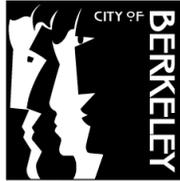


AGENDA



BERKELEY CITY COUNCIL MEETING

Tuesday, February 11, 2020

6:00 PM

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – CHERYL DAVILA
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – RIGEL ROBINSON
DISTRICT 8 – LORI DROSTE

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900.

The City Council may take action related to any subject listed on the Agenda. The Mayor may exercise a two minute speaking limitation to comments from Councilmembers. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.

Preliminary Matters

Roll Call:

Ceremonial Matters: *In addition to those items listed on the agenda, the Mayor may add additional ceremonial matters.*

1. Recognition of Mansour Id-Deen
2. Recognition of Berkeley Community Media
3. Adjourn in memory of Ove Wittstock, Berkeley Commissioner and Activist

City Manager Comments: *The City Manager may make announcements or provide information to the City Council in the form of an oral report. The Council will not take action on such items but may request the City Manager place a report on a future agenda for discussion.*

Public Comment on Non-Agenda Matters: *Persons will be selected by lottery to address matters not on the Council agenda. If five or fewer persons submit speaker cards for the lottery, each person selected will be allotted two minutes each. If more than five persons submit speaker cards for the lottery, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. Persons wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a speaker card to the City Clerk in person at the meeting location and prior to commencement of that meeting. The remainder*

of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda. Speaker cards are not required for this second round of public comment on non-agenda matters.

Consent Calendar

The Council will first determine whether to move items on the agenda for “Action” or “Information” to the “Consent Calendar”, or move “Consent Calendar” items to “Action.” Items that remain on the “Consent Calendar” are voted on in one motion as a group. “Information” items are not discussed or acted upon at the Council meeting unless they are moved to “Action” or “Consent”.

No additional items can be moved onto the Consent Calendar once public comment has commenced. At any time during, or immediately after, public comment on Information and Consent items, any Councilmember may move any Information or Consent item to “Action.” Following this, the Council will vote on the items remaining on the Consent Calendar in one motion.

For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again at the time the matter is taken up during the Action Calendar.

Public Comment on Consent Calendar and Information Items Only: *The Council will take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. Speakers will be entitled to two minutes each to speak in opposition to or support of Consent Calendar and Information Items. A speaker may only speak once during the period for public comment on Consent Calendar and Information items.*

Additional information regarding public comment by City of Berkeley employees and interns: Employees and interns of the City of Berkeley, although not required, are encouraged to identify themselves as such, the department in which they work and state whether they are speaking as an individual or in their official capacity when addressing the Council in open session or workshops.

Consent Calendar

- 1. Approving a Partial Assignment and Third Amendment to the Disposition and Development Agreement, Ground Leases, and Certain Related Documents for 2012 Berkeley Way**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,684-N.S. approving a Partial Assignment and Third Amendment to the Disposition and Development Agreement for 2012 Berkeley Way, the three ground leases outlined in the Disposition and Development Agreement, and two Reciprocal Easement, Maintenance and Joint Use Agreements required for project operations.
First Reading Vote: All Ayes.
Financial Implications: See report
Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

Consent Calendar

2. Cannabis Ordinance Revisions; Amending Berkeley Municipal Code Chapters 12.21, 12.22, 20.40, 23C.25, and Sub-Titles 23E and 23F

From: City Manager

Recommendation: Adopt second reading of five ordinances (1. Ordinance No. 7,686-N.S. amending BMC Title 12 (Health and Safety); 2. Ordinance No. 7,687-N.S. amending BMC Chapter 20.40 (Cannabis Business Signs and Cannabis Product Advertising); 3. Ordinance No. 7,688-N.S. amending BMC Chapter 23C.25 (Cannabis Uses); 4. Ordinance No. 7,689-N.S. amending BMC Sub-Title 23E (Provisions Applicable in All Non-Residential Districts); 5. Ordinance No. 7,690-N.S. amending BMC Sub-Title F (Definitions)) to amend the Berkeley Municipal Code which would:

- A. Allow new business types (Delivery-Only Retailers, Consumption Lounges);
- B. Allow Retailers to continue to operate as Microbusinesses;
- C. Clarify cannabis business operational standards and development standards, such as quotas and buffers, for Storefront Retailers;
- D. Allow more opportunities for Commercial Cultivation by expanding location options; and
- E. Protect the health of the general public and youth with additional advertising, signage and sales regulations.

First Reading Vote: Ayes – Kesarwani, Davila, Bartlett, Harrison, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Hahn.

Financial Implications: See report

Contact: Timothy Burroughs, Planning and Development, (510) 981-7400

3. Appointment of Director of Health, Housing, and Community Services Department

From: City Manager

Recommendation: Adopt a Resolution confirming the appointment of Lisa Warhuus as the Director of the Health, Housing and Community Services Department (HHCS) to be effective March 9, 2020 at an annual salary of \$188,000

Financial Implications: Various Funds - \$188,000

Contact: Dee Williams-Ridley, City Manager, (510) 981-7000

4. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on February 11, 2020

From: City Manager

Recommendation: Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.

Financial Implications: Various Funds - \$12,528,300

Contact: Henry Oyekanmi, Finance, (510) 981-7300

Consent Calendar

5. **Contract No. 9649 Amendment: Sloan Sakai LLP for Continued Chief Labor Negotiator Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 9649 increasing the contract amount by \$235,000 with Sloan Sakai LLP for Chief Labor Negotiator services, for a revised total contract amount not to exceed \$450,000.
Financial Implications: General Fund - \$235,000
Contact: LaTanya Bellow, Human Resources, (510) 981-6800
6. **Funding Application: State of California Department of Housing and Community Development for CalHome Funds**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager, or her designee, to submit an application to the State of California Department of Housing and Community Development (HCD) for a minimum of \$1,000,000 and up to \$5,000,000 in funding under the CalHome Owner-Occupied Rehabilitation Program, and if awarded, execute the Standard Agreement, and any subsequent amendments or modifications thereto.
Financial Implications: See report
Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400
7. **Jointly Apply for Infill Infrastructure Grant Funding for Projects Seeking City Funding through the 2019 Housing Trust Fund Request for Proposals**
From: City Manager
Recommendation: Adopt two resolutions that enable affordable housing development projects that applied for City funding through the 2019 Housing Trust Fund Request for Proposals to access State of California Infill Infrastructure Grant (IIG) funds by:
1. Authorizing the City Manager to prepare and submit a joint application with each of the following developers proposing to use IIG funds: a. Satellite Affordable Housing Associates (for Blake Apartments at 2527 San Pablo); b. Resources for Community Development (for Maudelle Miller Shirek Community at 2001 Ashby); and
2. Authorizing the City Manager to take actions needed for the City's participation in the IIG program by adopting state-required terms about submitting applications, entering into the State's Standard Agreement and other documents.
Financial Implications: See report
Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

Consent Calendar

8. **Contract No. 19F-4404: Community Services Block Grant Discretionary Funding for June 1, 2019 – May 31, 2020**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to modify the scope and deliverables for Community Services Block Grant (CSBG) Contract Number 19F-4404 and execute any resultant agreements and amendments to provide services to low-income people for the period June 1, 2019 – May 31, 2020. Instead of providing short-term rental assistance, CSBG funds will be used for a mobile shower program operated by Project We Hope's Dignity on Wheels.
Financial Implications: See report
Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

Council Consent Items

9. **Support of HR 5038 – Farm Workforce Modernization Act of 2019**
From: Mayor Arreguin and Councilmember Bartlett
Recommendation: Adopt a Resolution supporting House Resolution (HR) 5038 – the Farm Workforce Modernization Act of 2019. Send a copy of the Resolution to Representatives Zoe Lofgren and Barbara Lee, Senators Dianne Feinstein and Kamala Harris, and President Donald Trump.
Financial Implications: None
Contact: Jesse Arreguin, Mayor, (510) 981-7100
10. **Support of HR 5609 - Homelessness Emergency Declaration Act**
From: Mayor Arreguin and Councilmembers Hahn, Bartlett, and Harrison
Recommendation: Adopt a Resolution supporting House Resolution (HR) 5609, the Homelessness Emergency Declaration Act. Send a copy of the Resolution to Representatives Josh Harder and Barbara Lee, Senators Dianne Feinstein and Kamala Harris, and President Trump.
Financial Implications: None
Contact: Jesse Arreguin, Mayor, (510) 981-7100
11. **Excused Absence for Vice-Mayor Sophie Hahn**
From: Mayor Arreguin
Recommendation: Excuse Vice-Mayor Sophie Hahn from the January 28, 2020 Council meeting due to illness.
Financial Implications: None
Contact: Jesse Arreguin, Mayor, (510) 981-7100

Council Consent Items

- 12. Repealing and Reenacting BMC Chapter 13.104, Wage Theft Prevention**
(Continued from November 12, 2019. Item contains revised material.)
From: Mayor Arreguin and Councilmembers Harrison, Droste, and Hahn
Recommendation: Adopt first reading of Ordinance No. 7,668-N.S. repealing and reenacting BMC Chapter 13.104, Wage Theft Prevention to improve enforcement of the ordinance by requiring a signed acknowledgement of ordinance requirements and signed attestation.
Financial Implications: Staff time
Contact: Jesse Arreguin, Mayor, (510) 981-7100
- 13. Installation of William Byron Rumford Plaque**
From: Councilmembers Davila and Bartlett
Recommendation: Adopt a Resolution authorizing the installation of a plaque to honor William Byron Rumford in the public right of way.
Financial Implications: \$2,000
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120
- 14. Referral: Electric Moped Ride-Share Franchise Agreement** *(Reviewed by the Facilities, Infrastructure, Transportation, Environment, and Sustainability Committee)*
From: Councilmembers Robinson, Bartlett, and Harrison
Recommendation: Refer to the City Manager to rename the existing One-Way Car Share Program as the One-Way Vehicle Share Program and to amend the Program to include administrative requirements and parking permit fees for motorized bicycles that are affixed with license plates and require a driver's license for individuals to operate them (mopeds), in coordination with the City of Oakland.
Financial Implications: See report
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170

Action Calendar

The public may comment on each item listed on the agenda for action as the item is taken up. For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again at the time the matter is taken up during the Action Calendar.

The Presiding Officer will request that persons wishing to speak line up at the podium to determine the number of persons interested in speaking at that time. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue.

Action items may be reordered at the discretion of the Chair with the consent of Council.

Action Calendar – Old Business

15. Recommendations Related to Code Enforcement and Receivership Actions

(Continued from January 21, 2020.)

From: Health, Life Enrichment, Equity, and Community Committee

Recommendation: On November 25, 2019, the Health, Life Enrichment, Equity & Community Committee took action to send an item to Council with a positive recommendation that for purposes of understanding the issues and identifying potential changes to the City's codes, policies, and procedures the committee recommends the following:

- a. That the City Manager provide an information session to the City Council regarding the various ways in which code enforcement issues have been brought to the attention of the City over the last 5 years;
- b. How various code enforcement issues at residential properties are currently handled;
- c. Timeframe and mechanisms for achieving code compliance at residential properties;
- d. Any existing assistance programs available to support property owners found to have code violations;
- e. Specific learnings/changes in City practices resulting from the Leonard Powell receivership case;
- f. Other information deemed relevant and appropriate to understand the City's current code enforcement practices for residential properties

Additionally, the Policy Committee requests that the Mayor call a special meeting of the City Council for purposes of a forum based on the recommendations provided by Councilmember Bartlett as the draft plan for a public meeting on receivership.

And third, the Committee requests from the City Manager a specific reply on creating a mechanism to provide legal and technical assistance by an independent third party for individuals who are facing City of Berkeley initiated receivership, and that the reply also include a process for the individual to pick legal and technical representatives of their choice. This response should also include a recommendation from the City Manager and a budget referral.

Financial Implications: See report

Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150, Rashi Kesarwani, Councilmember, District 1, (510) 981-7110, Cheryl Davila, Councilmember, District 2, (510) 981-7120

16. Disposition of City-Owned, Former Redevelopment Agency Property at 1631

Fifth Street *(Reviewed by the Land Use, Housing & Economic Development Committee. Continued from January 28, 2020.)*

From: City Manager

Recommendation: Adopt a Resolution authorizing the sale of the City-owned, former Redevelopment Agency property at 1631 Fifth Street at market rate and authorizing the City Manager to contract with a real estate broker to manage the sale.

Financial Implications: See report

Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

Action Calendar – Old Business

17. **Resolution for Safe Recreational Vehicle (RV) Parking at Designated City-Owned Parking Lots During Overnight Non-Business Hours** *(Continued from January 28, 2020. Item contains revised material.)*

From: Councilmember Kesarwani, Mayor Arreguin, and Councilmembers Harrison and Hahn

Recommendation: Adopt a resolution to allow recipients of a three-month “Grace Period” permit for safe RV parking to park overnight during non-business hours in designated City-owned parking lots pursuant to California Vehicle Code Section 22519. Section 22519 states: “Local authorities may by ordinance or resolution prohibit, restrict or regulate the parking, stopping or standing of vehicles on any offstreet parking facility which it owns or operates. No such ordinance or resolution shall apply until signs giving notice thereof have been erected.”

This resolution identifies appropriate City-owned parking lots for overnight safe RV parking – selected in consultation with the City Manager and relevant City staff -- with consideration for safe ingress and egress, accessibility of restroom facilities, and other health and safety considerations.

Financial Implications: See report

Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110

Action Calendar – New Business

18. **Discussion and Direction Regarding Potential Ballot Measures for the November 3, 2020 General Municipal Election**

From: City Manager

Recommendation: Discuss possible ballot measures for November 2020, and provide direction to the City Manager about which issues to include in a community survey.

Financial Implications: See report

Contact: Dave White, City Manager’s Office, (510) 981-7000

19. **Electric Bike Share Program Franchise Amendment**

From: City Manager

Recommendation: Adopt a Resolution declaring the Council’s intention to set a public hearing for March 10, 2020, at 6:00 p.m., to consider whether to grant a Franchise Agreement Amendment to Bay Area Motivate, LLC, a subsidiary of Lyft Incorporated, to provide shared electric bicycles to the Berkeley public.

Financial Implications: See report

Contact: Phillip Harrington, Public Works, (510) 981-6300

Council Action Items

20. **Discourage the Use of Cell Phones, Email, Texting, Instant Messaging, and Social Media by City Councilmembers during Official City Meetings** *(Reviewed by the Agenda & Rules Committee)*

From: Councilmember Davila

Recommendation: Adopt a Resolution Discouraging the Use of Cell Phones, Email, Texting, Instant Messaging, and Social Media by City Councilmembers during Official City Meetings. The Brown Act prohibits a majority of members of a legislative body from communicating outside of a public meeting on a matter on the agenda for their consideration.

In order to ensure the full attention of the Council to the public and each other, the use of cell phones with access to email, text-messaging, instant messaging, and social media should be limited as much as possible during City Council meetings. The use of digital technologies outside of the City-provided equipment, upon which Agenda Items and notes can be stored, is distracting, and disrespectful to the democratic process.

The use of cellphones and telecommunications should explicitly be prohibited during City Council Closed Sessions meetings, as they are confidential. All council meetings require the full and utmost attention of attendees.

The City Manager is recommended to submit an item to the Council to amend the Council Rules of Procedure and Order to include a moratorium on the use of cell phones by Councilmembers on the dais during council meetings.

Financial Implications: See report

Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120

21. **2-Lane Option on Adeline St. between MLK Way and Ward St.**

From: Councilmember Bartlett

Recommendation: Refer to the City Manager to analyze the potential for a major redesign of the section of Adeline St. between MLK Way and Ward St., to improve the public space to increase safety for pedestrians, cyclists, and people living with disabilities, while also meeting the needs of public transit and emergency vehicles. The analysis should prioritize a 2-lane option that reduces the width of the street and creates many benefits for our community. Refer \$250,000 to the budget process to fund this important project.

Financial Implications: See report

Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130

Information Reports

22. **Commission on Disability FY 2019-20 Annual Workplan**

From: Commission on Disability

Contact: Dominika Bednarska, Commission Secretary, (510) 981-6300

Public Comment – Items Not Listed on the Agenda

Adjournment

NOTICE CONCERNING YOUR LEGAL RIGHTS: *If you object to a decision by the City Council to approve or deny a use permit or variance for a project the following requirements and restrictions apply: 1) No lawsuit challenging a City decision to deny (Code Civ. Proc. §1094.6(b)) or approve (Gov. Code 65009(c)(5)) a use permit or variance may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a use permit or variance, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*

Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33), via internet accessible video stream at <http://www.cityofberkeley.info/CalendarEventWebcastMain.aspx> and KPFB Radio 89.3.

Archived indexed video streams are available at <http://www.cityofberkeley.info/citycouncil>. Channel 33 rebroadcasts the following Wednesday at 9:00 a.m. and Sunday at 9:00 a.m.

Communications to the City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk Department at 2180 Milvia Street. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk Department for further information.

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at the public counter at the City Clerk Department located on the first floor of City Hall located at 2180 Milvia Street as well as posted on the City's website at <http://www.cityofberkeley.info>.

Agendas and agenda reports may be accessed via the Internet at <http://www.cityofberkeley.info/citycouncil> and may be read at reference desks at the following locations:

City Clerk Department
2180 Milvia Street
Tel: 510-981-6900
TDD: 510-981-6903
Fax: 510-981-6901
Email: clerk@cityofberkeley.info

Libraries:
Main - 2090 Kittredge Street
Claremont Branch – 2940 Benvenue
West Branch – 1125 University
North Branch – 1170 The Alameda
South Branch – 1901 Russell

COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location.

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date.

Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.



Captioning services are provided at the meeting, on B-TV, and on the Internet. In addition, assisted listening devices for the hearing impaired are available from the City Clerk prior to the meeting, and are to be returned before the end of the meeting.

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*I hereby certify that the agenda for this meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on January 30, 2020.*



Mark Numainville, City Clerk

## **Communications**

*Council rules limit action on Communications to referral to the City Manager and/or Boards and Commissions for investigation and/or recommendations. All communications submitted to Council are public record. Copies of individual communications are available for viewing at the City Clerk Department and through [Records Online](#).*

### **5G/Cell Towers**

1. Tom Luce
2. Marilla Arguelles
3. Kate Waffner
4. Emily Benner
5. Darlene Pratt
6. Marge Turngren

### **2211 Harold Way**

7. Rob Wrenn
8. Erin Diehm
9. Kelly Hammargren

### **Police Matters**

10. David Lerman (2)
11. David Fielder

### **Stop SB 50 – Elimination of Residential Single-Family Zoning**

12. Vivian Warkentin

### **Southside Subcommittee**

13. Avram Gur Arye

### **Housing**

14. Erwan Illian
15. Sheila Goldmacher

### **Environment**

16. Vivian Warkentin

### **Gas Powered Leaf Blowers**

17. David Lerman

### **Homelessness/Encampments**

- 18. Mary Ann Brewin
- 19. James Mattson
- 20. Ellen Pasternack
- 21. Diana

### **Seismic Safety**

- 22. Nancy Caruso

### **East Bay Community Energy – Using Nuclear Power**

- 23. Janice Schroeder
- 24. Christopher Kroll

### **Healthy Checkout Ordinance**

- 25. John Maa, on behalf of the American Heart Association

### **Okinawa**

- 26. Margy Wilkinson

### **Animal Welfare**

- 27. Aja Duniven

### **Live Oak Park Issues**

- 28. Marc Bodian

### **Telecom Ordinance Revision**

- 29. Isis Feral

### **Supplemental Communications and Reports**

*Items received by the deadlines for submission will be compiled and distributed as follows. If no items are received by the deadline, no supplemental packet will be compiled for said deadline.*

- **Supplemental Communications and Reports 1**  
Available by 5:00 p.m. five days prior to the meeting.
- **Supplemental Communications and Reports 2**  
Available by 5:00 p.m. the day before the meeting.
- **Supplemental Communications and Reports 3**  
Available by 5:00 p.m. two days following the meeting.

## ORDINANCE NO. 7,684-N.S.

APPROVING A PARTIAL ASSIGNMENT AND THIRD AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT, THREE GROUND LEASES, AND CERTAIN RELATED DOCUMENTS FOR 2012 BERKELEY WAY

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. FINDINGS

In 2014, the City selected BRIDGE Housing Corporation (BRIDGE) and the Berkeley Food and Housing Project (BFHP) to redevelop the City-owned parking lot at 2012 Berkeley Way into a single building with three separate components: affordable housing, permanent supportive housing, and homeless shelter (temporary housing) and services. In 2016 with Ordinances 7,479-N.S. and 7,480-N.S., the City approved a Disposition and Development Agreement (DDA) with BRIDGE as the named “Developer,” which established the initial terms and conditions for the eventual leasing of the site for the purpose of the project. The site will be subdivided into three separate legal parcels, one for each of the three project components, with each parcel leased to a separate tenant under a separate 75-year ground lease.

Under prior Council approved amendments and a partial assignment to the DDA, the deadlines for leasing the site and completing project construction were extended, some specific project development procedures were modified, and Developer BRIDGE formally assigned its interest in the permanent supportive housing and homeless shelter (temporary housing) components (together referred to as “The Hope Center”) to BFHP Hope Center LP, an affiliate of BRIDGE and BFHP (BFHP LP).

Consistent with the DDA and prior Council approvals, the three current project components are expected to include the following:

- Affordable Housing: Approximately 89 units of affordable housing (including one manager’s unit).
- Permanent Supportive Housing: Approximately 53 units of supportive housing.
- Homeless Shelter (Temporary Housing): Temporary housing (approximately 44 beds), a services center and administrative office space.

The City and BRIDGE have been processing a site subdivision map, which, once finalized and recorded, will be the basis of the legal descriptions of the three project ground lease parcels and will be attached to the three ground leases. The map is expected to be finalized by approximately the end of 2019.

In order to effectuate the development of the site, the City now wishes to take certain actions: to further amend the DDA and approve BRIDGE’s assignment of the affordable housing project component to Bridge Berkeley Way LP, an affiliate of BRIDGE (Bridge LP), approve one ground lease for each project component as anticipated in the DDA, and approve two Reciprocal Easement, Maintenance and Joint Use Agreements (REAs) to govern operational specifics among the separate component tenants, also as

anticipated by the DDA.

Section 2. AUTHORIZATION FOR THE CITY MANAGER TO ENTER INTO A PARTIAL ASSIGNMENT AND THIRD AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT

The City Manager is hereby authorized to enter into a Partial Assignment and Third Amendment to Disposition and Development Agreement (Third Amendment) which will allow for the BRIDGE Housing Corporation to assign its rights regarding the affordable housing component of the project to Bridge LP and to clarify certain details of the property transfer, including that both the permanent supportive housing and shelter (temporary housing) components will initially be ground leased to BFHP Hope Center LP, an affiliate of BRIDGE and BFHP (BFHP LP), and following project construction the shelter (temporary housing) component ground lease will be assigned to BFHP Hope Center LLC, an affiliate of BFHP (BFHP LLC). Such Third Amendment shall be on substantially the same terms as Exhibit A.

Section 3. AUTHORIZATION FOR THE CITY MANAGER TO ENTER INTO ONE GROUND LEASE WITH BRIDGE BERKELEY WAY LP AND TWO GROUND LEASES WITH BFHP HOPE CENTER LP

The City Manager is hereby authorized to enter into one ground lease with Bridge LP for the affordable housing parcel, one ground lease with BFHP LP for the permanent supportive housing parcel, and one ground lease with BFHP LP for the shelter (temporary housing) and services parcel. The City Manager is hereby authorized to enter into the ground leases including draft premises legal descriptions based on the tentative subdivision map if the subdivision has not yet been completed, and is authorized to include final premises legal descriptions and replace the draft subdivision map (included as Exhibit G) with the final subdivision map when available. Such ground leases shall be on substantially the same terms as Exhibits B, C, and D.

Section 4. AUTHORIZATION FOR THE CITY MANAGER TO ENTER INTO TWO RECIPROCAL EASEMENT, MAINTENANCE AND JOINT USE AGREEMENTS FOR 2012 BERKELEY WAY

The City Manager is hereby authorized to enter, as property owner, into two Reciprocal Easement, Maintenance and Joint Use Agreements (REAs) establishing the responsibilities and relationships between the tenants under the ground leases. Such agreements shall be on substantially the same terms as Exhibits E and F.

Section 5. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on January 21, 2020, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.

Noes: None.

Absent: None.

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

12-2-2019

City of Berkeley  
Housing Department  
2180 Milvia Street, 2<sup>nd</sup> Floor  
Berkeley, CA 94704  
Attn: Housing & Community Services  
Manager

NO FEE FOR RECORDING PURSUANT TO GOVERNMENT CODE SECTION 27383  
& 27388.1

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(space above for Recorder's use)

PARTIAL ASSIGNMENT AND THIRD AMENDMENT TO DISPOSITION AND  
DEVELOPMENT AGREEMENT  
(Berkeley Way)

THIS PARTIAL ASSIGNMENT AND THIRD AMENDMENT (the "**Third Amendment**") to the Disposition and Development Agreement is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_ 2020 (the "**Effective Date**"), by and between BRIDGE HOUSING CORPORATION, a California nonprofit public benefit corporation ("**BRIDGE**"), BFHP HOPE CENTER LP, a California Limited Partnership ("**BFHP LP**"), Bridge Berkeley Way LP, a California Limited Partnership ("**BRIDGE LP**") and the CITY OF BERKELEY, a charter city (the "**City**", together with BRIDGE, BFHP LP and BRIDGE LP, the "**Parties**") with reference to the following facts:

RECITALS

- A. BRIDGE and the City entered into a Disposition and Development Agreement dated as of June 8, 2016 (the "**Original Agreement**"), as amended by that certain First Amendment to Disposition and Development Agreement dated August 27, 2018 (the "**First Amendment**") and that certain Second Amendment to Disposition and Development Agreement dated February 1, 2019 (the "**Second Amendment**"), and as partially assigned to BFHP LP pursuant to the terms of that certain Partial Assignment and Assumption Agreement dated December 17, 2018 (the "**Assignment**"; and collectively with the Original Agreement, the First Amendment and the Second Amendment, the "**DDA**"). Capitalized terms used, but not defined in this Third Amendment shall have the meaning set forth in the DDA.
- B. Pursuant to the DDA, the City agreed to lease the Property for the construction and operation of the Development. Specifically, the Development includes: the BHC Improvements, which are approximately 89 units of affordable housing to be constructed and owned by an affiliate of BRIDGE Housing Corporation (the "**BRIDGE Development**"); the BFHP Permanent Improvements, which consist of

approximately 53 units of supportive housing; and, the BFHP Temporary Improvements, which consist of temporary housing (approximately 44 beds), a services center and administrative office space. The BFHP Permanent Improvements and the BFHP Temporary Improvements are commonly referred to, collectively, as the "**BFHP Hope Center**".

- C. BRIDGE previously assigned its rights pertaining to the BFHP Hope Center to BFHP LP. BRIDGE now desires to assign its remaining rights and obligations under the DDA, specifically those pertaining to the BRIDGE Development, to BRIDGE LP and BRIDGE LP desires to assume such rights and obligations.
- D. The Parties also desire to clarify certain transaction details pertaining to the Development.

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the Parties hereto and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

1. Development Schedule. Section 2.3 (a) of the DDA is deleted and replaced in its entirety with the following, to reflect the current Development Schedule: "The Development Schedule is attached to the Partial Assignment and Third Amendment to Disposition and Development Agreement dated \_\_\_\_\_, 2020, as Exhibit B."

2. Development Services Agreement. DDA Section 2.4 is hereby amended and restated to read in full as follows:

**Section 2.4 Joint Development Agreement and Developer Agreements.** On or before the date set forth in the Development Schedule (i) BHC LP shall enter into a Joint Development Agreement and Cost Allocation Agreement ("JDA") which will set forth the manner in which BHC LP and BFHP LP will develop and construct the Development in a coordinated and efficient manner consistent with the requirements of the DDA and (ii) BHC LP and BFHP LP will engage BRIDGE to provide predevelopment and preconstruction services for the Development pursuant to a Predevelopment Services Agreement among BHC LP, BFHP LP and BRIDGE, which will be replaced at Close of Escrow by two Development Services Agreements (one for the BHC Improvements and one for the BFHP Hope Center) to provide construction phase services for the Development (collectively, the ("Developer Agreements")). The Developer Agreements and the JDA are subject to the prior approval of the City. References in the Agreement to "Master LLC Agreement" or "DSA" are hereby replaced with JDA.

3. Final Subdivision Map. DDA Section 2.18 is hereby amended and restated to read in full as follows:

**Section 2.18 Final Subdivision Map.** On or before the Close of Escrow, the Developer shall apply for final approval by the City of the Final Subdivision

Map, and all applicable time periods required by law to render such approvals free from legal challenge shall have expired without challenge. If the foregoing cannot be completed by Close of Escrow, the City may convey the applicable portions of the Property to the Permitted Lessee by metes and bounds descriptions. If the Developer obtains a Final Subdivision Map for the Property, the City will cooperate in connection with the recordation of such Map.

4. Hazardous Materials. DDA Section 6.2 is hereby amended and restated to read in full as follows:

**Section 6.2 Hazardous Materials.**

(a) Certain Covenants and Agreements. The Developer hereby covenants and agrees that:

(1) The Developer shall not knowingly permit the Development or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials or otherwise knowingly permit the presence of Hazardous Materials in, on or under the Development.

(2) The Developer shall keep and maintain the Development and each portion thereof in compliance with, and shall not cause or permit the Development or any portion thereof to be in violation of, any Hazardous Materials Laws.

(3) Upon receiving actual knowledge of the same the Developer shall immediately advise the City in writing of: (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Developer or the Development pursuant to any applicable Hazardous Materials Laws; (ii) any and all claims made or threatened by any third party against the Developer or the Development relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in the foregoing clause (i) and this clause (ii) are hereinafter referred to as "**Hazardous Materials Claims**"); (iii) the presence of any Hazardous Materials in, on or under the Development; or (iv) the Developer's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Development classified as "borderzone property" under the provisions of California Health and Safety Code, Sections 25220 et seq., or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Development under any Hazardous Materials Laws. The City shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims, and to have its reasonable attorney's fees in connection therewith paid by Developer.

(4) Without the City's prior written consent, which shall not be unreasonably withheld, and which the City shall promptly grant or deny, the Developer shall not take any remedial action in response to the presence of any Hazardous Materials on, under, or about the Development (other than in emergency situations or as required by governmental agencies having jurisdiction in which case the City agrees to provide its consent), nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials Claims.

(b) Indemnity. Without limiting the generality of the indemnification set forth in Section 9.7 below, the Developer hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the City) the City, its council members, officers, and employees from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, attorney's fees and expenses), arising directly or indirectly, in whole or in part, out of:

(1) The failure of the Developer, or any other person or entity to comply with any Hazardous Materials Law relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials into, on, under or from the Development; or

(2) The presence in, on or under the Development of any Hazardous Materials or any releases or discharges of any Hazardous Materials into, on, under or from the Development; or

(3) Any activity carried on or undertaken on or off the Development, subsequent to the lease of the Property as provided in this Agreement, and whether by the Developer or any successor in title or any employees, agents, contractors or subcontractors of the Developer or any successor in title, or any third persons at any time occupying or present on the Development, in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials at any time located or present on or under the Development.

The foregoing indemnity shall further apply to any residual contamination on or under the Development, or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws. The provisions of this subsection shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

(c) No Limitation. The Developer hereby acknowledges and agrees that the Developer's duties, obligations and liabilities under this Agreement, including, without limitation, under subsection (b) above, are in no way limited or otherwise affected by any information the City may have concerning the Development and/or the presence within the Development of any Hazardous Materials, whether the City obtained such information from the Developer or from its own investigations.

5. REA or Reciprocal Easement Agreement. As used in the DDA, the REA will include the REA governing operations of the Development (the "REA 1") and the REA governing operations of the Hope Center Property (the "REA 2"); provided that obligations under the DDA pertaining to the REA 2 will only be applicable to the BFHP Hope Center and the Hope Center Property.

6. Assignment. BRIDGE hereby assigns and delegates to BRIDGE LP, and BRIDGE LP hereby accepts from BRIDGE, BRIDGE's remaining rights and obligations under the DDA pertaining to the BRIDGE Development. BRIDGE LP hereby accepts the above assignment and hereby assumes, agrees, and undertakes to perform all of the obligations, liabilities, covenants, and agreements of BRIDGE pursuant to the DDA as such relate to the BRIDGE Development. As contemplated in Section 2.5 of the DDA, BRIDGE is hereby released from any and all obligations under the DDA, as amended by this Third Amendment, arising after the date of this Third Amendment. Nothing in this Section 4 limits or modifies Section 2.10 of the DDA pertaining to the guaranties of completion of the development of the Property in accordance with the DDA or BRIDGE's obligations under the Developer Agreements.

7. Agreement on Leases. Notwithstanding anything to the contrary in the DDA, including Section 2.8 of the DDA, the City, BFHP LP and BRIDGE LP seek to clarify that the term "Leases" at closing means: (1) one ground lease between BRIDGE LP and the City for the BHC Parcel; (2) one ground lease between BFHP LP and the City for the BFHP Permanent Parcel; and (3) one ground lease between BFHP LP and the City for the BFHP Temporary Parcel. References in the DDA to the Lease for the Hope Center Property mean the leases described in (2) and (3) above. Following completion of construction of the Temporary Improvements, the BFHP Temporary Parcel Lease will be assigned to the BFHP Entity, and the BFHP Temporary Improvements will be transferred to the BFHP Entity, subject to the consent of the Hope Center lenders and investors.

8. Termination of DDA. Excepting those provisions which will be specified to survive and which will be identified in an Exhibit in the Leases, the DDA will terminate in its entirety at Close of Escrow.

9. Further Assurances. The Parties agree to take such further actions as may be necessary or advisable to effectuate, confirm or document the amendment contemplated hereby, which is consistent with this Third Amendment and not otherwise consistent with the DDA.

10. Successors and Assignor. This Third Amendment shall be binding upon and shall inure to the benefit of each party hereto and its successors and assignors.

11. Effective Date. This Third Amendment shall be effective as of the Effective Date.

12. California Law. This Third Amendment shall be governed by and interpreted in accordance with the laws of the State of California.

13. Counterparts. This Third Amendment may be signed in counterparts, each of which shall constitute one and the same instrument.

SIGNATURES FOLLOW ON NEXT PAGE

IN WITNESS WHEREOF, the Parties have executed this Third Amendment as of the Effective Date.

BRIDGE LP:

BRIDGE Berkeley Way LP,  
a California limited partnership

By: BRIDGE Berkeley Way LLC,  
a California limited liability company,  
its general partner

By: BRIDGE Housing Corporation,  
a California nonprofit public benefit  
corporation,  
its co- member

By: \_\_\_\_\_  
Smitha Seshadri, Senior Vice  
President

BRIDGE:

BRIDGE HOUSING CORPORATION,  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Smitha Seshadri,  
Senior Vice President

NOTE: SIGNATURE MUST BE NOTARIZED

[SIGNATURE PAGES CONTINUE]

BFHP LP:

BFHP Hope Center LP,  
a California limited partnership

By: Hope Center Housing LLC,  
a California limited liability company,  
its general partner

By: BRIDGE Housing Corporation,  
a California nonprofit public benefit  
corporation,  
its co- member

By: \_\_\_\_\_  
Smitha Seshadri, Senior Vice President

By: Berkeley Food and Housing Project,  
a California nonprofit religious corporation,  
its co- member

By: \_\_\_\_\_  
Executive Director

NOTE: SIGNATURE MUST BE NOTARIZED

[SIGNATURE PAGES CONTINUE]

CITY:

CITY OF BERKELEY, a charter city

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

Name: B.D. Williams

Its: City Manager

APPROVED AS TO FORM

\_\_\_\_\_  
City Attorney

NOTE: SIGNATURE MUST BE NOTARIZED

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public



1-14-2020

Exhibit B

**GROUND LEASE  
2012 BERKELEY WAY  
(Berkeley Way BRIDGE Affordable Apartments)**

by and between

**CITY OF BERKELEY  
("Landlord")**

and

**BRIDGE Berkeley Way LP, a California Limited Partnership**

**("Tenant")**

Dated \_\_\_\_\_, 2020

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**BASIC LEASE INFORMATION**  
**(Ground Lease - Berkeley Way BRIDGE Affordable Apartments)**

1. **“Landlord”**

CITY OF BERKELEY, a Charter city

Notice Address:

City of Berkeley  
2180 Milvia Street  
Berkeley, California 94704  
Attention: City Manager  
Telephone: (510) 981-7000  
Facsimile: (510) 981-7099

With a copy to:

City of Berkeley  
2180 Milvia Street, 4<sup>th</sup> floor  
Berkeley, California 94704  
Attention: City Attorney  
Telephone: (510) 981-6991  
Facsimile: (510) 981-6960

And

City of Berkeley HHCS  
2180 Milvia Street, 2<sup>nd</sup> floor  
Berkeley, California 94704  
Attention: Housing & Community Services Manager  
Telephone: (510) 981-5400  
Facsimile: (510) 981-5450

2. **“Tenant”**

BRIDGE Berkeley Way

Notice Address:

BRIDGE Berkeley Way LP  
c/o BRIDGE Housing Corporation  
600 California Street, Suite 900  
San Francisco, CA 94108  
Attn: General Counsel

3. **“Ground Lease Date”**

The date set forth in the first paragraph below.

4. **“DDA”**

That certain Disposition and Development Agreement (Berkeley Way Development), originally dated June 8, 2016 between Landlord and Bridge Housing Corporation, a California nonprofit public benefit corporation, as amended by First Amendment to Disposition and Development Agreement dated August 27, 2018, as partially assigned to BFHP Hope Center LP pursuant to that certain Partial Assignment and Assumption Agreement dated December 17, 2018 and recorded in Official Records of Alameda County on December 21, 2018 as Instrument No. 18-241567, as amended by the Second Amendment to Disposition and Development Agreement, dated February 1, 2019 and recorded in

**BASIC GROUND LEASE INFORMATION**  
**(Ground Lease - Berkeley Way BRIDGE Affordable Apartments)**

Official Records of Alameda County on February 14, 2019 as Instrument No. 2019029062, and as further partially assigned to Tenant and amended pursuant to that certain Assignment and Third Amendment to DDA dated \_\_\_\_\_, 2020 and recorded in Official Records of Alameda County on \_\_\_\_\_, 2020 as Instrument No. \_\_\_\_\_. See **Exhibit C** hereto.

5. **“Premises”**

The Premises is described in **Exhibit A**, being primarily Parcel C of the Parcel Map (defined below).

6. **“Development Site” or “Site”**

That certain approximately 1-acre (approximately 41,000 square feet) parcel of real property generally located at 2012 Berkeley Way, between Milvia Street and Shattuck Avenue (previously APN 57-2053-22-1) in the City of Berkeley, which is the subject of the DDA.

The Development Site has been divided into three parcels, pursuant to that certain Parcel Map 11051, filed \_\_\_\_\_, 2020 in Book \_\_\_ of Parcel Maps, Pages \_\_\_ and \_\_\_, Alameda County Records (the **“Parcel Map”**), a copy of which is attached hereto as **Exhibit B**. Generally, the three parcels are the **“BRIDGE Affordable Parcel”** (Parcel Map Parcel C), the **“Permanent Supportive Housing Parcel”** (Parcel Map Parcel A), and the **“Temporary Housing Parcel”** (Parcel Map Parcel B).

7. **“Development” or “Project”**

The entire development project to be planned, entitled, developed, financed, designed, constructed, operated and maintained on the Development Site. The overall Development is a six story building with approximately 140,000 square feet of gross interior floor space, with associated landscaping and hardscape, and includes:

- The Temporary Housing Parcel and the Temporary Housing Improvements. The **“Temporary Housing Improvements”** consists of approximately 44 beds of temporary housing, a services center and administrative office space. The Temporary Housing Improvements are located within the Temporary Housing Parcel.
- The Permanent Supportive Housing Parcel and the Permanent Supportive Improvements. The **“Permanent Supportive Housing Improvements”** consist of approximately 53 permanent supportive housing units and supportive service spaces. The Permanent Supportive Housing Improvements are located within the Permanent Supportive Housing

**BASIC GROUND LEASE INFORMATION**  
**(Ground Lease - Berkeley Way BRIDGE Affordable Apartments)**

Parcel.

- The BRIDGE Affordable Parcel and the BRIDGE Improvements. The “**BRIDGE Improvements**” consist of 89 affordable housing units (including one manager’s unit) and related improvements. The BRIDGE Improvements are located within the BRIDGE Affordable Parcel.

8. “**Permitted Use**” Affordable housing, subject to the Regulatory Requirements and all other provisions of this Ground Lease.
9. “**Premises Improvements**” The BRIDGE Improvements, collectively, together with all additions, alterations, modifications, replacements and improvements from time to time pursuant to this Ground Lease.
10. “**REA 1**” or “**Site REA**” or “**Berkeley Way REA**” That certain Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for Berkeley Way, dated \_\_\_\_\_, 2020, executed by the City of Berkeley and BRIDGE Berkeley Way LP and BFHP Hope Center LP, and recorded in Alameda County Records on \_\_\_\_\_, 2020 as Instrument No. \_\_\_\_\_, substantially in form attached hereto as **Exhibit D**.
11. [Intentionally Omitted]
12. “**Regulatory Requirements**” Includes, collectively, (i) that certain Regulatory Agreement and Declaration of Restrictive Covenants (Berkeley Way BRIDGE Affordable Apartments), dated \_\_\_\_\_, 20\_\_\_\_, between Landlord and Tenant and recorded in Official Records of Alameda County on \_\_\_\_\_, 2020 as Instrument No. \_\_\_\_\_, and any amendments approved by Landlord and Tenant, and (ii) any regulatory or affordability agreement or other covenant, condition or restriction in favor of Landlord and recorded against the Premises.
13. “**Leasehold Mortgagee**” Means the Leasehold Mortgagees identified in **Exhibit F** attached hereto or any entity holding a Leasehold Mortgage. See also ARTICLE 14 below.
14. “**Leasehold Mortgage**” Means any mortgage, deed of trust, trust indenture, letter of credit, or other security instrument, and any assignment of the rents, issues, and profits burdening the Premises, or any portion thereof, that constitutes a lien on the leasehold

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estate created by this Ground Lease.

15. **“Senior Leasehold Mortgagee”** Means the Senior Leasehold Mortgagee identified in **Exhibit F** attached hereto or any subsequent lender and its successors, assigns and participants or other entity holding the first lien deed of trust on the leasehold estate created by this Ground Lease.
16. **“Investor(s)”** *[to be provided, including notice addresses]*
17. **“Term”** The period of time commencing on the Ground Lease Date and ending on the last day of the month in which the 75<sup>th</sup> anniversary of the Ground Lease Date occurs, subject to earlier termination as provided elsewhere in this Ground Lease.
18. **“Developer”** BRIDGE Housing Corporation, a California nonprofit public benefit corporation.
19. **[Intentionally Omitted]**
20. **“JDA”** Joint Development Agreement, dated \_\_\_\_\_, 20\_\_ between Tenant and BFHP Hope Center LP, a California limited partnership.
21. **“Developer Agreement”** Prior to the Ground Lease Date, the Development Services Agreement, dated \_\_\_\_\_, 20\_\_ among Developer, Tenant and BFHP Hope Center LP, a California limited partnership; and after the Ground Lease Date the Development Services Agreement, dated \_\_\_\_\_, 20\_\_ between Developer and Tenant.
22. **“Construction Schedule”** The final approved Construction Schedule for the Premises and Project, as amended from time to time pursuant to ARTICLE 5 below.
23. **[Intentionally Omitted]**
24. **“Premises Substantial Completion”** Obtaining a temporary certificate of occupancy for the Premises and Project.
25. **“Premises Substantial Completion Date”** The earlier of 40 months following the commencement of Project construction and July 31, 2024.
26. **“Guarantor” and “Completion Guaranty”** Developer, as **[Guarantor]** under that certain **[Construction Completion Guaranty]** in favor of the Landlord, dated on or about the Ground Lease Date,

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together with such changes as Landlord may approve.

- 27. **“Base Rent”** \$500 for the entire Term.
- 28. **“Additional Rent”** Is defined in Section 3.3 below.
- 29. **“Interest Rate”** The maximum rate permitted under Section 1(2) of Article XV of the California Constitution.
- 30. **“County”** The County of Alameda, California.
- 31. **“State”** The State of California.
- 32. **“City”** City of Berkeley, California.
- 33. **“Code”** The Internal Revenue Code of 1986, as amended from time to time.
- 34. **“CPI”** The Consumer Price Index (1982-84=100) for all Urban Consumers published by the United States Department of Labor, Bureau of Labor Statistics for the San Francisco-Oakland-Hayward area, or any successor thereof.
- 35. **“City Financing Documents”** See Section 1.2 below and **Exhibit G** attached hereto.

The Basic Ground Lease Information set forth above and the Exhibits attached hereto are incorporated into and made a part of the following Ground Lease.

**LANDLORD'S INITIALS** \_\_\_\_\_

**TENANT'S INITIALS** \_\_\_\_\_

**GROUND LEASE  
2012 BERKELEY WAY  
(Berkeley Way BRIDGE Affordable Apartments)**

THIS GROUND LEASE (“Ground Lease”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2020 (the “Ground Lease Date”), by and between the Landlord and Tenant identified in the Basic Ground Lease Information, who agree as follows:

**ARTICLE 1.  
OVERVIEW AND GENERAL**

**1.1 Overview.**

A. General Purpose of Development; Authority. Landlord owns the Site. Landlord entered into the DDA to cause the construction and operation of the Development on the Site for temporary, affordable and permanent supportive housing, and homeless services to help address the City’s homeless and affordability crisis, existing as of the Ground Lease Date. This Ground Lease facilitates one component of the Development. Landlord is entering into two additional ground leases, with an affiliate of Tenant, to implement the other two components of the Development, which components are further described in Basic Ground Lease Information Section 7. In the event of a conflict between the DDA and this Ground Lease, this Ground Lease supersedes the DDA and will control. (See also Exhibit C hereto.) Landlord’s execution of this Ground Lease and the additional ground leases was authorized by City Council Resolution No. AAAA-N.S. attached hereto as Exhibit E.

B. Specific Purpose of Ground Lease. Landlord is entering into this Ground Lease to permit Tenant to construct, operate and maintain the Premises Improvements for the Permitted Use.

C. Regulatory Requirements. The parties intend that the Regulatory Requirements will survive for the full term therein, notwithstanding any prior termination or expiration of this Ground Lease or (except as provided in ARTICLE 14) foreclosure of any Permitted Leasehold Mortgage.

D. City Financing Documents. Nothing in this Ground Lease shall limit any City right under any regulatory or financing agreements between the City and Tenant (or by Tenant for the benefit of City), or under any Regulatory Requirement.

**1.2 Ground Lease and Possession.** For and in consideration of the payment of Rent and the performance of all the covenants and conditions of this Ground Lease, as of the Ground Lease Date Landlord hereby leases and demises to Tenant, and Tenant hereby leases and hires from Landlord, the Premises, for the Term and upon the covenants and conditions set forth herein. On the Ground Lease Date, Tenant shall obtain exclusive possession of the Premises.

**1.3 Ownership of Premises Improvements.** At all times during the Term of this Ground Lease, (i) the Premises Improvements shall be owned by Tenant, (ii) Tenant alone shall be entitled to all of the tax attributes of ownership, including, without limitation, the right to claim depreciation or cost recovery deductions and the right to claim the low-income housing tax credit described in Section 42 of the Internal Revenue Code of 1986, as amended, and (iii)

Tenant shall have the right to amortize capital costs and to claim any other federal or state tax benefits attributable to the Premises Improvements.

**1.4 Changes to Premises and Parcel Map.** Tenant shall not alter the definition of the Premises, modify the Parcel Map, or further subdivide, by map, subdivision map, or otherwise, the Premises or any portion thereof, without the prior written consent of Landlord, which Landlord may grant or withhold in its sole discretion. Nothing in this Section shall prevent Tenant from entering into residential leases as provided herein and in the Regulatory Agreement.

**1.5 Tenant's Organizational Documents.** Tenant has previously provided Landlord with correct and complete copies of organizational documents for itself and (as applicable) its general partner(s) and managing member(s), including without limitation articles of organization, certificates of limited partnership, limited partnership agreements, limited liability company agreements, and the like. Tenant will provide Landlord copies of all amendments and modifications promptly following adoption thereof, and copies of such other organizational documents as Landlord may reasonably request from time to time. Any such amendment or modification which materially alters Landlord's rights herein (such as by giving new rights to Investors), or under the Site REA or Regulatory Requirements is subject to Landlord's reasonable consent.

**ARTICLE 2.  
GROUND LEASE TERM**

**2.1 Term.** The Term of this Ground Lease shall be as set forth in the Basic Ground Lease Information.

**ARTICLE 3.  
RENT**

**3.1 Rent.** Tenant shall pay the Base Rent specified in the Basic Ground Lease Information on or before the Ground Lease Date. Base Rent and any Additional Rent (collectively, "**Rent**") shall be paid without notice or demand, and, except as specifically provided for in this Ground Lease, without offset, deduction or credit. All Rent (other than Additional Rent payable to entities other than Landlord) shall be payable in lawful money of the United States to Landlord at the address stated herein or to such other persons or at such other places as Landlord may designate from time-to-time in writing.

**3.2 No Cost to Landlord: No Counterclaim, No Abatement.** Except as otherwise expressly provided in this Ground Lease, all Rent payable under this Ground Lease shall be absolutely net to Landlord. Except as otherwise expressly provided in this Ground Lease, Tenant shall pay Rent without assertion of any counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction.

**3.3 Additional Rent.** "**Additional Rent**" means all sums, Impositions (as defined in Section 4.1 below), costs, expenses, and other payments for which Tenant is responsible pursuant to this Ground Lease. Tenant's obligation to pay Additional Rent shall begin to accrue on the Ground Lease Date and shall continue to accrue throughout the Term. Additional Rent shall be payable by Tenant to the appropriate party on or before the date required by this Ground Lease. In addition to and not by way of limitation of Landlord's rights under specific provisions of this Ground Lease, Landlord shall at all times have the right (at its

sole election and without any obligation to do so) to advance on behalf of Tenant any amount, subject to Tenant's right to contest such charges and provided that (except in case of emergency calling for immediate payment) Landlord shall first have given Tenant no less than 10 business days' advance written notice of Landlord's intent to advance such amounts on behalf of Tenant. No advance by Landlord shall operate as a waiver of any Landlord right under this Ground Lease and Tenant shall remain fully responsible for the performance of its obligations under this Ground Lease. All amounts advanced by Landlord as provided in this Section shall constitute "**Additional Rent**" under this Ground Lease, shall be due and payable by Tenant to Landlord within five business days of Tenant's receipt of an invoice from Landlord therefor, and shall bear interest at the Interest Rate until paid in full.

**3.4 Additional Consideration.** In addition to the Rent and Additional Rent provided for herein, consideration for this Ground Lease shall also be and is Tenant's full and complete compliance with all terms, conditions, warranties and covenants contained in the Regulatory Requirements and this Ground Lease relating to the planning, entitling, developing, financing, designing, constructing, operating and maintaining the Premises and Premises Improvements.

