessor upon demand for any amount paid for the account of Lessee hereunder, said amount shall be added to and become due as a part of the next payment of rent due and shall for all purposes be deemed and treated as rent hereunder.

30. LESSEE'S SELF HELP. If Lessor shall default in the performance or observance of any agreement or condition in this Lease contained on its part to be performed or observed, and if Lessor shall not cure such default within thirty (30) days after notice from Lessee specifying the default (or, if such default shall reasonably take more than thirty (30) days to cure, and Lessor shall not have commenced the same within the thirty (30) days and diligently prosecuted the same to completion), Lessee may, at its option, without waiving any claim for damages for breach of agreement, at any time thereafter cure such default for the account of Lessor and any amount paid or any contractual liability incurred by Lessee in so doing shall be deemed paid or incurred for the account of Lessor and Lessor shall reimburse Lessee therefore and save Lessee harmless therefrom. Provided, however, that Lessee may cure any such default as aforesaid prior to the expiration of said waiting period, without notice to Lessor if an emergency situation exists, or after notice to Lessor, if the curing of such default prior to the expiration of said waiting period is reasonably necessary to protect the Leased Premises or Lessee's interest therein or to prevent injury or damage to persons or property. If Lessor shall fail to reimburse Lessee upon demand for any amount paid or liability incurred for the account of Lessor hereunder, said amount or liability may be deducted by Lessee from the next or any succeeding payments of rent due hereunder; provided, however, that should said amount or the liability therefore be disputed by Lessor, Lessor may contest its liability or the amount thereof, through arbitration or through a declaratory judgment action and Lessor shall bear the cost of the filing fees therefore.

31. INDEMNIFICATION. Lessor will not be liable for any damage or injury to Lessee, or any other person, or to any property, occurring on the Premises, unless such damage is the legal result of the negligence or willful misconduct of Lessor as determined by law, its agents, or employees. Lessee agrees to hold Lessor harmless from any claims for damages, no matter how caused, except for injury or damages caused by negligence or willful misconduct of Lessor, its agents or employees.

32. HOLDING OVER. In the event that Lessee or anyone claiming under Lessee shall continue occupancy of the Leased Premises after the expiration of the term of this Lease or any renewal or extension thereof without any agreement in writing between Lessor and Lessee with respect thereto, such occupancy shall not be deemed to extend or renew the term of the Lease, but such occupancy shall continue as a tenancy at will, from month to month, upon the covenants, provisions and conditions herein contained. The rental shall be the rental in effect during the term of this Lease as extended or renewed, prorated and payable for the period of such occupancy.

33. DISPUTES. It is agreed that, if at any time a dispute shall arise as to any amount or sum of money to be paid by one party to the other under the provisions hereof, the party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of the said party to institute suit for the recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said party to pay such sum or any part thereof, said party shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Lease. If at any time a dispute shall arise between the parties hereto as to any work to be performed by either of them under the provisions hereof, the party against whom the obligation to perform the work is asserted may perform such work and pay the costs thereof "under protest" and the performance of such work shall in no event be regarded as a voluntary performance and shall survive the right on the part of the said party to institute suit for the recovery of the costs of such work. If it shall be adjudged that there was no legal obligation on the part of the said party to perform the same or any part thereof, said party shall be entitled to recover the costs of such work or the cost of so much thereof as said party was not legally required to perform under the provisions of this Lease and the amount so paid by Lessee may be withheld or deducted by Lessee from any rents herein reserved.

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written or have caused this Lease to be executed by their respective officers thereunto duly authorized.

"LESSOR"

City of Milpitas

Approved as to Form:

Thomas C. Williams
City Manager

Michael J. Ogaz
City Attorney

"LESSEE"

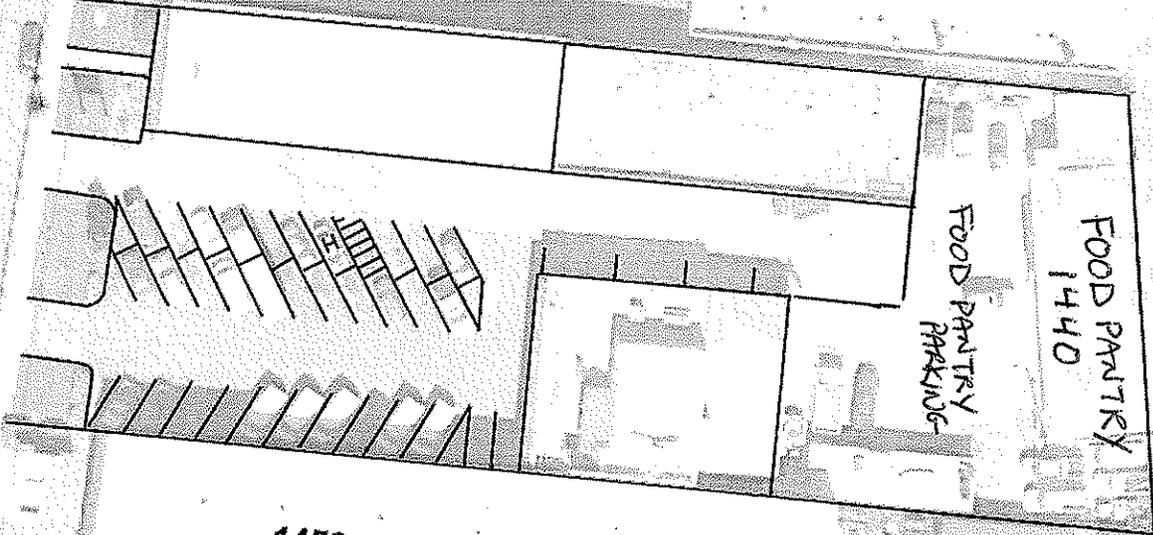
Milpitas Food Pantry

Karen Kolander, Executive Director



S. MAIN ST.

1430



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