

**RESOLUTION NO. OSB 2014-06**

**RESOLUTION OF THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY  
CITY OF ROHNERT PARK APPROVING A TEMPORARY LICENSE AGREEMENT  
BETWEEN THE SUCCESSOR AGENCY AND AMY'S KITCHEN, INC.**

WHEREAS, Assembly Bill 1X 26, as subsequently amended by AB 1484 (collectively, the "Dissolution Act") dissolved redevelopment agencies formed under the Community Redevelopment Law (Health and Safety Code Section 33000, *et seq.*);

WHEREAS, Section 31419.5(b) of the Dissolution Act required the Successor Agency City of Rohnert Park ("Successor Agency") to prepare and submit for review and approval by the Oversight Board for the Successor Agency ("Oversight Board") and the California Department of Finance ("DOF") a long-range property management plan ("Property Plan") addressing the disposition and use of real property formerly owned by the Community Development Commission of the City of Rohnert Park;

WHEREAS, Successor Agency staff prepared a Property Plan that was approved by the Oversight Board by Resolution No. OSB 2013-04 adopted on September 20, 2013 and thereafter submitted to DOF for review and approval;

WHEREAS, based on DOF's preliminary comments and requests for clarification of certain items included in the Property Plan, Successor Agency staff prepared an amended Property Plan that was approved by the Oversight Board by Resolution No. OSB 2014-03 adopted on April 9, 2014 and thereafter submitted to DOF for review and approval;

WHEREAS, DOF approved the Successor Agency's Property Plan by letter dated June 20, 2014;

WHEREAS, the approved Property Plan provides for the disposition of an approximately 6,534 square foot parcel located in the City of Rohnert Park, identified as "Parcel 6" in the Property Plan and designated as APN 045-082-053 ("Property") to the developer of the adjacent property immediately to the west ("Adjacent Property") pursuant to Health and Safety Code Section 34191.5(c)(2)(B), since the Property's only economic value would come through incorporation into the development of the Adjacent Property;

WHEREAS, the Oversight Board has approved an Agreement of Purchase and Sale and Joint Escrow Instructions ("Purchase Agreement") for the conveyance of the Property to the owner of the Adjacent Property, Amy's Kitchen, Inc., a California corporation ("Buyer");

WHEREAS, Buyer desires to access the Property prior to closing under the Purchase Agreement for the purpose of vehicular access to and from the Adjacent Property and onto Redwood Drive and for the installation of underground utility improvements to serve the Adjacent Parcel;

WHEREAS, Successor Agency staff and Buyer have negotiated the terms of a Temporary License Agreement, attached hereto as Exhibit A and incorporated herein by this reference (“License Agreement”), to provide Buyer such access to the Property;

WHEREAS, on May 13, 2014, the City of Rohnert Park approved a Mitigated Negative Declaration (“MND”) for Buyer’s development of the Adjacent Property, which anticipated and included Buyer’s acquisition and development of the Property; and

WHEREAS, the Oversight Board has considered all information related to this matter, including any supporting reports by Successor Agency staff and any information presented or provided during public meetings.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board for the Successor Agency City of Rohnert Park, as follows:

1. The Oversight Board hereby finds and determines that the foregoing recitals are true and correct and are incorporated herein.

2. The Oversight Board does hereby further finds approval of the License Agreement to be consistent with the project evaluated in the MND and that 1) there are no substantial changes to the project which would result in the need for major revisions to that MND, 2) there are no substantial changes with regard to the circumstances surrounding the proposed action which would require major revisions to that MND, and 3) no substantial new information exists which was not previously known which would show that the project has new significant environmental impacts, the project’s identified impacts are substantially more severe than previously disclosed, new alternatives or mitigation measures previously found to be infeasible are in fact feasible and/or would reduce significant environmental impacts more than previously disclosed.

3. The License Agreement substantially in the form attached hereto as Exhibit A and incorporated herein by this reference is hereby approved.