#### **ARTICLE 4. TAXES AND ASSESSMENTS; SERVICES AND UTILITIES**

**4.1 Impositions.** Tenant shall pay or cause to be paid, when due to the proper authority, any and all valid taxes, assessments, impositions, fees and similar charges on the Premises or Premises Improvements which become effective after the Ground Lease Date, including all taxes levied or assessed on the possession, use or occupancy of the Premises (as distinguished from the ownership of the Premises), and all taxes levied or assessed on the ownership, possession, use or occupancy of the Premises Improvements (collectively, "**Impositions**"). Tenant shall not permit any Impositions to become a defaulted lien on the Premises or Premises Improvements; provided, however, that in the event any Imposition is payable in installments, Tenant may make, or cause to be made, payment in installments; and, provided further, that Tenant may contest the legal validity or the amount of any tax, assessment, imposition, fee or similar charge, through such proceedings as Tenant considers necessary or appropriate, and Tenant may defer the payment thereof so long as the validity or amount thereof shall be contested by Tenant in good faith and without expense to the Landlord. In the event of any such contest, Tenant shall protect, defend and indemnify the Landlord against all loss, cost, expense or damage resulting there from, and should Tenant be unsuccessful in any such contest, Tenant shall forthwith pay, discharge, or cause to be paid or discharged, such tax, assessment, imposition, fee or other similar charge. Landlord hereby consents to and shall reasonably cooperate and assist with Tenant applying for and obtaining any applicable exemptions from taxes or assessments levied on the Premises, the Premises Improvements and on Tenant's interest therein. Tenant shall have no obligation to pay Impositions pursuant to this Section that are due and payable prior to the Ground Lease Date, including without limitation any taxes, assessments, impositions, fees or other charges levied against the Premises which are incurred prior to the Ground Lease Date. Any Imposition relating to a period, only a part of which is included within the Term, shall be prorated as between Landlord and Tenant so that Landlord shall pay (if Landlord is subject to such Impositions) the portion of Impositions attributable to any period prior to the Ground Lease Date or subsequent to the expiration of this Ground Lease, and Tenant shall pay the portion thereof attributable to any period during the Term. Nothing contained in this Ground Lease shall be deemed to require the payment by Tenant of any income, franchise, estate, inheritance, succession or capital levy tax of Landlord.

**4.2 Statement Regarding Possessory Interest Tax.** This Ground Lease creates a possessory property interest in Tenant. Tenant acknowledges and agrees that Tenant's leasehold and/or other real property interests may be subject to property taxation, and Tenant or the party in whom the possessory property interest is vested may be subject to the payment of property taxes levied on the interest. Such taxes (unless Tenant establishes an exemption) shall be paid by Tenant as part of Impositions as provided in this Ground Lease.

**4.3 Services and Utilities.** Tenant shall pay, or cause to be paid, all charges that are incurred by Tenant or that might be a charge or lien against the Premises or Premises Improvements for gas, water, electricity, telephone or other communication service, janitorial service, debris removal, or any other utility or service used, rendered or supplied upon or in connection with the Premises Improvements, throughout the Term ("**Utilities**"). Such charges shall include the cost of installing and metering such utility services. Tenant shall maintain, repair and (if necessary) replace all Utility facilities and installations in, on, about or otherwise serving the Premises or Premises Improvements. Landlord grants to Tenant the right to grant to public entities or public service corporations, for the purpose of serving only the Premises during the Term of this Ground Lease, rights-of-way or easements on or over the Site, for poles or conduits or both, and for other utilities and municipal or special district services; provided, however, that Tenant shall not grant any such rights of way or easements that would adversely affect or create safety problems in connection with the use or operation, or access to and from, the Permanent Supportive Housing Parcel or Temporary Housing Parcel, or any adjoining property. Landlord shall join in the execution of or consent to any such any such rights of way or easements. Tenant shall promptly provide to Landlord copies of all rights-of-way and easements so granted. Tenant, or third parties other than Landlord, shall bear all costs and expenses incurred in connection with the granting of any such rights-of-way and easements.

**ARTICLE 5.  
DEVELOPMENT OF PREMISES IMPROVEMENTS; ALTERATIONS**

**5.1 General** Tenant shall plan, entitle, develop, finance, design and construct the Premises Improvements on the Premises pursuant to and in compliance with all the terms and conditions set forth in DDA Article 5, this ARTICLE 5, the JDA, the Developer Agreement and the Construction Schedule. In the event of any conflict between this Ground Lease and the DDA, this Ground Lease shall control. Without limiting the foregoing:

A. Tenant shall notify Landlord regarding (i) any material breaches or defaults, and (ii) any schedule issues that may impair Tenant's ability to substantially complete the Premises Improvements prior to the date contained in the latest Construction Schedule; and

B. Tenant shall require its General Contractor performing the initial construction of the Premises Improvements to prepare all schedule updates required by the Construction Contract and promptly provide copies to Landlord.

**5.2 Commencement and Completion of Construction.** Tenant shall commence construction of the Premises Improvements no later than 30 days following the Ground Lease Date, and shall use diligent efforts to complete construction (subject to Force Majeure delays as defined in delays as defined in Section 15.4 below) no later than the Premises Substantial Completion Date. As between Tenant and Landlord, Tenant shall bear all costs and expenses to complete, or cause the completion of, the Premises Improvements within the time period set forth in the Construction Schedule, including without limitation any cost

overruns and changes (regardless of Landlord's approval of any changes) for the Premises Improvements.

### **5.3 Prior Development Matters**

A. Site and Title Approvals. By its execution and delivery of this Ground Lease, Tenant confirms that it has approved all matters relating to the Site and title matters, as provided in DDA Sections 2.6, 2.7 and 4.5.

B. City and Governmental Approvals; CEQA Litigation. By its execution and delivery of this Ground Lease, Tenant and Landlord confirm that Tenant has obtained all City Approvals (as defined in the DDA). Tenant confirms that it has obtained all other governmental approvals necessary for the development and operation of the Premises and the Premises Improvements, as provided in DDA Section 2.11. If any third party commences litigation objecting to or otherwise challenging any action or omission under California Environmental Quality Act (“CEQA”) with respect to the Premises or any of Landlord's land use approvals relating to this Ground Lease, the Premises Improvements or the use or occupancy thereof, Tenant shall indemnify, hold harmless and defend Landlord (with defense counsel selected by Tenant and reasonably acceptable to Landlord) for any and all liabilities, losses, costs or expenses, including attorney fees or fees for the use of experts or consultants, incurred as a result of any such claim, litigation or challenge. No settlement shall be entered into without Landlord's full consent and approval.

C. Construction Drawings and Specifications. By its execution and delivery of this Ground Lease, Tenant and Landlord confirm that Tenant has obtained all required City approvals for the Final Construction Drawings in accordance with DDA Sections 2.17 and 3.4.

**5.4 Non-Responsibility of Landlord.** Tenant shall be solely responsible for all aspects of its conduct in connection with the Premises Improvements, including, but not limited to, the quality and suitability of the final drawings and specifications, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review, inspection or approval undertaken by Landlord is solely for the purpose of determining whether the Tenant is properly discharging its obligations to Landlord, and should not be relied upon by Tenant, Developer or any other third parties as a warranty or representation by Landlord as to the quality of the design or construction of the Premises Improvements.

**5.5 No Change in Project Documents.** From and after the Ground Lease Date until Premises Substantial Completion, except as set forth in DDA Section 5.1, Tenant shall not make any Material Change to the Final Construction Drawings or permit others to make any Material Change without the Landlord's prior written approval. As used in this Section 5.5 “**Material Change**” means (i) any change in the work the cost of which exceeds Two Hundred Fifty Thousand Dollars (\$250,000); or (ii) any set of changes in the work the cost of which cumulatively exceeds Five Hundred Thousand Dollars (\$500,000); or (iii) any material change in building materials or equipment, or the structural or architectural design or appearance of the Development as provided for in the plans and specifications approved by the City Building Department. From and after the Ground Lease Date until Premises Substantial Completion, Tenant shall not make any changes to the Construction Schedule or permit others to do so, without the Landlord's prior written approval, which shall not unreasonably be withheld.

## 5.6 Alterations.

A. Alterations shall also be governed by this Ground Lease, including without limitation applicable provisions of this ARTICLE 5. “**Alterations**” include modifications or additions to the Premises Improvements following Premises Substantial Completion, including without limitation Material Alterations. “**Material Alterations**” means (a) the construction of any new additional building or structure, (b) an increase in the bulk or height of the Premises Improvements, (c) any material alteration of exterior architectural designs, colors or materials (unless the applicable exterior component is not reasonably available or does not meet current code requirements, and Tenant uses materials of equal quality, durability, design standards, and appearance to the materials originally installed), or (d) reconstruction following fire or other casualty in excess of \$300,000 (subject to adjustment pursuant to the CPI from and after the Ground Lease Date). Any Alterations shall be in compliance with applicable Laws and permits, shall at all times be of first-class construction and architectural design. Material Alterations shall be in accordance with all plans and specifications therefor submitted to and approved by Landlord as set forth below. No material changes to such approved plans and specifications shall be made without Landlord’s prior written approval. All Alterations shall be diligently prosecuted, completed, and accomplished without cost or expense to Landlord, by licensed contractors, and in a first-class and workmanlike manner.

B. Except with Landlord’s prior written consent, which may be granted or denied in Landlord’s reasonable discretion, Tenant shall not make or cause to be made any Material Alterations as set forth below. If Tenant at any time following Premises Substantial Completion desires to undertake any Material Alterations, Tenant shall, prior to the commencement of such work, prepare or cause to be prepared, at its sole expense, and shall submit to Landlord for its review, cost estimates, plans and specifications for such work, showing, without limitation, scaled elevations, scaled floor plans, design concepts, dimensions, material selection, colors, signing (if any) and such additional information as is reasonably requested by Landlord to make an informed decision on such submission. The plans and specifications shall comply with this Ground Lease and shall be in compliance with applicable Laws. Landlord shall approve or disapprove such submitted plans within 30 days of receipt of complete plans and specifications meeting the requirements of this subsection. In the event Landlord disapproves a submittal pursuant to this Section, Landlord shall submit a list of reasons for the disapproval to the Tenant together with its notice of such disapproval. Failure of the Landlord to approve or disapprove such plans and specifications within such 30-day period shall be deemed to be Landlord’s disapproval. Nothing herein or in any other agreement relating to the Development shall require Landlord to approve Material Alterations which would cause the Building (including any solar canopy or other energy facilities) to be greater than 206 feet high or include more than 167,000 interior square feet.

**5.7 Construction Standards.** The following standards (as applicable) shall apply to the design and construction of all Premises Improvements and Alterations under this Ground Lease.

A. Approval of Contractor and Materials. Landlord’s approval of Tenant’s contractor or other person engaged to perform the work is required for all Premises Improvements and Alterations with an aggregate cost exceeding \$250,000 (subject to adjustment pursuant to the CPI from and after the Ground Lease Date) for any single instance, and for such other matters as Landlord may request from time to time.

B. Contracts, Plans and Specifications. Subject to the rights of Leasehold Mortgagees and Tenant's Investor, all contracts with any architect, other design professional or any general contractor for the original construction of the Premises Improvements or the construction of Material Alterations shall provide for the assignment thereof to Landlord as security to Landlord for Tenant's performance hereunder.

C. General Construction Standards. Except as otherwise expressly provided in this Ground Lease, all Tenant construction contractors and subcontractors shall be licensed. Tenant shall require any general contractor to institute an appropriate safety program to assure the safety and convenience of all persons. In addition, Tenant shall pay (or cause to be paid) all costs and expenses associated with Tenant's work and shall indemnify, defend and hold Landlord harmless from all liabilities, damages, losses or claims attributable to the Tenant's construction of the Premises Improvements, or of any subsequent Alterations on or about the Premises, as the case may be, and the performance of Tenant's work. Dust, noise and other effects of Tenant's work shall be controlled by Tenant as required by the applicable conditions of approval of the Premises Improvements and applicable Laws so as to minimize deleterious effects associated with construction projects in a populated or developed area. Tenant shall identify an individual representative to address any neighborhood complaints related to its construction work and Tenant shall respond promptly to any neighborhood complaints. Tenant shall be required, at Tenant's expense, to obtain any and all air quality and other permits required of Tenant in connection with Tenant's construction.

D. Public Safety. Without limiting the generality of the Subsection 5.7C above, as between Landlord and Tenant, Tenant shall have the sole responsibility for implementing all necessary safeguards for the protection of workers and the public.

E. Permits. To the extent that any Premises Improvements or Alterations require a building permit or other permits from the City of Berkeley and/or any other governmental agency, Tenant shall not perform any Alterations until Tenant has obtained all requisite permits.

F. Prevailing Wage Laws. Tenant shall comply with all prevailing wage requirements of California Labor Code Sections 1720 et seq. Tenant agrees that to the extent it is required to comply with the prevailing wage requirements, Tenant shall assure that all workers are paid the general prevailing rate of per diem wages and the general per diem prevailing rate for holiday and overtime work as defined by applicable Laws (including without limitation Labor Code Section 1773.1) in effect from time to time. Copies of the applicable prevailing rate of per diem wages are on file at Landlord's principal office and will be made available to any interested party on request. Tenant agrees to post a copy of the prevailing rate of per diem wages at the Premises. Tenant, as a penalty, shall forfeit the amount then-specified by applicable Law for each calendar day, or portion thereof (or such other sum as specified from time to time by Section 1775 of the California Labor Code or other applicable law), for each worker paid less than the applicable prevailing rates for such work or craft in which such worker is employed. Unless otherwise specified by Law, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Tenant.

G. Compliance With JDA and Developer Agreement. During the initial construction of the Project, Tenant shall comply with its obligations under the JDA and Developer Agreement.

H. Insurance. See ARTICLE 9 below.

I. Utility Work. Any work performed by or on behalf of Tenant or any occupant or subtenant to connect to, repair, relocate, maintain or install any storm drain, sanitary sewer, water line, gas line, telephone conduit or any other public utility service shall be performed so as to minimize interference with the provision of such services to other property owners and occupants.

**5.8 Protection of Landlord**. Landlord shall have the right at all reasonable times to post, and keep posted, on the Premises and Premises Improvements any notices which Landlord may reasonably deem necessary for the protection of Landlord and of the Premises and Premises Improvements from mechanics' liens or other claims. Tenant shall give Landlord 10 days' prior written notice of the commencement of any Alterations that could give rise to mechanics' liens to be done on or about the Premises or Premises Improvements to enable Landlord to post such notices. In addition, Landlord may in its discretion require Tenant to furnish to Landlord at Tenant's expense reasonable improvement security, including performance and labor and materials bonds, prior to commencement of any Material Alterations. Tenant shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons doing any Alterations or furnishing any materials or supplies to Tenant or any of its contractors or subcontractors in connection therewith.

**5.9 Liens and Stop Notices**. Tenant shall keep the Premises and Premises Improvements free and clear of all stop notices, mechanics' liens and other liens on account of any Alterations done for Tenant or persons claiming under it. Tenant shall indemnify and save Landlord harmless against liability, loss, damages, costs, attorneys' fees, and all other expenses on account of claims of lien of laborers or materialmen or others for Alterations performed or materials or supplies furnished to Tenant or persons claiming under it. If a claim of a lien or stop notice is given or recorded affecting the Premises or Premises Improvements, Tenant shall have the right to consent the lien. Tenant shall, within 30 days of recording of a lien or service of a stop notice:

- A. Pay and discharge the same;
- B. Affect the release thereof by recording and delivering to Landlord a lien release bond in customary form and amount which results in the removal of such lien from the Premises and Premises Improvements; or
- C. Otherwise obtain or effect the release thereof.

**5.10 Notice**. Should any claims of lien be filed against the Premises or Premises Improvements thereon, or any action be commenced affecting the title to such property, the party receiving notice of such lien or action shall forthwith give the other party written notice thereof.

**5.11 Miscellaneous**.

A. Landlord Access. Representatives of Landlord shall have the right of reasonable access to the Premises upon reasonable notice to Tenant and without charges or fees, and at normal construction hours during any construction period, for the purposes of ascertaining compliance with the terms of this Ground Lease. Landlord's access shall be reasonably exercised to minimize interference with Tenant's construction and/or operations. In

any site visits, Landlord shall comply with all safety rules of the Tenant and (except as otherwise permitted in connection with its exercise of rights under Section 6.8 below) Tenant shall have the right to accompany Landlord.

B. Guarantee of Workmanship and Materials. Tenant shall insure that any transferable warranties then in effect are transferred to Landlord upon expiration or termination of this Ground Lease.

C. Notice of Completion. Promptly upon completion of construction of the Premises Improvements and Material Alterations, Tenant shall file or cause to be filed in the Official Records of the County a Notice of Completion (the "**Notice of Completion**"), and provide a filed copy to Landlord.

D. As Built Plans and Specifications. Within 30 days following completion of construction of any construction, changes, Alteration or repair on or about the Premises for which architectural drawings and specifications are required, Tenant shall deliver to Landlord three sets (at least one of which is on CD) of "**As Built**" drawings and specifications for such work, and copies of lien waivers from all contractors, subcontractors, suppliers and materialmen involved in construction.

E. Except as otherwise expressly provided in this Ground Lease or other agreement expressly referenced herein, all Premises Improvements and Alterations shall be without cost or expense to Landlord.

## **ARTICLE 6. USE OF PREMISES, COMPLIANCE WITH LAWS**

**6.1 General.** Tenant covenants and agrees on behalf of itself and its successors and assigns that Tenant shall continuously use and operate the Premises and Premises Improvements for the Permitted Use and for no other purpose without Landlord's prior written consent, which consent Landlord may withhold in its sole discretion. As a material condition of this Ground Lease and the City Financing Documents, Tenant shall comply and shall at all times be in compliance with the Ground Lease, the Site REA and all Regulatory Requirements. Tenant acknowledges that Landlord has entered into this Ground Lease and has agreed to the Rent structure contained herein in material reliance on Tenant's agreement to permit only those uses described herein. In the event Tenant requests a change in any use described herein, Tenant agrees that Landlord, in its sole discretion, may withhold consent to such a request or that Landlord properly may condition consent to any change in use on a renegotiation of the Rent structure or amounts. Further, Tenant acknowledges that Landlord has determined that this use is beneficial to Landlord's overall governmental purposes and Tenant understands that Landlord has no obligation to consent to any other use of all or any part of the Premises.

**6.2 Governmental Requirements.** Tenant, at Tenant's expense, shall comply with all applicable Hazardous Materials Laws (as defined in Section 7.2 below), statutes, laws, codes, rules, orders, zoning, ordinances, directions, regulations, permits, or other requirements of federal, state, county, municipal, or other governmental authorities having jurisdiction, now in force or which may hereafter be in force (individually "**Law**" and collectively "**Laws**"), which shall impose any duty upon Landlord or Tenant with respect to the use, occupancy, or alteration of the Premises or Premises Improvements or any portion thereof, including those requiring alterations or additions to be made to, or safety appliances or devices

to be maintained or installed in, on or about the Premises or Premises Improvements or any portion thereof, and payment of any fees, charges or assessments arising out of or in any way related to the Premises or Premises Improvements or any portion thereof as a source of adverse environmental impacts or effects].

**6.3 Tenant's Right to Contest.** Tenant, at its sole cost and expense, shall have the right to contest, by appropriate proceedings diligently conducted in good faith in the name of Tenant, the validity or application of any applicable Law. If compliance with any applicable Law legally may be delayed pending the prosecution of any such proceeding without cost or penalty and without subjecting Landlord to any liability, civil or criminal, Tenant may delay compliance until the final determination of such proceeding.

**6.4 Nuisance.** Tenant shall not use the Premises or the Premises Improvements for any unlawful purpose and shall not perform, permit or suffer any act of omission or commission upon or about the Premises or the Premises Improvements which would result in a nuisance or a violation of the laws and ordinances of the United States, State, County or City ordinances and all agencies thereof as the same may be now or hereafter in force and effect.

**6.5 General Use Prohibitions.** Tenant covenants and agrees that in connection with the use and operation of the Premises and Premises Improvements, and any portion thereof, Tenant will not:

- A. Permit undue accumulations of garbage, trash, rubbish or any other refuse;
- B. Create, cause, maintain or permit any nuisance (as the same may be defined by Law) in, on or about the Premises or Premises Improvements;
- C. Commit or suffer to be committed any waste in, on or about the Premises or Premises Improvements;
- D. Use or allow the Premises or Premises Improvements to be used for any unlawful purpose, or for any purpose which violates the terms of any recorded instrument affecting the Premises;
- E. Cause or permit any insurance coverage on the Premises or Premises Improvements to become void or voidable or make it impossible to obtain any required insurance at commercially reasonable rates;
- F. Intentionally cause or knowingly permit any material structural damage to or deterioration of the Premises or Premises Improvements or to any adjacent public or private property or improvements; or
- G. Violate or permit any violation of any applicable Law, ordinance or regulation applicable to the Premises or Premises Improvements.

**6.6 Non-Discrimination.** Tenant covenants and agrees that there shall be no unlawful discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation, source of income, age, physical or mental handicap, medical condition, national origin or ancestry in the sublease,

transfer, use, occupancy, tenure or enjoyment of the Premises, the Premises Improvements or any portion thereof, nor shall Tenant, or any person claiming under or through Tenant, establish or permit any such unlawful practice or practices of discrimination or unlawful segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, vendees, users or customers in the Premises, the Premises Improvements, or any portion thereof. Tenant shall refrain from unlawfully restricting the use, occupancy, rental or sublease of the Premises, the Premises Improvements, or any portion thereof on account of race, color, creed, religion, sex, marital status, sexual orientation, source of income, age, physical or mental handicap, medical condition, national origin or ancestry of any person.

**6.7 General Standards of Maintenance.** Tenant covenants and agrees that it shall maintain, or cause to be maintained, the Premises, the Premises Improvements, and all improvements and landscaping within the Premises in a good, safe condition and repair, subject only to normal wear and tear, and in full compliance with Site REA all applicable Laws, and this Ground Lease.. To accomplish such maintenance, Tenant shall either staff or contract with and hire licensed and qualified personnel to perform such maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Section. All maintenance work shall conform to all applicable Federal and State Occupation Safety and Health Act standards and regulations for the performance of maintenance.

**6.8 Landlord's Status as a Landowner.** Tenant understands and agrees that Landlord is entering into this Ground Lease in its capacity as a landowner with a proprietary interest in the Premises and Premises Improvements and not as a regulatory authority with certain police powers. Landlord's legal status shall in no way limit the obligation of Tenant to obtain any required approvals from Landlord's departments, boards or commissions that have jurisdiction over the Premises or Premises Improvements. By Landlord's entering into this Ground Lease, neither Landlord nor any of Landlord's Council, boards, commissions, agencies, departments, or affiliates obligates itself to any other governmental agent, board, commission or agency, or to Tenant, or to any other individual or entity, with regard to any discretionary action relating to development or operation of the Premises, or Premises Improvements. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals that may be required or desirable for the improvement, alteration, or operation of the Premises, or Premises Improvements by the City in connection with its governmental capacity or police powers. By entering into this Ground Lease, Landlord is in no way modifying or limiting the obligation of Tenant to cause the Premises and Premises Improvements to be used and occupied in accordance with all Laws, nor any right of the Landlord or its Council, boards, commissions, agencies, departments, or affiliates to directly enforce Tenant's compliance with Laws. Further, nothing in this Ground Lease shall subject Landlord to liability or increase its liability in connection with any act, omission, occurrence or circumstance arising from its governmental capacity or police powers due to its status as Landlord under this Ground Lease.

**6.9 Regulatory Approvals Generally.** Tenant acknowledges and agrees that this Ground Lease does not guarantee that Landlord, in its regulatory capacity, will grant any particular request for a license, permit or other regulatory approval. Tenant understands that Landlord may grant or deny such request in its sole discretion, and may impose such terms and conditions as it deems consistent with that discretion and applicable Laws.

ARTICLE 7.

CONDITION OF PREMISES; HAZARDOUS MATERIALS; LANDLORD'S RIGHT OF ENTRY

**7.1 Landlord's Disclaimers and Tenant's Acknowledgements.** The Premises are being leased to Tenant in their current, existing, "AS-IS" condition as set forth in, and subject to, DDA Section 4.5, the terms of which are incorporated herein by reference, except that all references therein to "Developer" are replaced with "Tenant".

**7.2 Hazardous Materials**

A. General Compliance. DDA Section 6.2, the terms of which are incorporated herein by reference, with the following modifications in addition to the other modifications therein:

1. All references therein to "Developer" are replaced with "Tenant";
2. All references to "Hazardous Materials Laws" shall mean all laws, codes, rules, orders, ordinances, directives, regulations, permits, or other requirements of federal, state, county, municipal or governmental authorities having jurisdiction, now in force or which may hereafter be in force concerning the management, use, generation, storage, transportation, presence, discharge or disposal of any and all pollutants, wastes, flammables, explosives, radioactive materials, hazardous or toxic materials, hazardous or toxic wastes, hazardous or toxic substances, carcinogenic materials or contaminants and all other materials governed, monitored, or regulated by any Federal, State or local law or regulation, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Substances Account Act, and/or the Resources Conservation and Recovery Act.
3. All references to "**Hazardous Materials**" shall include asbestos, asbestos-containing materials, hydrocarbons, polychlorinated biphenyl ("**PCB**") or PCB-containing materials, petroleum, gasoline, petroleum products, crude oil or any fraction, product or by-product thereof.
4. All references to "Development" means the "Premises."
5. All references to "Term" shall mean "Term" as defined in this Ground Lease.
6. Nothing in this Ground Lease or **Exhibit C** shall limit or restrict the use of limited quantities of household cleaning products and office supplies used or stored at the Premises and required in connection with the routine operation and maintenance of the Premises, and used in compliance with (i) this Ground Lease, (ii) all applicable Hazardous Materials Laws, and (if applicable) (ii) the Project Rules (as defined in the Site REA).

B. Tenant's Independent Investigation. Tenant or its agents and representatives have undertaken investigations of the Premises in an attempt to determine if any Hazardous Material is present on the Premises. Except as disclosed in the Phase I and Phase II Environmental Assessment report dated \_\_\_\_\_, 2018 by Rincon Consultants, and ***[insert name/other information regarding additional soils testing, expected to be completed on or about December 2019]***, no Hazardous Material has been located or discovered to date and the parties agree that for purposes of this Ground Lease, Tenant assumes full responsibility for the investigation and remediation, as and to the extent required by

Environmental Laws, of all Hazardous Material in, on or under the Premises that is discovered during the Term.

**7.3 Landlord's Right to Enter Premises and Premises Improvements.**

Landlord and its authorized representatives shall have the right to enter the Premises and Premises Improvements at all reasonable times, after giving Tenant 24 hours prior written notice (except in emergency in which case no notice shall be required), for any purpose, including: to determine whether the Premises, the Premises Improvements, or any other improvements on the Premises is in good condition and whether Tenant is complying with its obligations under this Ground Lease; to do any necessary maintenance and to make any restoration to the Premises Improvements or any other improvements upon the Premises that Landlord has the right or obligation to perform; to serve, post or keep posted any notices required or allowed under the provisions of this Ground Lease and (except as otherwise permitted in connection with its exercise of rights under Section 6.8 above) Tenant shall have the right to accompany Landlord.

A. Landlord shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of Landlord's entry on the Premises and Premises Improvements as provided in this Section other than any property damage, bodily injury, or death caused by the sole active negligence or willful misconduct of Landlord, its agents, employees or contractors.

B. Tenant shall not be entitled to an abatement or reduction of Rent if Landlord exercises any rights reserved in this section.

**ARTICLE 8.  
OWNERSHIP OF IMPROVEMENTS AND  
PERSONAL PROPERTY**

**8.1 Ownership of Premises Improvements During Term.** During the Term, the Premises Improvements and Alterations shall be and remain the property of Tenant; provided that Tenant's rights and powers with respect to the Premises Improvements and any Alterations shall be and shall remain subject to the terms and limitations of this Ground Lease. Tenant covenants for itself and all persons claiming under or through it that the Premises Improvements is and will at all times be real property.

**8.2 Ownership of Premises Improvements at Termination or Expiration.** Upon the expiration or other termination of this Ground Lease, all improvements on the Premises, including the Premises Improvements and any Alterations shall, without compensation to Tenant, become Landlord's property free and clear of all claims to the extent caused by Tenant or any subtenant. Tenant is not obligated to remove rights arising from the Site REA. The foregoing, however, will be subject to the rights of permitted subtenants at the Premises Improvements provided that the subtenants are not then in default and they attorn to Landlord as their landlord. (See also Section 15.10.)

**8.3 Removal and Ownership of Personal Property at Termination or Expiration.** At the expiration or termination of the Term, Landlord may, at Landlord's election, require Tenant to remove from the Premises, at Tenant's sole cost and expense, all personal property (including fixtures). Tenant shall be liable to Landlord for costs incurred by Landlord in effecting the removal of such personal property (including fixtures) which Tenant has failed to remove after demand pursuant to this section.

A. Tenant and its subtenants and other permitted occupants may, from time to time during the Term, remove any personal property (other than fixtures) that may be removed without damage to the structural integrity of the Premises or Premises Improvements. Tenant shall (or shall cause its subtenants and other permitted occupants to) repair all damage caused by any such removal.

B. Any personal property owned by Tenant or its subtenants and not removed by Tenant prior to the expiration or termination of the Term shall be deemed to be abandoned by Tenant or (to the greatest extent permitted by applicable Law) its subtenants, and shall, without compensation to Tenant or (to the extent permitted by applicable Law) subtenant, become the Landlord's property, free and clear of all claims to or against them by Tenant, subtenant or any other person, but subject to the rights of third party lenders and equipment lessors as to which Landlord has notice.

## **ARTICLE 9. INSURANCE AND INDEMNITY**

### **9.1 General Insurance Requirements.**

A. During the entire Term of this Ground Lease, Tenant shall provide the following forms and amounts of insurance with respect to the Premises Improvements and the Premises. Such insurance shall be primary to and not contributing with any other insurance, self-insurance, or joint self-insurance maintained by the Landlord, shall name the Landlord as an additional insured, and shall include, but not be limited to:

1. Fire and Extended Coverage Insurance as provided the Site REA or, following the expiration or termination thereof, as Landlord may reasonably specify..

2. Broad Form Commercial General Liability Insurance in an amount not less than \$2,000,000 per occurrence and umbrella/excess liability insurance in the amount of \$5,000,000, as further provided the Site REA and this ARTICLE 9 or, following the expiration or termination thereof, as Landlord may reasonably specify. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Ground Lease as an "insured contract" for the performance of Tenant's indemnity obligations under this Ground Lease. The limits of this insurance shall not, however, limit the liability of Tenant nor relieve Tenant of any obligation hereunder. .

3. Comprehensive Auto Liability Insurance with limits not less than \$2,000,000 each occurrence as further provided the Site REA and this ARTICLE 9 or, following the expiration or termination thereof, as Landlord may reasonably specify.

4. Worker's Compensation Insurance, including Employer's Liability coverage, with limits not less than \$1,000,000 each accident, to the extent required by law, as may be further provided the Site REA and this ARTICLE 9 or, following the expiration or termination thereof, as Landlord may reasonably specify.

5. Leasehold Mortgagee Insurance. Any additional policy of insurance required by any lender providing permanent financing for the Premises Improvements or any Alterations.

B. Review. The liability insurance requirements may be reviewed by Landlord every five years, for the purpose of increasing (in consultation with its insurance advisors) the minimum limits of such insurance from time to time to limits which shall be reasonable and customary for similar facilities of like size and operation in accordance with generally accepted insurance industry standards, but in no event will Tenant be required to increase the amount of cumulative or single occurrence coverage for any five-year period by more than the lesser of (i) 50% and (ii) two times the CPI increase since the last increase under this Section.

C. Insurance for Construction of Premises Improvements and Alterations. Tenant's contractors and subcontractors for the Premises Improvements shall maintain all insurance required by DDA Section 6.3(b). Tenants contractors and subcontractors for any Alterations shall maintain all liability, property worker's compensation, employee and insurance as Landlord deems reasonably necessary or as otherwise provided in this Ground Lease.

D. General. All deductibles shall be declared to and subject to Landlord's approval if in excess of \$100,000 per occurrence (as increased by CPI). All commercial general liability and automobile liability policies shall name Landlord and its officers, agents, employees, and representatives (together, "**Landlord Parties**") as additional insureds. Tenant shall furnish Landlord with a certificate of insurance evidencing the required insurance coverage and a duly executed endorsement evidencing such additional insured status. The certificate shall (to the extent reasonably obtainable) contain a statement of obligation on the part of the carrier to notify Landlord of any material change, cancellation or termination of the coverage at least 30 days in advance of the effective date of any such material change, cancellation or termination; otherwise, Tenant shall provide such notice. Upon Landlord's request, Tenant shall provide certified copies of all insurance policies, including declarations pages. Coverage provided hereunder by Tenant or its contractors shall be primary insurance and shall not be contributing with any insurance, self-insurance or joint self-insurance maintained by Landlord, and the policy shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the Landlord and other additional insureds. The required certificate and endorsements shall be furnished by Tenant to Landlord prior to the Ground Lease Date, and prior to each anniversary thereof. If Tenant or its contractors fails to purchase, renew or maintain any insurance policies required herein, Landlord shall have the right to so purchase any such insurance and the amount of any such advance by Landlord shall constitute Additional Rent under this Ground Lease.

**9.2 Indemnity**. To the greatest extent permitted by Law (including without limitation Civil Code Section 2782 if and to the extent applicable), Tenant shall protect, indemnify, defend and hold Landlord and Landlord Parties harmless from and against any and all demands, liability, claims, actions and damages to any person or property, costs and expenses, including attorneys' fees, arising out of or connected with: (i) a default by Tenant of its obligations under this Ground Lease; (ii) the use or occupancy of the Premises Improvements, the Premises, the improvements thereon including any Alterations, or any portion thereof, by Tenant or any of its contractors, subcontractors, employees, subtenants, licensees, invitees, subtenants, assignees or Users (collectively "**Tenant's Parties**"), other than those attributable to the sole negligence or willful misconduct of Landlord or Landlord Parties; (iii) any pre-Ground Lease Date entry by or on behalf of Developer or Tenant under the Temporary Right of Entry described in DDA Section 9.19(a); and (iv) the release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Premises in violation, or alleged violation, of any Laws, which occurs at any time during the Term. The indemnity obligation in clause (iii) above shall include any demands, liability, claims or actions for tangible

or intangible property damage; compensation for lost wages, business income, profits or other economic loss; damage to the natural resource or the environment; nuisance; trespass; and/or contamination, leak, spill, release or other adverse effect on the environment. Tenant's indemnity obligations under this Section shall survive the expiration or termination of this Ground Lease.

**ARTICLE 10.  
DAMAGE OR DESTRUCTION**

**10.1 Restoration.**

A. Insured Damage. No loss or damage by fire or any other cause resulting in either partial or total destruction of the Premises Improvements or any other improvements now or hereafter located on the Premises, including any fixtures, personal property, equipment or machinery used or intended to be used in connection with the Premises or Premises Improvements, shall (except as otherwise provided in Sections 1.1A or 10.1B) operate to terminate this Ground Lease or to relieve or discharge Tenant from the payment of any Rent, or other amounts payable hereunder, as and when they become due and payable, or from the performance and observance of any of the agreements, covenants and conditions herein contained to be performed and observed by Tenant. Provided that Tenant determines that it is feasible to repair the Premises Improvements, and subject to the rights of Leasehold Mortgagees and Tenant's Investors, and specific procedures (if any) set forth in the Site REA, Tenant covenants to repair, reconstruct, and/or replace or cause to be repaired, reconstructed and/or replaced the Premises Improvements and any other improvements now or hereafter located on the Premises, including any fixtures, personal property, equipment or machinery used or intended to be used in connection with the Premises or Premises Improvements, so damaged or destroyed. Subject to the rights of any Leasehold Mortgagee, Tenant also covenants that all insurance proceeds will be applied to the repair, reconstruction and/or replacement described herein.

B. Premises Improvements Uninsured Damage. Notwithstanding the provisions of Section 10.1A, if, during the Term, the Premises Improvements are totally destroyed or rendered inaccessible or if the remaining portion of the Premises Improvements are rendered unsuitable (as defined herein) for Tenant's continued use, from a risk not covered 90% by the insurance required to be carried by Tenant under this Ground Lease, and either (i) the cost of restoration exceeds 50% of the then replacement value of the Premises Improvements as reasonably determined by Landlord, (ii) Tenant reasonably determines that repair and reconstruction is infeasible, or (iii) if fewer than fifteen (15) years of the Term remain, Tenant can elect to terminate this Ground Lease by giving notice to Landlord within 30 days after Landlord's determination of the restoration cost and replacement value. The Premises Improvements shall be deemed unsuitable for Tenant's continued use if, following a reasonable amount of reconstruction, Tenant's operations in the Premises Improvements could not be maintained at an economically feasible level. Subject to the rights of Leasehold Mortgagees and Tenant's Investors, if this Ground Lease terminates pursuant to this Section, Tenant shall surrender possession of the Premises and, subject to the rights of Leasehold Mortgagees and Tenant's Investors, assign to Landlord its rights and interests in and to the proceed of insurance received by Tenant for the repair or demolition of the Premises Improvements. Notwithstanding the foregoing or anything to the contrary in this Ground Lease (other than expiration of the Term as provided in Section 2.1 above), this Ground Lease shall not terminate in the event of damage or destruction unless all obligations under the Senior Leasehold Mortgage have been paid in full.

C. Loss Adjustment and Disbursement Procedures. Except as may otherwise be required by any Leasehold Mortgagee, Tenant shall make the loss adjustment with the insurance company insuring the loss; provided, however, the Senior Leasehold Mortgagee may participate in the loss adjustment with the insurance company if it so chooses. Except as may otherwise be required by any Leasehold Mortgagee and Tenant's Investors, all resulting insurance proceeds shall be held by the Senior Leasehold Mortgagee or an independent trustee acceptable to the Senior Leasehold Mortgagee for the following purposes:

1. The sums shall be paid in installments by the contractor retained by Tenant as construction progresses, for payment of the cost of restoration. Any final retention provided for in the contract with such contractor will be paid to the contractor on completion of restoration, payment of all costs, expiration of all applicable lien periods, and proof that the restored Improvements and the Premises are free of all mechanics' liens and lienable claims.

2. Payments shall be made on presentation of certificates or vouchers from the architect or engineer retained by Tenant showing the amount due. If Landlord, in its reasonable discretion, determines that the certificates or vouchers are being improperly approved by the architect or engineer retained by Tenant, Landlord shall have the right to appoint a project manager, subject to approval by Senior Leasehold Mortgagee, to supervise construction and to approve payments on certificates or vouchers approved by the architect or engineer retained by the Tenant. The reasonable expenses and charges of the project manager retained by Landlord shall be paid from the insurance proceeds.

3. If at any time it reasonably appears to Tenant that the sums held by the Tenant are not sufficient to pay the actual cost of restoration, Tenant shall identify the amount of the deficiency to Landlord as promptly thereafter as reasonably possible.

4. Any undisbursed funds after compliance with the provisions of this Section 10.1C and full restoration of the Premises or Premises Improvements shall be delivered to Landlord to the extent of Landlord's contribution to the fund, and the balance, if any, shall be paid to Tenant.

**10.2 Waiver.** The provisions of this ARTICLE 10 shall govern the rights of the parties in the event of any full or partial destruction of the Premises Improvements and any improvements thereon. Tenant hereby waives the provisions of Civil Code Section 1932(2) and Civil Code Section 1933(4) and any similar successor statute or Law with respect to any destruction of the Premises Improvements.

**10.3 Determination of Extent of Destruction, Interference with Use.** For purposes of this ARTICLE 10, the extent of destruction of the Premises Improvements shall be determined by dividing the estimated cost of replacement or restoration as evidenced by estimates prepared by licensed general contractors acceptable to Landlord for the full replacement cost of the Premises Improvements, as reasonably determined by Landlord, Tenant and (to the extent required by the applicable insurance policies) Tenant's insurers.

**10.4 Procedures for Repair and Restoration.** Tenant shall promptly give Landlord reasonable written notice in the event of any damage or destruction to either (i) the Premises Improvements or (ii) (to the extent of Tenant's actual knowledge) the entire Development, with an estimated restoration cost exceeding \$1,000,000 (subject to adjustment pursuant to the CPI from and after the Ground Lease Date). Tenant's notice shall include the general nature of the damage or destruction and the date on which it occurred. Regardless of

the amount of any damage or destruction, Tenant shall promptly make proof of loss and shall proceed promptly to collect, or cause to be collected, all valid claims which Tenant may have against insurers or others based upon any such damage or destruction. Except as otherwise provided above and subject to rights of Leasehold Mortgagees and Investors, amounts received on account of any losses pursuant to insurance policies shall be used and expended for the purpose of fully repairing or reconstructing the portions of the Premises Improvements which have been destroyed or damaged (or repaying loans or advances used for such purposes).. Tenant shall commence and complete or cause to be commenced and completed any repairs and reconstruction in a good and workmanlike manner and in accordance with the Site REA, this ARTICLE 10 and the applicable provisions of ARTICLE 5 above.

## ARTICLE 11. CONDEMNATION

### 11.1 Definitions.

A. **“Condemnation”** means: (1) the exercise of any governmental power in eminent domain, whether by legal proceedings or otherwise, by a condemnor, and (2) a voluntary sale or transfer to any condemnor, either under threat of condemnation or while legal proceedings for condemnation are pending.

B. **“Date of taking”** means the date the condemnor has the right to possession of the property being condemned.

C. **“Award”** means all compensation, sums or anything of value awarded, paid or received on a total or partial condemnation.

D. **“Condemnor”** means any public or quasi-public authority, or private corporation or individual, having the power of condemnation.

**11.2 Parties’ Rights and Obligations to be Governed by Ground Lease.** If during the Term there is any taking of all or any part of the Premises, the Premises Improvements or any other improvements on the Premises or any interest in this Ground Lease by condemnation, the rights and obligations of the parties shall be determined pursuant to the provisions of this ARTICLE 11.

**11.3 Total Taking.** If the Premises or Premises Improvements are totally taken by condemnation, this Ground Lease shall terminate on the date of taking.

**11.4 Effect of Partial Taking.** If a portion of the Premises Improvements or Premises or any other improvements thereon are taken by condemnation, this Ground Lease shall remain in effect, except that Tenant may elect to terminate this Ground Lease if the remaining portion of the Premises or Premises Improvements are rendered unsuitable (as defined herein) for Tenant’s continued use. The remaining portion of the Premises Improvements or the Premises shall be deemed unsuitable for Tenant’s continued use if, following a reasonable amount of reconstruction, Tenant’s operations in the Premises Improvements could not be maintained at an economically feasible level. Tenant must exercise its right to terminate by giving Landlord written notice of its election within 90 days after the nature and extent of the taking have been finally determined. Such notice shall also specify the date of termination, which shall not be prior to the date of taking. Failure to properly exercise the election provided for in this Section 11.4 will result in this Ground Lease continuing in full

force and effect. Any exercise of Tenant's right to terminate the Ground Lease pursuant to this Section 11.4 shall be subject to the prior written consent of Senior Leasehold Mortgagee. If the Ground Lease is terminated in accordance with this Section 11.4, proceeds (excluding those to which Landlord is otherwise entitled pursuant to Section 11.7 below) must first be applied toward payment of each Leasehold Mortgage, beginning with the Senior Leasehold Mortgage.

**11.5 Restoration of Premises Improvements.** If in Tenant's judgment it is reasonably possible and economically feasible to do so, Tenant shall be entitled to use that portion of the award allocable to the Premises Improvements as is necessary to restore or to add on to the Premises Improvements so that the area and approximate layout of the Premises Improvements will be substantially the same after the date of taking as it was before the date of taking. If it is not reasonably possible and economically feasible to so restore the area and layout of the Premises Improvements, the remaining provisions of this ARTICLE 11 shall govern the rights of the parties. If Tenant fails to promptly commence any reasonably required repair, restoration or reconstruction of the Premises Improvements and diligently prosecute such repair, restoration or reconstruction to completion, and such failure is not remedied within 30 days of written notice from the Landlord to Tenant, this Ground Lease may be terminated by the Landlord, subject to the rights of Leasehold Mortgagees hereunder.

**11.6 Waiver of CCP Section 1265.130.** Each party waives the provisions of the Code of Civil Procedure Section 1265.130 allowing either party to petition the Superior Court of the County of Alameda, State of California to terminate this Ground Lease in the event of a partial taking of the Premises.

**11.7 Award.** Subject to the provisions of Section 11.5, and subject to the rights of Leasehold Mortgagees and Investors, if all or any portion of the Premises Improvements or any other improvements on the Premises is taken in connection with a condemnation, the award for the Premises Improvements or such other improvements shall be allocated taking into account that the Landlord's interest is limited to the land or air space (exclusive of the Premises Improvements). If the Premises Improvements are to be restored pursuant to Section 11.5 above, Tenant shall be entitled to recover the costs and expense incurred in such restoration out of any condemnation proceeds. Thereafter, if the condemning authority does not make separate awards, the proceeds will be allocated on a proportionate basis. If Landlord and Tenant are unable to agree as to the amounts that are to be allocated to each other, the allocation will be determined by an appraisal performed by a mutually agreed appraiser. The appraiser shall separately determine the amount of award to be allocated to the interest of each party, and the costs of the appraiser shall be borne equally by each party. For purposes of this Section, Landlord's interest in the land and air space shall be valued subject to this Ground Lease (i.e., as if this Ground Lease remained in full force and effect).

**11.8 Leasehold Mortgagee Participation.** Leasehold Mortgagees must be provided notice and the opportunity to participate in any condemnation proceedings contemplated by this ARTICLE 11. Awards shall be paid to the Senior Leasehold Mortgagee or an independent trustee acceptable to Senior Leasehold Mortgagee and shall be disbursed in accordance with the provisions of this ARTICLE 11.

**ARTICLE 12.  
ASSIGNMENT AND SUBLETTING**

**12.1 Assignment.**

A. Tenant shall not assign, sublet or otherwise transfer, whether voluntarily or involuntarily or by operation of Law, this Ground Lease, the Premises Improvements or any part thereof (collectively an “**assignment**”) without Landlord’s written consent, which shall not unreasonably be withheld, conditioned or delayed. The merger of Tenant with any other entity or the assignment or transfer of any direct or indirect controlling or managing ownership interest in Tenant, or the assignment or transfer of a substantial portion of the assets of Tenant, whether or not located at the Premises, or any interest in the Premises Improvements, shall constitute an “assignment” hereunder. However, the transfer of a limited partnership interest in a limited partnership tenant, or of a non-managing membership interest in a limited liability company tenant, shall not constitute an assignment.

B. Notwithstanding Subsection 12.1A above, Landlord’s consent is not required for any assignment to an Affiliate (as defined below) of BRIDGE, as long as the following conditions are met: (i) Landlord receives written notice of the assignment (as well as any documents or information reasonably requested by Landlord regarding the assignment or assignee); and (ii) the assignee assumes in writing all of Tenant’s obligations under this Ground Lease. For purposes of this Section, “**Affiliate**” means an entity which controls, is controlled by or under common control with Tenant. For the purposes of this definition, “control” means the direct or indirect ownership of more than 50% of the voting securities of an entity or possession of the right to direct the entity’s day-to-day affairs.

C. Also notwithstanding Subsection 12.1A above, Landlord’s consent is not required for any assignment to an Investor, as long as the following conditions are met: (i) the assignment occurs pursuant to the term of Tenant’s governing documents, following a default to the Investor; (ii) Landlord receives written notice of the assignment (as well as any documents or information reasonably requested by Landlord regarding the assignment or assignee); and (iii) the Investor assumes in writing all of Tenant’s obligations under this Ground Lease.

D. No partial assignments of this Ground Lease shall be permitted, and all assignments must be accompanied by a concurrent transfer of the Premises Improvements to the assignee. Assignments of this Ground Lease shall only be made pursuant to a written assignment and assumption agreement in a form reasonably acceptable to Landlord. Landlord’s consent to any one assignment shall not constitute consent to any other assignment, and shall not constitute a waiver of the right to give or withhold consent in accordance with this Section 12.1.

E. In the event Tenant shall assign this Ground Lease or request the consent of Landlord to any assignment for which Landlord’s consent is required under this ARTICLE 12, then Tenant shall pay Landlord’s reasonable attorneys’ fees incurred in connection with each such request.

**12.2 Subleases.** Except as to residential tenancies in connection with the Permitted Use and other tenancies typically entered into in connection with residential development (such as laundry leases) and subject to all Regulatory Requirements, Tenant shall not sublease all or any portion of the Premises Improvements or the Premises without Landlord’s prior written consent, which may be withheld for any reason whatsoever in Landlord’s

sole absolute discretion. No permitted subletting shall limit Tenant's obligations under this Lease.

**ARTICLE 13.  
TENANT DEFAULTS AND LANDLORD'S REMEDIES**

**13.1 Defaults by Tenant.** Tenant shall be in default under this Ground Lease upon occurrence of any of the following:

A. Tenant shall at any time be in default in the payment of Rent or any other monetary sum called for by this Ground Lease for more than 30 days following written notice from Landlord to Tenant; or

B. Tenant shall at any time be in default in the keeping and performing any of its covenants or agreements contained in the Regulatory Requirements or Site REA, and such other default continues for 30 days after written notice thereof from Landlord to Tenant specifying the particulars of such default, or if such default is of a nature that curing such default will take more than 30 days Tenant has failed to commence such cure within such 30-day period and to thereafter diligently and continuously pursue completion of such cure, provided that such cure period need not exceed any time period that the failure to cure would result in Landlord itself being in violation of any Law or expose Landlord to unreasonable financial risks; or

C. Tenant shall at any time be in default in the keeping and performing of any of its other covenants or agreements contained in this Ground Lease, and should such other default continue for 30 days after written notice thereof from Landlord to Tenant specifying the particulars of such default, or if such other default is of a nature that curing such default will take more than 30 days Tenant has failed to commence such cure within such 30-day period and to thereafter diligently and continuously pursue completion of such cure; or

D. Tenant abandons or substantially suspends the Premises Improvements prior to completion thereof and such default is not cured within 60 days of written notice from Landlord to Tenant; or

E. Tenant assigns, sells, transfers, conveys, encumbers, hypothecates or leases the whole or any part of the Premises Improvements, the Premises, or any other improvement constructed thereon in violation of the Improvements Documents; or

F. Except as otherwise expressly permitted in this Ground Lease there is any change in control of Tenant, or any other act or transaction involving or resulting in a change in the identity of the parties in control of Tenant or the degree of such control; or

G. Subject to ARTICLE 14 below, Tenant defaults on any loan encumbering Tenant's interest in this Ground Lease or any improvements on the Premises for which Tenant is responsible, and such failure continues beyond (i) the expiration of any applicable grace or cure period, and (ii) the date by which Tenant must make payment to cure any notice of default received from the holder of such loan; or

H. Any Leasehold Mortgagee or any other holder of any private loan encumbering Tenant's interest in this Ground Lease, or any improvements on the Premises initiates a foreclosure of the deed of trust by which such loan is secured, and Tenant fails to cause such foreclosure proceedings to be dismissed prior to the earlier to occur of (i) the trustee

under the deed of trust giving notice of the trustee's sale, or (ii) within 30 days of Tenant's receipt of written notice from Landlord.