4. The City Manager of the City of Rohnert Park (“City Manager”) is hereby delegated authority and is authorized and directed to execute the License Agreement substantially in the form attached hereto as Exhibit A, subject to minor, technical changes approved by the Oversight Board’s General Counsel.

5. The City Manager or his designee is authorized and directed to execute such additional instruments and to take such actions as are necessary to carry out the intent of this Resolution.

6. In accordance with Section 34179(h) of the Dissolution Act, the Board hereby authorizes and directs Successor Agency staff to transmit, by electronic means, written notice and information about the Board’s action approving the License Agreement to DOF; this Resolution shall become effective five business days after such notice has been given, pending additional review that may be requested by DOF pursuant to Section 34179(h) of the Dissolution Act.

**DULY AND REGULARLY ADOPTED** this 22nd day of July, 2014.

**ATTEST:**

**OVERSIGHT BOARD FOR THE SUCCESSOR  
AGENCY CITY OF ROHNERT PARK**



\_\_\_\_\_  
Eydie Tacata, Clerk of the Board



\_\_\_\_\_  
Marilyn Ponton, Chair

Cerreta: Absent Jolley: Aye Mackenzie: Absent Masterson: Aye Zane: Absent Thompson: Aye Ponton: Aye

AYES: ( 4 ) NOES: ( 0 ) ABSENT: ( 3 ) ABSTAIN: ( 0 )

## TEMPORARY LICENSE AGREEMENT

This Temporary License Agreement (this “**Agreement**”) is entered into as of \_\_\_\_\_, 2014 (hereinafter the “**Effective Date**”) by and between the Successor Agency to the Community Development Commission of the City of Rohnert Park, a public body established pursuant to the laws of the State of California (“**Owner**”) and Amy’s Kitchen, Inc., a California corporation (“**Licensee**”) for the purpose of granting a license to Licensee in accordance with the terms and conditions set forth herein.

### RECITALS

A. Owner is the owner of certain real property located in the City of Rohnert Park, California, commonly known as Assessor’s Parcel Number 045-082-053, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the “**Owner’s Parcel**”).

B. Licensee is the owner of certain real property commonly known as 58 Golf Course Drive West, Rohnert Park, California, Assessor’s Parcel Numbers 045-075-002 and 045-075-003 (the “**Adjacent Parcel**”).

C. Concurrently herewith, Licensee and Owner have jointly executed that certain Agreement of Purchase and Sale and Joint Escrow Instructions (the “**Purchase Agreement**”) for the purchase and sale, respectively, of the Owner’s Parcel (the “**Purchase Transaction**”), but the parties anticipate that Licensee’s predevelopment activities on the Adjacent Parcel will require the use of the Owner’s Parcel prior to the closing of the Purchase Transaction.

D. Licensee desires from Owner, and Owner desires to grant to Licensee, the right to use the Owner’s Parcel for the purpose of vehicular access to and from the Adjacent Parcel and onto Redwood Drive and for the installation of underground utility improvements to serve the Adjacent Parcel.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. **Recitals.** The recitals shall be considered an integral part of this Agreement and are incorporated herein by this reference.

2. **Grant of License.** Owner hereby grants and conveys to Licensee (including its employees and agents), subject to all existing encumbrances and exceptions to title, a temporary, conditional and limited license (the “**License**”) to use Owner’s Parcel as necessary to allow ingress and egress access to the Adjacent Parcel and to install or have a public utility provider install utility improvements on or under the Owner’s Parcel as are reasonable and necessary for the purpose of providing the Adjacent Parcel with utility service.

3. **Consideration.** The obligations of the parties hereunder are undertaken in consideration and in furtherance of their mutual obligations under the Purchase Agreement.

4. **Termination.** This Agreement shall terminate on the earlier of: (a) closing of the Purchase Transaction; or (b) termination of the Purchase Agreement. Should this Agreement terminate without the Purchase Transaction having closed, and if Licensee has installed utilities prior to the termination of the Purchase Transaction, Owner shall provide Licensee an easement for the maintenance of the utilities installed pursuant to this Agreement and Licensee shall be obligated to maintain such utilities. Licensee's obligation to maintain such utilities shall survive termination of this Agreement, as shall the Covenants of Licensee set forth in Paragraphs 7(b) and 7(d) below.