**13.2 Remedies.** Subject to the rights of any Leasehold Mortgagees permitted under ARTICLE 14, upon the occurrence of any such default, in addition to any and all other rights or remedies of Landlord hereunder, or by Law or in equity provided, Landlord shall have the sole option to exercise the following rights and remedies:

A. Terminate this Ground Lease by giving Tenant notice of termination. On the giving of such notice, all of Tenant's rights in the Premises, Premises Improvements and any other improvements located thereon, shall terminate. Immediately following notice of termination, Tenant shall surrender and vacate the Premises, including the Premises Improvements and any other improvements located thereon, leaving them in broom-clean condition; and, subject to Subsection 13.2B below, respecting the right of certain subtenants to remain, Landlord may reenter and take possession of the Premises and Premises Improvements and eject all parties in possession or eject some and not others, or eject none. Termination under this subsection shall not relieve Tenant from the payment of any sum then due to Landlord or from any claim for damages previously accrued or then accruing against Tenant.

B. Without terminating this Ground Lease, Landlord may at any time and from time to time relet the Premises, including the Premises Improvements, or any part or parts thereof for the account and in the name of Tenant or otherwise. Any reletting may be for the remainder of the Term or for a longer or shorter period, and subject to the rights of any subtenant under subleases permitted under Section 12.2. Landlord may execute any leases made under this provision either in Landlord's name or in Tenant's name, and shall be entitled to all rents from the use, operation, and occupancy of the Premises, Premises Improvements and any other improvements thereon. Tenant hereby appoints Landlord its attorney-in-fact for purpose of such leasing. Tenant shall nevertheless pay to Landlord on the due dates specified in this Ground Lease the equivalent of all sums required of Tenant under this Ground Lease, less the revenue received by Landlord from any reletting or attornment, plus Landlord's reasonable expenses, including (by way of example), but not limited to, remodeling expenses, Landlord's brokerage and advertising costs and attorneys' fees and costs. No act by or on behalf of Landlord under this subsection shall constitute a termination of this Ground Lease unless Landlord gives Tenant written notice of termination, and Tenant shall remain liable for all costs, losses and damages resulting from unperformed Tenant obligations and breaches under permitted subleases.

C. Even though Landlord may have relet all or any portion of the Premises, including the Premises Improvements and any other improvements thereon, Landlord may thereafter elect to terminate this Ground Lease and all of Tenant's rights in or to the foregoing.

**13.3 Damages.** Neither party shall be entitled to recover consequential or punitive damages under this Lease.

**13.4 Landlord's Right to Cure Tenant's Default.** Landlord, at any time after Tenant commits a default which Tenant has failed to cure within the time established therefor, may cure the default at Tenant's cost. If Landlord at any time, by reason of Tenant's default, pays any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord at the time the sum is paid, and if paid at a later date, shall bear interest at the Interest Rate from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. The sum, together with interest thereon, shall be Additional Rent.

**13.5 Guarantor Performance Under Completion Guaranty.** Notwithstanding anything in this Ground Lease to the contrary (other than the last sentence of this Section 13.5), (i) if Landlord enforces its rights against Guarantor, Guarantor's performance in compliance with the Completion Guaranty shall be deemed to suspend any default by Tenant under this Ground Lease relating to the construction of the Premises Improvements, and Landlord shall accept Guarantor's performance thereof; and (ii) so long as the Guarantor proceeds diligently to perform the guaranteed obligations thereunder (subject to permitted force majeure delays and other delays expressly specified in the Completion Guaranty) and to cause the Premises Improvements to be completed within three years following the date completion is otherwise required under this Ground Lease, Landlord shall not exercise any of its remedies under the Ground Lease arising from the Tenant's failure to construct the Premises Improvements as required herein including, without limitation, termination of this Ground Lease. Nothing in this Section 13.5 shall limit Landlord's right to collect any amounts otherwise due under Section 13.4 following Guarantor's satisfaction of all obligations under the Completion Guaranty or Guarantor's default thereunder.

#### **ARTICLE 14. MORTGAGEE PROTECTION PROVISIONS**

**14.1 Right to Encumber.** Tenant shall have the right during the Term to encumber, through one or more Leasehold Mortgages and the Regulatory Requirements, all of Tenant's right, title and interest in the Premises, subject to the provisions of this Ground Lease; provided, however, that any Leasehold Mortgage shall be in all respects subordinate and inferior to Landlord's right, title and interest as fee title owner of the Site and Premises, and any such Leasehold Mortgagee shall be subject to all of the rights and obligations of Landlord herein contained in this Ground Lease, except as otherwise provided in this Ground Lease. For purposes of this Ground Lease, Landlord and Tenant acknowledge and agree that the Senior Leasehold Mortgagee identified on **Exhibit F** attached hereto or any subsequent lender and its successors, assigns and participants or other entity holding the first lien deed of trust on the leasehold estate is a permitted Leasehold Mortgagee and all references to a "Leasehold Mortgagee" shall specifically include Senior Leasehold Mortgagee. All references to a Leasehold Mortgage shall include, without limitation, that certain Construction Leasehold Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing, dated as of even date herewith, made by Tenant for the benefit of the initial Senior Leasehold Mortgagee and any assignment or amendment and restatement thereof. For so long as any Leasehold Mortgage is outstanding, Landlord and Tenant shall not agree to any termination or accept any surrender of this Ground Lease (other than upon expiration of the Term) without the prior written consent of the holders of Leasehold Mortgages then in effect, and any such termination or surrender without such consent shall have no force or effect.

**14.2 Leasehold Mortgagee as Third Party Beneficiary.** Notwithstanding anything to the contrary contained herein, a Leasehold Mortgagee shall be deemed to be a third party beneficiary of Tenant's obligations under this Ground Lease; provided that the foregoing shall not alter any right, remedy, duty or obligation between Tenant and Landlord herein.

**14.3 Notice to Leasehold Mortgagee.** During any period in which a Leasehold Mortgage is in place, Landlord, prior to exercising any remedy under this Lease, shall give any such Leasehold Mortgagee of which Landlord has received notice from Tenant or the Leasehold Mortgagee a duplicate copy of all notices of default or other notices that Landlord may give to or serve in writing upon Tenant pursuant to the terms of this Ground Lease. The address of the Leasehold Mortgagee originally designated in the Leasehold Mortgage may be changed upon

written notice delivered to Landlord in the manner specified in Section 15.5 below. Landlord acknowledges each of the following as: (i) the Leasehold Mortgagee identified in **Exhibit F** as a holder of a Leasehold Mortgage and (ii) any subsequent lender (and its successors, assigns and transferees) holding a Leasehold Mortgage for which Landlord has received written notice, including such lender's address for notices hereunder. However, unless otherwise required by Law, nothing in this Section 14.3 shall obligate the City to deliver any notices to a Leasehold Mortgagee in connection with the City's exercise of its regulatory authority, including without limitation pursuant to Sections 6.8 or 6.9 above, or exercise of its Governmental Capacity pursuant to Section 15.22 below.

**14.4 Right of Leasehold Mortgagee to Cure.** Notwithstanding any default by Tenant under this Ground Lease, Landlord shall have no right to terminate this Ground Lease unless Landlord shall have given each Leasehold Mortgagee written notice of such default and such Leasehold Mortgagees shall have failed to remedy such default or acquire Tenant's leasehold estate created by this Ground Lease or commence foreclosure or other appropriate proceedings as set forth in, and within the time specified by, this Section 14.4.

A. Any Leasehold Mortgagee which has an outstanding Leasehold Mortgage shall have the right, but not the obligation, at any time to pay any or all of the Rent due pursuant to the terms of this Ground Lease, and do any other act or thing required of Tenant by the terms of this Ground Lease, to prevent termination of this Ground Lease. Each Leasehold Mortgagee shall have 90 days after receipt of notice from Landlord describing such default to cure the default. All payments so made and all things so done shall be as effective to prevent a termination of this Ground Lease as the same would have been if made and performed by Tenant instead of by Leasehold Mortgagees.

B. In addition to the cure period provided in Section 14.4A above, if the default is such that possession of the Premises may be reasonably necessary to remedy the default, any Leasehold Mortgagee shall have a reasonable time after the expiration of such 90 day period within which to remedy such default, provided that (i) such Leasehold Mortgagee shall have fully cured any default in the payment of any monetary obligations of Tenant under this Ground Lease within such 90 day period and shall continue to pay currently such monetary obligations when the same are due and (ii) such Leasehold Mortgagee shall have acquired Tenant's leasehold estate hereunder or commenced foreclosure or other appropriate proceedings prior to or within such period, and shall be diligently prosecuting the same.

C. Any default under this Ground Lease which by its nature cannot be remedied by any Leasehold Mortgagee shall be deemed to be remedied if (i) within 90 days after receiving written notice from Landlord describing the default, or prior thereto, any Leasehold Mortgagee shall have acquired Tenant's leasehold estate or commenced foreclosure or other appropriate proceedings, (ii) Leasehold Mortgagee shall diligently prosecute any such proceedings to completion, (iii) Leasehold Mortgagee shall have fully cured any default in the payment of any monetary obligations of Tenant hereunder which does not require possession of the Premises, and (iv) after gaining possession of the Premises, the Leasehold Mortgagee shall cure all non-monetary defaults of Tenant hereunder capable of cure by Leasehold Mortgagee.

D. If any Leasehold Mortgagee is prohibited, stayed or enjoined by any bankruptcy, insolvency or other judicial proceedings involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings, the times specified for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; provided that any Leasehold Mortgagee shall have fully cured any default in the

payment of any monetary obligations of Tenant under this Ground Lease and shall continue to pay currently such monetary obligations when the same fall due; provided, further, that such Leasehold Mortgagee shall not interfere with Landlord's efforts to seek compliance by the Tenant with any non-monetary obligation under this Ground Lease.

E. As used in this Section 14.4, "monetary obligations of Tenant" does not include damages, costs and expenses arising from any obligation of Tenant to indemnify Landlord for any acts or omission of Tenant prior to the date a Leasehold Mortgagee assumes the obligations of Tenant hereunder.

**14.5 Limitation on Liability of Leasehold Mortgagee.** No Leasehold Mortgagee shall be or become liable to Landlord as an assignee of this Ground Lease or otherwise unless it expressly assumes by written instrument executed by Landlord and Leasehold Mortgagee such liability (in which event the Leasehold Mortgagee's liability shall be limited to the period of time during which it is the owner of the leasehold estate created hereby) and no assumption shall be inferred from or result from foreclosure or other appropriate proceedings in the nature thereof or as the result of any other action or remedy provided for by such Leasehold Mortgage or other instrument or from a conveyance from Tenant pursuant to which the purchaser at foreclosure or grantee shall acquire the rights and interest of Tenant under the terms of this Ground Lease.

**14.6 Estoppel Certificates.** Landlord and Tenant agree that at any time and from time to time upon not less than 20 days' prior written notice by the other party, or upon request from any Leasehold Mortgagee or Investor or a permitted assignee, Landlord or Tenant will execute and deliver to the other party or to such Leasehold Mortgagee or Investor a statement in writing certifying (a) that this Ground Lease is unmodified and in full force and effect (or specifying any known amendments if applicable); (b) the date through which the Rents have been paid; and (c) that, to the knowledge of the certifier (if such be the case), there is no default (or any conditions existing which, but for the passage of time or the giving of notice, would constitute a default) set off, defense or other claim against Landlord or Tenant, as applicable, other than those, if any, so specified under the provisions of this Ground Lease. It is intended that any such statement may be relied upon by any persons proposing to acquire the interest of Landlord, Tenant or any Leasehold Mortgagee or Investor, as the case may be, in this Ground Lease or by any prospective Leasehold Mortgagee or Investor or permitted assignee of any Leasehold Mortgagee or Investor.

**14.7 Registration of Leasehold Mortgages.** Upon written request by Landlord, Tenant shall provide written notice to Landlord of the name and address of each Leasehold Mortgagee under this Ground Lease.

**14.8 New Ground Lease.** In the event of the termination of this Ground Lease prior to the natural expiration of the Term of this Ground Lease due to a default of Tenant or operation of law or otherwise (including, without limitation, a rejection or other termination of this Ground Lease pursuant to any bankruptcy filing by or against Tenant or the commencement of any other insolvency proceeding or similar proceeding, an act of condemnation or eminent domain against a portion of the Premises by a government agency or body, the destruction or damage of the Premises, or upon a foreclosure of Tenant's estate by a Leasehold Mortgagee or acceptance of a deed in lieu of foreclosure or a change in the control or management of Tenant in violation of this Ground Lease), Landlord shall also be obligated to give notice to Leasehold Mortgagee simultaneously under Section 14.3 hereof with such notice given to Tenant; provided that no failure to give such notice to Leasehold Mortgagee shall invalidate the termination of this

Ground Lease. Landlord, upon written request from Senior Leasehold Mortgagee and at Senior Leasehold Mortgagee's sole cost and expense, shall enter into a new lease with such holder or its designee in accordance with and upon the same terms and conditions as set forth in this Ground Lease. In addition, without limiting the preceding sentences, in the event of the filing of a petition in bankruptcy by or against Tenant, and the Tenant rejects this Ground Lease under the then applicable provisions of the Bankruptcy Code, Landlord shall, upon the request of a Leasehold Mortgagee and at Senior Leasehold Mortgagee or its designee's sole cost and expense, affirm this Ground Lease, and Landlord will enter into a new ground lease on the same terms and conditions set forth in this Ground Lease with such holder or its designee promptly upon Tenant's rejection of this Ground Lease. In the event of the filing of a petition in bankruptcy by the Landlord, and the Landlord rejects this Ground Lease and the Tenant does not affirm it, a Leasehold Mortgagee will have the authority to affirm this Ground Lease on behalf of the Tenant and to keep the Ground Lease in full force and effect.

A. After cancellation and termination of this Ground Lease, and upon compliance with the provisions of this Section 14.8 by Leasehold Mortgagee, or its designee, upon the request of Leasehold Mortgagee or its designee within sixty (60) days following the date on which Landlord notifies Senior Leasehold Mortgagee in writing in accordance with Section 14.3 that the Ground Lease actually has been terminated or rejected as described above in this Section 14.8, Landlord shall, at Senior Leasehold Mortgagee or its designee's sole cost and expense, execute and deliver such new ground lease to such Leasehold Mortgagee or its designee, having the same relative priority in time and right as this Ground Lease (to the extent possible) and having the benefit of all the right, title, interest, powers and privileges, and obligations and liabilities of Tenant hereunder in and to the Premises.

**14.9 Rights of Investor.** The Investor shall have the same notice and cure rights as any Leasehold Mortgagee (including monetary obligations) as set forth in Section 14.4 for so long as it is a limited partner of Tenant; provided, however, that Investor shall be deemed to have met any condition relating to commencement or continuation of a foreclosure proceeding as set forth in Section 14.4 above, if it is attempting with diligence and in good faith to remove the general partner of Tenant. The address for any notices to Investor, as of the date hereof, is provided in Basic Ground Lease Information Section 16.

**14.10 Transfers.** The consent of Landlord shall not be required for the mortgage of Tenant's interest in the Premises and Premises Improvements to any Leasehold Mortgagee, including, without limitation, Senior Leasehold Mortgagee, and transfer of the Premises and Premises Improvements to such Leasehold Mortgagee by foreclosure or deed-in-lieu of foreclosure (or the leasehold equivalent thereof), or to a third-party purchaser pursuant to a foreclosure sale (or the leasehold equivalent thereof). The consent of Landlord to a Transfer by a Leasehold Mortgagee after acquisition by foreclosure, at Senior Leasehold Mortgagee or its designee's sole cost and expense, will not be unreasonably withheld or delayed. Notwithstanding the foregoing, if at any time Federal Home Loan Mortgage Corporation or its successor, assignee or participant is the holder of the promissory note that is secured by the Leasehold Mortgage being foreclosed or transferred via a deed-in-lieu, Landlord's consent shall not be required in connection with such transfer of the Premises and Premises Improvements by the Leasehold Mortgagee after acquisition by foreclosure or deed-in-lieu of foreclosure (or the leasehold equivalent thereof).

**14.11 [Intentionally Omitted]**

**14.12 Further Ground Lease Amendments.** Landlord shall cooperate in including in this Ground Lease by suitable amendment from time to time any provision which may reasonably be requested by any Leasehold Mortgagee or any proposed lender, at Leasehold Mortgagee or proposed lender's sole cost and expense, for the purpose of implementing the mortgagee-protection provisions contained in this Ground Lease and allowing such Leasehold Mortgagee or proposed lender reasonable means to protect or preserve the lien of the leasehold mortgage and the value of its security, and to include any additional rights and privileges reasonably requested to be added by such Leasehold Mortgagee. Landlord agrees to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that any such amendment shall not in any way affect Landlord's fee estate in the Site or any other interest of Landlord in the Site or Premises, affect the Term or rent under this Ground Lease, or otherwise in any material respect adversely affect any rights of Landlord under this Ground Lease or (except as otherwise expressly provided herein) Regulatory Requirements.

**ARTICLE 15.  
MISCELLANEOUS**

**15.1 Holding Over.** If Tenant shall hold over in the Premises Improvements or Premises after the expiration or termination of the Term hereof with or without the consent of Landlord, such holding over shall be construed to be only a tenancy from month to month, subject to all the covenants, conditions and obligations contained in this Ground Lease. Tenant hereby agrees to pay to Landlord as monthly rental \$500 per month, plus all Additional Rent as otherwise required in this Ground Lease.

**15.2 Attorneys' Fees.** In the event that any action is brought by either party hereto against the other for the enforcement or declaration of any right or remedy in or under this Ground Lease or for the breach of any covenant or condition of this Ground Lease, the prevailing party shall be entitled to recover, and the other party agrees to pay, all fees and costs to be fixed by the court therein including, but not limited to, attorneys' fees.

**15.3 Quiet Possession.**

A. Landlord agrees that so long as Tenant is not in default under this Ground Lease and is paying the Rent and performing all of the covenants and conditions of this Ground Lease, Tenant shall quietly have, hold and enjoy the Premises throughout the Term hereof without interruption or disturbance from Landlord or any other persons claiming by, through or under Landlord. For purposes of this Section 15.3, persons exercising their rights under the Site REA shall be deemed to a person claiming by, through or under Tenant.

B. Landlord covenants and agrees that Landlord shall not mortgage, convey, pledge, or otherwise encumber the Premises without the written consent of Tenant and any Leasehold Mortgagees, which written consent may be withheld in the Tenant or Leasehold Mortgagees' sole discretion. Any document evidencing such encumbrances shall be expressly subordinate to the leasehold estate created hereunder and any Leasehold Mortgages. In such event, Tenant shall not be required, nor shall Tenant be permitted without the consent of all Leasehold Mortgagees, to subordinate the leasehold established hereunder to any mortgage entered into by Landlord after the date hereof. However, nothing in this Section 15.3B shall limit any City exercise of its regulatory authority, including without limitation pursuant to Sections 6.8 or 6.9 above, or exercise of its Governmental Capacity pursuant to Section 15.22 below.

**15.4 Force Majeure.** Except as to the payment of Rent, subject to the limitations set forth below, performance by either party hereunder (including without limitation continuing obligations under the DDA) shall not be deemed to be in default, and all performance and other dates specified in this Ground Lease shall be extended, where delays are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; unusually severe weather; lack of reasonable availability of labor or materials; acts or omissions of the other party; or acts or failures to act of the City or any other public or governmental agency or entity (other than the acts or failures to act of Landlord which shall not excuse performance by Landlord) (together, “**Force Majeure**”). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party with reasonable promptness (not more than 30 days) of the commencement of the cause. Times of performance under this Ground Lease may also be extended in writing by the mutual agreement of Landlord and Tenant. Tenant expressly agrees that post-Ground Lease Date adverse changes in economic conditions, either of Tenant specifically or the economy generally, changes in market conditions or demand, and/or Tenant’s inability to obtain financing or other lack of funding, shall not constitute a Force Majeure delay pursuant to this Section 15.4. Tenant expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Ground Lease Date.

**15.5 Notices.** Any notice to be given or other document to be delivered by either party to the other hereunder shall be in writing and shall be deemed to have been duly given and received (i) upon personal delivery, (ii) as of the third business day after mailing by United States registered or certified mail, return receipt requested, postage prepaid, addressed as set forth below, or (iii) the immediately succeeding business day after deposit with Federal Express or other equivalent overnight delivery system, addressed to the party for whom intended, as indicated in the Basic Ground Lease Information. Any party hereto may from time to time, by written notice to the other, designate a different address which shall be substituted for the one above specified.

**15.6 Waiver.** No waiver of any breach of any of the terms, covenants, agreements, restrictions or conditions of this Ground Lease shall be construed to be a waiver of any succeeding breach of the same or other terms, covenants, agreements, restrictions and conditions hereof.

**15.7 Surrender.** Upon the expiration or sooner termination of the Term of this Ground Lease, and notwithstanding anything herein contained to the contrary, Tenant shall surrender to Landlord the Premises Improvements, the Premises and any other improvements thereon, broom clean and in good condition and repair, reasonable wear and tear excepted.

**15.8 Binding.** Subject to the restrictions set forth herein regarding assignment of , Tenant’s interest in this Ground Lease, each of the terms, covenants and conditions of this Ground Lease shall extend to and be binding on and shall inure to the benefit of not only Landlord and Tenant, but to each of their respective heirs, administrators, executors, successors and assigns. Whenever in this Ground Lease reference is made to either Landlord or Tenant, the reference shall be deemed to include, wherever applicable, the heirs, administrators, executors, successors and assigns of such parties, the same as if in every case expressed.

**15.9 Disclaimer of Partnership.** The relationship of the parties hereto is that of Landlord and Tenant, and it is expressly understood and agreed that Landlord does not in any way nor for any purpose become a partner of Tenant or a joint venturer with Tenant in the Premises Improvements or in the conduct of Tenant's business or operations or otherwise.

**15.10 Quitclaim.** At termination or expiration of the Term of this Ground Lease, Tenant shall execute, acknowledge and deliver to Landlord within 30 days, a valid and recordable quitclaim deed covering the Premises and Premises Improvements, free and clear of all monetary liens and encumbrances not caused or agreed to by Landlord ("**Quitclaim Deed**"). If Tenant fails to clear all monetary liens and encumbrances as required by this Section at termination or expiration of the Term of this Ground Lease, Tenant shall continue to be liable and responsible for all such costs, liabilities and expenses associated with, related to or caused by such encumbrances that were not removed by Tenant, and Landlord may take any and all action to enforce its rights under this Ground Lease and to have such encumbrances removed, and all costs and expenses associated with such actions shall be paid solely by Tenant upon Landlord's demand

**15.11 Interpretation.** The titles to the sections of this Ground Lease are not a part of this Ground Lease and shall have no effect upon the construction or interpretation of any part of this Ground Lease. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Ground Lease shall be interpreted as though prepared jointly by both parties.

**15.12 Severability.** If any term, provision, condition or covenant of this Ground Lease or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Ground Lease, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by Law.

**15.13 Computation of Time.** The time in which any act is to be done under this Ground Lease is computed by excluding the first day, and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Sections 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

**15.14 Legal Advice.** Each party represents and warrants to the other the following: they have carefully read this Ground Lease, and in signing this Ground Lease, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Ground Lease, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Ground Lease; and, they have freely signed this Ground Lease without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Ground Lease, and without duress or coercion, whether economic or otherwise.

**15.15 Time of Essence.** Time is expressly made of the essence with respect to the performance by Landlord and Tenant of each and every obligation and condition of this Ground Lease.

**15.16 Nonliability of Officials, Employees, etc.** No member, official or employee of Landlord shall be personally liable to Tenant, or any successor in interest, in the event of any default or breach by Landlord or for any amount which may become due to Tenant or its successors, or on any obligations under the terms of this Ground Lease. Tenant hereby waives and releases any claim it may have against the members, officials or employees of Landlord with respect to any default or breach by Landlord or for any amount which may become due to Tenant or its successors, or on any obligations under the terms of this Ground Lease. No member, partner (other than general partners as otherwise permitted by law), or board member, officer or employee of Tenant (or of any of Tenant's members or partners) shall be personally liable to Landlord, or any successor in interest, in the event of any default or breach by Tenant or for any amount which may become due to Landlord or its successors, or on any obligations under the terms of this Ground Lease. Landlord hereby waives and releases any claim it may have against Tenant's members, partners (other than general partners as otherwise permitted by law), or board members, officers or employees (or of any of Tenant's members or partners) with respect to any default or breach by Tenant or for any amount which may become due to Landlord or its successors, or on any obligations under the terms of this Ground Lease.

**15.17 Assignment by Landlord.** Landlord may assign or transfer any of its interests hereunder at any time without Tenant's consent. Any such assignment or transfer shall be in compliance with all Laws, and the assignee or transferee shall affirmatively assume all Landlord obligations hereunder.

**15.18 Applicable Law.** The laws of the State of California, including all statutes of limitations but without regard to conflict of laws principles, shall govern the interpretation and enforcement of this Ground Lease.

**15.19 Covenants and Conditions.** Each obligation of the parties hereunder, including, without limitation, Tenant's obligation for the payment of Rent, shall be construed to be both a covenant and a condition of this Ground Lease.

**15.20 Integration.** This Ground Lease, together with all exhibits and attachments hereto, the Site REA, and Regulatory Requirements (collectively, "**Improvements Documents**"), excluding the City Financing Documents, constitute the entire agreement between the parties relating to the Premises and there are no conditions, representations or agreements regarding the matters covered by this Ground Lease which are not expressed herein or in the Improvements Documents. Without limiting the foregoing, except as expressly provided in this Ground Lease (including without limitation **Exhibit C**), this Ground Lease supersedes the DDA. Notwithstanding the foregoing, nothing herein will limit or restrict the rights of any party under the Improvements Documents and City Financing Documents.

**15.21 Amendments to this Ground Lease.** Landlord and Tenant agree to mutually consider reasonable requests for amendments to this Ground Lease that may be made by either of them, lending institutions or bond counsel or financial consultants to Landlord or Tenant, provided such requests are consistent with this Ground Lease and would not materially alter the basic business terms herein or the other Improvements Documents. No amendment

shall be effective unless in writing and signed by the parties hereto and consented to by each Leasehold Mortgagee.

**15.22 Proprietary and Governmental Roles: Actions by City.** Except where clearly and expressly provided otherwise in this Ground Lease, the capacity of the City in this Ground Lease shall be as owner and lessor of property only ("**Proprietary Capacity**"), and any obligations or restrictions imposed by this Ground Lease on the City shall be limited to that capacity and shall not relate to, constitute a waiver of, supersede or otherwise limit or affect its governmental capacities, including enacting laws, inspecting structures, reviewing and issuing permits, and all of the other legislative and administrative or enforcement functions pursuant to federal, state or local law ("**Governmental Capacity**"). When acting in its Proprietary Capacity, discretionary actions may be undertaken by the City Manager or other designees as designated by the City Manager to the extent otherwise provided herein. In addition, nothing in this Ground Lease shall supersede or waive any discretionary or regulatory approvals required to be obtained from the City under applicable Law.

**15.23 City Manager Authority and Limitations.** Any amendment to this Ground Lease which affects or relates to: (i) the Term of this Ground Lease; (ii) the permitted use of the Premises and Premises Improvements; (iii) Rent amounts and other monetary payments by Tenant; or (iii) any other material provision of this Ground Lease, shall require approval by the Landlord's City Council. Subject to the foregoing, the City Manager may also issue without City Council approval any consent or approval which Landlord is entitled to provide under this Ground Lease, including without limitation: (w) Material Alterations under Section 5.6 above; (x) assignments under Section 12.1; (y) sublettings under Section 12.2; and (z) rules for a CASp inspection under Section 15.29.

**15.24 Brokerage Commissions.** Landlord and Tenant each represents that it has not been represented by any broker in connection with this Ground Lease, and that no real estate broker's commission, finder's fee or other compensation (individually and collectively, "**Brokerage Commission**") is due or payable. Landlord and Tenant each agrees to indemnify and hold the other harmless from any claims or liability, including reasonable attorneys' fees, in connection with a claim by any person for a Brokerage Commission based upon any statement, representation or agreement of the other party.

**15.25 City Non-Discrimination Ordinance.** Tenant hereby agrees to comply with the provisions of the Berkeley Municipal Code ("**B.M.C.**"), including without limitation Chapter 13.26, as amended from time to time. In the performance of its obligations under this Ground Lease, Tenant agrees as follows:

A. Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

B. Tenant shall permit Landlord access to records of employment, employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the reasonable opinion of Landlord, are necessary to monitor compliance with this non-discrimination provision. In addition, Tenant shall fill out, in a timely fashion, forms supplied by Landlord to monitor this non-discrimination provision.

**15.26 Non-Discrimination Against Persons With Disabilities.**

A. If Tenant provides any aid, service or benefit to others on the Landlord's behalf, Tenant shall, in the provision of such aid, service or benefit, observe and comply with all applicable provisions of Title II of the Americans with Disabilities Act of 1990 and any amendments thereto. Tenant shall further observe and comply with all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination against individuals with disabilities or ensuring that individuals with disabilities are not excluded from participating in or receiving benefits, services or activities of the Landlord, if applicable.

B. If Tenant is or becomes a "public accommodation" as defined in Title III of the Americans with Disabilities Act of 1990, Tenant shall observe and comply with all applicable provisions of the Act and any amendments thereto, and all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations offered by the Tenant. All of Tenant's activities must be in accordance with these laws, ordinances, codes, and regulations, and Tenant shall be solely responsible for complying therewith.

**15.27 Conflict of Interest Prohibited.**

A. In accordance with California Government Code Section 1090, Berkeley City Charter Section 36 and B.M.C. Chapter 3.64, neither Tenant nor any employee, officer, director, partner or member of Tenant, or immediate family member of any of the preceding, shall have served as an elected officer, an employee, or a committee or commission member of Landlord, who has directly or indirectly influenced the making of this Ground Lease.

B. In accordance with California Government Code Section 1090 and the Political Reform Act, (Government Code Section 87100 et seq.,) no person who is a director, officer, partner, trustee, employee or consultant of Tenant, or immediate family member of any of the preceding, shall make or participate in a decision made by Landlord or any of its boards, commissions or committees, if it is reasonable foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Tenant, except to the extent permitted by 2 California Code of Regulations, Section 18700(c)(2).

C. Interpretation of this paragraph shall be governed by the definitions and provisions use in the Political Reform Act, Government Code section 87100 et seq., its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64, as amended from time to time.

**15.28 Nuclear Free Berkeley.** Tenant agrees to comply with B.M.C. Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

**15.29 Required Accessibility Disclosure.**

A. Landlord hereby advises Tenant that the Premises and Premises Improvements have not undergone an inspection by a certified access specialist, and except to the extent expressly set forth in this Ground Lease, Landlord shall have no liability or responsibility to make any repairs or modifications to the Premises or the Premises Improvements in order to comply with accessibility standards. The following disclosure is hereby made pursuant to applicable California law:

B. "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." [Cal. Civ. Code Section 1938(e)]. Any CASp inspection shall be conducted in compliance with reasonable rules in effect at the Premises with regard to such inspections and shall be subject to Landlord's prior written consent.

**15.30 Oppressive States.**

A. In accordance with Resolution No. 59,853-N.S., Tenant certifies that it has no contractual relations with, and agrees during the Term of this Ground Lease to forego contractual relations to provide personal services to, the following entities:

1. The governing regime in any Oppressive State.
2. Any business or corporation organized under the authority of the governing regime of any Oppressive State.
3. Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of this Ground Lease) for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

B. For purposes of this Ground Lease, the Tibet Autonomous Region and the provinces of Abo, Kham, and U-Tsang shall be deemed oppressive states.

C. Tenant's failure to comply with this Section shall constitute a default of this Ground Lease and Landlord may terminate this Ground Lease pursuant to ARTICLE 13. In the event that Landlord terminates this Ground Lease due to a default under this provision, Landlord may deem Tenant a non-responsible bidder for five years from the date this Ground Lease is terminated.

**15.31 Berkeley Living Wage Ordinance (LWO).**

A. Tenant agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance. If Tenant employs six or more part-time or full-time employees, and generates \$350,000 or more in annual gross receipts, Tenant will be required to provide all eligible employees with City mandated minimum compensation during the Term of this Ground Lease, as defined in B.M.C. Chapter 13.27, and well as comply with the terms enumerated herein.

B. Tenant shall be required to maintain all reasonable records and documents that would establish whether Tenant is subject to Berkeley's Living Wage Ordinance ("LWO"). If Tenant is subject to the LWO, as defined therein, Tenant shall be further required to

maintain monthly records of those employees located on the leased Premises. These records shall include the total number of hours worked, the number of hours spent providing service on the leased Premises, the hourly rate paid, and the amount paid by Tenant for health benefits, if any, for each of its employees providing services under the lease. The records described in this Section shall be made available upon the Landlord's request. The failure to produce these records upon demand shall be considered a default, subject to the provisions contained in ARTICLE 13 herein.

C. If Tenant is subject to the LWO, Tenant shall include the requirements of the ordinance, as defined in B.M.C. Chapter 13.27, in any and all subleases in which Tenant enters with regard to the subject Premises. Subtenants shall be required to comply with this ordinance with regard to any employees who spend 25% or more of their compensated time on the leased Premises.

D. If Tenant fails to comply with the requirements of the LWO and this Ground Lease, the Landlord shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

E. Tenant's failure to comply with this Section shall constitute a default of the Ground Lease, upon which City may terminate this Ground Lease pursuant to ARTICLE 13.

F. In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Tenant's failure to pay any of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty of forfeiture for Tenant's breach.

**15.32 Berkeley Equal Benefits Ordinance (EBO).**

A. Tenant hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant will be required to provide all eligible employees with City mandated equal benefits during the Term of this Ground Lease, as defined in B.M.C. Chapter 13.29, as well as comply with the terms enumerated herein.

B. If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant agrees to supply the City with any records the City deems necessary to determine compliance with this provision. Failure to do so shall be a considered a default, subject to the provisions of ARTICLE 13.

C. If Tenant fails to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity. Tenant's failure to comply with this Section shall constitute default of the Ground Lease, upon which City may terminate this Ground Lease pursuant to ARTICLE 13.

D. In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Tenant's failure to provide

its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Tenant's breach.

**15.33 Audit.** In addition to any other Landlord audit right herein, the City Auditor's Office, or its designee, may conduct an audit of Tenant's financial and compliance records maintained in connection with the operations and services performed under this Ground Lease, and with the payments made under this Ground Lease. In the event of such audit, Tenant agrees to make all such financial and compliance records available to the Auditor's Office, or to its designee. City agrees to provide Tenant an opportunity to discuss and respond to any findings before a final audit report is filed.

**15.34 City Business License, Payment of Taxes, Tax I.D. Number.** Tenant has obtained a City business license as required by B.M.C. Chapter 9.04, and its license number is written below; or, Tenant is exempt from the provisions of B.M.C. Chapter 9.04 and has written below the specific B.M.C. section under which it is exempt. Tenant shall pay all state and federal income taxes and any other taxes due. Tenant certifies under penalty of perjury that the taxpayer identification number written below is correct.

**15.35 Survival.** The provisions of Sections 4.1 (Impositions), 5.6 (Alterations), 5.9 (Liens and Stop Notices), 6.2 (Governmental Requirements), 6.7 (General Standards of Maintenance), 7.2 (Hazardous Materials), 9.2 (Indemnity), 15.7 (Surrender) and any other obligation of Tenant that, by its terms or nature, is to be performed after or is to survive expiration or termination of this Ground Lease, shall survive such expiration or termination.

**15.36 No Merger of Title.** Except following expiration of the Term, there shall be no merger of the leasehold estate created by this Ground Lease with the fee estate in the Land by reason of the fact that the same person may acquire or hold (a) the leasehold estate created by this Ground Lease or any interest in such leasehold estate, and (b) the fee estate in the Land or any interest in such fee estate; and no such merger shall occur unless all persons, including any Leasehold Mortgagee, shall join in a written instrument effectuating such merger and shall duly record the same.

**15.37 Recording of Lease.** Tenant and Landlord shall record this Ground Lease (or a separate memorandum thereof) in the Official Records of Alameda County.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Ground Lease to be executed on their behalf by their respective officers thereunto duly authorized as of the dates set forth below.

*[Signature Page Follows]*

**TENANT:**

BFHP Hope Center LP, a California limited partnership

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

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

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

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

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

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

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

**LANDLORD:**

CITY OF BERKELEY, a Charter city

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

Dee Williams-Ridley  
City Manager

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

**Approved as to form:**

\_\_\_\_\_  
Farimah Brown, City Attorney

**Registered by:**

\_\_\_\_\_  
\_\_\_\_\_, City Auditor

**Attest:**

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

**TENANT INFORMATION**

Tax Identification No. \_\_\_\_\_

Incorporated: Yes \_\_\_ No \_\_\_

Certified Woman Business Enterprise: Yes \_\_\_ No \_\_\_

Certified Minority Business Enterprise: Yes \_\_\_ No \_\_\_

Certified Disadvantaged Business Enterprise: Yes \_\_\_ No \_\_\_

City Business License No. \_\_\_\_\_, or  
Exempt pursuant to B.M.C. Section \_\_\_\_\_

**EXHIBIT A**

**PREMISES LEGAL DESCRIPTION**

The land referred to is situated in the City of Berkeley, County of Alameda, State of California, and is described as follows:

PARCEL ONE:

Parcel C, as shown on the Parcel Map 11051, filed \_\_\_\_\_, 2020 in Book \_\_\_ of Parcel Maps, Pages \_\_\_ and \_\_\_, Alameda County Records, EXCEPTING THEREFROM all buildings and improvements situated thereon, which buildings and improvements are and shall remain real property.

PARCEL TWO:

Easements for construction, maintenance, utilities, structural support and encroachment, set forth in that certain Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for Berkeley Way, dated \_\_\_\_\_, 2020, executed by the City of Berkeley and BRIDGE Berkeley Way LP and BFHP Hope Center LP, and recorded in Alameda County Records on \_\_\_\_\_, 2020 as Instrument No. \_\_\_\_\_.

Being a portion of APN 057-2053-022-01

EXHIBIT B

DEVELOPMENT SITE PARCEL MAP

*[Draft to be attached—final to be included before signing]*

**EXHIBIT C**

**STATUS OF CERTAIN DDA PROVISIONS**

1. The following DDA provisions have been fully satisfied or waived:
  - a. Section 2.1 (Conditions Precedent to Lease of Property).
  - b. Section 2.2 (Developer Deposit).
  - c. Section 2.3 (Development Schedule).
  - d. Section 2.4 (Development Services Agreement).
  - e. Section 2.5 (Creation of and Assignments to Permitted Lessees).
  - f. Section 2.6 (Developer Approval of Property).
  - g. Section 2.7 (Developer Approval of Title Matters).
  - h. Section 2.8 (Agreement on Leases).
  - i. Section 2.9 (Agreement on Reciprocal Easement Agreement).
  - j. Section 2.10 (Agreement on Completion Guaranty Agreement).
  - k. Section 2.11 (City and Other Governmental Approvals).
  - l. Section 2.12 (Financing Proposals and Financing Plans for the Development).
  - m. Section 2.13 (Evidence of Availability of Funds).
  - n. Section 2.14 (Construction Contract(s)).
  - o. Section 2.15 (Construction Bonds).
  - p. Section 2.16 (Building Permits).
  - q. Section 2.17 (Construction Drawings).
  - r. Section 2.18 (Final Subdivision Map).
  - s. Section 2.19 (No Default).
  - t. Section 2.20 (Permits and Approvals Final; Absence of Litigation).
  - u. Section 2.21 (Insurance).
  - v. Section 2.22 (Representations and Warranties; No Material Adverse Change).

- w. Article III (Design Requirements), except for Sections 3.7 and 3.8.
  - x. Article IV (Lease Disposition of Property) except for Sections 4.5 (see below), 4.6 (with respect to post-closing ad valorem taxes (if any) and other potential pre-closing and post-closing costs) and 4.7.
2. The following DDA provisions are terminated:
- a. Section 3.7 (No Change in Project Documents).
  - b. Section 3.8 (Additional Permits and Approvals).
  - c. Article VII (Assignment and Transfers).
  - d. Article VIII (Termination, Default and Remedies). (Remedies for default in any continuing obligation under the DDA shall be as provided in the Ground Lease.)
  - e. Section 9.3 (Enforced Delay).
  - f. Section 9.19 (Right of Entry to Perform Studies).
3. The following DDA provisions, attached hereto, remain in full force and effect, except to the extent provided below:
- a. Section 4.5 (Condition of Property) remains in full force and effect.
  - b. Section 4.6 (Costs of Escrow and Closing).
  - c. Section 4.7 (Obligations After Lease).
  - d. Article V (Construction of the Development) remains in full force and effect, and is incorporated into Section 5.1 of the Leases and the JDA.
  - e. Article VI (Ongoing Developer Obligations) (except to the extent modified in the Ground Lease or as attached hereto).
  - f. Section 9.1 (Notices, Demands and Communications), but only to the extent notices are required under the DDA, and not some other agreement with its own notice provisions.
  - g. Section 9.2 (Non-Liability of City Officials, Employees and Agents), Section 9.4 (Inspection of Books and Records), Section 9.5 (Provision Not Merged with Leases) and Section 9.6 (Title of Parts and Sections) shall remain in full force and effect.
  - h. Section 9.7 (Indemnification) shall remain in full force and effect against Developer except to the extent assumed by BRIDGE LP and BFHP LP, and otherwise in full force and effect against BRIDGE LP and BFHP LP.
  - i. Section 9.8 (Applicable Law), Section 9.9 (No Brokers), Section 9.10 (Severability), Section 9.11 (Binding Upon Successors), Section 9.12 (Parties Not Co-Venturers), Section 9.13 (Time of the Essence), Section 9.14 (Action by the City), Section 9.15 (Discretion Retained by City), Section 9.16 (Representations and Warranties by Developer), and

Section 9.17 (Multiple Originals; Complete Understanding of the Parties), remain in full force and effect.

j. Except as provided in Leases Subsection 1.1A, Section 9.18 (Conflict Among City Documents) remains in full force and effect to the extent any applicable DDA provision remains in effect.

EXHIBIT D

SITE RECIPROCAL EASEMENT AGREEMENT (REA 1)

*[to be provided]*



EXHIBIT E

RESOLUTION NO. AAAA-N.S.

*[to be attached]*



EXHIBIT F

INITIAL LEASEHOLD MORTGAGES AND MORTGAGEES

**[to be provided—identify “Senior Leasehold Mortgagee” if any and include notice addresses]**

EXHIBIT G

CITY FINANCING DOCUMENTS

*[to be provided]*





1-14-2020

Exhibit C

**GROUND LEASE  
2012 BERKELEY WAY  
(Berkeley Way Permanent Supportive Housing Apartments)**

by and between

**CITY OF BERKELEY  
("Landlord")**

and

**BFHP Hope Center, LP**

**("Tenant")**

Dated \_\_\_\_\_, 2020

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**BASIC LEASE INFORMATION**  
**(Ground Lease - Berkeley Way Permanent Supportive Housing Apartments)**

1. **“Landlord”** CITY OF BERKELEY, a Charter city

Notice Address:  
City of Berkeley  
2180 Milvia Street  
Berkeley, California 94704  
Attention: City Manager  
Telephone: (510) 981-7000  
Facsimile: (510) 981-7099

With a copy to:  
City of Berkeley  
2180 Milvia Street, 4<sup>th</sup> floor  
Berkeley, California 94704  
Attention: City Attorney  
Telephone: (510) 981-6991  
Facsimile: (510) 981-6960

And

City of Berkeley HHCS  
2180 Milvia Street, 2<sup>nd</sup> floor  
Berkeley, California 94704  
Attention: Housing & Community Services Manager  
Telephone: (510) 981-5400  
Facsimile: (510) 981-5450

2. **“Tenant”** BFHP Hope Center LP

Notice Address:  
  
BFHP Hope Center LP  
c/o BRIDGE Housing Corporation  
600 California Street, Suite 900  
San Francisco, CA 94108  
Attn: General Counsel

BFHP Hope Center LP  
c/o Berkeley Food and Housing Project  
1901 Fairview Street  
Berkeley, CA 94703  
Attn: Executive Director

3. **“Ground Lease Date”** The date set forth in the first paragraph below.

4. **“DDA”** That certain Disposition and Development Agreement (Berkeley Way Development), originally dated June 8, 2016 between Landlord and Bridge Housing Corporation, a California nonprofit public benefit corporation, as amended by First Amendment to Disposition and Development Agreement dated August 27, 2018, as

**BASIC GROUND LEASE INFORMATION**  
**(Ground Lease - Berkeley Way Permanent Supportive Housing Apartments)**

partially assigned to Tenant pursuant to that certain Partial Assignment and Assumption Agreement dated December 17, 2018 and recorded in Official Records of Alameda County on December 21, 2018 as Instrument No. 18-241567, as amended by the Second Amendment to Disposition and Development Agreement, dated February 1, 2019 and recorded in Official Records of Alameda County on February 14, 2019 as Instrument No. 2019029062, and as further partially assigned to BRIDGE Berkeley Way LP and amended pursuant to that certain Assignment and Third Amendment to DDA dated \_\_\_\_\_, 2020 and recorded in Official Records of Alameda County on \_\_\_\_\_, 2020 as Instrument No. \_\_\_\_\_. See **Exhibit C** hereto.

5. **“Premises”**

The Premises is described in **Exhibit A**, being primarily Parcel **A** of the Parcel Map (defined below).

6. **“Development Site” or “Site”**

That certain approximately 1-acre (approximately 41,000 square feet) parcel of real property generally located at 2012 Berkeley Way, between Milvia Street and Shattuck Avenue (previously APN 57-2053-22-1) in the City of Berkeley, which is the subject of the DDA.

The Development Site has been divided into three parcels, pursuant to that certain Parcel Map 11051, filed \_\_\_\_\_, 2020 in Book \_\_\_ of Parcel Maps, Pages \_\_ and \_\_, Alameda County Records (the **“Parcel Map”**), a copy of which is attached hereto as **Exhibit B**. Generally, the three parcels are the **“BRIDGE Affordable Parcel”** (Parcel Map Parcel C), the **“Permanent Supportive Housing Parcel”** (Parcel Map Parcel A), and the **“Temporary Housing Parcel”** (Parcel Map Parcel B).

7. **“Development” or “Project”**

The entire development project to be planned, entitled, developed, financed, designed, constructed, operated and maintained on the Development Site. The overall Development is a six story building with approximately 140,000 square feet of gross interior floor space, with associated landscaping and hardscape, and includes:

- The Temporary Housing Parcel and the Temporary Housing Improvements. The **“Temporary Housing Improvements”** consists of approximately 44 beds of temporary housing, a services center and administrative office space. The Temporary Housing Improvements are located within the Temporary Housing Parcel.
- The Permanent Supportive Housing Parcel and the

**BASIC GROUND LEASE INFORMATION**  
**(Ground Lease - Berkeley Way Permanent Supportive Housing Apartments)**

Permanent Supportive Improvements. The “**Permanent Supportive Housing Improvements**” consist of approximately 53 permanent supportive housing units and supportive service spaces. The Permanent Supportive Housing Improvements are located within the Permanent Supportive Housing Parcel.

- The BRIDGE Affordable Parcel and the BRIDGE Improvements. The “**BRIDGE Improvements**” consist of 89 affordable housing units (including one manager’s unit) and related improvements. The BRIDGE Improvements are located within the BRIDGE Affordable Parcel.

8. “**Permitted Use**” Supportive housing, subject to the Regulatory Requirements and all other provisions of this Ground Lease.

9. “**Premises Improvements**” The Permanent Supportive Housing Improvements, collectively, together with all additions, alterations, modifications, replacements and improvements from time to time pursuant to this Ground Lease.

10. “**REA 1**” or “**Site REA**” or “**Berkeley Way REA**” That certain Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for Berkeley Way, dated \_\_\_\_\_, 2020, executed by the City of Berkeley and BRIDGE Berkeley Way LP and BFHP Hope Center LP, and recorded in Alameda County Records on \_\_\_\_\_, 2020 as Instrument No. \_\_\_\_\_, substantially in form attached hereto as **Exhibit D**.

11. “**REA 2**” or “**Hope Center REA**” That certain Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for the BFHP Hope Center, dated \_\_\_\_\_, 2020, executed by the City of Berkeley and BFHP Hope Center LP, and recorded in Alameda County Records on \_\_\_\_\_, 2020 as Instrument No. \_\_\_\_\_, substantially in form attached hereto as **Exhibit D1**.

12. “**Regulatory Requirements**” Includes, collectively, (i) that certain Regulatory Agreement and Declaration of Restrictive Covenants (Berkeley Way Permanent Supportive Housing Apartments), dated \_\_\_\_\_, 20\_\_\_\_, between Landlord and Tenant and recorded in Official Records of Alameda County on \_\_\_\_\_, 2020 as Instrument No. \_\_\_\_\_,

**BASIC GROUND LEASE INFORMATION**  
**(Ground Lease - Berkeley Way Permanent Supportive Housing Apartments)**

and any amendments approved by Landlord and Tenant, and (ii) any regulatory or affordability agreement or other covenant, condition or restriction in favor of Landlord and recorded against the Premises.

13. **“Leasehold Mortgagee”** Means the Leasehold Mortgagees identified in **Exhibit F** attached hereto or any entity holding a Leasehold Mortgage. See also ARTICLE 14 below.
14. **“Leasehold Mortgage”** Means any mortgage, deed of trust, trust indenture, letter of credit, or other security instrument, and any assignment of the rents, issues, and profits burdening the Premises, or any portion thereof, that constitutes a lien on the leasehold estate created by this Ground Lease.
15. **“Senior Leasehold Mortgagee”** Means the Senior Leasehold Mortgagee identified in **Exhibit F** attached hereto or any subsequent lender and its successors, assigns and participants or other entity holding the first lien deed of trust on the leasehold estate created by this Ground Lease.
16. **“Investor(s)”** *[to be provided, including notice addresses]*
17. **“Term”** The period of time commencing on the Ground Lease Date and ending on the last day of the month in which the 75<sup>th</sup> anniversary of the Ground Lease Date occurs, subject to earlier termination as provided elsewhere in this Ground Lease.
18. **“Developer”** BRIDGE Housing Corporation, a California nonprofit public benefit corporation.
19. **“BFHP”** Berkeley Food and Housing Project, a California religious] corporation
20. **“JDA”** Joint Development Agreement, dated \_\_\_\_\_, 20\_\_ between Tenant and BRIDGE Berkeley Way LP, a California limited partnership.
21. **“Developer Agreement”** Prior to the Ground Lease Date, the Development Services Agreement, dated \_\_\_\_\_, 20\_\_ among Developer, Tenant and BRIDGE Berkeley Way LP, a California limited partnership; and after the Ground Lease Date the Development Services Agreement, dated \_\_\_\_\_, 20\_\_ between Developer and Tenant.
22. **“Construction Schedule”** The final approved Construction Schedule for the Premises and Project, as amended from time to time



**GROUND LEASE  
2012 BERKELEY WAY  
(Berkeley Way Permanent Supportive Housing Apartments)**

THIS GROUND LEASE (“**Ground Lease**”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2020 (the “**Ground Lease Date**”), by and between the Landlord and Tenant identified in the Basic Ground Lease Information, who agree as follows:

**ARTICLE 1.  
OVERVIEW AND GENERAL**

**1.1 Overview.**

A. General Purpose of Development; Authority. Landlord owns the Site. Landlord entered into the DDA to cause the construction and operation of the Development on the Site for temporary, affordable and permanent supportive housing, and homeless services to help address the City’s homeless and affordability crisis, existing as of the Ground Lease Date. This Ground Lease facilitates one component of the Development. Landlord is entering into two additional ground leases, with an affiliate of Tenant, to implement the other two components of the Development, which components are further described in Basic Ground Lease Information Section 7. In the event of a conflict between the DDA and this Ground Lease, this Ground Lease supersedes the DDA and will control. (See also Exhibit C hereto.) Landlord’s execution of this Ground Lease and the additional ground leases was authorized by City Council Resolution No. AAAA-N.S. attached hereto as Exhibit E.