5. **Limitations of Licensee's Use.** The use of the License by Licensee is limited to pedestrian and vehicular access, including ingress and egress to and from the Adjacent Parcel and installation of underground utility improvements under the Owner's Parcel for the purpose of servicing the Adjacent Parcel with utilities. Licensee shall at no time permanently park or locate any vehicles or other personal property or other improvements on Owner's Parcel without the express written permission of Owner.

6. **Maintenance and Repair.** As of the Effective Date, Licensee shall be solely responsible for the construction, repair and maintenance of the Owner's Parcel. From and after the Effective Date, Owner shall have no duty to repair, replace or maintain in good condition the Owner's Parcel, excepting only damage to the Owner's Parcel directly caused by the use of the Owner's Parcel by Owner or Owner's employees, contractors, agents or invitees. Any maintenance and/or repair performed by or at the direction of Licensee shall be performed in such a manner that it does not unreasonably interfere with or increase the burden on the use of the Owner's parcel by Owner. Owner shall have the right, but not the obligation, to repair or maintain the Owner's Parcel as Owner deems fit.

7. **Covenants of Licensee.** Licensee agrees to do the following:

(a) Pay all costs for any required construction, repairs, replacements or alterations to the Owner's Parcel as may be required by Licensee's plans.

(b) Licensee hereby assumes all risk, cost, expense, loss and damage which may result from Licensee's entry upon or use of the Owner's Parcel, including but not limited to any vehicle damage and/or personal injury. Licensee shall, and hereby agrees to, indemnify, protect, defend and hold Owner and its officers, officials, agents, employees and volunteers (collectively, "**Owner Parties**") harmless from any and all losses, claims, demands, causes of action, lawsuits, proceedings, enforcement actions, obligations and liabilities in any way arising out of use of the Licensee's Area by or through Licensee pursuant to this Agreement. The indemnification, hold harmless and covenant to defend contained herein shall survive the expiration or earlier termination of this Agreement.

(c) Licensee shall have in place at all times during the term of the License, one or more policies of liability insurance covering the Owner's Parcel, which shall contain standard comprehensive general liability, including coverage for bodily injuries, property damage (including vehicle coverage for owned, non-owned and hired vehicles) and contractual liability, and shall provide coverage for bodily injury to or death of persons and/or loss of or damage to

property, with a combined single limit of at least Two Million Dollars (\$2,000,000). Licensee shall name Owner and Owner Parties as additional named insureds under Licensee's policy or policies of liability insurance so as to provide coverage to Owner and Owner Parties under such liability insurance to the full extent of liability arising out of or resulting from use of the License hereunder. Licensee shall provide a certificate of such coverage to Owner within five (5) days following any request by Owner for the same. Licensee's policy or policies of insurance shall contain a provision requiring at least thirty (30) days written notice to Owner prior to any cancellation or material modification during the term of coverage, and Owner shall have the right, but not the obligation, to purchase insurance coverage to the extent previously provided under this paragraph at Licensee's expense.

(d) Licensee acknowledges that Owner does not make any representations or warranties, express or implied, with respect to or regarding the condition of the Owner's Parcel or suitability of the Owner's Parcel for Licensee's intended use thereof. Licensee waives any rights to recover from and forever releases Owner and Owner Parties from any and all losses, claims, demands, causes of action, lawsuits, proceedings, enforcement actions, obligations and liabilities that may arise on account of or in any way be connected with: (a) the physical or environmental condition of the Licensed Area; or (b) any damage suffered by Licensee in connection with its use of the Licensed Area.

(e) Licensee shall not discharge, release, transport, locate or place or permit or allow the discharge, release, location or placement of, any hazardous waste, hazardous materials or any other illegal substance on or within the Owner's Parcel.

(f) Licensee shall secure any required permits or approvals prior to commencing work or allowing work to be commenced on or under the Owner's Parcel. At all times during the term of this Agreement, Licensee's use of the Licensed Area shall be in conformance with and subject to all applicable local, state, and federal codes, statutes, rules, regulations, enactments, decrees, judgments, orders, permits, certificates and laws of any and all courts, boards, agencies, commissions, offices or governmental authorities of any nature having jurisdiction over the Licensee or the Licensed Area.

(g) Licensee shall keep the Owner's Property free from all liens, including but not limited to mechanic's liens and further encumbrances by reason of Licensee's use of the Licensed Area. Failure to remove any lien recorded against Owner's Property within thirty (30) days of receipt of notice of recordation shall be considered a material breach of this Agreement and cause for termination.

**8. Reserved Rights.** Notwithstanding anything to the contrary herein, Owner reserves to itself, and to Owner's personal representatives, heirs, successors, and assigns, all rights accruing from the ownership of Owner's Parcel, that does not unreasonably interfere with the purpose of this License.

**9. Discretion of Parties.** Enforcement of the terms of this Agreement shall be at the discretion of Owner, and any forbearance by Owner to exercise his rights under this Agreement in the event of any breach of any term of this Agreement by Licensee shall not be deemed or

construed to be a waiver of such term or of any subsequent breach of the same or any other term of this Agreement or of any rights under this Agreement. No delay or omission in the exercise of any right or remedy upon any breach shall impair such right or remedy or be construed as a waiver.

**10. Acts Beyond Owner's Control.** Nothing contained in this Agreement shall be construed to entitle Licensee to bring any action against Owner for any injury to or change in Owner's Parcel resulting from causes beyond Owner's control, including, without limitation, fire, flood, storm, vandalism or other trespass, and earth movement, or from any prudent action taken by Owner under emergency conditions to prevent, abate, or mitigate significant injury to Owner's Property resulting from such causes.

**11. Amendment.** If circumstances arise under which an amendment to or modification of this Agreement would be appropriate, Owner and Licensee may jointly amend this Agreement. Any such amendment must be in writing.

**12. Notices.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

**To Owner:**

Successor Agency to the Community  
Development Commission of the City of  
Rohnert Park  
130 Avram Avenue  
Rohnert Park, CA 92608-3517  
Attention: City Manager

**To Licensee:**

Amy's Kitchen, Inc.  
1650 Corporate Circle, Suite 200  
Petaluma, CA 94955  
Attention: Mark Rudolf, CFO

With a copy to:

Burke, Williams & Sorensen, LLP  
1901 Harrison Street, 9<sup>th</sup> Floor  
Oakland, CA 94612  
Attention: Rafael Mandelman

Clement, Fitzpatrick & Kenworthy, Inc.  
3333 Mendocino Ave., Suite 200  
Santa Rosa, CA 95403  
Attention: Robert L. Quail

or to such other address as either party or its assignee from time to time shall designate by written notice to the other.

**13. General Provisions.**

(a) Controlling Law. The interpretation and performance of this Agreement shall be governed by the laws of the State of California.

(b) Severability. If any provision of this Agreement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this

Agreement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(c) Attorneys' Fees. In the event legal action is instituted by any party to this Agreement, the prevailing party shall be entitled, in addition to any other relief to which such party may be entitled, to receive from the other party reasonable attorneys' fees to be determined by the court in which such action is brought.

(d) Entire Agreement. This instrument and the Purchase Agreement set forth the entire agreement of the parties with respect to the Owner's Parcel and supersede all prior discussions, negotiations, understandings, or agreements relating to the Owner's Parcel, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless set forth in a writing duly executed by all parties to be bound thereto.

(e) No Assignment. The rights granted to Licensee in this Agreement and the License granted herein are personal to Licensee and as such are non-transferrable. Any transfer or assignment in violation of this provision shall be void and shall, at the election of the Owner, constitute a material breach of this Agreement and effect a termination of the License.

(f) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

*[SIGNATURES ON FOLLOWING PAGE]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the last date set forth below.