B. Specific Purpose of Ground Lease. Landlord is entering into this Ground Lease to permit Tenant to construct, operate and maintain the Premises Improvements for the Permitted Use.

C. Regulatory Requirements. The parties intend that the Regulatory Requirements will survive for the full term therein, notwithstanding any prior termination or expiration of this Ground Lease or (except as provided in ARTICLE 14) foreclosure of any Permitted Leasehold Mortgage.

D. City Financing Documents. Nothing in this Ground Lease shall limit any City right under any regulatory or financing agreements between the City and Tenant (or by Tenant for the benefit of City), or under any Regulatory Requirement.

**1.2 Ground Lease and Possession.** For and in consideration of the payment of Rent and the performance of all the covenants and conditions of this Ground Lease, as of the Ground Lease Date Landlord hereby leases and demises to Tenant, and Tenant hereby leases and hires from Landlord, the Premises, for the Term and upon the covenants and conditions set forth herein. On the Ground Lease Date, Tenant shall obtain exclusive possession of the Premises.

**1.3 Ownership of Premises Improvements.** At all times during the Term of this Ground Lease, (i) the Premises Improvements shall be owned by Tenant, (ii) Tenant alone shall be entitled to all of the tax attributes of ownership, including, without limitation, the right to claim depreciation or cost recovery deductions and the right to claim the low-income housing tax credit described in Section 42 of the Internal Revenue Code of 1986, as amended, and (iii)

Tenant shall have the right to amortize capital costs and to claim any other federal or state tax benefits attributable to the Premises Improvements.

**1.4 Changes to Premises and Parcel Map.** Tenant shall not alter the definition of the Premises, modify the Parcel Map, or further subdivide, by map, subdivision map, or otherwise, the Premises or any portion thereof, without the prior written consent of Landlord, which Landlord may grant or withhold in its sole discretion. Nothing in this Section shall prevent Tenant from entering into residential leases as provided herein and in the Regulatory Agreement.

**1.5 Tenant's Organizational Documents.** Tenant has previously provided Landlord with correct and complete copies of organizational documents for itself and (as applicable) its general partner(s) and managing member(s), including without limitation articles of organization, certificates of limited partnership, limited partnership agreements, limited liability company agreements, and the like. Tenant will provide Landlord copies of all amendments and modifications promptly following adoption thereof, and copies of such other organizational documents as Landlord may reasonably request from time to time. Any such amendment or modification which materially alters Landlord's rights herein (such as by giving new rights to Investors), or under the Site REA, Hope Center REA, or Regulatory Requirements is subject to Landlord's reasonable consent.

**ARTICLE 2.  
GROUND LEASE TERM**

**2.1 Term.** The Term of this Ground Lease shall be as set forth in the Basic Ground Lease Information.

**ARTICLE 3.  
RENT**

**3.1 Rent.** Tenant shall pay the Base Rent specified in the Basic Ground Lease Information on or before the Ground Lease Date. Base Rent and any Additional Rent (collectively, "**Rent**") shall be paid without notice or demand, and, except as specifically provided for in this Ground Lease, without offset, deduction or credit. All Rent (other than Additional Rent payable to entities other than Landlord) shall be payable in lawful money of the United States to Landlord at the address stated herein or to such other persons or at such other places as Landlord may designate from time-to-time in writing.

**3.2 No Cost to Landlord: No Counterclaim, No Abatement.** Except as otherwise expressly provided in this Ground Lease, all Rent payable under this Ground Lease shall be absolutely net to Landlord. Except as otherwise expressly provided in this Ground Lease, Tenant shall pay Rent without assertion of any counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction.

**3.3 Additional Rent.** "**Additional Rent**" means all sums, Impositions (as defined in Section 4.1 below), costs, expenses, and other payments for which Tenant is responsible pursuant to this Ground Lease. Tenant's obligation to pay Additional Rent shall begin to accrue on the Ground Lease Date and shall continue to accrue throughout the Term. Additional Rent shall be payable by Tenant to the appropriate party on or before the date required by this Ground Lease. In addition to and not by way of limitation of Landlord's rights under specific provisions of this Ground Lease, Landlord shall at all times have the right (at its

sole election and without any obligation to do so) to advance on behalf of Tenant any amount, subject to Tenant's right to contest such charges and provided that (except in case of emergency calling for immediate payment) Landlord shall first have given Tenant no less than 10 business days' advance written notice of Landlord's intent to advance such amounts on behalf of Tenant. No advance by Landlord shall operate as a waiver of any Landlord right under this Ground Lease and Tenant shall remain fully responsible for the performance of its obligations under this Ground Lease. All amounts advanced by Landlord as provided in this Section shall constitute "**Additional Rent**" under this Ground Lease, shall be due and payable by Tenant to Landlord within five business days of Tenant's receipt of an invoice from Landlord therefor, and shall bear interest at the Interest Rate until paid in full.

**3.4 Additional Consideration.** In addition to the Rent and Additional Rent provided for herein, consideration for this Ground Lease shall also be and is Tenant's full and complete compliance with all terms, conditions, warranties and covenants contained in the Regulatory Requirements and this Ground Lease relating to the planning, entitling, developing, financing, designing, constructing, operating and maintaining the Premises and Premises Improvements.

#### **ARTICLE 4. TAXES AND ASSESSMENTS; SERVICES AND UTILITIES**

**4.1 Impositions.** Tenant shall pay or cause to be paid, when due to the proper authority, any and all valid taxes, assessments, impositions, fees and similar charges on the Premises or Premises Improvements which become effective after the Ground Lease Date, including all taxes levied or assessed on the possession, use or occupancy of the Premises (as distinguished from the ownership of the Premises), and all taxes levied or assessed on the ownership, possession, use or occupancy of the Premises Improvements (collectively, "**Impositions**"). Tenant shall not permit any Impositions to become a defaulted lien on the Premises or Premises Improvements; provided, however, that in the event any Imposition is payable in installments, Tenant may make, or cause to be made, payment in installments; and, provided further, that Tenant may contest the legal validity or the amount of any tax, assessment, imposition, fee or similar charge, through such proceedings as Tenant considers necessary or appropriate, and Tenant may defer the payment thereof so long as the validity or amount thereof shall be contested by Tenant in good faith and without expense to the Landlord. In the event of any such contest, Tenant shall protect, defend and indemnify the Landlord against all loss, cost, expense or damage resulting there from, and should Tenant be unsuccessful in any such contest, Tenant shall forthwith pay, discharge, or cause to be paid or discharged, such tax, assessment, imposition, fee or other similar charge. Landlord hereby consents to and shall reasonably cooperate and assist with Tenant applying for and obtaining any applicable exemptions from taxes or assessments levied on the Premises, the Premises Improvements and on Tenant's interest therein. Tenant shall have no obligation to pay Impositions pursuant to this Section that are due and payable prior to the Ground Lease Date, including without limitation any taxes, assessments, impositions, fees or other charges levied against the Premises which are incurred prior to the Ground Lease Date. Any Imposition relating to a period, only a part of which is included within the Term, shall be prorated as between Landlord and Tenant so that Landlord shall pay (if Landlord is subject to such Impositions) the portion of Impositions attributable to any period prior to the Ground Lease Date or subsequent to the expiration of this Ground Lease, and Tenant shall pay the portion thereof attributable to any period during the Term. Nothing contained in this Ground Lease shall be deemed to require the payment by Tenant of any income, franchise, estate, inheritance, succession or capital levy tax of Landlord.

**4.2 Statement Regarding Possessory Interest Tax.** This Ground Lease creates a possessory property interest in Tenant. Tenant acknowledges and agrees that Tenant's leasehold and/or other real property interests may be subject to property taxation, and Tenant or the party in whom the possessory property interest is vested may be subject to the payment of property taxes levied on the interest. Such taxes (unless Tenant establishes an exemption) shall be paid by Tenant as part of Impositions as provided in this Ground Lease.

**4.3 Services and Utilities.** Tenant shall pay, or cause to be paid, all charges that are incurred by Tenant or that might be a charge or lien against the Premises or Premises Improvements for gas, water, electricity, telephone or other communication service, janitorial service, debris removal, or any other utility or service used, rendered or supplied upon or in connection with the Premises Improvements, throughout the Term ("**Utilities**"). Such charges shall include the cost of installing and metering such utility services. Tenant shall maintain, repair and (if necessary) replace all Utility facilities and installations in, on, about or otherwise serving the Premises or Premises Improvements. Landlord grants to Tenant the right to grant to public entities or public service corporations, for the purpose of serving only the Premises during the Term of this Ground Lease, rights-of-way or easements on or over the Site, for poles or conduits or both, and for other utilities and municipal or special district services; provided, however, that Tenant shall not grant any such rights of way or easements that would adversely affect or create safety problems in connection with the use or operation, or access to and from, the BRIDGE Affordable Parcel or Temporary Housing Parcel, or any adjoining property. Landlord shall join in the execution of or consent to any such any such rights of way or easements. Tenant shall promptly provide to Landlord copies of all rights-of-way and easements so granted. Tenant, or third parties other than Landlord, shall bear all costs and expenses incurred in connection with the granting of any such rights-of-way and easements.

**ARTICLE 5.  
DEVELOPMENT OF PREMISES IMPROVEMENTS; ALTERATIONS**

**5.1 General.** Tenant shall plan, entitle, develop, finance, design and construct the Premises Improvements on the Premises pursuant to and in compliance with all the terms and conditions set forth in DDA Article 5, this ARTICLE 5, the JDA, the Developer Agreement and the Construction Schedule. In the event of any conflict between this Ground Lease and the DDA, this Ground Lease shall control. Without limiting the foregoing:

A. Tenant shall notify Landlord regarding (i) any material breaches or defaults, and (ii) any schedule issues that may impair Tenant's ability to substantially complete the Premises Improvements prior to the date contained in the latest Construction Schedule; and

B. Tenant shall require its General Contractor performing the initial construction of the Premises Improvements to prepare all schedule updates required by the Construction Contract and promptly provide copies to Landlord.

**5.2 Commencement and Completion of Construction.** Tenant shall commence construction of the Premises Improvements no later than 30 days following the Ground Lease Date, and shall use diligent efforts to complete construction (subject to Force Majeure delays as defined in delays as defined in Section 15.4 below) no later than the Premises Substantial Completion Date. As between Tenant and Landlord, Tenant shall bear all costs and expenses to complete, or cause the completion of, the Premises Improvements within the time period set forth in the Construction Schedule, including without limitation any cost

overruns and changes (regardless of Landlord's approval of any changes) for the Premises Improvements.

### **5.3 Prior Development Matters**

A. Site and Title Approvals. By its execution and delivery of this Ground Lease, Tenant confirms that it has approved all matters relating to the Site and title matters, as provided in DDA Sections 2.6, 2.7 and 4.5.

B. City and Governmental Approvals; CEQA Litigation. By its execution and delivery of this Ground Lease, Tenant and Landlord confirm that Tenant has obtained all City Approvals (as defined in the DDA). Tenant confirms that it has obtained all other governmental approvals necessary for the development and operation of the Premises and the Premises Improvements, as provided in DDA Section 2.11. If any third party commences litigation objecting to or otherwise challenging any action or omission under California Environmental Quality Act (“CEQA”) with respect to the Premises or any of Landlord's land use approvals relating to this Ground Lease, the Premises Improvements or the use or occupancy thereof, Tenant shall indemnify, hold harmless and defend Landlord (with defense counsel selected by Tenant and reasonably acceptable to Landlord) for any and all liabilities, losses, costs or expenses, including attorney fees or fees for the use of experts or consultants, incurred as a result of any such claim, litigation or challenge. No settlement shall be entered into without Landlord's full consent and approval.

C. Construction Drawings and Specifications. By its execution and delivery of this Ground Lease, Tenant and Landlord confirm that Tenant has obtained all required City approvals for the Final Construction Drawings in accordance with DDA Sections 2.17 and 3.4.

**5.4 Non-Responsibility of Landlord.** Tenant shall be solely responsible for all aspects of its conduct in connection with the Premises Improvements, including, but not limited to, the quality and suitability of the final drawings and specifications, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review, inspection or approval undertaken by Landlord is solely for the purpose of determining whether the Tenant is properly discharging its obligations to Landlord, and should not be relied upon by Tenant, Developer or any other third parties as a warranty or representation by Landlord as to the quality of the design or construction of the Premises Improvements.

**5.5 No Change in Project Documents.** From and after the Ground Lease Date until Premises Substantial Completion, except as set forth in DDA Section 5.1, Tenant shall not make any Material Change to the Final Construction Drawings or permit others to make any Material Change without the Landlord's prior written approval. As used in this Section 5.5 “**Material Change**” means (i) any change in the work the cost of which exceeds Two Hundred Fifty Thousand Dollars (\$250,000); or (ii) any set of changes in the work the cost of which cumulatively exceeds Five Hundred Thousand Dollars (\$500,000); or (iii) any material change in building materials or equipment, or the structural or architectural design or appearance of the Development as provided for in the plans and specifications approved by the City Building Department. From and after the Ground Lease Date until Premises Substantial Completion, Tenant shall not make any changes to the Construction Schedule or permit others to do so, without the Landlord's prior written approval, which shall not unreasonably be withheld.

## 5.6 Alterations.

A. Alterations shall also be governed by this Ground Lease, including without limitation applicable provisions of this ARTICLE 5. “**Alterations**” include modifications or additions to the Premises Improvements following Premises Substantial Completion, including without limitation Material Alterations. “**Material Alterations**” means (a) the construction of any new additional building or structure, (b) an increase in the bulk or height of the Premises Improvements, (c) any material alteration of exterior architectural designs, colors or materials (unless the applicable exterior component is not reasonably available or does not meet current code requirements, and Tenant uses materials of equal quality, durability, design standards, and appearance to the materials originally installed), or (d) reconstruction following fire or other casualty in excess of \$300,000 (subject to adjustment pursuant to the CPI from and after the Ground Lease Date). Any Alterations shall be in compliance with applicable Laws and permits, shall at all times be of first-class construction and architectural design. Material Alterations shall be in accordance with all plans and specifications therefor submitted to and approved by Landlord as set forth below. No material changes to such approved plans and specifications shall be made without Landlord’s prior written approval. All Alterations shall be diligently prosecuted, completed, and accomplished without cost or expense to Landlord, by licensed contractors, and in a first-class and workmanlike manner.

B. Except with Landlord’s prior written consent, which may be granted or denied in Landlord’s reasonable discretion, Tenant shall not make or cause to be made any Material Alterations as set forth below. If Tenant at any time following Premises Substantial Completion desires to undertake any Material Alterations, Tenant shall, prior to the commencement of such work, prepare or cause to be prepared, at its sole expense, and shall submit to Landlord for its review, cost estimates, plans and specifications for such work, showing, without limitation, scaled elevations, scaled floor plans, design concepts, dimensions, material selection, colors, signing (if any) and such additional information as is reasonably requested by Landlord to make an informed decision on such submission. The plans and specifications shall comply with this Ground Lease and shall be in compliance with applicable Laws. Landlord shall approve or disapprove such submitted plans within 30 days of receipt of complete plans and specifications meeting the requirements of this subsection. In the event Landlord disapproves a submittal pursuant to this Section, Landlord shall submit a list of reasons for the disapproval to the Tenant together with its notice of such disapproval. Failure of the Landlord to approve or disapprove such plans and specifications within such 30-day period shall be deemed to be Landlord’s disapproval. Nothing herein or in any other agreement relating to the Development shall require Landlord to approve Material Alterations which would cause the Building (including any solar canopy or other energy facilities) to be greater than 206 feet high or include more than 167,000 interior square feet.

**5.7 Construction Standards.** The following standards (as applicable) shall apply to the design and construction of all Premises Improvements and Alterations under this Ground Lease.

A. Approval of Contractor and Materials. Landlord’s approval of Tenant’s contractor or other person engaged to perform the work is required for all Premises Improvements and Alterations with an aggregate cost exceeding \$250,000 (subject to adjustment pursuant to the CPI from and after the Ground Lease Date) for any single instance, and for such other matters as Landlord may request from time to time.

B. Contracts, Plans and Specifications. Subject to the rights of Leasehold Mortgagees and Tenant's Investor, all contracts with any architect, other design professional or any general contractor for the original construction of the Premises Improvements or the construction of Material Alterations shall provide for the assignment thereof to Landlord as security to Landlord for Tenant's performance hereunder.

C. General Construction Standards. Except as otherwise expressly provided in this Ground Lease, all Tenant construction contractors and subcontractors shall be licensed. Tenant shall require any general contractor to institute an appropriate safety program to assure the safety and convenience of all persons. In addition, Tenant shall pay (or cause to be paid) all costs and expenses associated with Tenant's work and shall indemnify, defend and hold Landlord harmless from all liabilities, damages, losses or claims attributable to the Tenant's construction of the Premises Improvements, or of any subsequent Alterations on or about the Premises, as the case may be, and the performance of Tenant's work. Dust, noise and other effects of Tenant's work shall be controlled by Tenant as required by the applicable conditions of approval of the Premises Improvements and applicable Laws so as to minimize deleterious effects associated with construction projects in a populated or developed area. Tenant shall identify an individual representative to address any neighborhood complaints related to its construction work and Tenant shall respond promptly to any neighborhood complaints. Tenant shall be required, at Tenant's expense, to obtain any and all air quality and other permits required of Tenant in connection with Tenant's construction.

D. Public Safety. Without limiting the generality of the Subsection 5.7C above, as between Landlord and Tenant, Tenant shall have the sole responsibility for implementing all necessary safeguards for the protection of workers and the public.

E. Permits. To the extent that any Premises Improvements or Alterations require a building permit or other permits from the City of Berkeley and/or any other governmental agency, Tenant shall not perform any Alterations until Tenant has obtained all requisite permits.

F. Prevailing Wage Laws. Tenant shall comply with all prevailing wage requirements of California Labor Code Sections 1720 et seq. Tenant agrees that to the extent it is required to comply with the prevailing wage requirements, Tenant shall assure that all workers are paid the general prevailing rate of per diem wages and the general per diem prevailing rate for holiday and overtime work as defined by applicable Laws (including without limitation Labor Code Section 1773.1) in effect from time to time. Copies of the applicable prevailing rate of per diem wages are on file at Landlord's principal office and will be made available to any interested party on request. Tenant agrees to post a copy of the prevailing rate of per diem wages at the Premises. Tenant, as a penalty, shall forfeit the amount then-specified by applicable Law for each calendar day, or portion thereof (or such other sum as specified from time to time by Section 1775 of the California Labor Code or other applicable law), for each worker paid less than the applicable prevailing rates for such work or craft in which such worker is employed. Unless otherwise specified by Law, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Tenant.

G. Compliance With JDA and Developer Agreement. During the initial construction of the Project, Tenant shall comply with its obligations under the JDA and Developer Agreement.

H. Insurance. See ARTICLE 9 below.

I. Utility Work. Any work performed by or on behalf of Tenant or any occupant or subtenant to connect to, repair, relocate, maintain or install any storm drain, sanitary sewer, water line, gas line, telephone conduit or any other public utility service shall be performed so as to minimize interference with the provision of such services to other property owners and occupants.

**5.8 Protection of Landlord**. Landlord shall have the right at all reasonable times to post, and keep posted, on the Premises and Premises Improvements any notices which Landlord may reasonably deem necessary for the protection of Landlord and of the Premises and Premises Improvements from mechanics' liens or other claims. Tenant shall give Landlord 10 days' prior written notice of the commencement of any Alterations that could give rise to mechanics' liens to be done on or about the Premises or Premises Improvements to enable Landlord to post such notices. In addition, Landlord may in its discretion require Tenant to furnish to Landlord at Tenant's expense reasonable improvement security, including performance and labor and materials bonds, prior to commencement of any Material Alterations. Tenant shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons doing any Alterations or furnishing any materials or supplies to Tenant or any of its contractors or subcontractors in connection therewith.

**5.9 Liens and Stop Notices**. Tenant shall keep the Premises and Premises Improvements free and clear of all stop notices, mechanics' liens and other liens on account of any Alterations done for Tenant or persons claiming under it. Tenant shall indemnify and save Landlord harmless against liability, loss, damages, costs, attorneys' fees, and all other expenses on account of claims of lien of laborers or materialmen or others for Alterations performed or materials or supplies furnished to Tenant or persons claiming under it. If a claim of a lien or stop notice is given or recorded affecting the Premises or Premises Improvements, Tenant shall have the right to consent the lien. Tenant shall, within 30 days of recording of a lien or service of a stop notice:

- A. Pay and discharge the same;
- B. Affect the release thereof by recording and delivering to Landlord a lien release bond in customary form and amount which results in the removal of such lien from the Premises and Premises Improvements; or
- C. Otherwise obtain or effect the release thereof.

**5.10 Notice**. Should any claims of lien be filed against the Premises or Premises Improvements thereon, or any action be commenced affecting the title to such property, the party receiving notice of such lien or action shall forthwith give the other party written notice thereof.

**5.11 Miscellaneous**.

A. Landlord Access. Representatives of Landlord shall have the right of reasonable access to the Premises upon reasonable notice to Tenant and without charges or fees, and at normal construction hours during any construction period, for the purposes of ascertaining compliance with the terms of this Ground Lease. Landlord's access shall be reasonably exercised to minimize interference with Tenant's construction and/or operations. In

any site visits, Landlord shall comply with all safety rules of the Tenant and (except as otherwise permitted in connection with its exercise of rights under Section 6.8 below) Tenant shall have the right to accompany Landlord.

B. Guarantee of Workmanship and Materials. Tenant shall insure that any transferable warranties then in effect are transferred to Landlord upon expiration or termination of this Ground Lease.

C. Notice of Completion. Promptly upon completion of construction of the Premises Improvements and Material Alterations, Tenant shall file or cause to be filed in the Official Records of the County a Notice of Completion (the “**Notice of Completion**”), and provide a filed copy to Landlord.

D. As Built Plans and Specifications. Within 30 days following completion of construction of any construction, changes, Alteration or repair on or about the Premises for which architectural drawings and specifications are required, Tenant shall deliver to Landlord three sets (at least one of which is on CD) of “**As Built**” drawings and specifications for such work, and copies of lien waivers from all contractors, subcontractors, suppliers and materialmen involved in construction.

E. Except as otherwise expressly provided in this Ground Lease or other agreement expressly referenced herein, all Premises Improvements and Alterations shall be without cost or expense to Landlord.

## **ARTICLE 6. USE OF PREMISES, COMPLIANCE WITH LAWS**

**6.1 General.** Tenant covenants and agrees on behalf of itself and its successors and assigns that Tenant shall continuously use and operate the Premises and Premises Improvements for the Permitted Use and for no other purpose without Landlord’s prior written consent, which consent Landlord may withhold in its sole discretion. As a material condition of this Ground Lease and the City Financing Documents, Tenant shall comply and shall at all times be in compliance with the Ground Lease, the Site REA, the Hope Center REA and all Regulatory Requirements. Tenant acknowledges that Landlord has entered into this Ground Lease and has agreed to the Rent structure contained herein in material reliance on Tenant’s agreement to permit only those uses described herein. In the event Tenant requests a change in any use described herein, Tenant agrees that Landlord, in its sole discretion, may withhold consent to such a request or that Landlord properly may condition consent to any change in use on a renegotiation of the Rent structure or amounts. Further, Tenant acknowledges that Landlord has determined that this use is beneficial to Landlord’s overall governmental purposes and Tenant understands that, Landlord has no obligation to consent to any other use of all or any part of the Premises.

**6.2 Governmental Requirements.** Tenant, at Tenant’s expense, shall comply with all applicable Hazardous Materials Laws (as defined in Section 7.2 below), statutes, laws, codes, rules, orders, zoning, ordinances, directions, regulations, permits, or other requirements of federal, state, county, municipal, or other governmental authorities having jurisdiction, now in force or which may hereafter be in force (individually “**Law**” and collectively “**Laws**”), which shall impose any duty upon Landlord or Tenant with respect to the use, occupancy, or alteration of the Premises or Premises Improvements or any portion thereof, including those requiring alterations or additions to be made to, or safety appliances or devices

to be maintained or installed in, on or about the Premises or Premises Improvements or any portion thereof, and payment of any fees, charges or assessments arising out of or in any way related to the Premises or Premises Improvements or any portion thereof as a source of adverse environmental impacts or effects].

**6.3 Tenant's Right to Contest.** Tenant, at its sole cost and expense, shall have the right to contest, by appropriate proceedings diligently conducted in good faith in the name of Tenant, the validity or application of any applicable Law. If compliance with any applicable Law legally may be delayed pending the prosecution of any such proceeding without cost or penalty and without subjecting Landlord to any liability, civil or criminal, Tenant may delay compliance until the final determination of such proceeding.

**6.4 Nuisance.** Tenant shall not use the Premises or the Premises Improvements for any unlawful purpose and shall not perform, permit or suffer any act of omission or commission upon or about the Premises or the Premises Improvements which would result in a nuisance or a violation of the laws and ordinances of the United States, State, County or City ordinances and all agencies thereof as the same may be now or hereafter in force and effect. Landlord understands and agrees that Tenant's residential subtenants or clients may populate and congregate on the sidewalk adjacent to or near the Premises, and may make noise when arriving at or waiting to enter the Premises Improvements. Whether or not any otherwise legal activities of the Tenant's subtenants and clients constitute a legal nuisance, they will not constitute a default justifying termination of this Lease under ARTICLE 13.

**6.5 General Use Prohibitions.** Tenant covenants and agrees that in connection with the use and operation of the Premises and Premises Improvements, and any portion thereof, Tenant will not:

- A. Permit undue accumulations of garbage, trash, rubbish or any other refuse;
- B. Create, cause, maintain or permit any nuisance (as the same may be defined by Law) in, on or about the Premises or Premises Improvements;
- C. Commit or suffer to be committed any waste in, on or about the Premises or Premises Improvements;
- D. Use or allow the Premises or Premises Improvements to be used for any unlawful purpose, or for any purpose which violates the terms of any recorded instrument affecting the Premises;
- E. Cause or permit any insurance coverage on the Premises or Premises Improvements to become void or voidable or make it impossible to obtain any required insurance at commercially reasonable rates;
- F. Intentionally cause or knowingly permit any material structural damage to or deterioration of the Premises or Premises Improvements or to any adjacent public or private property or improvements; or
- G. Violate or permit any violation of any applicable Law, ordinance or regulation applicable to the Premises or Premises Improvements.

**6.6 Non-Discrimination.** Tenant covenants and agrees that there shall be no unlawful discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation, source of income, age, physical or mental handicap, medical condition, national origin or ancestry in the sublease, transfer, use, occupancy, tenure or enjoyment of the Premises, the Premises Improvements or any portion thereof, nor shall Tenant, or any person claiming under or through Tenant, establish or permit any such unlawful practice or practices of discrimination or unlawful segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, vendees, users or customers in the Premises, the Premises Improvements, or any portion thereof. Tenant shall refrain from unlawfully restricting the use, occupancy, rental or sublease of the Premises, the Premises Improvements, or any portion thereof on account of race, color, creed, religion, sex, marital status, sexual orientation, source of income, age, physical or mental handicap, medical condition, national origin or ancestry of any person.

**6.7 General Standards of Maintenance.** Tenant covenants and agrees that it shall maintain, or cause to be maintained, the Premises, the Premises Improvements, and all improvements and landscaping within the Premises in a good, safe condition and repair, subject only to normal wear and tear, and in full compliance with Site REA, the Hope Center REA all applicable Laws, and this Ground Lease.. To accomplish such maintenance, Tenant shall either staff or contract with and hire licensed and qualified personnel to perform such maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Section. All maintenance work shall conform to all applicable Federal and State Occupation Safety and Health Act standards and regulations for the performance of maintenance.

**6.8 Landlord's Status as a Landowner.** Tenant understands and agrees that Landlord is entering into this Ground Lease in its capacity as a landowner with a proprietary interest in the Premises and Premises Improvements and not as a regulatory authority with certain police powers. Landlord's legal status shall in no way limit the obligation of Tenant to obtain any required approvals from Landlord's departments, boards or commissions that have jurisdiction over the Premises or Premises Improvements. By Landlord's entering into this Ground Lease, neither Landlord nor any of Landlord's Council, boards, commissions, agencies, departments, or affiliates obligates itself to any other governmental agent, board, commission or agency, or to Tenant, or to any other individual or entity, with regard to any discretionary action relating to development or operation of the Premises, or Premises Improvements. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals that may be required or desirable for the improvement, alteration, or operation of the Premises, or Premises Improvements by the City in connection with its governmental capacity or police powers. By entering into this Ground Lease, Landlord is in no way modifying or limiting the obligation of Tenant to cause the Premises and Premises Improvements to be used and occupied in accordance with all Laws, nor any right of the Landlord or its Council, boards, commissions, agencies, departments, or affiliates to directly enforce Tenant's compliance with Laws. Further, nothing in this Ground Lease shall subject Landlord to liability or increase its liability in connection with any act, omission, occurrence or circumstance arising from its governmental capacity or police powers due to its status as Landlord under this Ground Lease.

**6.9 Regulatory Approvals Generally.** Tenant acknowledges and agrees that this Ground Lease does not guarantee that Landlord, in its regulatory capacity, will grant any particular request for a license, permit or other regulatory approval. Tenant understands that

Landlord may grant or deny such request in its sole discretion, and may impose such terms and conditions as it deems consistent with that discretion and applicable Laws.

**ARTICLE 7.**

**CONDITION OF PREMISES; HAZARDOUS MATERIALS; LANDLORD'S RIGHT OF ENTRY**

**7.1 Landlord's Disclaimers and Tenant's Acknowledgements.** The Premises are being leased to Tenant in their current, existing, "AS-IS" condition as set forth in, and subject to, DDA Section 4.5, the terms of which are incorporated herein by reference, except that all references therein to "Developer" are replaced with "Tenant".

**7.2 Hazardous Materials**

A. General Compliance. DDA Section 6.2, the terms of which are incorporated herein by reference, with the following modifications in addition to the other modifications therein:

1. All references therein to "Developer" are replaced with "Tenant";
2. All references to "Hazardous Materials Laws" shall mean all laws, codes, rules, orders, ordinances, directives, regulations, permits, or other requirements of federal, state, county, municipal or governmental authorities having jurisdiction, now in force or which may hereafter be in force concerning the management, use, generation, storage, transportation, presence, discharge or disposal of any and all pollutants, wastes, flammables, explosives, radioactive materials, hazardous or toxic materials, hazardous or toxic wastes, hazardous or toxic substances, carcinogenic materials or contaminants and all other materials governed, monitored, or regulated by any Federal, State or local law or regulation, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Substances Account Act, and/or the Resources Conservation and Recovery Act.
3. All references to "**Hazardous Materials**" shall include asbestos, asbestos-containing materials, hydrocarbons, polychlorinated biphenyl ("**PCB**") or PCB-containing materials, petroleum, gasoline, petroleum products, crude oil or any fraction, product or by-product thereof.
4. All references to "Development" means the "Premises."
5. All references to "Term" shall mean "Term" as defined in this Ground Lease.
6. Nothing in this Ground Lease or **Exhibit C** shall limit or restrict the use of limited quantities of household cleaning products and office supplies used or stored at the Premises and required in connection with the routine operation and maintenance of the Premises, and used in compliance with (i) this Ground Lease, (ii) all applicable Hazardous Materials Laws, and (if applicable) (ii) the Project Rules (as defined in the Site REA) and the Hope Center Project Rules (as defined in the Hope Center REA).

B. Tenant's Independent Investigation. Tenant or its agents and representatives have undertaken investigations of the Premises in an attempt to determine if any Hazardous Material is present on the Premises. Except as disclosed in the Phase I and Phase II Environmental Assessment report dated \_\_\_\_\_, 2018 by Rincon Consultants,

and *[insert name/other information regarding additional soils testing, expected to be completed on or about December 2019]*, no Hazardous Material has been located or discovered to date and the parties agree that for purposes of this Ground Lease, Tenant assumes full responsibility for the investigation and remediation, as and to the extent required by Environmental Laws, of all Hazardous Material in, on or under the Premises that is discovered during the Term.

**7.3 Landlord's Right to Enter Premises and Premises Improvements.**

Landlord and its authorized representatives shall have the right to enter the Premises and Premises Improvements at all reasonable times, after giving Tenant 24 hours prior written notice (except in emergency in which case no notice shall be required), for any purpose, including: to determine whether the Premises, the Premises Improvements, or any other improvements on the Premises is in good condition and whether Tenant is complying with its obligations under this Ground Lease; to do any necessary maintenance and to make any restoration to the Premises Improvements or any other improvements upon the Premises that Landlord has the right or obligation to perform; to serve, post or keep posted any notices required or allowed under the provisions of this Ground Lease and (except as otherwise permitted in connection with its exercise of rights under Section 6.8 above) Tenant shall have the right to accompany Landlord.

A. Landlord shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of Landlord's entry on the Premises and Premises Improvements as provided in this Section other than any property damage, bodily injury, or death caused by the sole active negligence or willful misconduct of Landlord, its agents, employees or contractors.

B. Tenant shall not be entitled to an abatement or reduction of Rent if Landlord exercises any rights reserved in this section.

**ARTICLE 8.  
OWNERSHIP OF IMPROVEMENTS AND  
PERSONAL PROPERTY**

**8.1 Ownership of Premises Improvements During Term.** During the Term, the Premises Improvements and Alterations shall be and remain the property of Tenant; provided that Tenant's rights and powers with respect to the Premises Improvements and any Alterations shall be and shall remain subject to the terms and limitations of this Ground Lease. Tenant covenants for itself and all persons claiming under or through it that the Premises Improvements is and will at all times be real property.

**8.2 Ownership of Premises Improvements at Termination or Expiration.** Upon the expiration or other termination of this Ground Lease, all improvements on the Premises, including the Premises Improvements and any Alterations shall, without compensation to Tenant, become Landlord's property free and clear of all claims to the extent caused by Tenant or any subtenant. Tenant is not obligated to remove rights arising from the Site REA and Hope Center REA. The foregoing, however, will be subject to the rights of permitted subtenants at the Premises Improvements provided that the subtenants are not then in default and they attorn to Landlord as their landlord. (See also Section 15.10.)

**8.3 Removal and Ownership of Personal Property at Termination or Expiration.** At the expiration or termination of the Term, Landlord may, at Landlord's election,

require Tenant to remove from the Premises, at Tenant's sole cost and expense, all personal property (including fixtures). Tenant shall be liable to Landlord for costs incurred by Landlord in effecting the removal of such personal property (including fixtures) which Tenant has failed to remove after demand pursuant to this section.

A. Tenant and its subtenants and other permitted occupants may, from time to time during the Term, remove any personal property (other than fixtures) that may be removed without damage to the structural integrity of the Premises or Premises Improvements. Tenant shall (or shall cause its subtenants and other permitted occupants to) repair all damage caused by any such removal.

B. Any personal property owned by Tenant or its subtenants and not removed by Tenant prior to the expiration or termination of the Term shall be deemed to be abandoned by Tenant or (to the greatest extent permitted by applicable Law) its subtenants, and shall, without compensation to Tenant or (to the extent permitted by applicable Law) subtenant, become the Landlord's property, free and clear of all claims to or against them by Tenant, subtenant or any other person, but subject to the rights of third party lenders and equipment lessors as to which Landlord has notice.

## **ARTICLE 9. INSURANCE AND INDEMNITY**

### **9.1 General Insurance Requirements.**

A. During the entire Term of this Ground Lease, Tenant shall provide the following forms and amounts of insurance with respect to the Premises Improvements and the Premises. Such insurance shall be primary to and not contributing with any other insurance, self-insurance, or joint self-insurance maintained by the Landlord, shall name the Landlord as an additional insured, and shall include, but not be limited to:

1. Fire and Extended Coverage Insurance as provided the Site REA or, following the expiration or termination thereof, as Landlord may reasonably specify..

2. Broad Form Commercial General Liability Insurance in an amount not less than \$2,000,000 per occurrence and umbrella/excess liability insurance in the amount of \$5,000,000, as further provided the Site REA and this ARTICLE 9 or, following the expiration or termination thereof, as Landlord may reasonably specify. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Ground Lease as an "insured contract" for the performance of Tenant's indemnity obligations under this Ground Lease. The limits of this insurance shall not, however, limit the liability of Tenant nor relieve Tenant of any obligation hereunder. .

3. Comprehensive Auto Liability Insurance with limits not less than \$2,000,000 each occurrence as further provided the Site REA and this ARTICLE 9 or, following the expiration or termination thereof, as Landlord may reasonably specify.

4. Worker's Compensation Insurance, including Employer's Liability coverage, with limits not less than \$1,000,000 each accident, to the extent required by law, as may be further provided the Site REA and this ARTICLE 9 or, following the expiration or termination thereof, as Landlord may reasonably specify.

5. Leasehold Mortgagee Insurance. Any additional policy of insurance required by any lender providing permanent financing for the Premises Improvements or any Alterations.

B. Review. The liability insurance requirements may be reviewed by Landlord every five years, for the purpose of increasing (in consultation with its insurance advisors) the minimum limits of such insurance from time to time to limits which shall be reasonable and customary for similar facilities of like size and operation in accordance with generally accepted insurance industry standards, but in no event will Tenant be required to increase the amount of cumulative or single occurrence coverage for any five-year period by more than the lesser of (i) 50% and (ii) two times the CPI increase since the last increase under this Section.

C. Insurance for Construction of Premises Improvements and Alterations. Tenant's contractors and subcontractors for the Premises Improvements shall maintain all insurance required by DDA Section 6.3(b). Tenants contractors and subcontractors for any Alterations shall maintain all liability, property worker's compensation, employee and insurance as Landlord deems reasonably necessary or as otherwise provided in this Ground Lease.

D. General. All deductibles shall be declared to and subject to Landlord's approval if in excess of \$100,000 per occurrence (as increased by CPI). All commercial general liability and automobile liability policies shall name Landlord and its officers, agents, employees, and representatives (together, "**Landlord Parties**") as additional insureds. Tenant shall furnish Landlord with a certificate of insurance evidencing the required insurance coverage and a duly executed endorsement evidencing such additional insured status. The certificate shall (to the extent reasonably obtainable) contain a statement of obligation on the part of the carrier to notify Landlord of any material change, cancellation or termination of the coverage at least 30 days in advance of the effective date of any such material change, cancellation or termination; otherwise, Tenant shall provide such notice. Upon Landlord's request, Tenant shall provide certified copies of all insurance policies, including declarations pages. Coverage provided hereunder by Tenant or its contractors shall be primary insurance and shall not be contributing with any insurance, self-insurance or joint self-insurance maintained by Landlord, and the policy shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the Landlord and other additional insureds. The required certificate and endorsements shall be furnished by Tenant to Landlord prior to the Ground Lease Date, and prior to each anniversary thereof. If Tenant or its contractors fails to purchase, renew or maintain any insurance policies required herein, Landlord shall have the right to so purchase any such insurance and the amount of any such advance by Landlord shall constitute Additional Rent under this Ground Lease.

**9.2 Indemnity.** To the greatest extent permitted by Law (including without limitation Civil Code Section 2782 if and to the extent applicable), Tenant shall protect, indemnify, defend and hold Landlord and Landlord Parties harmless from and against any and all demands, liability, claims, actions and damages to any person or property, costs and expenses, including attorneys' fees, arising out of or connected with: (i) a default by Tenant of its obligations under this Ground Lease; (ii) the use or occupancy of the Premises Improvements, the Premises, the improvements thereon including any Alterations, or any portion thereof, by Tenant or any of its contractors, subcontractors, employees, subtenants, licensees, invitees, subtenants, assignees or Users (collectively "**Tenant's Parties**"), other than those attributable to the sole negligence or willful misconduct of Landlord or Landlord Parties; (iii) any pre-Ground Lease Date entry by or on behalf of Developer or Tenant under the Temporary Right of Entry described in DDA Section 9.19(a); and (iv) the release, use,

generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Premises in violation, or alleged violation, of any Laws, which occurs at any time during the Term. The indemnity obligation in clause (iii) above shall include any demands, liability, claims or actions for tangible or intangible property damage; compensation for lost wages, business income, profits or other economic loss; damage to the natural resource or the environment; nuisance; trespass; and/or contamination, leak, spill, release or other adverse effect on the environment. Tenant's indemnity obligations under this Section shall survive the expiration or termination of this Ground Lease.

## **ARTICLE 10. DAMAGE OR DESTRUCTION**

### **10.1 Restoration.**

A. Insured Damage. No loss or damage by fire or any other cause resulting in either partial or total destruction of the Premises Improvements or any other improvements now or hereafter located on the Premises, including any fixtures, personal property, equipment or machinery used or intended to be used in connection with the Premises or Premises Improvements, shall (except as otherwise provided in Sections 1.1A or 10.1B) operate to terminate this Ground Lease or to relieve or discharge Tenant from the payment of any Rent, or other amounts payable hereunder, as and when they become due and payable, or from the performance and observance of any of the agreements, covenants and conditions herein contained to be performed and observed by Tenant. Provided that Tenant determines that it is feasible to repair the Premises Improvements, and subject to the rights of Leasehold Mortgagees and Tenant's Investors, and specific procedures (if any) set forth in the Site REA, Tenant covenants to repair, reconstruct, and/or replace or cause to be repaired, reconstructed and/or replaced the Premises Improvements and any other improvements now or hereafter located on the Premises, including any fixtures, personal property, equipment or machinery used or intended to be used in connection with the Premises or Premises Improvements, so damaged or destroyed. Subject to the rights of any Leasehold Mortgagee, Tenant also covenants that all insurance proceeds will be applied to the repair, reconstruction and/or replacement described herein.

B. Premises Improvements Uninsured Damage. Notwithstanding the provisions of Section 10.1A, if, during the Term, the Premises Improvements are totally destroyed or rendered inaccessible or if the remaining portion of the Premises Improvements are rendered unsuitable (as defined herein) for Tenant's continued use, from a risk not covered 90% by the insurance required to be carried by Tenant under this Ground Lease, and either (i) the cost of restoration exceeds 50% of the then replacement value of the Premises Improvements as reasonably determined by Landlord, (ii) Tenant reasonably determines that repair and reconstruction is infeasible, or (iii) or if fewer than fifteen (15) years of the Term remain, Tenant can elect to terminate this Ground Lease by giving notice to Landlord within 30 days after Landlord's determination of the restoration cost and replacement value. The Premises Improvements shall be deemed unsuitable for Tenant's continued use if, following a reasonable amount of reconstruction, Tenant's operations in the Premises Improvements could not be maintained at an economically feasible level. Subject to the rights of Leasehold Mortgagees and Tenant's Investors, if this Ground Lease terminates pursuant to this Section, Tenant shall surrender possession of the Premises and, subject to the rights of Leasehold Mortgagees and Tenant's Investors, assign to Landlord its rights and interests in and to the proceed of insurance received by Tenant for the repair or demolition of the Premises Improvements. Notwithstanding

the foregoing or anything to the contrary in this Ground Lease (other than expiration of the Term as provided in Section 2.1 above), this Ground Lease shall not terminate in the event of damage or destruction unless all obligations under the Senior Leasehold Mortgage have been paid in full.

C. Loss Adjustment and Disbursement Procedures. Except as may otherwise be required by any Leasehold Mortgagee, Tenant shall make the loss adjustment with the insurance company insuring the loss; provided, however, the Senior Leasehold Mortgagee may participate in the loss adjustment with the insurance company if it so chooses. Except as may otherwise be required by any Leasehold Mortgagee and Tenant's Investors, all resulting insurance proceeds shall be held by the Senior Leasehold Mortgagee or an independent trustee acceptable to the Senior Leasehold Mortgagee for the following purposes:

1. The sums shall be paid in installments by the contractor retained by Tenant as construction progresses, for payment of the cost of restoration. Any final retention provided for in the contract with such contractor will be paid to the contractor on completion of restoration, payment of all costs, expiration of all applicable lien periods, and proof that the restored Improvements and the Premises are free of all mechanics' liens and lienable claims.

2. Payments shall be made on presentation of certificates or vouchers from the architect or engineer retained by Tenant showing the amount due. If Landlord, in its reasonable discretion, determines that the certificates or vouchers are being improperly approved by the architect or engineer retained by Tenant, Landlord shall have the right to appoint a project manager, subject to approval by Senior Leasehold Mortgagee, to supervise construction and to approve payments on certificates or vouchers approved by the architect or engineer retained by the Tenant. The reasonable expenses and charges of the project manager retained by Landlord shall be paid from the insurance proceeds.

3. If at any time it reasonably appears to Tenant that the sums held by the Tenant are not sufficient to pay the actual cost of restoration, Tenant shall identify the amount of the deficiency to Landlord as promptly thereafter as reasonably possible.

4. Any undisbursed funds after compliance with the provisions of this Section 10.1C and full restoration of the Premises or Premises Improvements shall be delivered to Landlord to the extent of Landlord's contribution to the fund, and the balance, if any, shall be paid to Tenant.

**10.2 Waiver.** The provisions of this ARTICLE 10 shall govern the rights of the parties in the event of any full or partial destruction of the Premises Improvements and any improvements thereon. Tenant hereby waives the provisions of Civil Code Section 1932(2) and Civil Code Section 1933(4) and any similar successor statute or Law with respect to any destruction of the Premises Improvements.

**10.3 Determination of Extent of Destruction, Interference with Use.** For purposes of this ARTICLE 10, the extent of destruction of the Premises Improvements shall be determined by dividing the estimated cost of replacement or restoration as evidenced by estimates prepared by licensed general contractors acceptable to Landlord for the full replacement cost of the Premises Improvements, as reasonably determined by Landlord, Tenant and (to the extent required by the applicable insurance policies) Tenant's insurers.

**10.4 Procedures for Repair and Restoration.** Tenant shall promptly give Landlord reasonable written notice in the event of any damage or destruction to either (i) the

Premises Improvements or (ii) (to the extent of Tenant's actual knowledge) the entire Development, with an estimated restoration cost exceeding \$1,000,000 (subject to adjustment pursuant to the CPI from and after the Ground Lease Date). Tenant's notice shall include the general nature of the damage or destruction and the date on which it occurred. Regardless of the amount of any damage or destruction, Tenant shall promptly make proof of loss and shall proceed promptly to collect, or cause to be collected, all valid claims which Tenant may have against insurers or others based upon any such damage or destruction. Except as otherwise provided above and subject to rights of Leasehold Mortgagees and Investors, amounts received on account of any losses pursuant to insurance policies shall be used and expended for the purpose of fully repairing or reconstructing the portions of the Premises Improvements which have been destroyed or damaged (or repaying loans or advances used for such purposes).. Tenant shall commence and complete or cause to be commenced and completed any repairs and reconstruction in a good and workmanlike manner and in accordance with the Site REA, this ARTICLE 10 and the applicable provisions of ARTICLE 5 above.

## ARTICLE 11. CONDEMNATION

### 11.1 Definitions.

A. **"Condemnation"** means: (1) the exercise of any governmental power in eminent domain, whether by legal proceedings or otherwise, by a condemnor, and (2) a voluntary sale or transfer to any condemnor, either under threat of condemnation or while legal proceedings for condemnation are pending.

B. **"Date of taking"** means the date the condemnor has the right to possession of the property being condemned.

C. **"Award"** means all compensation, sums or anything of value awarded, paid or received on a total or partial condemnation.

D. **"Condemnor"** means any public or quasi-public authority, or private corporation or individual, having the power of condemnation.

**11.2 Parties' Rights and Obligations to be Governed by Ground Lease.** If during the Term there is any taking of all or any part of the Premises, the Premises Improvements or any other improvements on the Premises or any interest in this Ground Lease by condemnation, the rights and obligations of the parties shall be determined pursuant to the provisions of this ARTICLE 11.

**11.3 Total Taking.** If the Premises or Premises Improvements are totally taken by condemnation, this Ground Lease shall terminate on the date of taking.

**11.4 Effect of Partial Taking.** If a portion of the Premises Improvements or Premises or any other improvements thereon are taken by condemnation, this Ground Lease shall remain in effect, except that Tenant may elect to terminate this Ground Lease if the remaining portion of the Premises or Premises Improvements are rendered unsuitable (as defined herein) for Tenant's continued use. The remaining portion of the Premises Improvements or the Premises shall be deemed unsuitable for Tenant's continued use if, following a reasonable amount of reconstruction, Tenant's operations in the Premises Improvements could not be maintained at an economically feasible level. Tenant must exercise

its right to terminate by giving Landlord written notice of its election within 90 days after the nature and extent of the taking have been finally determined. Such notice shall also specify the date of termination, which shall not be prior to the date of taking. Failure to properly exercise the election provided for in this Section 11.4 will result in this Ground Lease continuing in full force and effect. Any exercise of Tenant's right to terminate the Ground Lease pursuant to this Section 11.4 shall be subject to the prior written consent of Senior Leasehold Mortgagee. If the Ground Lease is terminated in accordance with this Section 11.4, proceeds (excluding those to which Landlord is otherwise entitled pursuant to Section 11.7 below) must first be applied toward payment of each Leasehold Mortgage, beginning with the Senior Leasehold Mortgage.

**11.5 Restoration of Premises Improvements.** If in Tenant's judgment it is reasonably possible and economically feasible to do so, Tenant shall be entitled to use that portion of the award allocable to the Premises Improvements as is necessary to restore or to add on to the Premises Improvements so that the area and approximate layout of the Premises Improvements will be substantially the same after the date of taking as it was before the date of taking. If it is not reasonably possible and economically feasible to so restore the area and layout of the Premises Improvements, the remaining provisions of this ARTICLE 11 shall govern the rights of the parties. If Tenant fails to promptly commence any reasonably required repair, restoration or reconstruction of the Premises Improvements and diligently prosecute such repair, restoration or reconstruction to completion, and such failure is not remedied within 30 days of written notice from the Landlord to Tenant, this Ground Lease may be terminated by the Landlord, subject to the rights of Leasehold Mortgagees hereunder.

**11.6 Waiver of CCP Section 1265.130.** Each party waives the provisions of the Code of Civil Procedure Section 1265.130 allowing either party to petition the Superior Court of the County of Alameda, State of California to terminate this Ground Lease in the event of a partial taking of the Premises.

**11.7 Award.** Subject to the provisions of Section 11.5, and subject to the rights of Leasehold Mortgagees and Investors, if all or any portion of the Premises Improvements or any other improvements on the Premises is taken in connection with a condemnation, the award for the Premises Improvements or such other improvements shall be allocated taking into account that the Landlord's interest is limited to the land or air space (exclusive of the Premises Improvements). If the Premises Improvements are to be restored pursuant to Section 11.5 above, Tenant shall be entitled to recover the costs and expense incurred in such restoration out of any condemnation proceeds. Thereafter, if the condemning authority does not make separate awards, the proceeds will be allocated on a proportionate basis. If Landlord and Tenant are unable to agree as to the amounts that are to be allocated to each other, the allocation will be determined by an appraisal performed by a mutually agreed appraiser. The appraiser shall separately determine the amount of award to be allocated to the interest of each party, and the costs of the appraiser shall be borne equally by each party.