**OWNER:**

Successor Agency to the Community Development  
Commission of the City of Rohnert Park

Dated: \_\_\_\_\_, 2014

By: \_\_\_\_\_  
Darrin Jenkins, City Manager, City of Rohnert Park

**ATTEST:**

By: \_\_\_\_\_  
Eydie Tacata, Oversight Board Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Elizabeth Ann Strauss, Oversight Board Counsel

Dated: \_\_\_\_\_, 2014

**LICENSEE:**

Amy's Kitchen, Inc., a California corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

## EXHIBIT A

### DESCRIPTION OF OWNER'S PARCEL

**The land referred to herein is situated in the State of California, County of Sonoma, City of Rohnert Park and described as follows:**

All that certain real property situate in the City of Rohnert Park, County of Sonoma, State of California, being the lands of the CITY OF ROHNERT PARK, a Municipal Corporation, described as TRACT TWO, PARCEL THREE in that certain Grant Deed recorded March 17, 1989 under Document Number 89023626, Sonoma County Records and being a portion of Willis Avenue abandoned by that certain Resolution No. 91-56, a resolution of the City Council of the City of Rohnert Park, recorded October 3, 1991 under Document Number 1991 0098889, Sonoma County Records, being more particularly described as follows:

#### Parcel 1

Commencing at a City monument marking the centerline intersection of Business Park Drive and Redwood Drive (formerly South Santa Rosa Avenue) on the map of Rohnert Business Park Subdivision recorded in Book 375 of Maps, Pages 10 and 11, Sonoma County Records; thence from said Point of Commencement N 00 degrees 08' 49" E, along the centerline of South Santa Rosa Avenue 81.10 feet; thence N 89 degrees 51' 11" W, 20.00 feet to the westerly right of way of South Santa Rosa Avenue; thence along said right of way N 00 degrees 08' 49" E, 349.35 feet; thence N 02 degrees 29' 15" E, 303.91 feet; thence N 04 degrees 08' 51" E, 425.27 feet; thence N 00 degrees 09' 15" E, 710.92 to the northeast corner of the lands of North Bay Properties, described in that certain Grant Deed recorded July 5, 1984 under Document Number 84045612, Sonoma County Records; thence N 89 degrees 34' 00" W, 476.31 feet; thence S 00 degrees 03' 49" W, 95.05 feet to the POINT OF BEGINNING being a point on a curve to the left, having a radius point which bears N 74 degrees 37' 05" E, 551.00 feet and has an internal angle of 12 degrees 56' 47"; thence along said curve 124.50 feet; thence N 89 degrees 34' 00" W, 46.38 feet; thence N 00 degrees 03' 49" E, 114.96 feet to the POINT OF BEGINNING.

Together with:

#### Parcel 2

All that portion of Willis Avenue abandoned by said Resolution No. 91-56 lying east of the centerline of said Willis Avenue and lying north of the westerly prolongation of the southerly line of Parcel 1 described hereinabove being more particularly described as follows:

BEGINNING at the northeasterly corner of the hereinabove described Parcel 1, being a point on the westerly right of way of Redwood Drive as said Redwood Drive is shown on that certain map titled RECORD OF SURVEY OF REDWOOD DRIVE REALIGNMENT filed January 18, 1990 in Book 451 of Maps at Page 5, Sonoma County Records, being a point on a curve, concave to the northeast, having a radius of 551.00 feet, to which point a radial line bears South 74° 37' 05" West; thence northerly, along said curve and along said right of way, through a central angle of 15°28'59" an arc distance of 148.90 feet; thence continuing along said right of way, North 00° 06' 04" East, 10.00 feet to the northerly line of said portion of Willis Avenue; thence leaving said right of way, along said northerly line, North 44° 53' 56" West, 0.15 feet to said centerline of Willis Avenue; thence South 00°03' 49" West, 272.04 feet to said westerly prolongation; thence along said westerly prolongation South 89°34' 00" East, 20.00 feet to the easterly right of way of said Willis Avenue; thence along said right of way North 00°03'49" East, 114.96 feet to the POINT OF BEGINNING.

NOTE: This legal description is compiled from record data and is not the result of a field survey.

APN: 045-082-053  
(End of Legal Description)