**11.8 Leasehold Mortgagee Participation.** Leasehold Mortgagees must be provided notice and the opportunity to participate in any condemnation proceedings contemplated by this ARTICLE 11. Awards shall be paid to the Senior Leasehold Mortgagee or an independent trustee acceptable to Senior Leasehold Mortgagee and shall be disbursed in accordance with the provisions of this ARTICLE 11.

**ARTICLE 12.  
ASSIGNMENT AND SUBLETTING**

**12.1 Assignment.**

A. Tenant shall not assign, sublet or otherwise transfer, whether voluntarily or involuntarily or by operation of Law, this Ground Lease, the Premises Improvements or any part thereof (collectively an “**assignment**”) without Landlord’s written consent, which shall not unreasonably be withheld, conditioned or delayed. The merger of Tenant with any other entity or the assignment or transfer of any direct or indirect controlling or managing ownership interest in Tenant, or the assignment or transfer of a substantial portion of the assets of Tenant, whether or not located at the Premises, or any interest in the Premises Improvements, shall constitute an “assignment” hereunder. However, the transfer of a limited partnership interest in a limited partnership tenant, or of a non-managing membership interest in a limited liability company tenant, shall not constitute an assignment. Further, any Developer's departure from Tenant (or Tenant's general partner or managing member) requires Landlord's written consent, which shall not be unreasonably withheld, conditioned, or delayed.

B. Notwithstanding Subsection 12.1A above, Landlord’s consent is not required for any assignment to an Affiliate (as defined below) of BRIDGE or BFHP, as long as the following conditions are met: (i) Landlord receives written notice of the assignment (as well as any documents or information reasonably requested by Landlord regarding the assignment or assignee); and (ii) the assignee assumes in writing all of Tenant’s obligations under this Ground Lease. For purposes of this Section, “**Affiliate**” means an entity which controls, is controlled by or under common control with Tenant. For the purposes of this definition, “control” means the direct or indirect ownership of more than 50% of the voting securities of an entity or possession of the right to direct the entity's day-to-day affairs.

C. Also notwithstanding Subsection 12.1A above, Landlord’s consent is not required for any assignment to an Investor, as long as the following conditions are met: (i) the assignment occurs pursuant to the term of Tenant’s governing documents, following a default to the Investor; (ii) Landlord receives written notice of the assignment (as well as any documents or information reasonably requested by Landlord regarding the assignment or assignee); and (iii) the Investor assumes in writing all of Tenant’s obligations under this Ground Lease.

D. No partial assignments of this Ground Lease shall be permitted, and all assignments must be accompanied by a concurrent transfer of the Premises Improvements to the assignee. Assignments of this Ground Lease shall only be made pursuant to a written assignment and assumption agreement in a form reasonably acceptable to Landlord. Landlord’s consent to any one assignment shall not constitute consent to any other assignment, and shall not constitute a waiver of the right to give or withhold consent in accordance with this Section 12.1.

E. In the event Tenant shall assign this Ground Lease or request the consent of Landlord to any assignment for which Landlord’s consent is required under this ARTICLE 12, then Tenant shall pay Landlord's reasonable attorneys' fees incurred in connection with each such request.

**12.2 Subleases.** Except to residential tenancies in connection with the Permitted Use and other tenancies typically entered into in connection with residential development (such as laundry leases) and subject to all Regulatory Requirements, Tenant shall

not sublease all or any portion of the Premises Improvements or the Premises without Landlord's prior written consent, which may be withheld for any reason whatsoever in Landlord's sole absolute discretion. No permitted subletting shall limit Tenant's obligations under this Lease.

**ARTICLE 13.  
TENANT DEFAULTS AND LANDLORD'S REMEDIES**

**13.1 Defaults by Tenant.** Tenant shall be in default under this Ground Lease upon occurrence of any of the following:

A. Tenant shall at any time be in default in the payment of Rent or any other monetary sum called for by this Ground Lease for more than 30 days following written notice from Landlord to Tenant; or

B. Tenant shall at any time be in default in the keeping and performing any of its covenants or agreements contained in the Regulatory Requirements, Site REA or Hope Center REA, and such other default continues for 30 days after written notice thereof from Landlord to Tenant specifying the particulars of such default, or if such default is of a nature that curing such default will take more than 30 days Tenant has failed to commence such cure within such 30-day period and to thereafter diligently and continuously pursue completion of such cure, provided that such cure period need not exceed any time period that the failure to cure would result in Landlord itself being in violation of any Law or expose Landlord to unreasonable financial risks; or

C. Tenant shall at any time be in default in the keeping and performing of any of its other covenants or agreements contained in this Ground Lease, and should such other default continue for 30 days after written notice thereof from Landlord to Tenant specifying the particulars of such default, or if such other default is of a nature that curing such default will take more than 30 days Tenant has failed to commence such cure within such 30-day period and to thereafter diligently and continuously pursue completion of such cure; or

D. Tenant abandons or substantially suspends the Premises Improvements prior to completion thereof and such default is not cured within 60 days of written notice from Landlord to Tenant; or

E. Tenant assigns, sells, transfers, conveys, encumbers, hypothecates or leases the whole or any part of the Premises Improvements, the Premises, or any other improvement constructed thereon in violation of the Improvements Documents; or

F. Except as otherwise expressly permitted in this Ground Lease there is any change in control of Tenant, or any other act or transaction involving or resulting in a change in the identity of the parties in control of Tenant or the degree of such control; or

G. Subject to ARTICLE 14 below, Tenant defaults on any loan encumbering Tenant's interest in this Ground Lease or any improvements on the Premises for which Tenant is responsible, and such failure continues beyond (i) the expiration of any applicable grace or cure period, and (ii) the date by which Tenant must make payment to cure any notice of default received from the holder of such loan; or

H. Any Leasehold Mortgagee or any other holder of any private loan encumbering Tenant's interest in this Ground Lease, or any improvements on the Premises initiates a foreclosure of the deed of trust by which such loan is secured, and Tenant fails to cause such foreclosure proceedings to be dismissed prior to the earlier to occur of (i) the trustee under the deed of trust giving notice of the trustee's sale, or (ii) within 30 days of Tenant's receipt of written notice from Landlord.

**13.2 Remedies.** Subject to the rights of any Leasehold Mortgagees permitted under ARTICLE 14, upon the occurrence of any such default, in addition to any and all other rights or remedies of Landlord hereunder, or by Law or in equity provided, Landlord shall have the sole option to exercise the following rights and remedies:

A. Terminate this Ground Lease by giving Tenant notice of termination. On the giving of such notice, all of Tenant's rights in the Premises, Premises Improvements and any other improvements located thereon, shall terminate. Immediately following notice of termination, Tenant shall surrender and vacate the Premises, including the Premises Improvements and any other improvements located thereon, leaving them in broom-clean condition; and, subject to Subsection 13.2B below, respecting the right of certain subtenants to remain, Landlord may reenter and take possession of the Premises and Premises Improvements and eject all parties in possession or eject some and not others, or eject none. Termination under this subsection shall not relieve Tenant from the payment of any sum then due to Landlord or from any claim for damages previously accrued or then accruing against Tenant.

B. Without terminating this Ground Lease, Landlord may at any time and from time to time relet the Premises, including the Premises Improvements, or any part or parts thereof for the account and in the name of Tenant or otherwise. Any reletting may be for the remainder of the Term or for a longer or shorter period, and subject to the rights of any subtenant under subleases permitted under Section 12.2. Landlord may execute any leases made under this provision either in Landlord's name or in Tenant's name, and shall be entitled to all rents from the use, operation, and occupancy of the Premises, Premises Improvements and any other improvements thereon. Tenant hereby appoints Landlord its attorney-in-fact for purpose of such leasing. Tenant shall nevertheless pay to Landlord on the due dates specified in this Ground Lease the equivalent of all sums required of Tenant under this Ground Lease, less the revenue received by Landlord from any reletting or attornment, plus Landlord's reasonable expenses, including (by way of example), but not limited to, remodeling expenses, Landlord's brokerage and advertising costs and attorneys' fees and costs. No act by or on behalf of Landlord under this subsection shall constitute a termination of this Ground Lease unless Landlord gives Tenant written notice of termination, and Tenant shall remain liable for all costs, losses and damages resulting from unperformed Tenant obligations and breaches under permitted subleases.

C. Even though Landlord may have relet all or any portion of the Premises, including the Premises Improvements and any other improvements thereon, Landlord may thereafter elect to terminate this Ground Lease and all of Tenant's rights in or to the foregoing.

**13.3 Damages.** Neither party shall be entitled to recover consequential or punitive damages under this Lease.

**13.4 Landlord's Right to Cure Tenant's Default.** Landlord, at any time after Tenant commits a default which Tenant has failed to cure within the time established therefor, may cure the default at Tenant's cost. If Landlord at any time, by reason of Tenant's default, pays any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord at

the time the sum is paid, and if paid at a later date, shall bear interest at the Interest Rate from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. The sum, together with interest thereon, shall be Additional Rent.

**13.5 Guarantor Performance Under Completion Guaranty.** Notwithstanding anything in this Ground Lease to the contrary (other than the last sentence of this Section 13.5), (i) if Landlord enforces its rights against Guarantor, Guarantor's performance in compliance with the Completion Guaranty shall be deemed to suspend any default by Tenant under this Ground Lease relating to the construction of the Premises Improvements, and Landlord shall accept Guarantor's performance thereof; and (ii) so long as the Guarantor proceeds diligently to perform the guaranteed obligations thereunder (subject to permitted force majeure delays and other delays expressly specified in the Completion Guaranty) and to cause the Premises Improvements to be completed within three years following the date completion is otherwise required under this Ground Lease, Landlord shall not exercise any of its remedies under the Ground Lease arising from the Tenant's failure to construct the Premises Improvements as required herein including, without limitation, termination of this Ground Lease. Nothing in this Section 13.5 shall limit Landlord's right to collect any amounts otherwise due under Section 13.4 following Guarantor's satisfaction of all obligations under the Completion Guaranty or Guarantor's default thereunder.

#### **ARTICLE 14. MORTGAGEE PROTECTION PROVISIONS**

**14.1 Right to Encumber.** Tenant shall have the right during the Term to encumber, through one or more Leasehold Mortgages and the Regulatory Requirements, all of Tenant's right, title and interest in the Premises, subject to the provisions of this Ground Lease; provided, however, that any Leasehold Mortgage shall be in all respects subordinate and inferior to Landlord's right, title and interest as fee title owner of the Site and Premises, and any such Leasehold Mortgagee shall be subject to all of the rights and obligations of Landlord herein contained in this Ground Lease, except as otherwise provided in this Ground Lease. For purposes of this Ground Lease, Landlord and Tenant acknowledge and agree that the Senior Leasehold Mortgagee identified on **Exhibit F** attached hereto or any subsequent lender and its successors, assigns and participants or other entity holding the first lien deed of trust on the leasehold estate is a permitted Leasehold Mortgagee and all references to a "Leasehold Mortgagee" shall specifically include Senior Leasehold Mortgagee. All references to a Leasehold Mortgage shall include, without limitation, that certain Construction Leasehold Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing, dated as of even date herewith, made by Tenant for the benefit of the initial Senior Leasehold Mortgagee and any assignment or amendment and restatement thereof. For so long as any Leasehold Mortgage is outstanding, Landlord shall not agree to any termination or accept any surrender of this Ground Lease (other than upon expiration of the Term) without the prior written consent of the holders of Leasehold Mortgages then in effect, and any such termination or surrender without such consent shall have no force or effect.

**14.2 Leasehold Mortgagee as Third Party Beneficiary.** Notwithstanding anything to the contrary contained herein, a Leasehold Mortgagee shall be deemed to be a third party beneficiary of Tenant's obligations under this Ground Lease; provided that the foregoing shall not alter any right, remedy, duty or obligation between Tenant and Landlord herein.

**14.3 Notice to Leasehold Mortgagee.** During any period in which a Leasehold Mortgage is in place, Landlord, prior to exercising any remedy under this Lease, shall give any

such Leasehold Mortgagee of which Landlord has received notice from Tenant or the Leasehold Mortgagee a duplicate copy of all notices of default or other notices that Landlord may give to or serve in writing upon Tenant pursuant to the terms of this Ground Lease. The address of the Leasehold Mortgagee originally designated in the Leasehold Mortgage may be changed upon written notice delivered to Landlord in the manner specified in Section 15.5 below. Landlord acknowledges each of the following as: (i) the Leasehold Mortgagee identified in **Exhibit F** as a holder of a Leasehold Mortgage and (ii) any subsequent lender (and its successors, assigns and transferees) holding a Leasehold Mortgage for which Landlord has received written notice, including such lender's address for notices hereunder. However, unless otherwise required by Law, nothing in this Section 14.3 shall obligate the City to deliver any notices to a Leasehold Mortgagee in connection with the City's exercise of its regulatory authority, including without limitation pursuant to Sections 6.8 or 6.9 above, or exercise of its Governmental Capacity pursuant to Section 15.22 below.

**14.4 Right of Leasehold Mortgagee to Cure.** Notwithstanding any default by Tenant under this Ground Lease, Landlord shall have no right to terminate this Ground Lease unless Landlord shall have given each Leasehold Mortgagee written notice of such default and such Leasehold Mortgagees shall have failed to remedy such default or acquire Tenant's leasehold estate created by this Ground Lease or commence foreclosure or other appropriate proceedings as set forth in, and within the time specified by, this Section 14.4.

A. Any Leasehold Mortgagee which has an outstanding Leasehold Mortgage shall have the right, but not the obligation, at any time to pay any or all of the Rent due pursuant to the terms of this Ground Lease, and do any other act or thing required of Tenant by the terms of this Ground Lease, to prevent termination of this Ground Lease. Each Leasehold Mortgagee shall have 90 days after receipt of notice from Landlord describing such default to cure the default. All payments so made and all things so done shall be as effective to prevent a termination of this Ground Lease as the same would have been if made and performed by Tenant instead of by Leasehold Mortgagees.

B. In addition to the cure period provided in Section 14.4A above, if the default is such that possession of the Premises may be reasonably necessary to remedy the default, any Leasehold Mortgagee shall have a reasonable time after the expiration of such 90 day period within which to remedy such default, provided that (i) such Leasehold Mortgagee shall have fully cured any default in the payment of any monetary obligations of Tenant under this Ground Lease within such 90 day period and shall continue to pay currently such monetary obligations when the same are due and (ii) such Leasehold Mortgagee shall have acquired Tenant's leasehold estate hereunder or commenced foreclosure or other appropriate proceedings prior to or within such period, and shall be diligently prosecuting the same.

C. Any default under this Ground Lease which by its nature cannot be remedied by any Leasehold Mortgagee shall be deemed to be remedied if (i) within 90 days after receiving written notice from Landlord describing the default, or prior thereto, any Leasehold Mortgagee shall have acquired Tenant's leasehold estate or commenced foreclosure or other appropriate proceedings, (ii) Leasehold Mortgagee shall diligently prosecute any such proceedings to completion, (iii) Leasehold Mortgagee shall have fully cured any default in the payment of any monetary obligations of Tenant hereunder which does not require possession of the Premises, and (iv) after gaining possession of the Premises, the Leasehold Mortgagee shall cure all non-monetary defaults of Tenant hereunder capable of cure by Leasehold Mortgagee.

D. If any Leasehold Mortgagee is prohibited, stayed or enjoined by any bankruptcy, insolvency or other judicial proceedings involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings, the times specified for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; provided that any Leasehold Mortgagee shall have fully cured any default in the payment of any monetary obligations of Tenant under this Ground Lease and shall continue to pay currently such monetary obligations when the same fall due; provided, further, that such Leasehold Mortgagee shall not interfere with Landlord's efforts to seek compliance by the Tenant with any non-monetary obligation under this Ground Lease.

E. As used in this Section 14.4, "monetary obligations of Tenant" does not include damages, costs and expenses arising from any obligation of Tenant to indemnify Landlord for any acts or omission of Tenant prior to the date a Leasehold Mortgagee assumes the obligations of Tenant hereunder.

**14.5 Limitation on Liability of Leasehold Mortgagee.** No Leasehold Mortgagee shall be or become liable to Landlord as an assignee of this Ground Lease or otherwise unless it expressly assumes by written instrument executed by Landlord and Leasehold Mortgagee such liability (in which event the Leasehold Mortgagee's liability shall be limited to the period of time during which it is the owner of the leasehold estate created hereby) and no assumption shall be inferred from or result from foreclosure or other appropriate proceedings in the nature thereof or as the result of any other action or remedy provided for by such Leasehold Mortgagee or other instrument or from a conveyance from Tenant pursuant to which the purchaser at foreclosure or grantee shall acquire the rights and interest of Tenant under the terms of this Ground Lease.

**14.6 Estoppel Certificates.** Landlord and Tenant agree that at any time and from time to time upon not less than 20 days' prior written notice by the other party, or upon request from any Leasehold Mortgagee or Investor or a permitted assignee, Landlord or Tenant will execute and deliver to the other party or to such Leasehold Mortgagee or Investor a statement in writing certifying (a) that this Ground Lease is unmodified and in full force and effect (or specifying any known amendments if applicable); (b) the date through which the Rents have been paid; and (c) that, to the knowledge of the certifier (if such be the case), there is no default (or any conditions existing which, but for the passage of time or the giving of notice, would constitute a default) set off, defense or other claim against Landlord or Tenant, as applicable, other than those, if any, so specified under the provisions of this Ground Lease. It is intended that any such statement may be relied upon by any persons proposing to acquire the interest of Landlord, Tenant or any Leasehold Mortgagee or Investor, as the case may be, in this Ground Lease or by any prospective Leasehold Mortgagee or Investor or permitted assignee of any Leasehold Mortgagee or Investor.

**14.7 Registration of Leasehold Mortgages.** Upon written request by Landlord, Tenant shall provide written notice to Landlord of the name and address of each Leasehold Mortgagee under this Ground Lease.

**14.8 New Ground Lease.** In the event of the termination of this Ground Lease prior to the natural expiration of the Term of this Ground Lease due to a default of Tenant or operation of law or otherwise (including, without limitation, a rejection or other termination of this Ground Lease pursuant to any bankruptcy filing by or against Tenant or the commencement of any other insolvency proceeding or similar proceeding, an act of condemnation or eminent domain against a portion of the Premises by a government agency or body, the destruction or

damage of the Premises, or upon a foreclosure of Tenant's estate by a Leasehold Mortgagee or acceptance of a deed in lieu of foreclosure or a change in the control or management of Tenant in violation of this Ground Lease), Landlord shall also be obligated to give notice to Leasehold Mortgagee simultaneously under Section 14.3 hereof with such notice given to Tenant; provided that no failure to give such notice to Leasehold Mortgagee shall invalidate the termination of this Ground Lease. Landlord, upon written request from Senior Leasehold Mortgagee and at Senior Leasehold Mortgagee's sole cost and expense, shall enter into a new lease with such holder or its designee in accordance with and upon the same terms and conditions as set forth in this Ground Lease. In addition, without limiting the preceding sentences, in the event of the filing of a petition in bankruptcy by or against Tenant, and the Tenant rejects this Ground Lease under the then applicable provisions of the Bankruptcy Code, Landlord shall, upon the request of a Leasehold Mortgagee and at Senior Leasehold Mortgagee or its designee's sole cost and expense, affirm this Ground Lease, and Landlord will enter into a new ground lease on the same terms and conditions set forth in this Ground Lease with such holder or its designee promptly upon Tenant's rejection of this Ground Lease. In the event of the filing of a petition in bankruptcy by the Landlord, and the Landlord rejects this Ground Lease and the Tenant does not affirm it, a Leasehold Mortgagee will have the authority to affirm this Ground Lease on behalf of the Tenant and to keep the Ground Lease in full force and effect.

A. After cancellation and termination of this Ground Lease, and upon compliance with the provisions of this Section 14.8 by Leasehold Mortgagee, or its designee, upon the request of Leasehold Mortgagee or its designee within sixty (60) days following the date on which Landlord notifies Senior Leasehold Mortgagee in writing in accordance with Section 14.3 that the Ground Lease actually has been terminated or rejected as described above in this Section 14.8, Landlord shall, at Senior Leasehold Mortgagee or its designee's sole cost and expense, execute and deliver such new ground lease to such Leasehold Mortgagee or its designee, having the same relative priority in time and right as this Ground Lease (to the extent possible) and having the benefit of all the right, title, interest, powers and privileges, and obligations and liabilities of Tenant hereunder in and to the Premises.

**14.9 Rights of Investor.** The Investor shall have the same notice and cure rights as any Leasehold Mortgagee (including monetary obligations) as set forth in Section 14.4 for so long as it is a limited partner of Tenant; provided, however, that Investor shall be deemed to have met any condition relating to commencement or continuation of a foreclosure proceeding as set forth in Section 14.4 above, if it is attempting with diligence and in good faith to remove the general partner of Tenant. The address for any notices to Investor, as of the date hereof, is provided in Basic Ground Lease Information Section 16.

**14.10 Transfers.** The consent of Landlord shall not be required for the mortgage of Tenant's interest in the Premises and Premises Improvements to any Leasehold Mortgagee, including, without limitation, Senior Leasehold Mortgagee, and transfer of the Premises and Premises Improvements to such Leasehold Mortgagee by foreclosure or deed-in-lieu of foreclosure (or the leasehold equivalent thereof), or to a third-party purchaser pursuant to a foreclosure sale (or the leasehold equivalent thereof). The consent of Landlord to a Transfer by a Leasehold Mortgagee after acquisition by foreclosure, at Senior Leasehold Mortgagee or its designee's sole cost and expense, will not be unreasonably withheld or delayed. Notwithstanding the foregoing, if at any time Federal Home Loan Mortgage Corporation or its successor, assignee or participant is the holder of the promissory note that is secured by the Leasehold Mortgage being foreclosed or transferred via a deed-in-lieu, Landlord's consent shall not be required in connection with such transfer of the Premises and Premises Improvements

by the Leasehold Mortgagee after acquisition by foreclosure or deed-in-lieu of foreclosure (or the leasehold equivalent thereof).

**14.11 Permitted Use Requirements.** Following a transfer of the Premises to any Leasehold Mortgagee (or its nominee or assignee), including, without limitation, Senior Leasehold Mortgagee, and transfer of the Premises and Premises Improvements to such Leasehold Mortgagee by foreclosure or deed-in-lieu of foreclosure (or the leasehold equivalent thereof), or to a third-party purchaser pursuant to a foreclosure sale (or the leasehold equivalent thereof), notwithstanding anything to the contrary in this Ground Lease, the Permitted Use of the Premises shall be affordable housing.

**14.12 Further Ground Lease Amendments.** Landlord shall cooperate in including in this Ground Lease by suitable amendment from time to time any provision which may reasonably be requested by any Leasehold Mortgagee or any proposed lender, at Leasehold Mortgagee or proposed lender's sole cost and expense, for the purpose of implementing the mortgagee-protection provisions contained in this Ground Lease and allowing such Leasehold Mortgagee or proposed lender reasonable means to protect or preserve the lien of the leasehold mortgage and the value of its security, and to include any additional rights and privileges reasonably requested to be added by such Leasehold Mortgagee. Landlord agrees to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that any such amendment shall not in any way affect Landlord's fee estate in the Site or any other interest of Landlord in the Site or Premises, affect the Term or rent under this Ground Lease, or otherwise in any material respect adversely affect any rights of Landlord under this Ground Lease or (except as otherwise expressly provided herein) Regulatory Requirements.

## ARTICLE 15. MISCELLANEOUS

**15.1 Holding Over.** If Tenant shall hold over in the Premises Improvements or Premises after the expiration or termination of the Term hereof with or without the consent of Landlord, such holding over shall be construed to be only a tenancy from month to month, subject to all the covenants, conditions and obligations contained in this Ground Lease. Tenant hereby agrees to pay to Landlord as monthly rental \$500 per month, plus all Additional Rent as otherwise required in this Ground Lease.

**15.2 Attorneys' Fees.** In the event that any action is brought by either party hereto against the other for the enforcement or declaration of any right or remedy in or under this Ground Lease or for the breach of any covenant or condition of this Ground Lease, the prevailing party shall be entitled to recover, and the other party agrees to pay, all fees and costs to be fixed by the court therein including, but not limited to, attorneys' fees.

**15.3 Quiet Possession.**

A. Landlord agrees that so long as Tenant is not in default under this Ground Lease and is paying the Rent and performing all of the covenants and conditions of this Ground Lease, Tenant shall quietly have, hold and enjoy the Premises throughout the Term hereof without interruption or disturbance from Landlord or any other persons claiming by, through or under Landlord. For purposes of this Section 15.3, persons exercising their rights under the Site REA or Hope Center REA shall be deemed to a person claiming by, through or under Tenant.

B. Landlord covenants and agrees that Landlord shall not mortgage, convey, pledge, or otherwise encumber the Premises without the written consent of Tenant and any Leasehold Mortgagees, which written consent may be withheld in the Tenant or Leasehold Mortgagees' sole discretion. Any document evidencing such encumbrances shall be expressly subordinate to the leasehold estate created hereunder and any Leasehold Mortgages. In such event, Tenant shall not be required, nor shall Tenant be permitted without the consent of all Leasehold Mortgagees, to subordinate the leasehold established hereunder to any mortgage entered into by Landlord after the date hereof. However, nothing in this Section 15.3B shall limit any City exercise of its regulatory authority, including without limitation pursuant to Sections 6.8 or 6.9 above, or exercise of its Governmental Capacity pursuant to Section 15.22 below.

**15.4 Force Majeure.** Except as to the payment of Rent, subject to the limitations set forth below, performance by either party hereunder (including without limitation continuing obligations under the DDA) shall not be deemed to be in default, and all performance and other dates specified in this Ground Lease shall be extended, where delays are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; unusually severe weather; lack of reasonable availability of labor or materials; acts or omissions of the other party; or acts or failures to act of the City or any other public or governmental agency or entity (other than the acts or failures to act of Landlord which shall not excuse performance by Landlord) (together, "**Force Majeure**"). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party with reasonable promptness (not more than 30 days) of the commencement of the cause. Times of performance under this Ground Lease may also be extended in writing by the mutual agreement of Landlord and Tenant. Tenant expressly agrees that post-Ground Lease Date adverse changes in economic conditions, either of Tenant specifically or the economy generally, changes in market conditions or demand, and/or Tenant's inability to obtain financing or other lack of funding, shall not constitute a Force Majeure delay pursuant to this Section 15.4. Tenant expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Ground Lease Date.

**15.5 Notices.** Any notice to be given or other document to be delivered by either party to the other hereunder shall be in writing and shall be deemed to have been duly given and received (i) upon personal delivery, (ii) as of the third business day after mailing by United States registered or certified mail, return receipt requested, postage prepaid, addressed as set forth below, or (iii) the immediately succeeding business day after deposit with Federal Express or other equivalent overnight delivery system, addressed to the party for whom intended, as indicated in the Basic Ground Lease Information. Any party hereto may from time to time, by written notice to the other, designate a different address which shall be substituted for the one above specified.

**15.6 Waiver.** No waiver of any breach of any of the terms, covenants, agreements, restrictions or conditions of this Ground Lease shall be construed to be a waiver of any succeeding breach of the same or other terms, covenants, agreements, restrictions and conditions hereof.

**15.7 Surrender.** Upon the expiration or sooner termination of the Term of this Ground Lease, and notwithstanding anything herein contained to the contrary, Tenant shall

surrender to Landlord the Premises Improvements, the Premises and any other improvements thereon, broom clean and in good condition and repair, reasonable wear and tear excepted.

**15.8 Binding.** Subject to the restrictions set forth herein regarding assignment of , Tenant's interest in this Ground Lease, each of the terms, covenants and conditions of this Ground Lease shall extend to and be binding on and shall inure to the benefit of not only Landlord and Tenant, but to each of their respective heirs, administrators, executors, successors and assigns. Whenever in this Ground Lease reference is made to either Landlord or Tenant, the reference shall be deemed to include, wherever applicable, the heirs, administrators, executors, successors and assigns of such parties, the same as if in every case expressed.

**15.9 Disclaimer of Partnership.** The relationship of the parties hereto is that of Landlord and Tenant, and it is expressly understood and agreed that Landlord does not in any way nor for any purpose become a partner of Tenant or a joint venturer with Tenant in the Premises Improvements or in the conduct of Tenant's business or operations or otherwise.

**15.10 Quitclaim.** At termination or expiration of the Term of this Ground Lease, Tenant shall execute, acknowledge and deliver to Landlord within 30 days, a valid and recordable quitclaim deed covering the Premises and Premises Improvements, free and clear of all monetary liens and encumbrances not caused or agreed to by Landlord ("**Quitclaim Deed**"). If Tenant fails to clear all monetary liens and encumbrances as required by this Section at termination or expiration of the Term of this Ground Lease, Tenant shall continue to be liable and responsible for all such costs, liabilities and expenses associated with, related to or caused by such encumbrances that were not removed by Tenant, and Landlord may take any and all action to enforce its rights under this Ground Lease and to have such encumbrances removed, and all costs and expenses associated with such actions shall be paid solely by Tenant upon Landlord's demand

**15.11 Interpretation.** The titles to the sections of this Ground Lease are not a part of this Ground Lease and shall have no effect upon the construction or interpretation of any part of this Ground Lease. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Ground Lease shall be interpreted as though prepared jointly by both parties.

**15.12 Severability.** If any term, provision, condition or covenant of this Ground Lease or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Ground Lease, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by Law.

**15.13 Computation of Time.** The time in which any act is to be done under this Ground Lease is computed by excluding the first day, and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Sections 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

**15.14 Legal Advice.** Each party represents and warrants to the other the following: they have carefully read this Ground Lease, and in signing this Ground Lease, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Ground Lease, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Ground Lease; and, they have freely signed this Ground Lease without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Ground Lease, and without duress or coercion, whether economic or otherwise.

**15.15 Time of Essence.** Time is expressly made of the essence with respect to the performance by Landlord and Tenant of each and every obligation and condition of this Ground Lease.

**15.16 Nonliability of Officials, Employees, etc.** No member, official or employee of Landlord shall be personally liable to Tenant, or any successor in interest, in the event of any default or breach by Landlord or for any amount which may become due to Tenant or its successors, or on any obligations under the terms of this Ground Lease. Tenant hereby waives and releases any claim it may have against the members, officials or employees of Landlord with respect to any default or breach by Landlord or for any amount which may become due to Tenant or its successors, or on any obligations under the terms of this Ground Lease. No member, partner (other than general partners as otherwise permitted by law), or board member, officer or employee of Tenant (or of any of Tenant's members or partners) shall be personally liable to Landlord, or any successor in interest, in the event of any default or breach by Tenant or for any amount which may become due to Landlord or its successors, or on any obligations under the terms of this Ground Lease. Landlord hereby waives and releases any claim it may have against Tenant's members, partners (other than general partners as otherwise permitted by law), or board members, officers or employees (or of any of Tenant's members or partners) with respect to any default or breach by Tenant or for any amount which may become due to Landlord or its successors, or on any obligations under the terms of this Ground Lease.

**15.17 Assignment by Landlord.** Landlord may assign or transfer any of its interests hereunder at any time without Tenant's consent. Any such assignment or transfer shall be in compliance with all Laws, and the assignee or transferee shall affirmatively assume all Landlord obligations hereunder.

**15.18 Applicable Law.** The laws of the State of California, including all statutes of limitations but without regard to conflict of laws principles, shall govern the interpretation and enforcement of this Ground Lease.

**15.19 Covenants and Conditions.** Each obligation of the parties hereunder, including, without limitation, Tenant's obligation for the payment of Rent, shall be construed to be both a covenant and a condition of this Ground Lease.

**15.20 Integration.** This Ground Lease, together with all exhibits and attachments hereto, the Site REA, Hope Center REA, and Regulatory Requirements (collectively, "**Improvements Documents**"), excluding the City Financing Documents, constitute the entire agreement between the parties relating to the Premises and there are no conditions, representations or agreements regarding the matters covered by this Ground Lease which are not expressed herein or in the Improvements Documents. Without limiting the

foregoing, except as expressly provided in this Ground Lease (including without limitation **Exhibit C**), this Ground Lease supersedes the DDA. Notwithstanding the foregoing, nothing herein will limit or restrict the rights of any party under the Improvements Documents and City Financing Documents.

**15.21 Amendments to this Ground Lease.** Landlord and Tenant agree to mutually consider reasonable requests for amendments to this Ground Lease that may be made by either of them, lending institutions or bond counsel or financial consultants to Landlord or Tenant, provided such requests are consistent with this Ground Lease and would not materially alter the basic business terms herein or the other Improvements Documents. No amendment shall be effective unless in writing and signed by the parties hereto and consented to by each Leasehold Mortgagee.

**15.22 Proprietary and Governmental Roles: Actions by City.** Except where clearly and expressly provided otherwise in this Ground Lease, the capacity of the City in this Ground Lease shall be as owner and lessor of property only ("**Proprietary Capacity**"), and any obligations or restrictions imposed by this Ground Lease on the City shall be limited to that capacity and shall not relate to, constitute a waiver of, supersede or otherwise limit or affect its governmental capacities, including enacting laws, inspecting structures, reviewing and issuing permits, and all of the other legislative and administrative or enforcement functions pursuant to federal, state or local law ("**Governmental Capacity**"). When acting in its Proprietary Capacity, discretionary actions may be undertaken by the City Manager or other designees as designated by the City Manager to the extent otherwise provided herein. In addition, nothing in this Ground Lease shall supersede or waive any discretionary or regulatory approvals required to be obtained from the City under applicable Law.

**15.23 City Manager Authority and Limitations.** Any amendment to this Ground Lease which affects or relates to: (i) the Term of this Ground Lease; (ii) the permitted use of the Premises and Premises Improvements; (iii) Rent amounts and other monetary payments by Tenant; or (iii) any other material provision of this Ground Lease, shall require approval by the Landlord's City Council. Subject to the foregoing, the City Manager may also issue without City Council approval any consent or approval which Landlord is entitled to provide under this Ground Lease, including without limitation: (w) Material Alterations under Section 5.6 above; (x) assignments under Section 12.1; (y) sublettings under Section 12.2; and (z) rules for a CASp inspection under Section 15.29.

**15.24 Brokerage Commissions.** Landlord and Tenant each represents that it has not been represented by any broker in connection with this Ground Lease, and that no real estate broker's commission, finder's fee or other compensation (individually and collectively, "**Brokerage Commission**") is due or payable. Landlord and Tenant each agrees to indemnify and hold the other harmless from any claims or liability, including reasonable attorneys' fees, in connection with a claim by any person for a Brokerage Commission based upon any statement, representation or agreement of the other party.

**15.25 City Non-Discrimination Ordinance.** Tenant hereby agrees to comply with the provisions of the Berkeley Municipal Code ("**B.M.C.**"), including without limitation Chapter 13.26, as amended from time to time. In the performance of its obligations under this Ground Lease, Tenant agrees as follows:

A. Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

B. Tenant shall permit Landlord access to records of employment, employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the reasonable opinion of Landlord, are necessary to monitor compliance with this non-discrimination provision. In addition, Tenant shall fill out, in a timely fashion, forms supplied by Landlord to monitor this non-discrimination provision.

**15.26 Non-Discrimination Against Persons With Disabilities.**

A. If Tenant provides any aid, service or benefit to others on the Landlord's behalf, Tenant shall, in the provision of such aid, service or benefit, observe and comply with all applicable provisions of Title II of the Americans with Disabilities Act of 1990 and any amendments thereto. Tenant shall further observe and comply with all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination against individuals with disabilities or ensuring that individuals with disabilities are not excluded from participating in or receiving benefits, services or activities of the Landlord, if applicable.

B. If Tenant is or becomes a "public accommodation" as defined in Title III of the Americans with Disabilities Act of 1990, Tenant shall observe and comply with all applicable provisions of the Act and any amendments thereto, and all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations offered by the Tenant. All of Tenant's activities must be in accordance with these laws, ordinances, codes, and regulations, and Tenant shall be solely responsible for complying therewith.

**15.27 Conflict of Interest Prohibited.**

A. In accordance with California Government Code Section 1090, Berkeley City Charter Section 36 and B.M.C. Chapter 3.64, neither Tenant nor any employee, officer, director, partner or member of Tenant, or immediate family member of any of the preceding, shall have served as an elected officer, an employee, or a committee or commission member of Landlord, who has directly or indirectly influenced the making of this Ground Lease.

B. In accordance with California Government Code Section 1090 and the Political Reform Act, (Government Code Section 87100 et seq.,) no person who is a director, officer, partner, trustee, employee or consultant of Tenant, or immediate family member of any of the preceding, shall make or participate in a decision made by Landlord or any of its boards, commissions or committees, if it is reasonable foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Tenant, except to the extent permitted by 2 California Code of Regulations, Section 18700(c)(2).

C. Interpretation of this paragraph shall be governed by the definitions and provisions use in the Political Reform Act, Government Code section 87100 et seq., its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64, as amended from time to time.

**15.28 Nuclear Free Berkeley.** Tenant agrees to comply with B.M.C. Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

**15.29 Required Accessibility Disclosure.**

A. Landlord hereby advises Tenant that the Premises and Premises Improvements have not undergone an inspection by a certified access specialist, and except to the extent expressly set forth in this Ground Lease, Landlord shall have no liability or responsibility to make any repairs or modifications to the Premises or the Premises Improvements in order to comply with accessibility standards. The following disclosure is hereby made pursuant to applicable California law:

B. "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." [Cal. Civ. Code Section 1938(e)]. Any CASp inspection shall be conducted in compliance with reasonable rules in effect at the Premises with regard to such inspections and shall be subject to Landlord's prior written consent.

**15.30 Oppressive States.**

A. In accordance with Resolution No. 59,853-N.S., Tenant certifies that it has no contractual relations with, and agrees during the Term of this Ground Lease to forego contractual relations to provide personal services to, the following entities:

1. The governing regime in any Oppressive State.
2. Any business or corporation organized under the authority of the governing regime of any Oppressive State.
3. Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of this Ground Lease) for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

B. For purposes of this Ground Lease, the Tibet Autonomous Region and the provinces of Adu, Kham, and U-Tsang shall be deemed oppressive states.

C. Tenant's failure to comply with this Section shall constitute a default of this Ground Lease and Landlord may terminate this Ground Lease pursuant to ARTICLE 13. In the event that Landlord terminates this Ground Lease due to a default under this provision, Landlord may deem Tenant a non-responsible bidder for five years from the date this Ground Lease is terminated.

**15.31 Berkeley Living Wage Ordinance (LWO).**

A. Tenant agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance. If Tenant employs six or more part-time or full-time employees, and generates \$350,000 or more in annual gross receipts, Tenant will be required to provide all eligible employees with City mandated minimum compensation during the Term of this Ground Lease, as defined in B.M.C. Chapter 13.27, and well as comply with the terms enumerated herein.

B. Tenant shall be required to maintain all reasonable records and documents that would establish whether Tenant is subject to Berkeley's Living Wage Ordinance ("**LWO**"). If Tenant is subject to the LWO, as defined therein, Tenant shall be further required to maintain monthly records of those employees located on the leased Premises. These records shall include the total number of hours worked, the number of hours spent providing service on the leased Premises, the hourly rate paid, and the amount paid by Tenant for health benefits, if any, for each of its employees providing services under the lease. The records described in this Section shall be made available upon the Landlord's request. The failure to produce these records upon demand shall be considered a default, subject to the provisions contained in ARTICLE 13 herein.

C. If Tenant is subject to the LWO, Tenant shall include the requirements of the ordinance, as defined in B.M.C. Chapter 13.27, in any and all subleases in which Tenant enters with regard to the subject Premises. Subtenants shall be required to comply with this ordinance with regard to any employees who spend 25% or more of their compensated time on the leased Premises.

D. If Tenant fails to comply with the requirements of the LWO and this Ground Lease, the Landlord shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

E. Tenant's failure to comply with this Section shall constitute a default of the Ground Lease, upon which City may terminate this Ground Lease pursuant to ARTICLE 13.

F. In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Tenant's failure to pay any of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty of forfeiture for Tenant's breach.

**15.32 Berkeley Equal Benefits Ordinance (EBO).**

A. Tenant hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant will be required to provide all eligible employees with City mandated equal benefits during the Term of this Ground Lease, as defined in B.M.C. Chapter 13.29, as well as comply with the terms enumerated herein.

B. If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant agrees to supply the City with any records the City deems necessary to determine compliance with this provision. Failure to do so shall be a considered a default, subject to the provisions of ARTICLE 13.

C. If Tenant fails to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity. Tenant's failure to comply with this Section shall constitute default of the Ground Lease, upon which City may terminate this Ground Lease pursuant to ARTICLE 13.

D. In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Tenant's failure to provide its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Tenant's breach.

**15.33 Audit.** In addition to any other Landlord audit right herein, the City Auditor's Office, or its designee, may conduct an audit of Tenant's financial and compliance records maintained in connection with the operations and services performed under this Ground Lease, and with the payments made under this Ground Lease. In the event of such audit, Tenant agrees to make all such financial and compliance records available to the Auditor's Office, or to its designee. City agrees to provide Tenant an opportunity to discuss and respond to any findings before a final audit report is filed.

**15.34 City Business License, Payment of Taxes, Tax I.D. Number.** Tenant has obtained a City business license as required by B.M.C. Chapter 9.04, and its license number is written below; or, Tenant is exempt from the provisions of B.M.C. Chapter 9.04 and has written below the specific B.M.C. section under which it is exempt. Tenant shall pay all state and federal income taxes and any other taxes due. Tenant certifies under penalty of perjury that the taxpayer identification number written below is correct.

**15.35 Survival.** The provisions of Sections 4.1 (Impositions), 5.6 (Alterations), 5.9 (Liens and Stop Notices), 6.2 (Governmental Requirements), 6.7 (General Standards of Maintenance), 7.2 (Hazardous Materials), 9.2 (Indemnity), 15.7 (Surrender) and any other obligation of Tenant that, by its terms or nature, is to be performed after or is to survive expiration or termination of this Ground Lease, shall survive such expiration or termination.

**15.36 No Merger of Title.** Except following expiration of the Term, there shall be no merger of the leasehold estate created by this Ground Lease with the fee estate in the Land by reason of the fact that the same person may acquire or hold (a) the leasehold estate created by this Ground Lease or any interest in such leasehold estate, and (b) the fee estate in the Land or any interest in such fee estate; and no such merger shall occur unless all persons, including any Leasehold Mortgagee, shall join in a written instrument effectuating such merger and shall duly record the same.

**15.37 Recording of Lease.** Tenant and Landlord shall record this Ground Lease (or a separate memorandum thereof) in the Official Records of Alameda County.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Ground Lease to be executed on their behalf by their respective officers thereunto duly authorized as of the dates set forth below.

*[Signature Page Follows]*

**TENANT:**

BFHP Hope Center LP, a California limited partnership

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

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

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

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

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

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

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

**LANDLORD:**

CITY OF BERKELEY, a Charter city

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

Dee Williams-Ridley  
City Manager

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

**Approved as to form:**

\_\_\_\_\_  
Farimah Brown, City Attorney

**Registered by:**

\_\_\_\_\_  
\_\_\_\_\_, City Auditor

**Attest:**

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

**TENANT INFORMATION**

Tax Identification No. \_\_\_\_\_

Incorporated: Yes \_\_\_\_ No \_\_\_\_

Certified Woman Business Enterprise: Yes \_\_\_\_ No \_\_\_\_

Certified Minority Business Enterprise: Yes \_\_\_\_ No \_\_\_\_

Certified Disadvantaged Business Enterprise: Yes \_\_\_\_ No \_\_\_\_

City Business License No. \_\_\_\_\_, or  
Exempt pursuant to B.M.C. Section \_\_\_\_

**EXHIBIT A**

**PREMISES LEGAL DESCRIPTION**

The land referred to is situated in the City of Berkeley, County of Alameda, State of California, and is described as follows:

PARCEL ONE:

Parcel A, as shown on the Parcel Map 11051, filed \_\_\_\_\_, 2020 in Book \_\_\_ of Parcel Maps, Pages \_\_\_ and \_\_\_, Alameda County Records, EXCEPTING THEREFROM all buildings and improvements situated thereon, which buildings and improvements are and shall remain real property.

PARCEL TWO:

Easements for construction, maintenance, utilities, structural support and encroachment, set forth in that certain Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for Berkeley Way, dated \_\_\_\_\_, 2020, executed by the City of Berkeley and BRIDGE Berkeley Way LP and BFHP Hope Center LP, and recorded in Alameda County Records on \_\_\_\_\_, 2020, as Instrument No. \_\_\_\_\_; and Easements for access, use, ingress and egress, set forth in that certain Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for the BFHP Hope Center, dated \_\_\_\_\_, 2020, executed by the City of Berkeley and BFHP Hope Center LP, and recorded in Alameda County Records on \_\_\_\_\_, 20\_\_\_\_, as Instrument No. \_\_\_\_\_, 2020.

Being a portion of APN 057-2053-022-01

EXHIBIT B

DEVELOPMENT SITE PARCEL MAP

*[Draft to be attached—final to be included before signing]*

**EXHIBIT C**

**STATUS OF CERTAIN DDA PROVISIONS**

1. The following DDA provisions have been fully satisfied or waived:
  - a. Section 2.1 (Conditions Precedent to Lease of Property).
  - b. Section 2.2 (Developer Deposit).
  - c. Section 2.3 (Development Schedule).
  - d. Section 2.4 (Development Services Agreement).
  - e. Section 2.5 (Creation of and Assignments to Permitted Lessees).
  - f. Section 2.6 (Developer Approval of Property).
  - g. Section 2.7 (Developer Approval of Title Matters).
  - h. Section 2.8 (Agreement on Leases).
  - i. Section 2.9 (Agreement on Reciprocal Easement Agreement).
  - j. Section 2.10 (Agreement on Completion Guaranty Agreement).
  - k. Section 2.11 (City and Other Governmental Approvals).
  - l. Section 2.12 (Financing Proposals and Financing Plans for the Development).
  - m. Section 2.13 (Evidence of Availability of Funds).
  - n. Section 2.14 (Construction Contract(s)).
  - o. Section 2.15 (Construction Bonds).
  - p. Section 2.16 (Building Permits).
  - q. Section 2.17 (Construction Drawings).
  - r. Section 2.18 (Final Subdivision Map).
  - s. Section 2.19 (No Default).
  - t. Section 2.20 (Permits and Approvals Final; Absence of Litigation).
  - u. Section 2.21 (Insurance).
  - v. Section 2.22 (Representations and Warranties; No Material Adverse Change).

- w. Article III (Design Requirements), except for Sections 3.7 and 3.8.
  - x. Article IV (Lease Disposition of Property) except for Sections 4.5 (see below), 4.6 (with respect to post-closing ad valorem taxes (if any) and other potential pre-closing and post-closing costs) and 4.7.
2. The following DDA provisions are terminated:
- a. Section 3.7 (No Change in Project Documents).
  - b. Section 3.8 (Additional Permits and Approvals).
  - c. Article VII (Assignment and Transfers).
  - d. Article VIII (Termination, Default and Remedies). (Remedies for default in any continuing obligation under the DDA shall be as provided in the Ground Lease.)
  - e. Section 9.3 (Enforced Delay).
  - f. Section 9.19 (Right of Entry to Perform Studies).
3. The following DDA provisions, attached hereto, remain in full force and effect, except to the extent provided below:
- a. Section 4.5 (Condition of Property) remains in full force and effect.
  - b. Section 4.6 (Costs of Escrow and Closing).
  - c. Section 4.7 (Obligations After Lease).
  - d. Article V (Construction of the Development) remains in full force and effect, and is incorporated into Section 5.1 of the Leases and the JDA.
  - e. Article VI (Ongoing Developer Obligations) (except to the extent modified in the Ground Lease or as attached hereto).
  - f. Section 9.1 (Notices, Demands and Communications), but only to the extent notices are required under the DDA, and not some other agreement with its own notice provisions.
  - g. Section 9.2 (Non-Liability of City Officials, Employees and Agents), Section 9.4 (Inspection of Books and Records), Section 9.5 (Provision Not Merged with Leases) and Section 9.6 (Title of Parts and Sections) shall remain in full force and effect.
  - h. Section 9.7 (Indemnification) shall remain in full force and effect against Developer except to the extent assumed by BRIDGE LP and BFHP LP, and otherwise in full force and effect against BRIDGE LP and BFHP LP.
  - i. Section 9.8 (Applicable Law), Section 9.9 (No Brokers), Section 9.10 (Severability), Section 9.11 (Binding Upon Successors), Section 9.12 (Parties Not Co-Venturers), Section 9.13 (Time of the Essence), Section 9.14 (Action by the City), Section 9.15 (Discretion Retained by City), Section 9.16 (Representations and Warranties by Developer), and

Section 9.17 (Multiple Originals; Complete Understanding of the Parties), remain in full force and effect.

j. Except as provided in Leases Subsection 1.1A, Section 9.18 (Conflict Among City Documents) remains in full force and effect to the extent any applicable DDA provision remains in effect.

EXHIBIT D

SITE RECIPROCAL EASEMENT AGREEMENT (REA 1)

*[to be provided]*



EXHIBIT D1

HOPE CENTER RECIPROCAL EASEMENT AGREEMENT (REA 2)

*[to be provided]*



EXHIBIT E

RESOLUTION NO. AAAA-N.S.

*[to be attached]*



EXHIBIT F

INITIAL LEASEHOLD MORTGAGES AND MORTGAGEES

**[to be provided—identify “Senior Leasehold Mortgagee” if any and include notice addresses]**

EXHIBIT G

CITY FINANCING DOCUMENTS

*[to be provided]*





1-14-2020

Exhibit D

**GROUND LEASE  
2012 BERKELEY WAY  
(Berkeley Way Hope Center Temporary Housing)**

by and between

**CITY OF BERKELEY  
("Landlord")**

and

**BFHP Hope Center, LP**

**("Tenant")**

Dated \_\_\_\_\_, 2020

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| <u>Exhibit B</u>  | Development Site Parcel Map                                                |
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| <u>Exhibit E</u>  | City Resolution No. AAAA-N.S. [ <b><i>Approving the final Leases</i></b> ] |
| <u>Exhibit F</u>  | Initial Leasehold Mortgages and Mortgagees                                 |
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**BASIC GROUND LEASE INFORMATION**  
**(Ground Lease - Berkeley Way Hope Center Temporary Housing)**

1. **“Landlord”**

CITY OF BERKELEY, a Charter city

Notice Address:

City of Berkeley  
2180 Milvia Street  
Berkeley, California 94704  
Attention: City Manager  
Telephone: (510) 981-7000  
Facsimile: (510) 981-7099

With a copy to:

City of Berkeley  
2180 Milvia Street, 4<sup>th</sup> floor  
Berkeley, California 94704  
Attention: City Attorney  
Telephone: (510) 981-6991  
Facsimile: (510) 981-6960

And

City of Berkeley HHCS  
2180 Milvia Street, 2<sup>nd</sup> floor  
Berkeley, California 94704  
Attention: Housing & Community Services Manager  
Telephone: (510) 981-5400  
Facsimile: (510) 981-5450

2. **“Tenant”**

BFHP Hope Center LP

Notice Address:

BFHP Hope Center LP  
c/o BRIDGE Housing Corporation  
600 California Street, Suite 900  
San Francisco, CA 94108  
Attn: General Counsel

BFHP Hope Center LP  
c/o Berkeley Food and Housing Project  
1901 Fairview Street  
Berkeley, CA 94703  
Attn: Executive Director

3. **“Ground Lease Date”**

The date set forth in the first paragraph below.

4. **“DDA”**

That certain Disposition and Development Agreement (Berkeley Way Development), originally dated June 8, 2016 between Landlord and Bridge Housing Corporation, a California nonprofit public benefit corporation, as amended by First Amendment to Disposition and Development Agreement dated August 27, 2018, as partially assigned to Tenant pursuant to that certain Partial

**BASIC GROUND LEASE INFORMATION**  
**(Ground Lease - Berkeley Way Hope Center Temporary Housing)**

Assignment and Assumption Agreement dated December 17, 2018 and recorded in Official Records of Alameda County on December 21, 2018 as Instrument No. 18-241567, as amended by the Second Amendment to Disposition and Development Agreement, dated February 1, 2019 and recorded in Official Records of Alameda County on February 14, 2019 as Instrument No. 2019029062, and as further partially assigned to BRIDGE Berkeley Way LP and amended pursuant to that certain Assignment and Third Amendment to DDA dated \_\_\_\_\_, 2020 and recorded in Official Records of Alameda County on \_\_\_\_\_, 2020 as Instrument No. \_\_\_\_\_. See **Exhibit C** hereto.

5. **“Premises”**

The Premises is described in **Exhibit A**, being primarily Parcel B of the Parcel Map (defined below).

6. **“Development Site”** or **“Site”**

That certain approximately 1-acre (approximately 41,000 square feet) parcel of real property generally located at 2012 Berkeley Way, between Milvia Street and Shattuck Avenue (previously APN 57-2053-22-1) in the City of Berkeley, which is the subject of the DDA.

The Development Site has been divided into three parcels, pursuant to that certain Parcel Map 11051, filed \_\_\_\_\_, 2020 in Book \_\_ of Parcel Maps, Pages \_\_ and \_\_, Alameda County Records (the **“Parcel Map”**), a copy of which is attached hereto as **Exhibit B**. Generally, the three parcels are the **“BRIDGE Affordable Parcel”** (Parcel Map Parcel C), the **“Permanent Supportive Housing Parcel”** (Parcel Map Parcel A), and the **“Temporary Housing Parcel”** (Parcel Map Parcel B).

7. **“Development”** or **“Project”**

The entire development project to be planned, entitled, developed, financed, designed, constructed, operated and maintained on the Development Site. The overall Development is a six story building with approximately 140,000 square feet of gross interior floor space, with associated landscaping and hardscape, and includes:

- The Temporary Housing Parcel and the Temporary Housing Improvements. The **“Temporary Housing Improvements”** consists of approximately 44 beds of temporary housing, a services center and administrative office space. The Temporary Housing Improvements are located within the Temporary Housing Parcel.
- The Permanent Supportive Housing Parcel and the Permanent Supportive Improvements. The

**BASIC GROUND LEASE INFORMATION**  
**(Ground Lease - Berkeley Way Hope Center Temporary Housing)**

**“Permanent Supportive Housing Improvements”** consist of approximately 53 permanent supportive housing units and supportive service spaces. The Permanent Supportive Housing Improvements are located within the Permanent Supportive Housing Parcel.

- The BRIDGE Affordable Parcel and the BRIDGE Improvements. The **“BRIDGE Improvements”** consist of 89 affordable housing units (including one manager’s unit) and related improvements. The BRIDGE Improvements are located within the BRIDGE Affordable Parcel.

8. **“Permitted Use”** Homeless and community services, subject to the Regulatory Requirements and all other provisions of this Ground Lease.

9. **“Premises Improvements”** The Temporary Housing Improvements, collectively, together with all additions, alterations, modifications, replacements and improvements from time to time pursuant to this Ground Lease.

10. **“REA 1” or “Site REA” or “Berkeley Way REA”** That certain Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for Berkeley Way, dated \_\_\_\_\_, 2020, executed by the City of Berkeley and BRIDGE Berkeley Way LP and BFHP Hope Center LP, and recorded in Alameda County Records on \_\_\_\_\_, 2020 as Instrument No. \_\_\_\_\_, substantially in form attached hereto as **Exhibit D.**

11. **“REA 2” or “Hope Center REA”** That certain Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for the BFHP Hope Center, dated \_\_\_\_\_, 2020, executed by the City of Berkeley and BFHP Hope Center LP, and recorded in Alameda County Records on \_\_\_\_\_, 2020 as Instrument No. \_\_\_\_\_, substantially in form attached hereto as **Exhibit D1.**

12. **“Regulatory Requirements”** Includes, collectively, (i) that certain Regulatory Agreement and Declaration of Restrictive Covenants (Berkeley Way Hope Center Temporary Housing), dated \_\_\_\_\_, 20\_\_\_\_, between Landlord and Tenant and recorded in Official Records of Alameda County on \_\_\_\_\_, 2020 as Instrument No. \_\_\_\_\_, and any amendments approved by

**BASIC GROUND LEASE INFORMATION**  
**(Ground Lease - Berkeley Way Hope Center Temporary Housing)**

Landlord and Tenant, and (ii) any regulatory or affordability agreement or other covenant, condition or restriction in favor of Landlord and recorded against the Premises.

13. **“Leasehold Mortgage”** Means the Leasehold Mortgagees identified in **Exhibit F** attached hereto or any entity holding a Leasehold Mortgage. See also ARTICLE 14 below.
14. **“Leasehold Mortgage”** Means any mortgage, deed of trust, trust indenture, letter of credit, or other security instrument, and any assignment of the rents, issues, and profits burdening the Premises, or any portion thereof, that constitutes a lien on the leasehold estate created by this Ground Lease.
15. **“Senior Leasehold Mortgage”** Means the Senior Leasehold Mortgagee identified in **Exhibit F** attached hereto or any subsequent lender and its successors, assigns and participants or other entity holding the first lien deed of trust on the leasehold estate created by this Ground Lease.
16. **“Investor(s)”** *[to be provided, including notice addresses]*
17. **“Term”** The period of time commencing on the Ground Lease Date and ending on the last day of the month in which the 75<sup>th</sup> anniversary of the Ground Lease Date occurs, subject to earlier termination as provided elsewhere in this Ground Lease.
18. **“Developer”** BRIDGE Housing Corporation, a California nonprofit public benefit corporation.
19. **“BFHP”** Berkeley Food and Housing Project, a California religious corporation
20. **“JDA”** Joint Development Agreement, dated \_\_\_\_\_, 20\_\_ between Tenant and BRIDGE Berkeley Way LP, a California limited partnership.
21. **“Developer Agreement”** Prior to the Ground Lease Date, the Development Services Agreement, dated \_\_\_\_\_, 20\_\_ among Developer, Tenant and BRIDGE Berkeley Way LP, a California limited partnership; and after the Ground Lease Date the Development Services Agreement, dated \_\_\_\_\_, 20\_\_ between Developer and Tenant.
22. **“Construction Schedule”** The final approved Construction Schedule for the Premises and Project, as amended from time to time

**BASIC GROUND LEASE INFORMATION**  
**(Ground Lease - Berkeley Way Hope Center Temporary Housing)**

pursuant to ARTICLE 5 below.

- 23. **“Lease Transfer Agreement” or “Transfer Agreement”** Lease Transfer Agreement, dated \_\_\_\_\_, 20\_\_ between Tenant and BFHP Hope Center LLC, a California limited liability company (“**BFHP LLC**”), together with such changes as City may approve.
- 24. **“Premises Substantial Completion”** Obtaining a temporary certificate of occupancy for the Premises and Project.
- 25. **“Premises Substantial Completion Date”** The earlier of 40 months following the commencement of Project construction and July 31, 2024.
- 26. **“Guarantor” and “Completion Guaranty”** Developer, as **[Guarantor]** under that certain **[Construction Completion Guaranty]** in favor of the Landlord, dated on or about the Ground Lease Date, together with such changes as Landlord may approve.
- 27. **“Base Rent”** \$500 for the entire Term.
- 28. **“Additional Rent”** Is defined in Section 3.3 below.
- 29. **“Interest Rate”** The maximum rate permitted under Section 1(2) of Article XV of the California Constitution.
- 30. **“County”** The County of Alameda, California.
- 31. **“State”** The State of California.
- 32. **“City”** City of Berkeley, California.
- 33. **“Code”** The Internal Revenue Code of 1986, as amended from time to time.
- 34. **“CPI”** The Consumer Price Index (1982-84=100) for all Urban Consumers published by the United States Department of Labor, Bureau of Labor Statistics for the San Francisco-Oakland-Hayward area, or any successor thereof.
- 35. **“City Financing Documents”** See Section 1.2 below and **Exhibit G** attached hereto.

The Basic Ground Lease Information set forth above and the Exhibits attached hereto are incorporated into and made a part of the following Ground Lease.

**LANDLORD'S INITIALS** \_\_\_\_\_

**TENANT'S INITIALS** \_\_\_\_\_

**GROUND LEASE  
2012 BERKELEY WAY  
(Berkeley Way Hope Center Temporary Housing)**

THIS GROUND LEASE (“**Ground Lease**”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020 (the “**Ground Lease Date**”), by and between the Landlord and Tenant identified in the Basic Ground Lease Information, who agree as follows:

**ARTICLE 1.  
OVERVIEW AND GENERAL**

**1.1 Overview.**

A. General Purpose of Development; Authority. Landlord owns the Site. Landlord entered into the DDA to cause the construction and operation of the Development on the Site for temporary, affordable and permanent supportive housing, and homeless services to help address the City’s homeless and affordability crisis, existing as of the Ground Lease Date. This Ground Lease facilitates one component of the Development. Landlord is entering into two additional ground leases, with an affiliate of Tenant, to implement the other two components of the Development, which components are further described in Basic Ground Lease Information Section 7. In the event of a conflict between the DDA and this Ground Lease, this Ground Lease supersedes the DDA and will control. (See also Exhibit C hereto.) Landlord’s execution of this Ground Lease and the additional ground leases was authorized by City Council Resolution No. AAAA-N.S. attached hereto as Exhibit E.

B. Specific Purpose of Ground Lease. Landlord is entering into this Ground Lease to permit Tenant to construct, operate and maintain the Premises Improvements for the Permitted Use.

C. Regulatory Requirements. The parties intend that the Regulatory Requirements will survive for the full term therein, notwithstanding any prior termination or expiration of this Ground Lease or (except as provided in ARTICLE 14) foreclosure of any Permitted Leasehold Mortgage.

D. City Financing Documents. Nothing in this Ground Lease shall limit any City right under any regulatory or financing agreements between the City and Tenant (or by Tenant for the benefit of City), or under any Regulatory Requirement.

**1.2 Ground Lease and Possession.** For and in consideration of the payment of Rent and the performance of all the covenants and conditions of this Ground Lease, as of the Ground Lease Date Landlord hereby leases and demises to Tenant, and Tenant hereby leases and hires from Landlord, the Premises, for the Term and upon the covenants and conditions set forth herein. On the Ground Lease Date, Tenant shall obtain exclusive possession of the Premises.

**1.3 Ownership of Premises Improvements.** At all times during the Term of this Ground Lease, (i) the Premises Improvements shall be owned by Tenant, (ii) Tenant alone shall be entitled to all of the tax attributes of ownership, including, without limitation, the right to claim depreciation or cost recovery deductions and the right to claim the low-income housing tax credit described in Section 42 of the Internal Revenue Code of 1986, as amended, and (iii)

Tenant shall have the right to amortize capital costs and to claim any other federal or state tax benefits attributable to the Premises Improvements.

**1.4 Changes to Premises and Parcel Map.** Tenant shall not alter the definition of the Premises, modify the Parcel Map, or further subdivide, by map, subdivision map, or otherwise, the Premises or any portion thereof, without the prior written consent of Landlord, which Landlord may grant or withhold in its sole discretion.

**1.5 Tenant's Organizational Documents.** Tenant has previously provided Landlord with correct and complete copies of organizational documents for itself and (as applicable) its general partner(s) and managing member(s), including without limitation articles of organization, certificates of limited partnership, limited partnership agreements, limited liability company agreements, and the like. Tenant will provide Landlord copies of all amendments and modifications promptly following adoption thereof, and copies of such other organizational documents as Landlord may reasonably request from time to time. Any such amendment or modification which materially alters Landlord's rights herein, or under the Site REA, Hope Center REA, or Regulatory Requirements is subject to Landlord's reasonable consent.

**1.6 Assignment of Ground Lease to BFHP LLC.**

A. Following Premises Substantial Completion, Tenant may convey its interest in this Ground Lease and the Premises Improvement to BFHP LLC pursuant to the Lease Transfer Agreement, in which event Tenant and BFHP LLC shall enter into an assignment of this Ground Lease ("**Lease Assignment**") and grant deed ("**Grant Deed**"), each substantially in form attached to the Transfer Agreement, or in such other form as Landlord may approve in its reasonable discretion (the "**Assignment**"). Concurrently with the effective date of the Assignment, Tenant shall record in the Official Records of Alameda County (i) the Lease Assignment (or memorandum thereof) and (ii) Grant Deed, and upon recording thereof (except as provided in the Transfer Agreement) Tenant shall be released from any and all obligations under this Ground Lease arising after the effective date of the Assignment. Tenant will pay all costs of recording, including any County documentary transfer tax or City conveyance tax, the cost of any title insurance it may require and any escrow to implement the transaction.

B. Nothing in this Section shall prevent Tenant from entering into a temporary sublease with BFHP LLC to operate the Temporary Housing Improvements pursuant to this Ground Lease and the Regulatory Agreement prior to the transfer of this Ground Lease and the Temporary Housing Improvements to the BFHP LLC pursuant to the Lease Transfer Agreement as described in Section 1.6A.

**ARTICLE 2.  
GROUND LEASE TERM**

**2.1 Term.** The Term of this Ground Lease shall be as set forth in the Basic Ground Lease Information.

**ARTICLE 3.  
RENT**

**3.1 Rent.** Tenant shall pay the Base Rent specified in the Basic Ground Lease Information on or before the Ground Lease Date. Base Rent and any Additional Rent (collectively, “**Rent**”) shall be paid without notice or demand, and, except as specifically provided for in this Ground Lease, without offset, deduction or credit. All Rent (other than Additional Rent payable to entities other than Landlord) shall be payable in lawful money of the United States to Landlord at the address stated herein or to such other persons or at such other places as Landlord may designate from time-to-time in writing.

**3.2 No Cost to Landlord: No Counterclaim, No Abatement.** Except as otherwise expressly provided in this Ground Lease, all Rent payable under this Ground Lease shall be absolutely net to Landlord. Except as otherwise expressly provided in this Ground Lease, Tenant shall pay Rent without assertion of any counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction.

**3.3 Additional Rent.** “**Additional Rent**” means all sums, Impositions (as defined in Section 4.1 below), costs, expenses, and other payments for which Tenant is responsible pursuant to this Ground Lease. Tenant’s obligation to pay Additional Rent shall begin to accrue on the Ground Lease Date and shall continue to accrue throughout the Term. Additional Rent shall be payable by Tenant to the appropriate party on or before the date required by this Ground Lease. In addition to and not by way of limitation of Landlord’s rights under specific provisions of this Ground Lease, Landlord shall at all times have the right (at its sole election and without any obligation to do so) to advance on behalf of Tenant any amount, subject to Tenant’s right to contest such charges and provided that (except in case of emergency calling for immediate payment) Landlord shall first have given Tenant no less than 10 business days’ advance written notice of Landlord’s intent to advance such amounts on behalf of Tenant. No advance by Landlord shall operate as a waiver of any Landlord right under this Ground Lease and Tenant shall remain fully responsible for the performance of its obligations under this Ground Lease. All amounts advanced by Landlord as provided in this Section shall constitute “**Additional Rent**” under this Ground Lease, shall be due and payable by Tenant to Landlord within five business days of Tenant’s receipt of an invoice from Landlord therefor, and shall bear interest at the Interest Rate until paid in full.

**3.4 Additional Consideration.** In addition to the Rent and Additional Rent provided for herein, consideration for this Ground Lease shall also be and is Tenant's full and complete compliance with all terms, conditions, warranties and covenants contained in the Regulatory Requirements and this Ground Lease relating to the planning, entitling, developing, financing, designing, constructing, operating and maintaining the Premises and Premises Improvements.

**ARTICLE 4.  
TAXES AND ASSESSMENTS; SERVICES AND UTILITIES**

**4.1 Impositions.** Tenant shall pay or cause to be paid, when due to the proper authority, any and all valid taxes, assessments, impositions, fees and similar charges on the Premises or Premises Improvements which become effective after the Ground Lease Date, including all taxes levied or assessed on the possession, use or occupancy of the Premises (as distinguished from the ownership of the Premises), and all taxes levied or assessed on the ownership, possession, use or occupancy of the Premises Improvements (collectively,

**“Impositions”**). Tenant shall not permit any Impositions to become a defaulted lien on the Premises or Premises Improvements; provided, however, that in the event any Imposition is payable in installments, Tenant may make, or cause to be made, payment in installments; and, provided further, that Tenant may contest the legal validity or the amount of any tax, assessment, imposition, fee or similar charge, through such proceedings as Tenant considers necessary or appropriate, and Tenant may defer the payment thereof so long as the validity or amount thereof shall be contested by Tenant in good faith and without expense to the Landlord. In the event of any such contest, Tenant shall protect, defend and indemnify the Landlord against all loss, cost, expense or damage resulting there from, and should Tenant be unsuccessful in any such contest, Tenant shall forthwith pay, discharge, or cause to be paid or discharged, such tax, assessment, imposition, fee or other similar charge. Landlord hereby consents to and shall reasonably cooperate and assist with Tenant applying for and obtaining any applicable exemptions from taxes or assessments levied on the Premises, the Premises Improvements and on Tenant’s interest therein. Tenant shall have no obligation to pay Impositions pursuant to this Section that are due and payable prior to the Ground Lease Date, including without limitation any taxes, assessments, impositions, fees or other charges levied against the Premises which are incurred prior to the Ground Lease Date. Any Imposition relating to a period, only a part of which is included within the Term, shall be prorated as between Landlord and Tenant so that Landlord shall pay (if Landlord is subject to such Impositions) the portion of Impositions attributable to any period prior to the Ground Lease Date or subsequent to the expiration of this Ground Lease, and Tenant shall pay the portion thereof attributable to any period during the Term. Nothing contained in this Ground Lease shall be deemed to require the payment by Tenant of any income, franchise, estate, inheritance, succession or capital levy tax of Landlord.

**4.2 Statement Regarding Possessory Interest Tax.** This Ground Lease creates a possessory property interest in Tenant. Tenant acknowledges and agrees that Tenant’s leasehold and/or other real property interests may be subject to property taxation, and Tenant or the party in whom the possessory property interest is vested may be subject to the payment of property taxes levied on the interest. Such taxes (unless Tenant establishes an exemption) shall be paid by Tenant as part of Impositions as provided in this Ground Lease.

**4.3 Services and Utilities.** Tenant shall pay, or cause to be paid, all charges that are incurred by Tenant or that might be a charge or lien against the Premises or Premises Improvements for gas, water, electricity, telephone or other communication service, janitorial service, debris removal, or any other utility or service used, rendered or supplied upon or in connection with the Premises Improvements, throughout the Term (**“Utilities”**). Such charges shall include the cost of installing and metering such utility services. Tenant shall maintain, repair and (if necessary) replace all Utility facilities and installations in, on, about or otherwise serving the Premises or Premises Improvements. Landlord grants to Tenant the right to grant to public entities or public service corporations, for the purpose of serving only the Premises during the Term of this Ground Lease, rights-of-way or easements on or over the Site, for poles or conduits or both, and for other utilities and municipal or special district services; provided, however, that Tenant shall not grant any such rights of way or easements that would adversely affect or create safety problems in connection with the use or operation, or access to and from, the BRIDGE Affordable Parcel or Permanent Supportive Housing Parcel, or any adjoining property. Landlord shall join in the execution of or consent to any such rights of way or easements. Tenant shall promptly provide to Landlord copies of all rights-of-way and easements so granted. Tenant, or third parties other than Landlord, shall bear all costs and expenses incurred in connection with the granting of any such rights-of-way and easements.

**ARTICLE 5.  
DEVELOPMENT OF PREMISES IMPROVEMENTS; ALTERATIONS**

**5.1 General.** Tenant shall plan, entitle, develop, finance, design and construct the Premises Improvements on the Premises pursuant to and in compliance with all the terms and conditions set forth in DDA Article 5, this ARTICLE 5, the JDA, the Developer Agreement and the Construction Schedule. In the event of any conflict between this Ground Lease and the DDA, this Ground Lease shall control. Without limiting the foregoing:

A. Tenant shall notify Landlord regarding (i) any material breaches or defaults, and (ii) any schedule issues that may impair Tenant's ability to substantially complete the Premises Improvements prior to the date contained in the latest Construction Schedule; and

B. Tenant shall require its General Contractor performing the initial construction of the Premises Improvements to prepare all schedule updates required by the Construction Contract and promptly provide copies to Landlord.

**5.2 Commencement and Completion of Construction.** Tenant shall commence construction of the Premises Improvements no later than 30 days following the Ground Lease Date, and shall use diligent efforts to complete construction (subject to Force Majeure delays as defined in delays as defined in Section 15.4 below) no later than the Premises Substantial Completion Date. As between Tenant and Landlord, Tenant shall bear all costs and expenses to complete, or cause the completion of, the Premises Improvements within the time period set forth in the Construction Schedule, including without limitation any cost overruns and changes (regardless of Landlord's approval of any changes) for the Premises Improvements.

**5.3 Prior Development Matters.**

A. Site and Title Approvals. By its execution and delivery of this Ground Lease, Tenant confirms that it has approved all matters relating to the Site and title matters, as provided in DDA Sections 2.6, 2.7 and 4.5.

B. City and Governmental Approvals; CEQA Litigation. By its execution and delivery of this Ground Lease, Tenant and Landlord confirm that Tenant has obtained all City Approvals (as defined in the DDA). Tenant confirms that it has obtained all other governmental approvals necessary for the development and operation of the Premises and the Premises Improvements, as provided in DDA Section 2.11. If any third party commences litigation objecting to or otherwise challenging any action or omission under California Environmental Quality Act ("CEQA") with respect to the Premises or any of Landlord's land use approvals relating to this Ground Lease, the Premises Improvements or the use or occupancy thereof, Tenant shall indemnify, hold harmless and defend Landlord (with defense counsel selected by Tenant and reasonably acceptable to Landlord) for any and all liabilities, losses, costs or expenses, including attorney fees or fees for the use of experts or consultants, incurred as a result of any such claim, litigation or challenge. No settlement shall be entered into without Landlord's full consent and approval.

C. Construction Drawings and Specifications. By its execution and delivery of this Ground Lease, Tenant and Landlord confirm that Tenant has obtained all required City approvals for the Final Construction Drawings in accordance with DDA Sections 2.17 and 3.4.

**5.4 Non-Responsibility of Landlord.** Tenant shall be solely responsible for all aspects of its conduct in connection with the Premises Improvements, including, but not limited to, the quality and suitability of the final drawings and specifications, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review, inspection or approval undertaken by Landlord is solely for the purpose of determining whether the Tenant is properly discharging its obligations to Landlord, and should not be relied upon by Tenant, Developer or any other third parties as a warranty or representation by Landlord as to the quality of the design or construction of the Premises Improvements.

**5.5 No Change in Project Documents.** From and after the Ground Lease Date until Premises Substantial Completion, except as set forth in DDA Section 5.1, Tenant shall not make any Material Change to the Final Construction Drawings or permit others to make any Material Change without the Landlord's prior written approval. As used in this Section 5.5 "**Material Change**" means (i) any change in the work the cost of which exceeds Two Hundred Fifty Thousand Dollars (\$250,000); or (ii) any set of changes in the work the cost of which cumulatively exceeds Five Hundred Thousand Dollars (\$500,000); or (iii) any material change in building materials or equipment, or the structural or architectural design or appearance of the Development as provided for in the plans and specifications approved by the City Building Department. From and after the Ground Lease Date until Premises Substantial Completion, Tenant shall not make any changes to the Construction Schedule or permit others to do so, without the Landlord's prior written approval, which shall not unreasonably be withheld.

**5.6 Alterations.**

A. Alterations shall also be governed by this Ground Lease, including without limitation applicable provisions of this ARTICLE 5. "**Alterations**" include modifications or additions to the Premises Improvements following Premises Substantial Completion, including without limitation Material Alterations. "**Material Alterations**" means (a) the construction of any new additional building or structure, (b) an increase in the bulk or height of the Premises Improvements, (c) any material alteration of exterior architectural designs, colors or materials (unless the applicable exterior component is not reasonably available or does not meet current code requirements, and Tenant uses materials of equal quality, durability, design standards, and appearance to the materials originally installed), or (d) reconstruction following fire or other casualty in excess of \$300,000 (subject to adjustment pursuant to the CPI from and after the Ground Lease Date). Any Alterations shall be in compliance with applicable Laws and permits, shall at all times be of first-class construction and architectural design. Material Alterations shall be in accordance with all plans and specifications therefor submitted to and approved by Landlord as set forth below. No material changes to such approved plans and specifications shall be made without Landlord's prior written approval. All Alterations shall be diligently prosecuted, completed, and accomplished without cost or expense to Landlord, by licensed contractors, and in a first-class and workmanlike manner.

B. Except with Landlord's prior written consent, which may be granted or denied in Landlord's reasonable discretion, Tenant shall not make or cause to be made any Material Alterations as set forth below. If Tenant at any time following Premises Substantial Completion desires to undertake any Material Alterations, Tenant shall, prior to the commencement of such work, prepare or cause to be prepared, at its sole expense, and shall submit to Landlord for its review, cost estimates, plans and specifications for such work, showing, without limitation, scaled elevations, scaled floor plans, design concepts, dimensions, material selection, colors, signing (if any) and such additional information as is reasonably

requested by Landlord to make an informed decision on such submission. The plans and specifications shall comply with this Ground Lease and shall be in compliance with applicable Laws. Landlord shall approve or disapprove such submitted plans within 30 days of receipt of complete plans and specifications meeting the requirements of this subsection. In the event Landlord disapproves a submittal pursuant to this Section, Landlord shall submit a list of reasons for the disapproval to the Tenant together with its notice of such disapproval. Failure of the Landlord to approve or disapprove such plans and specifications within such 30-day period shall be deemed to be Landlord's disapproval. Nothing herein or in any other agreement relating to the Development shall require Landlord to approve Material Alterations which would cause the Building (including any solar canopy or other energy facilities) to be greater than 206 feet high or include more than 167,000 interior square feet.

**5.7 Construction Standards.** The following standards (as applicable) shall apply to the design and construction of all Premises Improvements and Alterations under this Ground Lease.

A. Approval of Contractor and Materials. Landlord's approval of Tenant's contractor or other person engaged to perform the work is required for all Premises Improvements and Alterations with an aggregate cost exceeding \$250,000 (subject to adjustment pursuant to the CPI from and after the Ground Lease Date) for any single instance, and for such other matters as Landlord may request from time to time.

B. Contracts, Plans and Specifications. Subject to the rights of Leasehold Mortgagees and Tenant's Investor, all contracts with any architect, other design professional or any general contractor for the original construction of the Premises Improvements or the construction of Material Alterations shall provide for the assignment thereof to Landlord as security to Landlord for Tenant's performance hereunder.

C. General Construction Standards. Except as otherwise expressly provided in this Ground Lease, all Tenant construction contractors and subcontractors shall be licensed. Tenant shall require any general contractor to institute an appropriate safety program to assure the safety and convenience of all persons. In addition, Tenant shall pay (or cause to be paid) all costs and expenses associated with Tenant's work and shall indemnify, defend and hold Landlord harmless from all liabilities, damages, losses or claims attributable to the Tenant's construction of the Premises Improvements, or of any subsequent Alterations on or about the Premises, as the case may be, and the performance of Tenant's work. Dust, noise and other effects of Tenant's work shall be controlled by Tenant as required by the applicable conditions of approval of the Premises Improvements and applicable Laws so as to minimize deleterious effects associated with construction projects in a populated or developed area. Tenant shall identify an individual representative to address any neighborhood complaints related to its construction work and Tenant shall respond promptly to any neighborhood complaints. Tenant shall be required, at Tenant's expense, to obtain any and all air quality and other permits required of Tenant in connection with Tenant's construction.

D. Public Safety. Without limiting the generality of the Subsection 5.7C above, as between Landlord and Tenant, Tenant shall have the sole responsibility for implementing all necessary safeguards for the protection of workers and the public.

E. Permits. To the extent that any Premises Improvements or Alterations require a building permit or other permits from the City of Berkeley and/or any other

governmental agency, Tenant shall not perform any Alterations until Tenant has obtained all requisite permits.

F. Prevailing Wage Laws. Tenant shall comply with all prevailing wage requirements of California Labor Code Sections 1720 et seq. Tenant agrees that to the extent it is required to comply with the prevailing wage requirements, Tenant shall assure that all workers are paid the general prevailing rate of per diem wages and the general per diem prevailing rate for holiday and overtime work as defined by applicable Laws (including without limitation Labor Code Section 1773.1) in effect from time to time. Copies of the applicable prevailing rate of per diem wages are on file at Landlord's principal office and will be made available to any interested party on request. Tenant agrees to post a copy of the prevailing rate of per diem wages at the Premises. Tenant, as a penalty, shall forfeit the amount then-specified by applicable Law for each calendar day, or portion thereof (or such other sum as specified from time to time by Section 1775 of the California Labor Code or other applicable law), for each worker paid less than the applicable prevailing rates for such work or craft in which such worker is employed. Unless otherwise specified by Law, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Tenant.

G. Compliance With JDA and Developer Agreement. During the initial construction of the Project, Tenant shall comply with its obligations under the JDA and Developer Agreement.

H. Insurance. See ARTICLE 9 below.

I. Utility Work. Any work performed by or on behalf of Tenant or any occupant or subtenant to connect to, repair, relocate, maintain or install any storm drain, sanitary sewer, water line, gas line, telephone conduit or any other public utility service shall be performed so as to minimize interference with the provision of such services to other property owners and occupants.

**5.8 Protection of Landlord.** Landlord shall have the right at all reasonable times to post, and keep posted, on the Premises and Premises Improvements any notices which Landlord may reasonably deem necessary for the protection of Landlord and of the Premises and Premises Improvements from mechanics' liens or other claims. Tenant shall give Landlord 10 days' prior written notice of the commencement of any Alterations that could give rise to mechanics' liens to be done on or about the Premises or Premises Improvements to enable Landlord to post such notices. In addition, Landlord may in its discretion require Tenant to furnish to Landlord at Tenant's expense reasonable improvement security, including performance and labor and materials bonds, prior to commencement of any Material Alterations. Tenant shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons doing any Alterations or furnishing any materials or supplies to Tenant or any of its contractors or subcontractors in connection therewith.

**5.9 Liens and Stop Notices.** Tenant shall keep the Premises and Premises Improvements free and clear of all stop notices, mechanics' liens and other liens on account of any Alterations done for Tenant or persons claiming under it. Tenant shall indemnify and save Landlord harmless against liability, loss, damages, costs, attorneys' fees, and all other expenses on account of claims of lien of laborers or materialmen or others for Alterations performed or materials or supplies furnished to Tenant or persons claiming under it. If a claim of a lien or stop notice is given or recorded affecting the Premises or Premises Improvements,

Tenant shall have the right to consent the lien. Tenant shall, within 30 days of recording of a lien or service of a stop notice:

- A. Pay and discharge the same;
- B. Affect the release thereof by recording and delivering to Landlord a lien release bond in customary form and amount which results in the removal of such lien from the Premises and Premises Improvements; or
- C. Otherwise obtain or effect the release thereof.

**5.10 Notice.** Should any claims of lien be filed against the Premises or Premises Improvements thereon, or any action be commenced affecting the title to such property, the party receiving notice of such lien or action shall forthwith give the other party written notice thereof.

**5.11 Miscellaneous.**

A. Landlord Access. Representatives of Landlord shall have the right of reasonable access to the Premises upon reasonable notice to Tenant and without charges or fees, and at normal construction hours during any construction period, for the purposes of ascertaining compliance with the terms of this Ground Lease. Landlord's access shall be reasonably exercised to minimize interference with Tenant's construction and/or operations. In any site visits, Landlord shall comply with all safety rules of the Tenant and (except as otherwise permitted in connection with its exercise of rights under Section 6.8 below) Tenant shall have the right to accompany Landlord.

B. Guarantee of Workmanship and Materials. Tenant shall insure that any transferable warranties then in effect are transferred to Landlord upon expiration or termination of this Ground Lease.

C. Notice of Completion. Promptly upon completion of construction of the Premises Improvements and Material Alterations, Tenant shall file or cause to be filed in the Official Records of the County a Notice of Completion (the "**Notice of Completion**"), and provide a filed copy to Landlord.

D. As Built Plans and Specifications. Within 30 days following completion of construction of any construction, changes, Alteration or repair on or about the Premises for which architectural drawings and specifications are required, Tenant shall deliver to Landlord three sets (at least one of which is on CD) of "**As Built**" drawings and specifications for such work, and copies of lien waivers from all contractors, subcontractors, suppliers and materialmen involved in construction.

E. Except as otherwise expressly provided in this Ground Lease or other agreement expressly referenced herein, all Premises Improvements and Alterations shall be without cost or expense to Landlord.

**ARTICLE 6.  
USE OF PREMISES, COMPLIANCE WITH LAWS**

**6.1 General.** Tenant covenants and agrees on behalf of itself and its successors and assigns that Tenant shall continuously use and operate the Premises and Premises Improvements for the Permitted Use and for no other purpose without Landlord's prior written consent, which consent Landlord may withhold in its sole discretion. As a material condition of this Ground Lease and the City Financing Documents, Tenant shall comply and shall at all times be in compliance with the Ground Lease, the Site REA, the Hope Center REA and all Regulatory Requirements. Tenant acknowledges that Landlord has entered into this Ground Lease and has agreed to the Rent structure contained herein in material reliance on Tenant's agreement to permit only those uses described herein. In the event Tenant requests a change in any use described herein, Tenant agrees that Landlord, in its sole discretion, may withhold consent to such a request or that Landlord properly may condition consent to any change in use on a renegotiation of the Rent structure or amounts. Further, Tenant acknowledges that Landlord has determined that this use is beneficial to Landlord's overall governmental purposes and Tenant understands that, except as provided in ARTICLE 14, Landlord has no obligation to consent to any other use of all or any part of the Premises.

**6.2 Governmental Requirements.** Tenant, at Tenant's expense, shall comply with all applicable Hazardous Materials Laws (as defined in Section 7.2 below), statutes, laws, codes, rules, orders, zoning, ordinances, directions, regulations, permits, or other requirements of federal, state, county, municipal, or other governmental authorities having jurisdiction, now in force or which may hereafter be in force (individually "**Law**" and collectively "**Laws**"), which shall impose any duty upon Landlord or Tenant with respect to the use, occupancy, or alteration of the Premises or Premises Improvements or any portion thereof, including those requiring alterations or additions to be made to, or safety appliances or devices to be maintained or installed in, on or about the Premises or Premises Improvements or any portion thereof, and payment of any fees, charges or assessments arising out of or in any way related to the Premises or Premises Improvements or any portion thereof as a source of adverse environmental impacts or effects].

**6.3 Tenant's Right to Contest.** Tenant, at its sole cost and expense, shall have the right to contest, by appropriate proceedings diligently conducted in good faith in the name of Tenant, the validity or application of any applicable Law. If compliance with any applicable Law legally may be delayed pending the prosecution of any such proceeding without cost or penalty and without subjecting Landlord to any liability, civil or criminal, Tenant may delay compliance until the final determination of such proceeding.

**6.4 Nuisance.** Tenant shall not use the Premises or the Premises Improvements for any unlawful purpose and shall not perform, permit or suffer any act of omission or commission upon or about the Premises or the Premises Improvements which would result in a nuisance or a violation of the laws and ordinances of the United States, State, County or City ordinances and all agencies thereof as the same may be now or hereafter in force and effect. Landlord understands and agrees that Tenant's residential subtenants or clients may populate and congregate on the sidewalk adjacent to or near the Premises, and may make noise when arriving at or waiting to enter the Premises Improvements. Whether or not any otherwise legal activities of the Tenant's subtenants and clients constitute a legal nuisance, they will not constitute a default justifying termination of this Lease under ARTICLE 13.

**6.5 General Use Prohibitions.** Tenant covenants and agrees that in connection with the use and operation of the Premises and Premises Improvements, and any portion thereof, Tenant will not:

A. Permit undue accumulations of garbage, trash, rubbish or any other refuse;

B. Create, cause, maintain or permit any nuisance (as the same may be defined by Law) in, on or about the Premises or Premises Improvements;

C. Commit or suffer to be committed any waste in, on or about the Premises or Premises Improvements;

D. Use or allow the Premises or Premises Improvements to be used for any unlawful purpose, or for any purpose which violates the terms of any recorded instrument affecting the Premises;

E. Cause or permit any insurance coverage on the Premises or Premises Improvements to become void or voidable or make it impossible to obtain any required insurance at commercially reasonable rates;

F. Intentionally cause or knowingly permit any material structural damage to or deterioration of the Premises or Premises Improvements or to any adjacent public or private property or improvements; or

G. Violate or permit any violation of any applicable Law, ordinance or regulation applicable to the Premises or Premises Improvements.

**6.6 Non-Discrimination.** Tenant covenants and agrees that there shall be no unlawful discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation, source of income, age, physical or mental handicap, medical condition, national origin or ancestry in the sublease, transfer, use, occupancy, tenure or enjoyment of the Premises, the Premises Improvements or any portion thereof, nor shall Tenant, or any person claiming under or through Tenant, establish or permit any such unlawful practice or practices of discrimination or unlawful segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, vendees, users or customers in the Premises, the Premises Improvements, or any portion thereof. Tenant shall refrain from unlawfully restricting the use, occupancy, rental or sublease of the Premises, the Premises Improvements, or any portion thereof on account of race, color, creed, religion, sex, marital status, sexual orientation, source of income, age, physical or mental handicap, medical condition, national origin or ancestry of any person. City understands and agrees that the shelter beds in the Temporary Housing Improvements may be restricted to men, or persons identifying as men.

**6.7 General Standards of Maintenance.** Tenant covenants and agrees that it shall maintain, or cause to be maintained, the Premises, the Premises Improvements, and all improvements and landscaping within the Premises in a good, safe condition and repair, subject only to normal wear and tear, and in full compliance with Site REA, the Hope Center REA all applicable Laws, and this Ground Lease.. To accomplish such maintenance, Tenant shall either staff or contract with and hire licensed and qualified personnel to perform such maintenance work, including the provision of labor, equipment, materials, support facilities, and

any and all other items necessary to comply with the requirements of this Section. All maintenance work shall conform to all applicable Federal and State Occupation Safety and Health Act standards and regulations for the performance of maintenance.

**6.8 Landlord’s Status as a Landowner.** Tenant understands and agrees that Landlord is entering into this Ground Lease in its capacity as a landowner with a proprietary interest in the Premises and Premises Improvements and not as a regulatory authority with certain police powers. Landlord’s legal status shall in no way limit the obligation of Tenant to obtain any required approvals from Landlord’s departments, boards or commissions that have jurisdiction over the Premises or Premises Improvements. By Landlord’s entering into this Ground Lease, neither Landlord nor any of Landlord’s Council, boards, commissions, agencies, departments, or affiliates obligates itself to any other governmental agent, board, commission or agency, or to Tenant, or to any other individual or entity, with regard to any discretionary action relating to development or operation of the Premises, or Premises Improvements. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals that may be required or desirable for the improvement, alteration, or operation of the Premises, or Premises Improvements by the City in connection with its governmental capacity or police powers. By entering into this Ground Lease, Landlord is in no way modifying or limiting the obligation of Tenant to cause the Premises and Premises Improvements to be used and occupied in accordance with all Laws, nor any right of the Landlord or its Council, boards, commissions, agencies, departments, or affiliates to directly enforce Tenant’s compliance with Laws. Further, nothing in this Ground Lease shall subject Landlord to liability or increase its liability in connection with any act, omission, occurrence or circumstance arising from its governmental capacity or police powers due to its status as Landlord under this Ground Lease.

**6.9 Regulatory Approvals Generally.** Tenant acknowledges and agrees that this Ground Lease does not guarantee that Landlord, in its regulatory capacity, will grant any particular request for a license, permit or other regulatory approval. Tenant understands that Landlord may grant or deny such request in its sole discretion, and may impose such terms and conditions as it deems consistent with that discretion and applicable Laws.

**ARTICLE 7.**

**CONDITION OF PREMISES; HAZARDOUS MATERIALS; LANDLORD’S RIGHT OF ENTRY**

**7.1 Landlord’s Disclaimers and Tenant’s Acknowledgements.** The Premises are being leased to Tenant in their current, existing, “AS-IS” condition as set forth in, and subject to, DDA Section 4.5, the terms of which are incorporated herein by reference, except that all references therein to “Developer” are replaced with “Tenant”..

**7.2 Hazardous Materials**

A. General Compliance. DDA Section 6.2, the terms of which are incorporated herein by reference, with the following modifications in addition to the other modifications therein:

1. All references therein to “Developer” are replaced with “Tenant”;
2. All references to “Hazardous Materials Laws” shall mean all laws, codes, rules, orders, ordinances, directives, regulations, permits, or other requirements of federal, state, county, municipal or governmental authorities having jurisdiction, now in force or

which may hereafter be in force concerning the management, use, generation, storage, transportation, presence, discharge or disposal of any and all pollutants, wastes, flammables, explosives, radioactive materials, hazardous or toxic materials, hazardous or toxic wastes, hazardous or toxic substances, carcinogenic materials or contaminants and all other materials governed, monitored, or regulated by any Federal, State or local law or regulation, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Substances Account Act, and/or the Resources Conservation and Recovery Act.

3. All references to “**Hazardous Materials**” shall include asbestos, asbestos-containing materials, hydrocarbons, polychlorinated biphenyl (“**PCB**”) or PCB-containing materials, petroleum, gasoline, petroleum products, crude oil or any fraction, product or by-product thereof.

4. All references to "Development" means the "Premises."

5. All references to “Term” shall mean “Term” as defined in this Ground Lease.

6. Nothing in this Ground Lease or **Exhibit C** shall limit or restrict the use of limited quantities of household cleaning products and office supplies used or stored at the Premises and required in connection with the routine operation and maintenance of the Premises, and used in compliance with (i) this Ground Lease, (ii) all applicable Hazardous Materials Laws, and (if applicable) (ii) the Project Rules (as defined in the Site REA) and the Hope Center Project Rules (as defined in the Hope Center REA).

B. Tenant’s Independent Investigation. Tenant or its agents and representatives have undertaken investigations of the Premises in an attempt to determine if any Hazardous Material is present on the Premises. Except as disclosed in the Phase I and Phase II Environmental Assessment report dated \_\_\_\_\_, 2018 by Rincon Consultants, and ***[insert name/other information regarding additional soils testing, expected to be completed on or about December 2019]***, no Hazardous Material has been located or discovered to date and the parties agree that for purposes of this Ground Lease, Tenant assumes full responsibility for the investigation and remediation, as and to the extent required by Environmental Laws, of all Hazardous Material in, on or under the Premises that is discovered during the Term.

### **7.3 Landlord’s Right to Enter Premises and Premises Improvements.**

Landlord and its authorized representatives shall have the right to enter the Premises and Premises Improvements at all reasonable times, after giving Tenant 24 hours prior written notice (except in emergency in which case no notice shall be required), for any purpose, including: to determine whether the Premises, the Premises Improvements, or any other improvements on the Premises is in good condition and whether Tenant is complying with its obligations under this Ground Lease; to do any necessary maintenance and to make any restoration to the Premises Improvements or any other improvements upon the Premises that Landlord has the right or obligation to perform; to serve, post or keep posted any notices required or allowed under the provisions of this Ground Lease and (except as otherwise permitted in connection with its exercise of rights under Section 6.8 above) Tenant shall have the right to accompany Landlord.

A. Landlord shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of Landlord’s entry on the

Premises and Premises Improvements as provided in this Section other than any property damage, bodily injury, or death caused by the sole active negligence or willful misconduct of Landlord, its agents, employees or contractors.

B. Tenant shall not be entitled to an abatement or reduction of Rent if Landlord exercises any rights reserved in this section.

**ARTICLE 8.  
OWNERSHIP OF IMPROVEMENTS AND  
PERSONAL PROPERTY**

**8.1 Ownership of Premises Improvements During Term.** During the Term, the Premises Improvements and Alterations shall be and remain the property of Tenant; provided that Tenant's rights and powers with respect to the Premises Improvements and any Alterations shall be and shall remain subject to the terms and limitations of this Ground Lease. Tenant covenants for itself and all persons claiming under or through it that the Premises Improvements is and will at all times be real property.

**8.2 Ownership of Premises Improvements at Termination or Expiration.** Upon the expiration or other termination of this Ground Lease, all improvements on the Premises, including the Premises Improvements and any Alterations shall, without compensation to Tenant, become Landlord's property free and clear of all claims to or against to the extent caused by Tenant or subtenant. Tenant is not obligated to remove rights arising from the Site REA and Hope Center REA. (See also Section 15.10.)

**8.3 Removal and Ownership of Personal Property at Termination or Expiration.** At the expiration or termination of the Term, Landlord may, at Landlord's election, require Tenant to remove from the Premises, at Tenant's sole cost and expense, all personal property (including fixtures). Tenant shall be liable to Landlord for costs incurred by Landlord in effecting the removal of such personal property (including fixtures) which Tenant has failed to remove after demand pursuant to this section.

A. Tenant and other permitted occupants may, from time to time during the Term, remove any personal property (other than fixtures) that may be removed without damage to the structural integrity of the Premises or Premises Improvements. Tenant shall (or shall cause its other permitted occupants to) repair all damage caused by any such removal.

B. Any personal property owned by Tenant or its subtenants and not removed by Tenant prior to the expiration or termination of the Term shall be deemed to be abandoned by Tenant or (to the greatest extent permitted by applicable Law) its subtenants, and shall, without compensation to Tenant or (to the extent permitted by applicable Law) subtenant, become the Landlord's property, free and clear of all claims to or against them by Tenant, subtenant or any other person, but subject to the rights of third party lenders and equipment lessors as to which Landlord has notice.

**ARTICLE 9.  
INSURANCE AND INDEMNITY**

**9.1 General Insurance Requirements.**

A. During the entire Term of this Ground Lease, Tenant shall provide the following forms and amounts of insurance with respect to the Premises Improvements and the Premises. Such insurance shall be primary to and not contributing with any other insurance, self-insurance, or joint self-insurance maintained by the Landlord, shall name the Landlord as an additional insured, and shall include, but not be limited to:

1. Fire and Extended Coverage Insurance as provided the Site REA or, following the expiration or termination thereof, as Landlord may reasonably specify..

2. Broad Form Commercial General Liability Insurance in an amount not less than \$2,000,000 per occurrence and umbrella/excess liability insurance in the amount of \$5,000,000, as further provided the Site REA and this ARTICLE 9 or, following the expiration or termination thereof, as Landlord may reasonably specify. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Ground Lease as an “insured contract” for the performance of Tenant’s indemnity obligations under this Ground Lease. The limits of this insurance shall not, however, limit the liability of Tenant nor relieve Tenant of any obligation hereunder. .

3. Comprehensive Auto Liability Insurance with limits not less than \$2,000,000 each occurrence as further provided the Site REA and this ARTICLE 9 or, following the expiration or termination thereof, as Landlord may reasonably specify.

4. Worker’s Compensation Insurance, including Employer’s Liability coverage, with limits not less than \$1,000,000 each accident, to the extent required by law, as may be further provided the Site REA and this ARTICLE 9 or, following the expiration or termination thereof, as Landlord may reasonably specify.

5. Leasehold Mortgagee Insurance. Any additional policy of insurance required by any lender providing permanent financing for the Premises Improvements or any Alterations.

B. Review. The liability insurance requirements may be reviewed by Landlord every five years, for the purpose of increasing (in consultation with its insurance advisors) the minimum limits of such insurance from time to time to limits which shall be reasonable and customary for similar facilities of like size and operation in accordance with generally accepted insurance industry standards, but in no event will Tenant be required to increase the amount of cumulative or single occurrence coverage for any five-year period by more than the lesser of (i) 50% and (ii) two times the CPI increase since the last increase under this Section.

C. Insurance for Construction of Premises Improvements and Alterations. Tenant’s contractors and subcontractors for the Premises Improvements shall maintain all insurance required by DDA Section 6.3(b). Tenants contractors and subcontractors for any Alterations shall maintain all liability, property worker’s compensation, employee and insurance as Landlord deems reasonably necessary or as otherwise provided in this Ground Lease.

D. General. All deductibles shall be declared to and subject to Landlord's approval if in excess of \$100,000 per occurrence (as increased by CPI). All commercial general liability and automobile liability policies shall name Landlord and its officers, agents, employees, and representatives (together, "**Landlord Parties**") as additional insureds. Tenant shall furnish Landlord with a certificate of insurance evidencing the required insurance coverage and a duly executed endorsement evidencing such additional insured status. The certificate shall (to the extent reasonably obtainable) contain a statement of obligation on the part of the carrier to notify Landlord of any material change, cancellation or termination of the coverage at least 30 days in advance of the effective date of any such material change, cancellation or termination; otherwise, Tenant shall provide such notice. Upon Landlord's request, Tenant shall provide certified copies of all insurance policies, including declarations pages. Coverage provided hereunder by Tenant or its contractors shall be primary insurance and shall not be contributing with any insurance, self-insurance or joint self-insurance maintained by Landlord, and the policy shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the Landlord and other additional insureds. The required certificate and endorsements shall be furnished by Tenant to Landlord prior to the Ground Lease Date, and prior to each anniversary thereof. If Tenant or its contractors fails to purchase, renew or maintain any insurance policies required herein, Landlord shall have the right to so purchase any such insurance and the amount of any such advance by Landlord shall constitute Additional Rent under this Ground Lease.

**9.2 Indemnity.** To the greatest extent permitted by Law (including without limitation Civil Code Section 2782 if and to the extent applicable), Tenant shall protect, indemnify, defend and hold Landlord and Landlord Parties harmless from and against any and all demands, liability, claims, actions and damages to any person or property, costs and expenses, including attorneys' fees, arising out of or connected with: (i) a default by Tenant of its obligations under this Ground Lease; (ii) the use or occupancy of the Premises Improvements, the Premises, the improvements thereon including any Alterations, or any portion thereof, by Tenant or any of its contractors, subcontractors, employees, subtenants, licensees, invitees, subtenants, assignees or Users (collectively "**Tenant's Parties**"), other than those attributable to the sole negligence or willful misconduct of Landlord or Landlord Parties; (iii) any pre-Ground Lease Date entry by or on behalf of Developer or Tenant under the Temporary Right of Entry described in DDA Section 9.19(a); and (iv) the release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Premises in violation, or alleged violation, of any Laws, which occurs at any time during the Term. The indemnity obligation in clause (iii) above shall include any demands, liability, claims or actions for tangible or intangible property damage; compensation for lost wages, business income, profits or other economic loss; damage to the natural resource or the environment; nuisance; trespass; and/or contamination, leak, spill, release or other adverse effect on the environment. Tenant's indemnity obligations under this Section shall survive the expiration or termination of this Ground Lease.

## **ARTICLE 10. DAMAGE OR DESTRUCTION**

### **10.1 Restoration.**

A. Insured Damage. No loss or damage by fire or any other cause resulting in either partial or total destruction of the Premises Improvements or any other improvements now or hereafter located on the Premises, including any fixtures, personal property, equipment or machinery used or intended to be used in connection with the Premises or Premises

Improvements, shall (except as otherwise provided in Sections 1.1A or 10.1B) operate to terminate this Ground Lease or to relieve or discharge Tenant from the payment of any Rent, or other amounts payable hereunder, as and when they become due and payable, or from the performance and observance of any of the agreements, covenants and conditions herein contained to be performed and observed by Tenant. Provided that Tenant determines that it is feasible to repair the Premises Improvements, and subject to the rights of Leasehold Mortgagees and Tenant's Investors, and specific procedures (if any) set forth in the Site REA, Tenant covenants to repair, reconstruct, and/or replace or cause to be repaired, reconstructed and/or replaced the Premises Improvements and any other improvements now or hereafter located on the Premises, including any fixtures, personal property, equipment or machinery used or intended to be used in connection with the Premises or Premises Improvements, so damaged or destroyed. Subject to the rights of any Leasehold Mortgagee, Tenant also covenants that all insurance proceeds will be applied to the repair, reconstruction and/or replacement described herein.

B. Premises Improvements Uninsured Damage. Notwithstanding the provisions of Section 10.1A, if, during the Term, the Premises Improvements are totally destroyed or rendered inaccessible or if the remaining portion of the Premises Improvements are rendered unsuitable (as defined herein) for Tenant's continued use, from a risk not covered 90% by the insurance required to be carried by Tenant under this Ground Lease, and either (i) the cost of restoration exceeds 50% of the then replacement value of the Premises Improvements as reasonably determined by Landlord, (ii) Tenant reasonably determines that repair and reconstruction is infeasible, or (iii) if fewer than fifteen (15) years of the Term remain, Tenant can elect to terminate this Ground Lease by giving notice to Landlord within 30 days after Landlord's determination of the restoration cost and replacement value. The Premises Improvements shall be deemed unsuitable for Tenant's continued use if, following a reasonable amount of reconstruction, Tenant's operations in the Premises Improvements could not be maintained at an economically feasible level. Subject to the rights of Leasehold Mortgagees and Tenant's Investors, if this Ground Lease terminates pursuant to this Section, Tenant shall surrender possession of the Premises and, subject to the rights of Leasehold Mortgagees and Tenant's Investors, assign to Landlord its rights and interests in and to the proceed of insurance received by Tenant for the repair or demolition of the Premises Improvements. Notwithstanding the foregoing or anything to the contrary in this Ground Lease (other than expiration of the Term as provided in Section 2.1 above), this Ground Lease shall not terminate in the event of damage or destruction unless all obligations under the Senior Leasehold Mortgage have been paid in full.

C. Loss Adjustment and Disbursement Procedures. Except as may otherwise be required by any Leasehold Mortgagee, Tenant shall make the loss adjustment with the insurance company insuring the loss; provided, however, the Senior Leasehold Mortgagee may participate in the loss adjustment with the insurance company if it so chooses. Except as may otherwise be required by any Leasehold Mortgagee and Tenant's Investors, all resulting insurance proceeds shall be held by the Senior Leasehold Mortgagee or an independent trustee acceptable to the Senior Leasehold Mortgagee for the following purposes:

1. The sums shall be paid in installments by the contractor retained by Tenant as construction progresses, for payment of the cost of restoration. Any final retention provided for in the contract with such contractor will be paid to the contractor on completion of restoration, payment of all costs, expiration of all applicable lien periods, and proof that the restored Improvements and the Premises are free of all mechanics' liens and lienable claims.

2. Payments shall be made on presentation of certificates or vouchers from the architect or engineer retained by Tenant showing the amount due. If Landlord, in its reasonable discretion, determines that the certificates or vouchers are being improperly approved by the architect or engineer retained by Tenant, Landlord shall have the right to appoint a project manager, subject to approval by Senior Leasehold Mortgagee, to supervise construction and to approve payments on certificates or vouchers approved by the architect or engineer retained by the Tenant. The reasonable expenses and charges of the project manager retained by Landlord shall be paid from the insurance proceeds.

3. If at any time it reasonably appears to Tenant that the sums held by the Tenant are not sufficient to pay the actual cost of restoration, Tenant shall identify the amount of the deficiency to Landlord as promptly thereafter as reasonably possible.

4. Any undisbursed funds after compliance with the provisions of this Section 10.1C and full restoration of the Premises or Premises Improvements shall be delivered to Landlord to the extent of Landlord's contribution to the fund, and the balance, if any, shall be paid to Tenant.

**10.2 Waiver.** The provisions of this ARTICLE 10 shall govern the rights of the parties in the event of any full or partial destruction of the Premises Improvements and any improvements thereon. Tenant hereby waives the provisions of Civil Code Section 1932(2) and Civil Code Section 1933(4) and any similar successor statute or Law with respect to any destruction of the Premises Improvements.

**10.3 Determination of Extent of Destruction, Interference with Use.** For purposes of this ARTICLE 10, the extent of destruction of the Premises Improvements shall be determined by dividing the estimated cost of replacement or restoration as evidenced by estimates prepared by licensed general contractors acceptable to Landlord for the full replacement cost of the Premises Improvements, as reasonably determined by Landlord, Tenant and (to the extent required by the applicable insurance policies) Tenant's insurers.

**10.4 Procedures for Repair and Restoration.** Tenant shall promptly give Landlord reasonable written notice in the event of any damage or destruction to either (i) the Premises Improvements or (ii) (to the extent of Tenant's actual knowledge) the entire Development, with an estimated restoration cost exceeding \$1,000,000 (subject to adjustment pursuant to the CPI from and after the Ground Lease Date). Tenant's notice shall include the general nature of the damage or destruction and the date on which it occurred. Regardless of the amount of any damage or destruction, Tenant shall promptly make proof of loss and shall proceed promptly to collect, or cause to be collected, all valid claims which Tenant may have against insurers or others based upon any such damage or destruction. Except as otherwise provided above and subject to rights of Leasehold Mortgagees and Investors, amounts received on account of any losses pursuant to insurance policies shall be used and expended for the purpose of fully repairing or reconstructing the portions of the Premises Improvements which have been destroyed or damaged (or repaying loans or advances used for such purposes).. Tenant shall commence and complete or cause to be commenced and completed any repairs and reconstruction in a good and workmanlike manner and in accordance with the Site REA, this ARTICLE 10 and the applicable provisions of ARTICLE 5 above.

**ARTICLE 11.  
CONDEMNATION**

**11.1 Definitions.**

A. **“Condemnation”** means: (1) the exercise of any governmental power in eminent domain, whether by legal proceedings or otherwise, by a condemnor, and (2) a voluntary sale or transfer to any condemnor, either under threat of condemnation or while legal proceedings for condemnation are pending.

B. **“Date of taking”** means the date the condemnor has the right to possession of the property being condemned.

C. **“Award”** means all compensation, sums or anything of value awarded, paid or received on a total or partial condemnation.

D. **“Condemnor”** means any public or quasi-public authority, or private corporation or individual, having the power of condemnation.

**11.2 Parties’ Rights and Obligations to be Governed by Ground Lease.** If during the Term there is any taking of all or any part of the Premises, the Premises Improvements or any other improvements on the Premises or any interest in this Ground Lease by condemnation, the rights and obligations of the parties shall be determined pursuant to the provisions of this ARTICLE 11.

**11.3 Total Taking.** If the Premises or Premises Improvements are totally taken by condemnation, this Ground Lease shall terminate on the date of taking.

**11.4 Effect of Partial Taking.** If a portion of the Premises Improvements or Premises or any other improvements thereon are taken by condemnation, this Ground Lease shall remain in effect, except that Tenant may elect to terminate this Ground Lease if the remaining portion of the Premises or Premises Improvements are rendered unsuitable (as defined herein) for Tenant’s continued use. The remaining portion of the Premises Improvements or the Premises shall be deemed unsuitable for Tenant’s continued use if, following a reasonable amount of reconstruction, Tenant’s operations in the Premises Improvements could not be maintained at an economically feasible level. Tenant must exercise its right to terminate by giving Landlord written notice of its election within 90 days after the nature and extent of the taking have been finally determined. Such notice shall also specify the date of termination, which shall not be prior to the date of taking. Failure to properly exercise the election provided for in this Section 11.4 will result in this Ground Lease continuing in full force and effect. Any exercise of Tenant’s right to terminate the Ground Lease pursuant to this Section 11.4 shall be subject to the prior written consent of Senior Leasehold Mortgagee. If the Ground Lease is terminated in accordance with this Section 11.4, proceeds (excluding those to which Landlord is otherwise entitled pursuant to Section 11.7 below) must first be applied toward payment of each Leasehold Mortgage, beginning with the Senior Leasehold Mortgage.

**11.5 Restoration of Premises Improvements.** If in Tenant’s judgment it is reasonably possible and economically feasible to do so, Tenant shall be entitled to use that portion of the award allocable to the Premises Improvements as is necessary to restore or to add on to the Premises Improvements so that the area and approximate layout of the Premises Improvements will be substantially the same after the date of taking as it was before the date of

taking. If it is not reasonably possible and economically feasible to so restore the area and layout of the Premises Improvements, the remaining provisions of this ARTICLE 11 shall govern the rights of the parties. If Tenant fails to promptly commence any reasonably required repair, restoration or reconstruction of the Premises Improvements and diligently prosecute such repair, restoration or reconstruction to completion, and such failure is not remedied within 30 days of written notice from the Landlord to Tenant, this Ground Lease may be terminated by the Landlord, subject to the rights of Leasehold Mortgagees hereunder.

**11.6 Waiver of CCP Section 1265.130.** Each party waives the provisions of the Code of Civil Procedure Section 1265.130 allowing either party to petition the Superior Court of the County of Alameda, State of California to terminate this Ground Lease in the event of a partial taking of the Premises.

**11.7 Award.** Subject to the provisions of Section 11.5, and subject to the rights of Leasehold Mortgagees and Investors, if all or any portion of the Premises Improvements or any other improvements on the Premises is taken in connection with a condemnation, the award for the Premises Improvements or such other improvements shall be allocated taking into account that the Landlord's interest is limited to the land or air space (exclusive of the Premises Improvements). If the Premises Improvements are to be restored pursuant to Section 11.5 above, Tenant shall be entitled to recover the costs and expense incurred in such restoration out of any condemnation proceeds. Thereafter, if the condemning authority does not make separate awards, the proceeds will be allocated on a proportionate basis. If Landlord and Tenant are unable to agree as to the amounts that are to be allocated to each other, the allocation will be determined by an appraisal performed by a mutually agreed appraiser. The appraiser shall separately determine the amount of award to be allocated to the interest of each party, and the costs of the appraiser shall be borne equally by each party.

**11.8 Leasehold Mortgagee Participation.** Leasehold Mortgagees must be provided notice and the opportunity to participate in any condemnation proceedings contemplated by this ARTICLE 11. Awards shall be paid to the Senior Leasehold Mortgagee or an independent trustee acceptable to Senior Leasehold Mortgagee and shall be disbursed in accordance with the provisions of this ARTICLE 11.

## **ARTICLE 12. ASSIGNMENT AND SUBLETTING**

### **12.1 Assignment.**

A. Except as provided in Section 1.6 and the Lease Transfer Agreement, Tenant shall not assign, sublet or otherwise transfer, whether voluntarily or involuntarily or by operation of Law, this Ground Lease, the Premises Improvements or any part thereof (collectively an "**assignment**") without Landlord's written consent, which shall not unreasonably be withheld, conditioned or delayed. The merger of Tenant with any other entity or the assignment or transfer of any direct or indirect controlling or managing ownership interest in Tenant, or the assignment or transfer of a substantial portion of the assets of Tenant, whether or not located at the Premises, or any interest in the Premises Improvements, shall constitute an "assignment" hereunder. However, the transfer of a limited partnership interest in a limited partnership tenant, or of a non-managing membership interest in a limited liability company tenant, shall not constitute an assignment.

B. Notwithstanding Subsection 12.1A above, Landlord's consent is not required for any assignment to an Affiliate (as defined below) of BRIDGE or BFHP, as long as the following conditions are met: (i) Landlord receives written notice of the assignment (as well as any documents or information reasonably requested by Landlord regarding the assignment or assignee); and (ii) the assignee assumes in writing all of Tenant's obligations under this Ground Lease. For purposes of this Section, "**Affiliate**" means an entity which controls, is controlled by or under common control with Tenant. For the purposes of this definition, "control" means the direct or indirect ownership of more than 50% of the voting securities of an entity or possession of the right to direct the entity's day-to-day affairs.

C. Also notwithstanding Subsection 12.1A above, Landlord's consent is not required for any assignment to an Investor, as long as the following conditions are met: (i) the assignment occurs pursuant to the term of Tenant's governing documents, following a default to the Investor; (ii) Landlord receives written notice of the assignment (as well as any documents or information reasonably requested by Landlord regarding the assignment or assignee); and (iii) the Investor assumes in writing all of Tenant's obligations under this Ground Lease.

D. No partial assignments of this Ground Lease shall be permitted, and all assignments must be accompanied by a concurrent transfer of the Premises Improvements to the assignee. Assignments of this Ground Lease shall only be made pursuant to a written assignment and assumption agreement in a form reasonably acceptable to Landlord. Landlord's consent to any one assignment shall not constitute consent to any other assignment, and shall not constitute a waiver of the right to give or withhold consent in accordance with this Section 12.1.

E. In the event Tenant shall assign this Ground Lease or request the consent of Landlord to any assignment for which Landlord's consent is required under this ARTICLE 12, then Tenant shall pay Landlord's reasonable attorneys' fees incurred in connection with each such request.

**12.2 Subleases.** Except as provided in Subsection 1.6B, to residential tenancies and other tenancies typically entered into in connection with residential development (such as laundry leases) and subject to all Regulatory Requirements, Tenant shall not sublease all or any portion of the Premises Improvements or the Premises without Landlord's prior written consent, which may be withheld for any reason whatsoever in Landlord's sole absolute discretion. No permitted subletting shall limit Tenant's obligations under this Lease.

## **ARTICLE 13. TENANT DEFAULTS AND LANDLORD'S REMEDIES**

**13.1 Defaults by Tenant.** Tenant shall be in default under this Ground Lease upon occurrence of any of the following:

A. Tenant shall at any time be in default in the payment of Rent or any other monetary sum called for by this Ground Lease for more than 30 days following written notice from Landlord to Tenant; or

B. Tenant shall at any time be in default in the keeping and performing any of its covenants or agreements contained in the Regulatory Requirements, Site REA or Hope Center REA, and such other default continues for 30 days after written notice thereof from Landlord to Tenant specifying the particulars of such default, or if such default is of a nature that

curing such default will take more than 30 days Tenant has failed to commence such cure within such 30-day period and to thereafter diligently and continuously pursue completion of such cure, provided that such cure period need not exceed any time period that the failure to cure would result in Landlord itself being in violation of any Law or expose Landlord to unreasonable financial risks; or

C. Tenant shall at any time be in default in the keeping and performing of any of its other covenants or agreements contained in this Ground Lease, and should such other default continue for 30 days after written notice thereof from Landlord to Tenant specifying the particulars of such default, or if such other default is of a nature that curing such default will take more than 30 days Tenant has failed to commence such cure within such 30-day period and to thereafter diligently and continuously pursue completion of such cure; or

D. Tenant abandons or substantially suspends the Premises Improvements prior to completion thereof and such default is not cured within 60 days of written notice from Landlord to Tenant; or

E. Tenant assigns, sells, transfers, conveys, encumbers, hypothecates or leases the whole or any part of the Premises Improvements, the Premises, or any other improvement constructed thereon in violation of the Improvements Documents; or

F. Except as otherwise expressly permitted in this Ground Lease there is any change in control of Tenant, or any other act or transaction involving or resulting in a change in the identity of the parties in control of Tenant or the degree of such control; or

G. Subject to ARTICLE 14 below, Tenant defaults on any loan encumbering Tenant's interest in this Ground Lease or any improvements on the Premises for which Tenant is responsible, and such failure continues beyond (i) the expiration of any applicable grace or cure period, and (ii) the date by which Tenant must make payment to cure any notice of default received from the holder of such loan; or

H. Any Leasehold Mortgagee or any other holder of any private loan encumbering Tenant's interest in this Ground Lease, or any improvements on the Premises initiates a foreclosure of the deed of trust by which such loan is secured, and Tenant fails to cause such foreclosure proceedings to be dismissed prior to the earlier to occur of (i) the trustee under the deed of trust giving notice of the trustee's sale, or (ii) within 30 days of Tenant's receipt of written notice from Landlord.

**13.2 Remedies.** Subject to the rights of any Leasehold Mortgagees permitted under ARTICLE 14, upon the occurrence of any such default, in addition to any and all other rights or remedies of Landlord hereunder, or by Law or in equity provided, Landlord shall have the sole option to exercise the following rights and remedies:

A. Terminate this Ground Lease by giving Tenant notice of termination. On the giving of such notice, all of Tenant's rights in the Premises, Premises Improvements and any other improvements located thereon, shall terminate. Immediately following notice of termination, Tenant shall surrender and vacate the Premises, including the Premises Improvements and any other improvements located thereon, leaving them in broom-clean condition; and, subject to Subsection 13.2B below, respecting the right of certain subtenants to remain, Landlord may reenter and take possession of the Premises and Premises Improvements and eject all parties in possession or eject some and not others, or eject none. Termination

under this subsection shall not relieve Tenant from the payment of any sum then due to Landlord or from any claim for damages previously accrued or then accruing against Tenant.

B. Without terminating this Ground Lease, Landlord may at any time and from time to time relet the Premises, including the Premises Improvements, or any part or parts thereof for the account and in the name of Tenant or otherwise. Any reletting may be for the remainder of the Term or for a longer or shorter period, and subject to the rights of any subtenant under subleases permitted under Section 12.2. Landlord may execute any leases made under this provision either in Landlord's name or in Tenant's name, and shall be entitled to all rents from the use, operation, and occupancy of the Premises, Premises Improvements and any other improvements thereon. Tenant hereby appoints Landlord its attorney-in-fact for purpose of such leasing. Tenant shall nevertheless pay to Landlord on the due dates specified in this Ground Lease the equivalent of all sums required of Tenant under this Ground Lease, less the revenue received by Landlord from any reletting or attornment, plus Landlord's reasonable expenses, including (by way of example), but not limited to, remodeling expenses, Landlord's brokerage and advertising costs and attorneys' fees and costs. No act by or on behalf of Landlord under this subsection shall constitute a termination of this Ground Lease unless Landlord gives Tenant written notice of termination, and Tenant shall remain liable for all costs, losses and damages resulting from unperformed Tenant obligations and breaches under permitted subleases.

C. Even though Landlord may have relet all or any portion of the Premises, including the Premises Improvements and any other improvements thereon, Landlord may thereafter elect to terminate this Ground Lease and all of Tenant's rights in or to the foregoing.

**13.3 Damages.** Neither party shall be entitled to recover consequential or punitive damages under this Lease.

**13.4 Landlord's Right to Cure Tenant's Default.** Landlord, at any time after Tenant commits a default which Tenant has failed to cure within the time established therefor, may cure the default at Tenant's cost. If Landlord at any time, by reason of Tenant's default, pays any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord at the time the sum is paid, and if paid at a later date, shall bear interest at the Interest Rate from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. The sum, together with interest thereon, shall be Additional Rent.

**13.5 Guarantor Performance Under Completion Guaranty.** Notwithstanding anything in this Ground Lease to the contrary (other than the last sentence of this Section 13.5), (i) if Landlord enforces its rights against Guarantor, Guarantor's performance in compliance with the Completion Guaranty shall be deemed to suspend any default by Tenant under this Ground Lease relating to the construction of the Premises Improvements, and Landlord shall accept Guarantor's performance thereof; and (ii) so long as the Guarantor proceeds diligently to perform the guaranteed obligations thereunder (subject to permitted force majeure delays and other delays expressly specified in the Completion Guaranty) and to cause the Premises Improvements to be completed within three years following the date completion is otherwise required under this Ground Lease, Landlord shall not exercise any of its remedies under the Ground Lease arising from the Tenant's failure to construct the Premises Improvements as required herein including, without limitation, termination of this Ground Lease. Nothing in this Section 13.5 shall limit Landlord's right to collect any amounts otherwise due under Section 13.4 following Guarantor's satisfaction of all obligations under the Completion Guaranty or Guarantor's default thereunder.

**ARTICLE 14.  
MORTGAGEE PROTECTION PROVISIONS**

**14.1 Right to Encumber.** Tenant shall have the right during the Term to encumber, through one or more Leasehold Mortgages and the Regulatory Requirements, all of Tenant's right, title and interest in the Premises, subject to the provisions of this Ground Lease; provided, however, that any Leasehold Mortgage shall be in all respects subordinate and inferior to Landlord's right, title and interest as fee title owner of the Site and Premises, and any such Leasehold Mortgagee shall be subject to all of the rights and obligations of Landlord herein contained in this Ground Lease, except as otherwise provided in this Ground Lease. For purposes of this Ground Lease, Landlord and Tenant acknowledge and agree that the Senior Leasehold Mortgagee identified on **Exhibit F** attached hereto or any subsequent lender and its successors, assigns and participants or other entity holding the first lien deed of trust on the leasehold estate is a permitted Leasehold Mortgagee and all references to a "Leasehold Mortgagee" shall specifically include Senior Leasehold Mortgagee. All references to a Leasehold Mortgage shall include, without limitation, that certain Construction Leasehold Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing, dated as of even date herewith, made by Tenant for the benefit of the initial Senior Leasehold Mortgagee and any assignment or amendment and restatement thereof. For so long as any Leasehold Mortgage is outstanding, Landlord shall not agree to any termination or accept any surrender of this Ground Lease (other than upon expiration of the Term) without the prior written consent of the holders of Leasehold Mortgages then in effect, and any such termination or surrender without such consent shall have no force or effect.

**14.2 Leasehold Mortgagee as Third Party Beneficiary.** Notwithstanding anything to the contrary contained herein, a Leasehold Mortgagee shall be deemed to be a third party beneficiary of Tenant's obligations under this Ground Lease; provided that the foregoing shall not alter any right, remedy, duty or obligation between Tenant and Landlord herein.

**14.3 Notice to Leasehold Mortgagee.** During any period in which a Leasehold Mortgage is in place, Landlord, prior to exercising any remedy under this Lease, shall give any such Leasehold Mortgagee of which Landlord has received notice from Tenant or the Leasehold Mortgagee a duplicate copy of all notices of default or other notices that Landlord may give to or serve in writing upon Tenant pursuant to the terms of this Ground Lease. The address of the Leasehold Mortgagee originally designated in the Leasehold Mortgage may be changed upon written notice delivered to Landlord in the manner specified in Section 15.5 below. Landlord acknowledges each of the following as: (i) the Leasehold Mortgagee identified in **Exhibit F** as a holder of a Leasehold Mortgage and (ii) any subsequent lender (and its successors, assigns and transferees) holding a Leasehold Mortgage for which Landlord has received written notice, including such lender's address for notices hereunder. However, unless otherwise required by Law, nothing in this Section 14.3 shall obligate the City to deliver any notices to a Leasehold Mortgage in connection with the City's exercise of its regulatory authority, including without limitation pursuant to Sections 6.8 or 6.9 above, or exercise of its Governmental Capacity pursuant to Section 15.22 below.

**14.4 Right of Leasehold Mortgagee to Cure.** Notwithstanding any default by Tenant under this Ground Lease, Landlord shall have no right to terminate this Ground Lease unless Landlord shall have given each Leasehold Mortgagee written notice of such default and such Leasehold Mortgagees shall have failed to remedy such default or acquire Tenant's leasehold estate created by this Ground Lease or commence foreclosure or other appropriate proceedings as set forth in, and within the time specified by, this Section 14.4.

A. Any Leasehold Mortgagee which has an outstanding Leasehold Mortgage shall have the right, but not the obligation, at any time to pay any or all of the Rent due pursuant to the terms of this Ground Lease, and do any other act or thing required of Tenant by the terms of this Ground Lease, to prevent termination of this Ground Lease. Each Leasehold Mortgagee shall have 90 days after receipt of notice from Landlord describing such default to cure the default. All payments so made and all things so done shall be as effective to prevent a termination of this Ground Lease as the same would have been if made and performed by Tenant instead of by Leasehold Mortgagees.

B. In addition to the cure period provided in Section 14.4A above, if the default is such that possession of the Premises may be reasonably necessary to remedy the default, any Leasehold Mortgagee shall have a reasonable time after the expiration of such 90 day period within which to remedy such default, provided that (i) such Leasehold Mortgagee shall have fully cured any default in the payment of any monetary obligations of Tenant under this Ground Lease within such 90 day period and shall continue to pay currently such monetary obligations when the same are due and (ii) such Leasehold Mortgagee shall have acquired Tenant's leasehold estate hereunder or commenced foreclosure or other appropriate proceedings prior to or within such period, and shall be diligently prosecuting the same.

C. Any default under this Ground Lease which by its nature cannot be remedied by any Leasehold Mortgagee shall be deemed to be remedied if (i) within 90 days after receiving written notice from Landlord describing the default, or prior thereto, any Leasehold Mortgagee shall have acquired Tenant's leasehold estate or commenced foreclosure or other appropriate proceedings, (ii) Leasehold Mortgagee shall diligently prosecute any such proceedings to completion, (iii) Leasehold Mortgagee shall have fully cured any default in the payment of any monetary obligations of Tenant hereunder which does not require possession of the Premises, and (iv) after gaining possession of the Premises, the Leasehold Mortgagee shall cure all non-monetary defaults of Tenant hereunder capable of cure by Leasehold Mortgagee.

D. If any Leasehold Mortgagee is prohibited, stayed or enjoined by any bankruptcy, insolvency or other judicial proceedings involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings, the times specified for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; provided that any Leasehold Mortgagee shall have fully cured any default in the payment of any monetary obligations of Tenant under this Ground Lease and shall continue to pay currently such monetary obligations when the same fall due; provided, further, that such Leasehold Mortgagee shall not interfere with Landlord's efforts to seek compliance by the Tenant with any non-monetary obligation under this Ground Lease.

E. As used in this Section 14.4, "monetary obligations of Tenant" does not include damages, costs and expenses arising from any obligation of Tenant to indemnify Landlord for any acts or omission of Tenant prior to the date a Leasehold Mortgagee assumes the obligations of Tenant hereunder.

**14.5 Limitation on Liability of Leasehold Mortgagee.** No Leasehold Mortgagee shall be or become liable to Landlord as an assignee of this Ground Lease or otherwise unless it expressly assumes by written instrument executed by Landlord and Leasehold Mortgagee such liability (in which event the Leasehold Mortgagee's liability shall be limited to the period of time during which it is the owner of the leasehold estate created hereby) and no assumption shall be inferred from or result from foreclosure or other appropriate proceedings in the nature thereof or as the result of any other action or remedy provided for by

such Leasehold Mortgage or other instrument or from a conveyance from Tenant pursuant to which the purchaser at foreclosure or grantee shall acquire the rights and interest of Tenant under the terms of this Ground Lease.

**14.6 Estoppel Certificates.** Landlord and Tenant agree that at any time and from time to time upon not less than 20 days' prior written notice by the other party, or upon request from any Leasehold Mortgagee or Investor or a permitted assignee, Landlord or Tenant will execute and deliver to the other party or to such Leasehold Mortgagee or Investor a statement in writing certifying (a) that this Ground Lease is unmodified and in full force and effect (or specifying any known amendments if applicable); (b) the date through which the Rents have been paid; and (c) that, to the knowledge of the certifier (if such be the case), there is no default (or any conditions existing which, but for the passage of time or the giving of notice, would constitute a default) set off, defense or other claim against Landlord or Tenant, as applicable, other than those, if any, so specified under the provisions of this Ground Lease. It is intended that any such statement may be relied upon by any persons proposing to acquire the interest of Landlord, Tenant or any Leasehold Mortgagee or Investor, as the case may be, in this Ground Lease or by any prospective Leasehold Mortgagee or Investor or permitted assignee of any Leasehold Mortgagee or Investor.

**14.7 Registration of Leasehold Mortgages.** Upon written request by Landlord, Tenant shall provide written notice to Landlord of the name and address of each Leasehold Mortgagee under this Ground Lease.

**14.8 New Ground Lease.** In the event of the termination of this Ground Lease prior to the natural expiration of the Term of this Ground Lease due to a default of Tenant or operation of law or otherwise (including, without limitation, a rejection or other termination of this Ground Lease pursuant to any bankruptcy filing by or against Tenant or the commencement of any other insolvency proceeding or similar proceeding, an act of condemnation or eminent domain against a portion of the Premises by a government agency or body, the destruction or damage of the Premises, or upon a foreclosure of Tenant's estate by a Leasehold Mortgagee or acceptance of a deed in lieu of foreclosure or a change in the control or management of Tenant in violation of this Ground Lease), Landlord shall also be obligated to give notice to Leasehold Mortgagee simultaneously under Section 14.3 hereof with such notice given to Tenant; provided that no failure to give such notice to Leasehold Mortgagee shall invalidate the termination of this Ground Lease. Landlord, upon written request from Senior Leasehold Mortgagee and at Senior Leasehold Mortgagee's sole cost and expense, shall enter into a new lease with such holder or its designee in accordance with and upon the same terms and conditions as set forth in this Ground Lease. In addition, without limiting the preceding sentences, in the event of the filing of a petition in bankruptcy by or against the Tenant, and the Tenant rejects this Ground Lease under the then applicable provisions of the Bankruptcy Code, Landlord shall, upon the request of a Leasehold Mortgagee and at Senior Leasehold Mortgagee or its designee's sole cost and expense, affirm this Ground Lease, and Landlord will enter into a new ground lease on the same terms and conditions set forth in this Ground Lease with such holder or its designee promptly upon Tenant's rejection of this Ground Lease. In the event of the filing of a petition in bankruptcy by the Landlord, and the Landlord rejects this Ground Lease and the Tenant does not affirm it, a Leasehold Mortgagee will have the authority to affirm this Ground Lease on behalf of the Tenant and to keep the Ground Lease in full force and effect.

A. After cancellation and termination of this Ground Lease, and upon compliance with the provisions of this Section 14.8 by Leasehold Mortgagee, or its designee, upon the request of Leasehold Mortgagee or its designee within sixty (60) days following the

date on which Landlord notifies Senior Leasehold Mortgagee in writing in accordance with Section 14.3 that the Ground Lease actually has been terminated or rejected as described above in this Section 14.8, Landlord shall, at Senior Leasehold Mortgagee or its designee's sole cost and expense, execute and deliver such new ground lease to such Leasehold Mortgagee or its designee, having the same relative priority in time and right as this Ground Lease (to the extent possible) and having the benefit of all the right, title, interest, powers and privileges, and obligations and liabilities of Tenant hereunder in and to the Premises.

**14.9 Rights of Investor.** The Investor shall have the same notice and cure rights as any Leasehold Mortgagee (including monetary obligations) as set forth in Section 14.4 for so long as it is a limited partner of Tenant; provided, however, that Investor shall be deemed to have met any condition relating to commencement or continuation of a foreclosure proceeding as set forth in Section 14.4 above, if it is attempting with diligence and in good faith to remove the general partner of Tenant. The address for any notices to Investor, as of the date hereof, is provided in Basic Ground Lease Information Section 16.

**14.10 Transfers.** The consent of Landlord shall not be required for the mortgage of Tenant's interest in the Premises and Premises Improvements to any Leasehold Mortgagee, including, without limitation, Senior Leasehold Mortgagee, and transfer of the Premises and Premises Improvements to such Leasehold Mortgagee by foreclosure or deed-in-lieu of foreclosure (or the leasehold equivalent thereof), or to a third-party purchaser pursuant to a foreclosure sale (or the leasehold equivalent thereof). The consent of Landlord to a Transfer by a Leasehold Mortgagee after acquisition by foreclosure, at Senior Leasehold Mortgagee or its designee's sole cost and expense, will not be unreasonably withheld or delayed. Notwithstanding the foregoing, if at any time Federal Home Loan Mortgage Corporation or its successor, assignee or participant is the holder of the promissory note that is secured by the Leasehold Mortgage being foreclosed or transferred via a deed-in-lieu, Landlord's consent shall not be required in connection with such transfer of the Premises and Premises Improvements by the Leasehold Mortgagee after acquisition by foreclosure or deed-in-lieu of foreclosure (or the leasehold equivalent thereof).

**14.11 Permitted Use Requirements.** Following a transfer of the Premises to any Leasehold Mortgagee (or its nominee or assignee), including, without limitation, Senior Leasehold Mortgagee, and transfer of the Premises and Premises Improvements to such Leasehold Mortgagee by foreclosure or deed-in-lieu of foreclosure (or the leasehold equivalent thereof), or to a third-party purchaser pursuant to a foreclosure sale (or the leasehold equivalent thereof), notwithstanding anything to the contrary in this Ground Lease, the Permitted Use of the Premises shall be as specified by the zoning or applicable City conditions of approval.

**14.12 Further Ground Lease Amendments.** Landlord shall cooperate in including in this Ground Lease by suitable amendment from time to time any provision which may reasonably be requested by any Leasehold Mortgagee or any proposed lender, at Leasehold Mortgagee or proposed lender's sole cost and expense, for the purpose of implementing the mortgagee-protection provisions contained in this Ground Lease and allowing such Leasehold Mortgagee or proposed lender reasonable means to protect or preserve the lien of the leasehold mortgage and the value of its security, and to include any additional rights and privileges reasonably requested to be added by such Leasehold Mortgagee. Landlord agrees to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that any such amendment shall not in any way affect Landlord's fee estate in the Site or any other interest of Landlord in the Site or Premises, affect the Term or rent under this Ground Lease, or otherwise in any material

respect adversely affect any rights of Landlord under this Ground Lease or (except as otherwise expressly provided herein) Regulatory Requirements.

**ARTICLE 15.  
MISCELLANEOUS**

**15.1 Holding Over.** If Tenant shall hold over in the Premises Improvements or Premises after the expiration or termination of the Term hereof with or without the consent of Landlord, such holding over shall be construed to be only a tenancy from month to month, subject to all the covenants, conditions and obligations contained in this Ground Lease. Tenant hereby agrees to pay to Landlord as monthly rental \$500 per month, plus all Additional Rent as otherwise required in this Ground Lease.

**15.2 Attorneys' Fees.** In the event that any action is brought by either party hereto against the other for the enforcement or declaration of any right or remedy in or under this Ground Lease or for the breach of any covenant or condition of this Ground Lease, the prevailing party shall be entitled to recover, and the other party agrees to pay, all fees and costs to be fixed by the court therein including, but not limited to, attorneys' fees.

**15.3 Quiet Possession.**

A. Landlord agrees that so long as Tenant is not in default under this Ground Lease and is paying the Rent and performing all of the covenants and conditions of this Ground Lease, Tenant shall quietly have, hold and enjoy the Premises throughout the Term hereof without interruption or disturbance from Landlord or any other persons claiming by, through or under Landlord. For purposes of this Section 15.3, persons exercising their rights under the Site REA or Hope Center REA shall be deemed to a person claiming by, through or under Tenant.

B. Landlord covenants and agrees that Landlord shall not mortgage, convey, pledge, or otherwise encumber the Premises without the written consent of Tenant and any Leasehold Mortgagees, which written consent may be withheld in the Tenant or Leasehold Mortgagees' sole discretion. Any document evidencing such encumbrances shall be expressly subordinate to the leasehold estate created hereunder and any Leasehold Mortgagees. In such event, Tenant shall not be required, nor shall Tenant be permitted without the consent of all Leasehold Mortgagees, to subordinate the leasehold established hereunder to any mortgage entered into by Landlord after the date hereof. However, nothing in this Section 15.3B shall limit any City exercise of its regulatory authority, including without limitation pursuant to Sections 6.8 or 6.9 above, or exercise of its Governmental Capacity pursuant to Section 15.22 below.

**15.4 Force Majeure.** Except as to the payment of Rent, subject to the limitations set forth below, performance by either party hereunder (including without limitation continuing obligations under the DDA) shall not be deemed to be in default, and all performance and other dates specified in this Ground Lease shall be extended, where delays are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; unusually severe weather; lack of reasonable availability of labor or materials; acts or omissions of the other party; or acts or failures to act of the City or any other public or governmental agency or entity (other than the acts or failures to act of Landlord which shall not excuse performance by Landlord) (together, "**Force Majeure**"). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from

the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party with reasonable promptness (not more than 30 days) of the commencement of the cause. Times of performance under this Ground Lease may also be extended in writing by the mutual agreement of Landlord and Tenant. Tenant expressly agrees that post-Ground Lease Date adverse changes in economic conditions, either of Tenant specifically or the economy generally, changes in market conditions or demand, and/or Tenant's inability to obtain financing or other lack of funding, shall not constitute a Force Majeure delay pursuant to this Section 15.4. Tenant expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Ground Lease Date.

**15.5 Notices.** Any notice to be given or other document to be delivered by either party to the other hereunder shall be in writing and shall be deemed to have been duly given and received (i) upon personal delivery, (ii) as of the third business day after mailing by United States registered or certified mail, return receipt requested, postage prepaid, addressed as set forth below, or (iii) the immediately succeeding business day after deposit with Federal Express or other equivalent overnight delivery system, addressed to the party for whom intended, as indicated in the Basic Ground Lease Information. Any party hereto may from time to time, by written notice to the other, designate a different address which shall be substituted for the one above specified.

**15.6 Waiver.** No waiver of any breach of any of the terms, covenants, agreements, restrictions or conditions of this Ground Lease shall be construed to be a waiver of any succeeding breach of the same or other terms, covenants, agreements, restrictions and conditions hereof.

**15.7 Surrender.** Upon the expiration or sooner termination of the Term of this Ground Lease, and notwithstanding anything herein contained to the contrary, Tenant shall surrender to Landlord the Premises Improvements, the Premises and any other improvements thereon, broom clean and in good condition and repair, reasonable wear and tear excepted.

**15.8 Binding.** Subject to the restrictions set forth herein regarding assignment of , Tenant's interest in this Ground Lease, each of the terms, covenants and conditions of this Ground Lease shall extend to and be binding on and shall inure to the benefit of not only Landlord and Tenant, but to each of their respective heirs, administrators, executors, successors and assigns. Whenever in this Ground Lease reference is made to either Landlord or Tenant, the reference shall be deemed to include, wherever applicable, the heirs, administrators, executors, successors and assigns of such parties, the same as if in every case expressed.

**15.9 Disclaimer of Partnership.** The relationship of the parties hereto is that of Landlord and Tenant, and it is expressly understood and agreed that Landlord does not in any way nor for any purpose become a partner of Tenant or a joint venturer with Tenant in the Premises Improvements or in the conduct of Tenant's business or operations or otherwise.

**15.10 Quitclaim.** At termination or expiration of the Term of this Ground Lease, Tenant shall execute, acknowledge and deliver to Landlord within 30 days, a valid and recordable quitclaim deed covering the Premises and Premises Improvements, free and clear of all monetary liens and encumbrances not caused or agreed to by Landlord (**"Quitclaim Deed"**). If Tenant fails to clear all monetary liens and encumbrances as required by this Section at termination or expiration of the Term of this Ground Lease, Tenant shall continue to

be liable and responsible for all such costs, liabilities and expenses associated with, related to or caused by such encumbrances that were not removed by Tenant, and Landlord may take any and all action to enforce its rights under this Ground Lease and to have such encumbrances removed, and all costs and expenses associated with such actions shall be paid solely by Tenant upon Landlord's demand

**15.11 Interpretation.** The titles to the sections of this Ground Lease are not a part of this Ground Lease and shall have no effect upon the construction or interpretation of any part of this Ground Lease. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Ground Lease shall be interpreted as though prepared jointly by both parties.

**15.12 Severability.** If any term, provision, condition or covenant of this Ground Lease or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Ground Lease, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by Law.

**15.13 Computation of Time.** The time in which any act is to be done under this Ground Lease is computed by excluding the first day, and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Sections 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

**15.14 Legal Advice.** Each party represents and warrants to the other the following: they have carefully read this Ground Lease, and in signing this Ground Lease, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Ground Lease, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Ground Lease; and, they have freely signed this Ground Lease without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Ground Lease, and without duress or coercion, whether economic or otherwise.

**15.15 Time of Essence.** Time is expressly made of the essence with respect to the performance by Landlord and Tenant of each and every obligation and condition of this Ground Lease.

**15.16 Nonliability of Officials, Employees, etc.** No member, official or employee of Landlord shall be personally liable to Tenant, or any successor in interest, in the event of any default or breach by Landlord or for any amount which may become due to Tenant or its successors, or on any obligations under the terms of this Ground Lease. Tenant hereby waives and releases any claim it may have against the members, officials or employees of Landlord with respect to any default or breach by Landlord or for any amount which may become due to Tenant or its successors, or on any obligations under the terms of this Ground Lease. No member, partner (other than general partners as otherwise permitted by law), or board member, officer or employee of Tenant (or of any of Tenant's members or partners) shall

be personally liable to Landlord, or any successor in interest, in the event of any default or breach by Tenant or for any amount which may become due to Landlord or its successors, or on any obligations under the terms of this Ground Lease. Landlord hereby waives and releases any claim it may have against Tenant's members, partners (other than general partners as otherwise permitted by law), or board members, officers or employees (or of any of Tenant's members or partners) with respect to any default or breach by Tenant or for any amount which may become due to Landlord or its successors, or on any obligations under the terms of this Ground Lease.

**15.17 Assignment by Landlord.** Landlord may assign or transfer any of its interests hereunder at any time without Tenant's consent. Any such assignment or transfer shall be in compliance with all Laws, and the assignee or transferee shall affirmatively assume all Landlord obligations hereunder.

**15.18 Applicable Law.** The laws of the State of California, including all statutes of limitations but without regard to conflict of laws principles, shall govern the interpretation and enforcement of this Ground Lease.

**15.19 Covenants and Conditions.** Each obligation of the parties hereunder, including, without limitation, Tenant's obligation for the payment of Rent, shall be construed to be both a covenant and a condition of this Ground Lease.

**15.20 Integration.** This Ground Lease, together with all exhibits and attachments hereto, the Site REA, Hope Center REA, and Regulatory Requirements (collectively, "**Improvements Documents**"), excluding the City Financing Documents, constitute the entire agreement between the parties relating to the Premises and there are no conditions, representations or agreements regarding the matters covered by this Ground Lease which are not expressed herein or in the Improvements Documents. Without limiting the foregoing, except as expressly provided in this Ground Lease (including without limitation **Exhibit C**), this Ground Lease supersedes the DDA. Notwithstanding the foregoing, nothing herein will limit or restrict the rights of any party under the Improvements Documents and City Financing Documents.

**15.21 Amendments to this Ground Lease.** Landlord and Tenant agree to mutually consider reasonable requests for amendments to this Ground Lease that may be made by either of them, lending institutions or bond counsel or financial consultants to Landlord or Tenant, provided such requests are consistent with this Ground Lease and would not materially alter the basic business terms herein or the other Improvements Documents. No amendment shall be effective unless in writing and signed by the parties hereto and consented to by each Leasehold Mortgagee.

**15.22 Proprietary and Governmental Roles: Actions by City.** Except where clearly and expressly provided otherwise in this Ground Lease, the capacity of the City in this Ground Lease shall be as owner and lessor of property only ("**Proprietary Capacity**"), and any obligations or restrictions imposed by this Ground Lease on the City shall be limited to that capacity and shall not relate to, constitute a waiver of, supersede or otherwise limit or affect its governmental capacities, including enacting laws, inspecting structures, reviewing and issuing permits, and all of the other legislative and administrative or enforcement functions pursuant to federal, state or local law ("**Governmental Capacity**"). When acting in its Proprietary Capacity, discretionary actions may be undertaken by the City Manager or other designees as designated by the City Manager to the extent otherwise provided herein. In addition, nothing in this Ground

Lease shall supersede or waive any discretionary or regulatory approvals required to be obtained from the City under applicable Law.

**15.23 City Manager Authority and Limitations.** Any amendment to this Ground Lease which affects or relates to: (i) the Term of this Ground Lease; (ii) the permitted use of the Premises and Premises Improvements; (iii) Rent amounts and other monetary payments by Tenant; or (iii) any other material provision of this Ground Lease, shall require approval by the Landlord's City Council. Subject to the foregoing, the City Manager may also issue without City Council approval any consent or approval which Landlord is entitled to provide under this Ground Lease, including without limitation: (w) Material Alterations under Section 5.6 above; (x) assignments under Section 12.1; (y) sublettings under Section 12.2; and (z) rules for a CASp inspection under Section 15.29.

**15.24 Brokerage Commissions.** Landlord and Tenant each represents that it has not been represented by any broker in connection with this Ground Lease, and that no real estate broker's commission, finder's fee or other compensation (individually and collectively, "**Brokerage Commission**") is due or payable. Landlord and Tenant each agrees to indemnify and hold the other harmless from any claims or liability, including reasonable attorneys' fees, in connection with a claim by any person for a Brokerage Commission based upon any statement, representation or agreement of the other party.

**15.25 City Non-Discrimination Ordinance.** Tenant hereby agrees to comply with the provisions of the Berkeley Municipal Code ("**B.M.C.**"), including without limitation Chapter 13.26, as amended from time to time. In the performance of its obligations under this Ground Lease, Tenant agrees as follows:

A. Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

B. Tenant shall permit Landlord access to records of employment, employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the reasonable opinion of Landlord, are necessary to monitor compliance with this non-discrimination provision. In addition, Tenant shall fill out, in a timely fashion, forms supplied by Landlord to monitor this non-discrimination provision.

**15.26 Non-Discrimination Against Persons With Disabilities.**

A. If Tenant provides any aid, service or benefit to others on the Landlord's behalf, Tenant shall, in the provision of such aid, service or benefit, observe and comply with all applicable provisions of Title II of the Americans with Disabilities Act of 1990 and any amendments thereto. Tenant shall further observe and comply with all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination against individuals with disabilities or ensuring that individuals with disabilities are not excluded from participating in or receiving benefits, services or activities of the Landlord, if applicable.

B. If Tenant is or becomes a "public accommodation" as defined in Title III of the Americans with Disabilities Act of 1990, Tenant shall observe and comply with all applicable provisions of the Act and any amendments thereto, and all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages, or

accommodations offered by the Tenant. All of Tenant's activities must be in accordance with these laws, ordinances, codes, and regulations, and Tenant shall be solely responsible for complying therewith.

**15.27 Conflict of Interest Prohibited.**

A. In accordance with California Government Code Section 1090, Berkeley City Charter Section 36 and B.M.C. Chapter 3.64, neither Tenant nor any employee, officer, director, partner or member of Tenant, or immediate family member of any of the preceding, shall have served as an elected officer, an employee, or a committee or commission member of Landlord, who has directly or indirectly influenced the making of this Ground Lease.

B. In accordance with California Government Code Section 1090 and the Political Reform Act, (Government Code Section 87100 et seq.,) no person who is a director, officer, partner, trustee, employee or consultant of Tenant, or immediate family member of any of the preceding, shall make or participate in a decision made by Landlord or any of its boards, commissions or committees, if it is reasonable foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Tenant, except to the extent permitted by 2 California Code of Regulations, Section 18700(c)(2).

C. Interpretation of this paragraph shall be governed by the definitions and provisions use in the Political Reform Act, Government Code section 87100 et seq., its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64, as amended from time to time.

**15.28 Nuclear Free Berkeley.** Tenant agrees to comply with B.M.C. Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

**15.29 Required Accessibility Disclosure.**

A. Landlord hereby advises Tenant that the Premises and Premises Improvements have not undergone an inspection by a certified access specialist, and except to the extent expressly set forth in this Ground Lease, Landlord shall have no liability or responsibility to make any repairs or modifications to the Premises or the Premises Improvements in order to comply with accessibility standards. The following disclosure is hereby made pursuant to applicable California law:

B. "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." [Cal. Civ. Code Section 1938(e)]. Any CASp inspection shall be conducted in compliance with reasonable rules in effect at the Premises with regard to such inspections and shall be subject to Landlord's prior written consent.

**15.30 Oppressive States.**

A. In accordance with Resolution No. 59,853-N.S., Tenant certifies that it has no contractual relations with, and agrees during the Term of this Ground Lease to forego contractual relations to provide personal services to, the following entities:

1. The governing regime in any Oppressive State.
2. Any business or corporation organized under the authority of the governing regime of any Oppressive State.
3. Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of this Ground Lease) for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

B. For purposes of this Ground Lease, the Tibet Autonomous Region and the provinces of Abo, Kham, and U-Tsang shall be deemed oppressive states.

C. Tenant's failure to comply with this Section shall constitute a default of this Ground Lease and Landlord may terminate this Ground Lease pursuant to ARTICLE 13. In the event that Landlord terminates this Ground Lease due to a default under this provision, Landlord may deem Tenant a non-responsible bidder for five years from the date this Ground Lease is terminated.

**15.31 Berkeley Living Wage Ordinance (LWO).**

A. Tenant agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance. If Tenant employs six or more part-time or full-time employees, and generates \$350,000 or more in annual gross receipts, Tenant will be required to provide all eligible employees with City mandated minimum compensation during the Term of this Ground Lease, as defined in B.M.C. Chapter 13.27, and well as comply with the terms enumerated herein.

B. Tenant shall be required to maintain all reasonable records and documents that would establish whether Tenant is subject to Berkeley's Living Wage Ordinance ("LWO"). If Tenant is subject to the LWO, as defined therein, Tenant shall be further required to maintain monthly records of those employees located on the leased Premises. These records shall include the total number of hours worked, the number of hours spent providing service on the leased Premises, the hourly rate paid, and the amount paid by Tenant for health benefits, if any, for each of its employees providing services under the lease. The records described in this Section shall be made available upon the Landlord's request. The failure to produce these records upon demand shall be considered a default, subject to the provisions contained in ARTICLE 13 herein.

C. If Tenant is subject to the LWO, Tenant shall include the requirements of the ordinance, as defined in B.M.C. Chapter 13.27, in any and all subleases in which Tenant enters with regard to the subject Premises. Subtenants shall be required to comply with this ordinance with regard to any employees who spend 25% or more of their compensated time on the leased Premises.

D. If Tenant fails to comply with the requirements of the LWO and this Ground Lease, the Landlord shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

E. Tenant's failure to comply with this Section shall constitute a default of the Ground Lease, upon which City may terminate this Ground Lease pursuant to ARTICLE 13.

F. In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Tenant's failure to pay any of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty of forfeiture for Tenant's breach.

**15.32 Berkeley Equal Benefits Ordinance (EBO).**

A. Tenant hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant will be required to provide all eligible employees with City mandated equal benefits during the Term of this Ground Lease, as defined in B.M.C. Chapter 13.29, as well as comply with the terms enumerated herein.

B. If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant agrees to supply the City with any records the City deems necessary to determine compliance with this provision. Failure to do so shall be a considered a default, subject to the provisions of ARTICLE 13.

C. If Tenant fails to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity. Tenant's failure to comply with this Section shall constitute default of the Ground Lease, upon which City may terminate this Ground Lease pursuant to ARTICLE 13.

D. In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Tenant's failure to provide its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Tenant's breach.

**15.33 Audit.** In addition to any other Landlord audit right herein, the City Auditor's Office, or its designee, may conduct an audit of Tenant's financial and compliance records maintained in connection with the operations and services performed under this Ground Lease, and with the payments made under this Ground Lease. In the event of such audit, Tenant agrees to make all such financial and compliance records available to the Auditor's Office, or to its designee. City agrees to provide Tenant an opportunity to discuss and respond to any findings before a final audit report is filed.

**15.34 City Business License, Payment of Taxes, Tax I.D. Number.** Tenant has obtained a City business license as required by B.M.C. Chapter 9.04, and its license number is written below; or, Tenant is exempt from the provisions of B.M.C. Chapter 9.04 and has written below the specific B.M.C. section under which it is exempt. Tenant shall pay all state and federal income taxes and any other taxes due. Tenant certifies under penalty of perjury that the taxpayer identification number written below is correct.

**15.35 Survival.** The provisions of Sections 4.1 (Impositions), 5.6 (Alterations), 5.9 (Liens and Stop Notices), 6.2 (Governmental Requirements), 6.7 (General Standards of Maintenance), 7.2 (Hazardous Materials), 9.2 (Indemnity), 15.7 (Surrender) and any other obligation of Tenant that, by its terms or nature, is to be performed after or is to survive expiration or termination of this Ground Lease, shall survive such expiration or termination.

**15.36 No Merger of Title.** Except following expiration of the Term, there shall be no merger of the leasehold estate created by this Ground Lease with the fee estate in the Land by reason of the fact that the same person may acquire or hold (a) the leasehold estate created by this Ground Lease or any interest in such leasehold estate, and (b) the fee estate in the Land or any interest in such fee estate; and no such merger shall occur unless all persons, including any Leasehold Mortgagee, shall join in a written instrument effectuating such merger and shall duly record the same.

**15.37 Recording of Lease.** Tenant and Landlord shall record this Ground Lease (or a separate memorandum thereof) in the Official Records of Alameda County.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Ground Lease to be executed on their behalf by their respective officers thereunto duly authorized as of the dates set forth below.

*[Signature Page Follows]*

**TENANT:**

BFHP Hope Center LP, a California limited partnership

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

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

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

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

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

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

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

**LANDLORD:**

CITY OF BERKELEY, a Charter city

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

Dee Williams-Ridley  
City Manager

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

**Approved as to form:**

\_\_\_\_\_  
Farimah Brown, City Attorney

**Registered by:**

\_\_\_\_\_  
\_\_\_\_\_, City Auditor

**Attest:**

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

**TENANT INFORMATION**

Tax Identification No. \_\_\_\_\_

Incorporated: Yes \_\_\_ No \_\_\_

Certified Woman Business Enterprise: Yes \_\_\_ No \_\_\_

Certified Minority Business Enterprise: Yes \_\_\_ No \_\_\_

Certified Disadvantaged Business Enterprise: Yes \_\_\_ No \_\_\_

City Business License No. \_\_\_\_\_, or

Exempt pursuant to B.M.C. Section \_\_\_\_\_

**EXHIBIT A**

**PREMISES LEGAL DESCRIPTION**

The land referred to is situated in the City of Berkeley, County of Alameda, State of California, and is described as follows:

PARCEL ONE:

Parcel B , as shown on the Parcel Map 11051, filed \_\_\_\_\_, 2020 in Book \_\_\_ of Parcel Maps, Pages \_\_\_ and \_\_\_, Alameda County Records, EXCEPTING THEREFROM all buildings and improvements situated thereon, which buildings and improvements are and shall remain real property.

PARCEL TWO:

Easements for construction, maintenance, utilities, structural support and encroachment, set forth in that certain Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for Berkeley Way, dated \_\_\_\_\_, 2020, executed by the City of Berkeley and BRIDGE Berkeley Way LP and BFHP Hope Center LP, and recorded in Alameda County Records on \_\_\_\_\_, 2020, as Instrument No. \_\_\_\_\_; and Easements for access, use, ingress and egress, set forth in that certain Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for the BFHP Hope Center, dated \_\_\_\_\_, 2020, executed by the City of Berkeley and BFHP Hope Center LP, and recorded in Alameda County Records on \_\_\_\_\_, 20\_\_\_\_, as Instrument No. \_\_\_\_\_, 2020.

Being a portion of APN 057-2053-022-01

EXHIBIT B

DEVELOPMENT SITE PARCEL MAP

*[Draft to be attached—final to be included before signing]*

**EXHIBIT C**

**CERTAIN DDA PROVISIONS**

1. The following DDA provisions have been fully satisfied or waived:
  - a. Section 2.1 (Conditions Precedent to Lease of Property).
  - b. Section 2.2 (Developer Deposit).
  - c. Section 2.3 (Development Schedule).
  - d. Section 2.4 (Development Services Agreement).
  - e. Section 2.5 (Creation of and Assignments to Permitted Lessees).
  - f. Section 2.6 (Developer Approval of Property).
  - g. Section 2.7 (Developer Approval of Title Matters).
  - h. Section 2.8 (Agreement on Leases).
  - i. Section 2.9 (Agreement on Reciprocal Easement Agreement).
  - j. Section 2.10 (Agreement on Completion Guaranty Agreement).
  - k. Section 2.11 (City and Other Governmental Approvals).
  - l. Section 2.12 (Financing Proposals and Financing Plans for the Development).
  - m. Section 2.13 (Evidence of Availability of Funds).
  - n. Section 2.14 (Construction Contract(s)).
  - o. Section 2.15 (Construction Bonds).
  - p. Section 2.16 (Building Permits).
  - q. Section 2.17 (Construction Drawings).
  - r. Section 2.18 (Final Subdivision Map).
  - s. Section 2.19 (No Default).
  - t. Section 2.20 (Permits and Approvals Final; Absence of Litigation).
  - u. Section 2.21 (Insurance).
  - v. Section 2.22 (Representations and Warranties; No Material Adverse Change).

- w. Article III (Design Requirements), except for Sections 3.7 and 3.8.
  - x. Article IV (Lease Disposition of Property) except for Sections 4.5 (see below), 4.6 (with respect to post-closing ad valorem taxes (if any) and other potential pre-closing and post-closing costs) and 4.7.
2. The following DDA provisions are terminated:
- a. Section 3.7 (No Change in Project Documents).
  - b. Section 3.8 (Additional Permits and Approvals).
  - c. Article VII (Assignment and Transfers).
  - d. Article VIII (Termination, Default and Remedies). (Remedies for default in any continuing obligation under the DDA shall be as provided in the Ground Lease.)
  - e. Section 9.3 (Enforced Delay).
  - f. Section 9.19 (Right of Entry to Perform Studies).
3. The following DDA provisions, attached hereto, remain in full force and effect, except to the extent provided below:
- a. Section 4.5 (Condition of Property) remains in full force and effect.
  - b. Section 4.6 (Costs of Escrow and Closing).
  - c. Section 4.7 (Obligations After Lease).
  - d. Article V (Construction of the Development) remains in full force and effect, and is incorporated into Section 5.1 of the Leases and the JDA.
  - e. Article VI (Ongoing Developer Obligations) (except to the extent modified in the Ground Lease or as attached hereto).
  - f. Section 9.1 (Notices, Demands and Communications), but only to the extent notices are required under the DDA, and not some other agreement with its own notice provisions.
  - g. Section 9.2 (Non-Liability of City Officials, Employees and Agents), Section 9.4 (Inspection of Books and Records), Section 9.5 (Provision Not Merged with Leases) and Section 9.6 (Title of Parts and Sections) shall remain in full force and effect.
  - h. Section 9.7 (Indemnification) shall remain in full force and effect against Developer except to the extent assumed by BRIDGE LP and BFHP LP, and otherwise in full force and effect against BRIDGE LP and BFHP LP.
  - i. Section 9.8 (Applicable Law), Section 9.9 (No Brokers), Section 9.10 (Severability), Section 9.11 (Binding Upon Successors), Section 9.12 (Parties Not Co-Venturers), Section 9.13 (Time of the Essence), Section 9.14 (Action by the City), Section 9.15 (Discretion Retained by City), Section 9.16 (Representations and Warranties by Developer), and

Section 9.17 (Multiple Originals; Complete Understanding of the Parties), remain in full force and effect.

j. Except as provided in Leases Subsection 1.1A, Section 9.18 (Conflict Among City Documents) remains in full force and effect to the extent any applicable DDA provision remains in effect.

EXHIBIT D

SITE RECIPROCAL EASEMENT AGREEMENT (REA 1)

*[to be provided]*



EXHIBIT D1

HOPE CENTER RECIPROCAL EASEMENT AGREEMENT (REA 2)

*[to be provided]*



EXHIBIT E

RESOLUTION NO. AAAA-N.S.

*[to be attached]*



EXHIBIT F

INITIAL LEASEHOLD MORTGAGES AND MORTGAGEES

**[to be provided—identify “Senior Leasehold Mortgagee” if any and include notice addresses]**

EXHIBIT G

CITY FINANCING DOCUMENTS

*[to be provided]*





12-19-2019

**DECLARATION OF AND AGREEMENT REGARDING COVENANTS, CONDITIONS AND RESTRICTIONS PROVIDING FOR RECIPROCAL EASEMENTS, JOINT USE AND MAINTENANCE FOR BERKELEY WAY**

THIS DECLARATION OF AND AGREEMENT REGARDING COVENANTS, CONDITIONS AND RESTRICTIONS PROVIDING FOR RECIPROCAL EASEMENTS, JOINT USE AND MAINTENANCE FOR BERKELEY WAY (the "Declaration") is made as of \_\_\_\_\_, 2020 (the "Effective Date"), by the City of Berkeley (the "City") as owner of the fee interest in the Property described herein, and BRIDGE Berkeley Way LP and BFHP Hope Center LP, as lessees of portions of said Property (City and said lessees being referred to herein collectively as the "Berkeley Way Declarants"), with reference to the following facts:

RECITALS

- A. These Recitals refer to and utilize certain capitalized terms that are defined in Article 1 of this Declaration.
- B. The City owns certain real property located at 2012 Berkeley Way in Berkeley, California, as more particularly described in Exhibit A attached hereto and incorporated herein (the "Property"). Berkeley Way Declarants have caused the subdivision of the Property pursuant to the Map. The Map and this Declaration collectively delineate the BRIDGE Affordable Development and the BFHP Hope Center Development, which includes the BFHP Hope Center Permanent Supportive Housing and the BFHP Hope Center Temporary Housing. The BRIDGE Affordable Development is located on the BRIDGE Affordable Parcel and the BFHP Hope Center Development is located on the BFHP Hope Center Parcels.
- C. City has no current intention of developing the BRIDGE Affordable Development, BFHP Hope Center Development or the Parcels comprising the Property. Concurrently with the making of this Declaration, the City has leased the BRIDGE Affordable Parcel to the BRIDGE Affordable Partnership for the purpose of developing and operating the BRIDGE Affordable Development and has leased the BFHP Hope Center Parcels to the BFHP Hope Center Partnership for the purpose of developing the BFHP Hope Center. BFHP Hope Center Partnership is intended to be the long term operator of the Permanent Supportive Housing Development portion of the BFHP Hope Center and BFHP Hope Center LLC is intended to be the long term lessee and operator of the Temporary Housing Development portion of the BFHP Hope Center.
- D. Pursuant to this Declaration, the Berkeley Way Declarants are (i) setting forth certain rights and responsibilities pertaining to the easements affecting the Property granted herein and by virtue of the Map, and (ii) providing for the management, maintenance and operation of the Parcels, and certain joint uses thereof.
- E. The Project is not a common interest development as defined by Civil Code Section 4100. The Project and the Lessees are therefore not subject to the

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Davis-Stirling Common Interest Development Act (codified at Civil Code Sections 4000 et seq.).

F. Concurrently with the recordation of this Declaration, the City and BFHP Hope Center LP will record that certain Declaration of and Agreement Regarding Covenants, Conditions and Reciprocal Easements, Joint Use and Maintenance for the BFHP Hope Center dated and recorded of even date herewith as it may be amended, the "REA 2").

WITH REFERENCE TO THE FACTS RECITED ABOVE, the Berkeley Way Declarants declare and agree as follows:

ARTICLE 1  
DEFINITIONS

1.1 Definitions. In addition to the terms defined elsewhere in this Declaration, the following definitions shall apply:

(a) "Berkeley Way Annual Joint Expenses Budget" has the meaning given in Section 5.3.

(b) "Berkeley Way Assessments" means Berkeley Way Joint Expenses Assessments, Berkeley Way Reimbursement Assessments and/or Berkeley Way Special Joint Expenses Assessments.

(c) "Berkeley Way Creditor Lessee" means a Lessee to whom an Berkeley Way Assessment is owed by another Lessee or a Lessee seeking to ensure payments required under Section 5.8 are made to a reserve account.

(d) "Berkeley Way Debtor Lessee" means a Lessee who owes either an Berkeley Way Assessment to another Lessee or a payment required under Section 5.8 to be made to its reserve account which Berkeley Way Assessment or payment has not been made when due.

(e) "Berkeley Way Declarants" has the meaning set forth in the preamble of this Declaration.

(f) "Berkeley Way Joint Expenses" means, collectively, (i) all expenses and costs of the Berkeley Way Joint Policy, (ii) all costs and expenses of Maintenance of Berkeley Way Project-Serving Components, and (iii) any other expenses provided for in an Annual Berkeley Way Joint Expense Budget or that this Declaration provides to be paid by a Lessee according to its Designated Share.

(g) "Berkeley Way Joint Expenses Assessment" has the meaning given in Section 5.4.

(h) "Berkeley Way Joint Maintenance Committee" means the committee responsible for the coordination of the Maintenance of Berkeley Way Project-Serving Components and other duties as set forth in more detail in Section 5.1 below.

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(i) "Berkeley Way Joint Policy" means the master policy (or policies) of primary property insurance coverage to be maintained by the Lessees covering the Project as set forth in more detail in Section 6.1 below.

(j) "Berkeley Way Reimbursement Assessment" has the meaning given in Section 5.6(b).

(k) "Berkeley Way Project Rules" means the rules that may be adopted by the Lessees from time to time, pursuant to Section 7.13 to address certain issues not fully addressed in this Declaration.

(l) "Berkeley Way Project-Serving Components" means (i) components of the Improvements that service all Lessee Parcels, such as the foundation, Roof, and the structural walls, and (ii) components of any system in the Improvements that services both the BRIDGE Affordable Parcel and both of the BFHP Hope Center Parcels. Components serving the BFHP Hope Center Parcels exclusively or just one Lessee Parcel exclusively do not constitute Project Serving Components under this Declaration. Berkeley Way Project-Serving Components include (without limitation and as applicable): the vertical shared wall separating the BRIDGE Affordable Development and the BFHP Hope Center Development; the Project generator, MPOE room (which is the main point of entry, or the first point where utilities enter the Project), hardscape and softscape adjacent to the sidewalk or street along the boundary of the Project (including landscaping), fire pump and sprinkler system, fire alarm and other life safety and security systems, water pump, irrigation and backflow preventer, those portions of reservoirs, tanks, pumps, motors, ducts, flues, chutes, conduits, pipes, plumbing, wires, and other utility installations contained within and immediately surrounded by or attached to any structure or space which is part of the Project and passes through more than one Lessee Parcel (as required to provide power, light, telephone, cable television, gas, water, sanitary sewerage, storm sewerage, and drainage services); window washing anchors; other usual appurtenances; and any other Project element which is not located solely within one Parcel and which the Lessees determine to be a Berkeley Way Project-Serving Component. For the purposes of this Agreement, the following will be considered Berkeley Way Project Serving Components, but subject to the provisions of Section 3.2(c) and (d), respectively: (i) the exterior walls and windows and (ii) the Southern Egress Easement area and improvements constructed thereon pursuant to the Plans and Specifications.

(m) "Berkeley Way Special Joint Expenses Assessment" has the meaning given in Section 5.5.

(n) "BFHP Hope Center Development" means the Permanent Supportive Housing Development and Temporary Housing Development located on the BFHP Hope Center Parcels.

(o) "BFHP Hope Center Ground Leases" means, collectively, the Permanent Supportive Housing Ground Lease and Temporary Housing Ground Lease, as either may be amended from time to time.

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- (p) "BFHP Hope Center Lessee" means the Permanent Supportive Housing Lessee and the Temporary Housing Lessee, or one of them as the context requires.
- (q) "BFHP Hope Center LLC" means BFHP Hope Center LLC, a California limited liability company.
- (r) "BFHP Hope Center Parcels" means, collectively, the Permanent Supportive Housing Parcel and the Temporary Housing Parcel portions of the Property designated as "Parcel A" and "Parcel B", respectively, on the Map.
- (s) "BFHP Hope Center Partnership" means BFHP Hope Center LP, a California limited partnership.
- (t) "BFHP Hope Center Project-Serving Component" means a Project-Serving Component located on one or both of the BFHP Hope Center Parcels.
- (u) "BRIDGE Affordable Development" means approximately eighty-nine (89) units of affordable multifamily housing units located on the BRIDGE Affordable Parcel.
- (v) "BRIDGE Affordable Ground Lease" means that certain ground lease entered in by and between the City and the BRIDGE Affordable Lessee for the BRIDGE Affordable Parcel, as amended from time to time.
- (w) "BRIDGE Affordable Lessee" means (i) the long term tenant or lessee of the BRIDGE Affordable Parcel pursuant to the BRIDGE Affordable Ground Lease, or a replacement thereof, as well as the successors or assigns of any such lessee, or (ii) if the BRIDGE Affordable Ground Lease expires or is terminated and is not replaced by a long term lease, the fee owner, from time to time, of the BRIDGE Affordable Parcel. BRIDGE Affordable Partnership is the initial BRIDGE Affordable Lessee.
- (x) "BRIDGE Affordable Parcel" means the portion of the Property designated as "Parcel C" on the Map.
- (y) "BRIDGE Affordable Partnership" means BRIDGE Berkeley Way LP, a California limited partnership.
- (z) "BRIDGE Affordable Project-Serving Component" means a Project-Serving Component located on the BRIDGE Affordable Parcel.
- (aa) "City" has the meaning set forth in the preamble of this Declaration.
- (bb) "CPI" has the meaning set forth in Section 7.5(b).
- (cc) "Declaration" means this Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing Reciprocal Easements, Joint Use and

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Maintenance for Berkeley Way, and all amendments, modifications and supplements executed in accordance herewith.

(dd) "Designated Share" means the following percentages for the Maintenance of the Berkeley Way Project-Serving Components (which were calculated based upon the gross square footage of the Parcels):

|                                     |     |
|-------------------------------------|-----|
| BRIDGE Affordable Lessee            | 64% |
| Permanent Supportive Housing Lessee | 27% |
| Temporary Housing Lessee            | 9%  |

Notwithstanding the forgoing, the Designated Share paid by a Lessee may be modified by the Lessees (and with the consent of the City) for costs associated with Berkeley Way Project-Serving Components which benefit more than one but not all of the Lessees or which are later determined to provide disproportionate benefit to one or more Lessee shall be allocated in an equitable manner solely among the benefited Lessees.

(ee) "Easements" means the Map Easements and the Project Easements.

(ff) "Encroachments" means minor encroachments among the Parcels due to any of the following: engineering errors; errors in original construction, reconstruction, or repair; settlement, shifting or movement of the Improvements; the insertion of nails, screws, or similar hardware through a boundary between the Parcels for the purpose of securing an item; or any similar cause.

(gg) "Improvements" means, collectively, the BRIDGE Affordable Development and the BFHP Hope Center Development, and all other improvements and fixtures that may be built on and/or installed in any of the Lessee Parcels from time to time, including landscaping.

(hh) "Leases" means the BRIDGE Affordable Ground Lease and the BFHP Hope Center Ground Leases.

(ii) "Lessee" means (i) the BRIDGE Affordable Lessee, (ii) the Permanent Supportive Housing Lessee and (iii) the Temporary Housing Lessee, (each being referred to herein as a "Lessee" and collectively referred to as the "Lessees").

(jj) "Lessee Parcel" means any of the BRIDGE Affordable Parcel, the Permanent Supportive Housing Parcel, and the Temporary Housing Parcel (each being referred to herein as a "Lessee Parcel" and collectively referred to as "Lessee Parcels").

(kk) "Maintain" means undertake Maintenance.

(ll) "Maintenance" means the maintaining (including cleaning and routine, day to day, janitorial services), repairing and replacing of any improvement on a

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Parcel (including a Project-Serving Component), or related to an Easement.

(mm) "Map" means that certain parcel map entitled Parcel Map No. 11051 filed in the Official Records on \_\_\_\_\_, 2020 as file number \_\_\_\_\_, subdividing the Property into the Parcels, a copy of which is attached to this Declaration as Exhibit B and incorporated herein.

(nn) "Map Easements" mean the easements granted by Berkeley Way Declarants through the Map.

(oo) "Mortgage" means a recorded mortgage or deed of trust encumbering a Lessee Parcel, which is given as security by a Lessee for the payment of money or performance of an obligation.

(pp) "Mortgagee" means any Person, bank, savings and loan association, insurance company, or other financial institution that is either a mortgagee under a mortgage or the beneficiary under a deed of trust and any holder, governmental guarantor, or insurer of any such mortgage or deed of trust.

(qq) "Official Records" means the Official Records of the County of Alameda, State of California.

(rr) "Parcels" means the Lessee Parcels.

(ss) "Permanent Supportive Housing Development" means approximately fifty-three (53) supportive housing units located on the Permanent Supportive Housing Parcel.

(tt) "Permanent Supportive Housing Ground Lease" means that certain ground lease entered into by and between the City and the BFHP Hope Center Partnership for the Permanent Supportive Housing Parcel, as amended from time to time.

(uu) "Permanent Supportive Housing Lessee" means (i) the long term lessee of the Permanent Supportive Housing Parcel pursuant to the Permanent Supportive Housing Ground Lease, or a replacement thereof, as well as the successors or assigns of any such lessee, or (ii) if the Permanent Supportive Housing Ground Lease expires or is terminated and is not replaced by a long term lease, the fee owner, from time to time, of the Permanent Supportive Housing Parcel. The BFHP Hope Center partnership is the initial Permanent Supportive Housing Lessee.

(vv) "Permanent Supportive Housing Parcel" means the portion of the Property designated as "Parcel A" on the Map.

(ww) "Person" means a natural person, a corporation, a partnership, a limited liability company, a trust, or other legal entity.

(xx) "Plans and Specifications" means the plans and specifications for

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the applicable portion of the Project last dated as of \_\_\_\_\_, 20\_\_ prepared by \_\_\_\_\_, together with such changes thereto as may have been made in connection with the approval thereof by any regulatory body having jurisdiction to approve such plans and specifications.

(yy) "Project" means, collectively, the BRIDGE Affordable Parcel, the BFHP Hope Center Parcels, and all Improvements constructed on such Parcels.

(zz) "Project Easements" means the easements granted through this Declaration. The Project Easements will be described in this Declaration by function or location rather than by precise measurement on the Map or the Plans and Specifications.

(aaa) "Property" means that certain real property described in Exhibit A.

(bbb) "REA 2" is defined in Recital F.

(ccc) "Reimbursement Expense" has the meaning given in Section 5.6(a).

(ddd) "Roof" means the waterproof membrane on the uppermost surface of the Project which is exposed to the elements together with the load bearing structure that supports such membrane. The Roof covers and is contained in the BRIDGE Affordable Parcel and the Permanent Supportive Housing Parcel and is a Project-Serving Component.

(eee) "Southern Egress Easement" is defined in Section 2.4.

(fff) "Temporary Housing Development" means approximately forty-four (44) beds of temporary housing, community kitchen and dining hall.

(ggg) "Temporary Housing Ground Lease" means that certain ground lease to be entered into by and between the City and the Temporary Housing Lessee for the Temporary Housing Parcel, as amended from time to time.

(hhh) "Temporary Housing Lessee" means (i) the long term lessee of the Temporary Housing Parcel pursuant to Temporary Housing Ground Lease, or a replacement thereof, as well as the successors or assigns of any such lessee, or (ii) if the Temporary Housing Ground Lease expires or is terminated and is not replaced by a long term lease, the fee owner, from time to time, of the Temporary Housing Parcel. The BFHP Hope Center Partnership is the initial Temporary Housing Lessee, but the parties anticipate that BFHP Hope Center LLC will be the Temporary Housing Lessee following completion of construction and issuance of the IRS Form 8609 (Low Income Housing Tax Credit Allocation and Certification) for the Permanent Supportive Housing Development.

(iii) "Temporary Housing Parcel" means the portion of the Property designated as "Parcel B" on the Map.

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(jjj) "Users" means a Lessee's employees, tenants, lessees, guests, licensees, invitees, contractors and subcontractors.

1.2 Exhibits. The following exhibits are attached to and incorporated into this Declaration:

- Exhibit A     Legal Description of the Property
- Exhibit B     Parcel Map

ARTICLE 2  
DIVISION OF PROPERTY, GRANT OF EASEMENTS

2.1 General Description of Property.

(a) General Boundaries. Each of the Parcels has the boundaries shown on the Map.

(b) BRIDGE Affordable Parcel. The BRIDGE Affordable Parcel will contain the BRIDGE Affordable Development to be developed by the BRIDGE Affordable Partnership.

(c) BFHP Hope Center Parcels. The BFHP Hope Center Parcels will contain the BFHP Hope Center Development to be developed by the BFHP Partnership. The BFHP Hope Center Parcels are comprised of the Permanent Supportive Housing Parcel and the Temporary Housing Parcel.

2.2 No Separate Conveyance of Easements. The ownership of each of the Parcels includes the benefit of, and is encumbered by and is subject to the Easements, as applicable. The Project Easements are (i) established through this Declaration and are to be conveyed, as applicable, with each of the Lessee Parcels (ii) cannot be modified, terminated or relocated (except as set forth in this Declaration), and (iii) may not be separated or separately conveyed. The benefit and burden of each Easement, as applicable, shall be deemed to be conveyed with its respective Parcel, even though the description in the instrument of conveyance may refer only to the fee or leasehold title to such Parcel. The Easements are essential and necessary for the development and ongoing operation of the Improvements.

2.3 Grant of Easements. Through this Declaration, the Berkeley Way Declarants hereby grant and establish the following easements affecting the Project and the Parcels.

(a) Easements for Construction and Maintenance. Each Lessee is hereby granted, and each Lessee Parcel shall have the benefit of and shall be burdened by, a non-exclusive easement in, on, under, over and across each Lessee Parcel for the purpose of (i) construction or installation and Maintenance of the Improvements within each Lessee Parcel, (ii) repair, restoration, or reconstruction following a casualty affecting all or a portion of the Improvements, (iii) Maintenance of encroachments in which easements are granted in Section 2.3(e), and (iv) Maintenance

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of Improvements within any Lessee Parcel to the extent that performance of such Maintenance is the responsibility or right of another Lessee under Article 3. The exercise of the easements granted in this Section shall be made with as little inconvenience to each Lessee as practicable. Except in cases of emergency prior to exercise of any easement rights granted in this Section, not less than forty-eight (48) hours' advance notice (by telephonic notice together with any one of: (i) overnight delivery, (ii) electronic mail and overnight delivery, or (iii) personal delivery) shall be given to any Lessee whose Parcel will be affected by the exercise of such rights. Any damage to any portion of any of the Parcels as a result of the exercise of the easement rights granted in this Section shall be promptly restored to as near the original condition as possible by the Lessee utilizing the easement at such Lessee's sole cost and expense. The easements granted in this Section are of a temporary nature and the rights hereunder may only be exercised during the relevant period of construction, repair, restoration, reconstruction, or Maintenance.

(i) Safety Matters; Legal Compliance. Each Lessee shall take, and shall cause its agents and contractors to take, all safety measures necessary to protect the other Lessees and their Users and the property of each from injury or damage caused by or resulting from the any construction, repair, restoration, reconstruction or Maintenance undertaken by or on behalf of such Lessee pursuant to the foregoing grant of easement. Each Lessee agrees that all construction work performed hereunder by or on behalf of such Lessee shall be done in a diligent, good and workmanlike manner, with first-class materials and in accordance with approved drawings and specifications (including the Plans and Specifications, as applicable) and all applicable laws, rules, ordinances, regulations, and code requirements.

(ii) Liens. Each Lessee agrees that in the event that any mechanic's lien or other statutory lien arising by reason of labor, services or materials supplied to or at the request of said Lessee shall be recorded against any Parcel other than such Lessee's Parcel, then such Lessee shall pay and discharge the same of record within twenty (20) days after the notice of the filing thereof, by either payment, deposit or bond. Each Lessee shall have the right, but not the obligation, to contest the validity, amount or applicability of any such lien by appropriate legal proceedings, provided it furnishes a lien release bond or otherwise causes such lien to be released of record within such twenty (20) day period. If said Lessee does not, within the time period specified above, cause such lien to be released of record by payment or posting of a proper bond, the Lessee of the Lessee Parcel affected by such lien shall have, in addition to all other remedies provided herein and by law, the right, but not the obligation, to cause the same to be released by such means as such Lessee shall deem proper, including, without limitation, by the payment of the claim giving rise to such lien or by the posting of a bond. The Lessee of the Lessee Parcel affected by such lien shall submit an invoice and supporting documentation to the responsible Lessee and the responsible Lessee shall pay such amount no later than ten (10) days following receipt of such invoice.

(b) Utility Easements. Each Lessee is hereby granted, and each Lessee Parcel shall have the benefit of and shall be burdened by, such non-exclusive

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easements and rights in, on, under, over and across those portions of each of the Lessee Parcels, and the utility rooms identified on the Plans and Specifications, that are reasonably necessary for each Lessee to access, install, operate, maintain, repair, replace and relocate all electrical, gas, water, sewage, drainage, telephone, cable, security, generators, life safety equipment and other utilities and similar facilities identified in the Plans and Specifications and servicing the Lessee Parcel of each Lessee. The exercise of the easements granted in this paragraph shall be made with as little inconvenience to each Lessee as practicable. Except in cases of emergency prior to exercise of any easement rights granted in this paragraph (including but not limited to access to the MPOE and water pump room), not less than forty-eight (48) hours' advance notice (by telephonic notice together with any one of and: (i) overnight delivery, (ii) electronic mail and overnight delivery, or (iii) personal delivery) shall be given to any Lessee whose Parcel will be affected by the exercise of such rights. Any utility work shall be at the sole cost and expense of the Lessee contracting for the performance of the work. Any damage to any portion of any of the Parcels as a result of the exercise of the easement rights granted in this Section shall be promptly restored to as near the original condition as possible by the Lessee utilizing the easement at such Lessee's sole cost and expense.

(c) Structural and Support Easements. Each Lessee is hereby granted, and each Lessee Parcel shall have the benefit of and shall be burdened by, such non-exclusive easements and rights in, on, under, over, and across each Lessee Parcel as reasonably necessary for the structural support and integrity of the Improvements located within each Lessee Parcel, with such easements and rights being appurtenant to each Lessee Parcel. No Lessee shall perform, or shall permit the performance of, any activity that may materially alter the structural support necessary for the Improvements located within the Lessee Parcel(s) owned by any other Lessee(s) without the consent of the other Lessee(s).

(d) Encroachment Easements. Each Lessee is hereby granted, and each Lessee Parcel shall have the benefit of and shall be burdened by, such non-exclusive easements and rights in, on, under, over, and across each Lessee Parcel as reasonably necessary to accommodate and maintain any Encroachment that may now or hereafter exist. Notwithstanding the forgoing, no Lessee shall have the benefit of an easement for an Encroachment as a result of the negligence or willful misconduct of such Lessee or its Users. If the Improvements are partially or totally destroyed, and then repaired or rebuilt in substantially the same manner as originally constructed, minor encroachments shall be permitted to facilitate repair or reconstruction.

#### 2.4 Egress Easements.

(a) Subject to the terms and conditions in that certain Grant Deed dated September 6, 1955, recording in the Official Records of Alameda County on September 21, 1955 at Book 7788 pages 3-5 (the "Southern Egress Easement Deed"), the Property is subject to a non-exclusive egress easement, three feet wide and seven feet in height, from the Southern Parcels to Berkeley Way for fire escape purposes (the "Southern Egress Easement"). The current location of the Southern Egress Easement is

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shown on the Map. Subject to the terms of the Southern Egress Easement Deed, Lessees will allow access from the parcels benefited by the Southern Egress Easement and identified in the Southern Egress Easement Deed (the "Southern Parcels"); provided that the Lessees may take reasonable measures to prevent the Southern Egress Easement from being utilized as an entrance to the Southern Parcels or (except for emergencies) exit egress from the Southern Parcels. The Southern Egress Easement may also be used by the Lessees for emergency exit.

(b) The BRIDGE Affordable Parcel and Supportive Housing Parcel will also meet City requirements to provide emergency exit egress to Lot 9 and 10 as such lots are shown on page 2 of the Map.

(c) The BRIDGE Affordable Parcel will also meet City requirements to provide emergency exit egress to Lot 57 and 58 as such lots are shown on page 2 of the Map.

## 2.5 Hold Harmless.

(a) Each Lessee (an "Indemnifying Lessee") shall indemnify, defend, and hold each of the other Lessees (the "Indemnified Lessees") harmless from all liability, damage, cost, or expense incurred by any of the Indemnified Lessees arising out of the utilization by the Indemnifying Lessee or any of its Users of any of the Easements within any such Indemnified Lessee's Lessee Parcel, or arising out of any violation by such Indemnifying Lessee of its obligations under this Declaration, except to the extent that any such liability, damage, cost or expense results from the negligence or willful misconduct of the Indemnified Lessee.

(b) Each Lessee shall indemnify, defend, and hold each of the other Lessees harmless from all liability, damage, cost, or expense incurred by any such other Lessee arising out of any liens, including, but not limited to, mechanics' and materialmen's liens, imposed on the Lessee Parcel of such other Lessee as a consequence of any work or labor done, supplies furnished, or services rendered at the request of the contracting Lessee or any of its Users.

(c) Each Lessee shall cause any property insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against any other Lessee in connection with any damage covered by such property insurance policy to the personal and real property improvements located in or on the Lessee Parcel or such other Lessee and/or the Project that are caused by or result from risks insured against under any property insurance policies carried by such Lessee and in force at the time of any such damage.

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ARTICLE 3  
MAINTENANCE AND ALTERATIONS

3.1 Maintenance of the Lessee Parcels.

(a) Maintenance of the BRIDGE Affordable Parcel. Maintenance of the BRIDGE Affordable Parcel shall be performed as follows:

(i) Maintenance of the BRIDGE Affordable Parcel and the BRIDGE Affordable Development, including the BRIDGE Affordable Berkeley Way Project-Serving Components shall be performed by the BRIDGE Affordable Lessee in accordance with this Declaration and the BRIDGE Affordable Ground Lease. The BRIDGE Affordable Lessee shall manage, maintain in good condition, repair, and replace the Improvements (which includes landscaping and the courtyards) on the BRIDGE Affordable Parcel, except for those items (if any) which another Lessee has been designated to manage, maintain, repair, and replace as described in this Declaration.

(ii) Each of the other Lessees shall have the right to perform Maintenance of the BRIDGE Affordable Parcel to the extent necessary to mitigate an emergency situation. Before performing Maintenance under this paragraph, the other Lessee shall first take all reasonable steps to contact the BRIDGE Affordable Lessee to permit the BRIDGE Affordable Lessee to perform the necessary Maintenance.

(iii) Except as provided in Section 3.1(c) and (d), and Section 3.2, the cost of Maintenance of the BRIDGE Affordable Parcel shall be borne by the BRIDGE Affordable Lessee; provided that failure of the other Lessees to tender their respective cost amounts shall not relieve BRIDGE Affordable Lessee from performing its required Maintenance under this Declaration.

(b) Maintenance of the BFHP HOPE Center Parcels. Maintenance of the BFHP Hope Center Parcels shall be performed as follows:

(i) Maintenance of the BFHP Hope Center Parcels and the BFHP Hope Center Development, including the applicable BFHP Hope Center Berkeley Way Project-Serving Components, shall be performed by the applicable BFHP Hope Center Lessee in accordance with this Declaration and the REA 2. Provisions of the REA 2 concerning the BFHP Hope Center Parcels Berkeley Way Project-Serving Components may not be amended or modified unless consented to by the City and the BRIDGE Affordable Lessee. Each BFHP Hope Center Lessee, as applicable under the REA 2, shall manage, maintain in good condition, repair, and replace the Improvements (which includes landscaping and the courtyards) on the BFHP Hope Center Parcels, except for those items (if any) which another Lessee has been designated to manage, maintain, repair, and replace as described in this Declaration.

(ii) Each of the other Lessees shall have the right to perform Maintenance of a BFHP Hope Center Parcels to the extent necessary to mitigate an

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emergency situation. Before performing Maintenance under this paragraph, the other Lessee shall first take all reasonable steps to contact the applicable BFHP Hope Center Lessee to permit such BFHP Hope Center Lessee to perform the necessary Maintenance.

(iii) Except as provided in Section 3.1(c) and (d) and Section 3.2, the cost of Maintenance of each BFHP Hope Center Parcel shall be borne by the applicable BFHP Hope Center Lessee, pursuant to the REA 2; provided that failure of the other Lessees to tender their respective cost amounts shall not relieve BFHP Hope Center Lessees from performing its required Maintenance under this Declaration.

(c) Cost of Maintenance of Berkeley Way Project-Serving Components. The cost of Maintenance of the Berkeley Way Project-Serving Components shall be borne by the Lessees in their Designated Shares.

(d) Cost for Maintenance Caused by Another Lessee. Subject to Section 2.4(c), the cost of any Maintenance of any Parcel required as a result of any act or omission (including without limitation failure to timely perform its own maintenance obligations) of another Lessee or its Users shall be borne solely by such Lessee.

### 3.2 Specific Maintenance.

(a) Each Lessee will coordinate its repair and maintenance of any Berkeley Way Project-Serving Components with the Berkeley Way Joint Maintenance Committee. Costs to maintain and repair Berkeley Way Project-Serving Components shall be allocated in a manner consistent with Section 5.3(c).

(b) BRIDGE Affordable Lessee will manage the maintenance of all exterior landscaping adjacent to the sidewalk or street along the boundary of the Project, the Roof, foundation and exterior walls (all of which are Berkeley Way Project-Serving Components), on behalf of the Lessees, the costs of which will be a Berkeley Way Joint Expense.

(c) BRIDGE Affordable Lessee and the Permanent Supportive Housing Lessee will jointly manage window washing and the costs of such washing will be shared in accordance with each Lessee's Designated Share. Notwithstanding anything to the contrary in this Declaration or the BFHP Hope Center Declaration, other Maintenance of the windows (including repair of any broken or leaking windows) will be the sole responsibility of the Lessee on whose parcel the window is located.

(d) Permanent Supportive Housing Lessee will manage the maintenance of the Southern Egress Easement and all improvements (including the lights and gates) thereon, the costs of which will be a Berkeley Way Joint Expense. Notwithstanding anything to the contrary in this Declaration or the BFHP Hope Center Declaration, Maintenance costs of the Southern Egress Easement will be allocated as follows: 70% to the BFHP Hope Center and 30% to the BRIDGE Affordable Parcel. In addition, the Lessees may seek reimbursement from the Southern Parcel owners pursuant to the Southern Access Easement Deed.

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### 3.3 Prohibited Alterations; Alterations to Berkeley Way Project-Serving Components.

(a) Subject to the requirements of the Leases, no Lessee shall, without the prior written consent of the other Lessees, construct or alter any Improvements on such Lessee's Parcel that will do any of the following:

(i) Unreasonably interfere with any other Lessee's use and enjoyment of its Lessee Parcel;

(ii) Cause the termination or nonrenewal of insurance policies or an increase in insurance premiums for another Lessee;

(iii) Adversely affect or impair the architectural integrity of the Project or the exterior of the Project;

(iv) Interfere with or alter the fire or acoustical rating of any wall separating a Lessee Parcel from another Lessee Parcel; or

(v) Violate the Lessee's Lease.

(b) Prior to performing any alteration to any Project-Serving Component located on a Lessee Parcel (except for cosmetic alterations, such as painting, that are not visible from the exterior of the Project), the Lessee proposing to undertake the alteration shall:

(i) Provide the other Lessees copies of the plans and specifications for the work to be performed; and

(ii) Request and obtain the written approval of the other Lessees, which approval shall not be unreasonably withheld, conditioned, or delayed.

## ARTICLE 4 USE RESTRICTIONS

In addition to all of the covenants contained in this Declaration and in the Leases, the use of the Property is subject to the following:

4.1 BRIDGE Affordable Parcel. The BRIDGE Affordable Parcel shall be occupied and used for residential and related purposes, including but not limited to, affordable multi-family housing apartment purposes. No other trade or business shall be conducted therein, except as follows: (1) secondary use not incompatible with residential use such as an "office in the home," (2) management offices and use of residential units for resident manager's units and assistant residential manager's units, (3) use of residential units, common areas, and offices for the provision of supportive services to the residents of the residential units, (4) other ground floor uses then consistent with zoning.

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4.2 BFHP Hope Center Parcels. The BFHP Hope Center Parcels shall be occupied and used for residential and social or community serving purposes then consistent with zoning. Declarant intend for the BFHP Hope Center Parcel to be used as follows: (a) the Permanent Supportive Housing Parcel shall be used for supportive housing and other community services uses including a kitchen and meal service and (b) the Temporary Housing Parcel shall be used for temporary housing, community and supportive and related office space, and other community and supportive services. No other trade or business shall be conducted therein, except as follows: (1) secondary use not incompatible with residential use such as an "office in the home," (2) management offices and use of residential units for resident manager's units and assistant residential manager's units, (3) use of common areas, and offices for the provision of supportive services to the residents of the residential units and homeless and low income community members.

4.3 Compliance with Laws; No Nuisances. Each Lessee shall comply with, and shall make diligent efforts to cause all Users to comply with, at all times, all applicable laws, rules, ordinances, regulations, and code requirements governing its Lessee Parcel, specifically and the Property generally. Nothing shall be done on any Lessee Parcel which will impair the structural integrity of the Project or which constitutes a nuisance or interferes with the quiet enjoyment of the other Lessees or the Lessee Parcels. No illegal activities will be carried on, in or upon the Property. Each Lessee shall also be responsible for the costs of any false alarms triggered by such Lessee's Users and resulting in any fines, costs or fees.

4.4 Signs. Signs on each Lessee Parcel shall conform to any applicable City ordinances and shall be subject to any applicable Berkeley Way Project Rules. Signs of a reasonable size advertising any residential or otherwise permitted retail unit (if any) for rent may be displayed to the public view, provided such signs comply with the City ordinances.

4.5 Telecommunications Equipment and Roof Mounted Equipment. Other than what is shown on the Plans and Specifications or otherwise required by law and subject to the applicable Leases, no telecommunications equipment or roof mounted equipment of any sort may be put on the Roof or the exterior of the Project without the prior written consent of the Lessees.

4.6 Garbage and Refuse Disposal. All rubbish, trash, and garbage shall be regularly removed from the Property, and shall not be allowed to accumulate. Trash, garbage, and other waste shall be kept in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. All equipment, garbage cans, or storage piles shall be kept screened and concealed from view of streets, and open spaces in the Lessee Parcels. Each Lessee shall be responsible for the storage and disposal of the rubbish, trash, and garbage generated from the activities occurring on its Lessee Parcel.

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ARTICLE 5  
JOINT MAINTENANCE EXPENSES, ASSESSMENTS AND RESERVES

5.1 Berkeley Way Joint Maintenance Committee. The BRIDGE Affordable Lessee will appoint one representative to serve as a member of the Berkeley Way Joint Maintenance Committee. Pursuant to the procedures set forth in the REA 2, the BFHP Hope Center Lessee will appoint one representative to serve as a member of the Berkeley Way Joint Maintenance Committee. Each member of the Berkeley Way Joint Maintenance Committee may be removed from office at any time by his/her appointing Lessee with or without cause. Any member of the Berkeley Way Joint Maintenance Committee may resign at any time by giving written notice to the appointing Lessee and the Berkeley Way Joint Maintenance Committee.

(a) Meetings. The Berkeley Way Joint Maintenance Committee shall meet annually, no later than August 1 of each year, and at such other times as the members of the Berkeley Way Joint Maintenance Committee may determine. Both members of the Berkeley Way Joint Maintenance Committee must be present to conduct business and approve actions.

(b) Compensation. No member of the Berkeley Way Joint Maintenance Committee shall receive compensation for any service he or she may render to the Berkeley Way Joint Maintenance Committee.

(c) Duties. The duties of the Berkeley Way Joint Maintenance Committee shall include (i) coordination of maintenance of the Berkeley Way Project-Serving Components, and coordination of repair after damage or destruction to the Project (Section 5.2 below); (ii) preparation of the Berkeley Way Annual Joint Expenses Budget (Section 5.3 below); (iii) establishing, levying and collecting Berkeley Way Joint Assessments (Sections 5.4 and 5.5 below); (iv) establishing and monitoring reserves for reasonably anticipated contingencies and repairs or replacements of Berkeley Way Project-Serving Components (Section 5.8 below); and (v) oversight of the Berkeley Way Joint Policy for the Project (Article 6).

(d) Limitation of Liability. The members of the Berkeley Way Joint Maintenance Committee shall not be liable to the Lessees, their Users, or other person for any injury, death, loss or damage due to theft, other breaches of security, failures, or interruption of services, or other circumstances pertaining to activities within the Berkeley Way Joint Maintenance Committee's control. Each member of the Berkeley Way Joint Maintenance Committee shall be entitled to indemnification by the Lessees against all expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any proceeding to which such member may be a party, or in which such member may become involved, by reason of the fact that he or she was or is a member of the Berkeley Way Joint Maintenance Committee.

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## 5.2 Coordination of Berkeley Way Joint Maintenance and Repair after Damage or Destruction.

(a) Maintenance Coordination. The Berkeley Way Joint Maintenance Committee is authorized to coordinate Maintenance of and provide service to, and assure that, each Project-Serving Component is operated, maintained, repaired, and replaced in a first-class condition, and otherwise in accordance with the standards and provisions of this Declaration. Such authorization includes the right to inspect and monitor each Lessee's Maintenance of Berkeley Way Project-Serving Components located on their respective Lessee Parcel, coordinate Maintenance among Lessees, and authorize contracts to perform any Maintenance the Committee reasonably determines is not being properly performed.

(b) Damage or Destruction Repair Coordination. The Berkeley Way Joint Maintenance Committee is authorized to coordinate the repair or restoration activities necessitated by damage or destruction affecting more than one Lessee Parcel, subject to the rights of Mortgagees. The Berkeley Way Joint Maintenance Committee shall have the right to authorize contracts to perform any repair or restoration work the Berkeley Way Joint Maintenance Committee reasonably determines is not being properly performed.

(c) Contracting. The BRIDGE Affordable Lessee (or any other Lessee or property management agent selected by the Berkeley Way Joint Maintenance Committee), as the agent of the Berkeley Way Joint Maintenance Committee, shall have the right but not the obligation to solicit bids, enter into contracts with third parties on behalf of the Berkeley Way Joint Maintenance Committee, and take all other steps reasonably necessary or appropriate to perform the duties of the Berkeley Way Joint Maintenance Committee consistent with the then-current Berkeley Way Annual Joint Expenses Budget or as otherwise authorized to be undertaken by the Berkeley Way Joint Maintenance Committee; provided, however, that if the activities of the Berkeley Way Joint Maintenance Committee are necessitated by a Lessee not performing its required Maintenance, repair or restoration activities, the costs incurred by the Berkeley Way Joint Maintenance Committee to perform such activities shall be a Berkeley Way Reimbursement Assessment charged pursuant to Section 5.6 below.

## 5.3 Berkeley Way Annual Joint Expenses Budget.

(a) By September 1 of each year, the Berkeley Way Joint Maintenance Committee shall meet to discuss the Berkeley Way Joint Expenses that the Lessees expect to be incurred in the following calendar year. By October 1, the Berkeley Way Joint Maintenance Committee shall prepare and deliver to the Lessees a written budget describing in reasonable detail the Berkeley Way Joint Expenses that the Lessees expect to be incurred in the following calendar year (the "Berkeley Way Annual Joint Expenses Budget"). The Berkeley Way Annual Joint Expenses Budget shall also specify the contribution that each Lessee must make, during the following calendar year, to its reserve account pursuant to Section 5.8(b).

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(b) The Berkeley Way Annual Joint Expenses Budget shall account for all expected ordinary and extraordinary Berkeley Way Joint Expenses to be incurred in a calendar year, including expenses expected to be incurred by the Berkeley Way Joint Maintenance Committee for management, accounting or other services, and (ii) any previously unreconciled past payments of Berkeley Way Reimbursement Assessments for Berkeley Way Joint Expenses or Berkeley Way Joint Expenses Assessments for Reimbursement Expenses. The Berkeley Way Annual Joint Expenses Budget shall also describe the following: (1) the current estimated replacement cost, estimated remaining life, and estimated useful life of each major component the Maintenance of which is a Berkeley Way Joint Expense; (2) the current estimate of the amount of cash reserves necessary to perform Maintenance on such major components; (3) the current estimate of accumulated cash reserves actually set aside by the Lessees to perform Maintenance on such major components (as further discussed in Section 5.8); and (4) a statement addressing the procedures used for the calculation and establishment of those reserves to defray the Maintenance of major components the Maintenance of which is a Berkeley Way Joint Expense.

(c) The Berkeley Way Annual Joint Expenses Budget shall allocate Berkeley Way Joint Expenses to each Lessee in proportion to their Designated Shares.

(d) Unless one or more of the Lessees objects in writing in a timely manner to the Berkeley Way Annual Joint Expenses Budget pursuant to Section 5.3(e) below, the Berkeley Way Annual Joint Expenses Budget shall be effective as of January 1 of the following year.

(e) If any affected Lessee disputes the Annual Berkeley Way Joint Expense Budget proposed by the Berkeley Way Joint Maintenance Committee and the Lessees are unable to resolve their differences within a reasonable time, then the parties shall submit the Berkeley Way Annual Joint Expenses Budget in question to an arbitrator jointly selected by the parties (or if the Lessees cannot agree on an arbitrator, then each Lessee will select an arbitrator and the selected arbitrators will select a third arbitrator and the third arbitrator shall be the arbitrator to resolve the dispute over the Berkeley Way Annual Joint Expenses Budget). By December 25, the arbitrator shall confirm or revise the Berkeley Way Annual Joint Expenses Budget as the arbitrator determines to be appropriate, and such confirmed or revised Berkeley Way Annual Joint Expenses Budget shall be effective as of January 1 of the following year. The fees of the arbitrator or arbitrators shall be a Berkeley Way Joint Expense, but any other costs incurred in connection with the arbitration shall be borne by the Lessee incurring such costs.

#### 5.4 Berkeley Way Joint Expenses Assessments.

(a) Each Lessee's Designated Share of Berkeley Way Joint Expenses, as set forth in the Berkeley Way Annual Joint Expenses Budget from time to time, shall be a charge levied against such Lessee and its Lessee Parcel and may be collected as a "Berkeley Way Joint Expenses Assessment", enforceable in the manner set forth in Section 5.7.

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(b) The Berkeley Way Joint Maintenance Committee will, from time to time, select a Lessee to receive and hold, in trust, the Berkeley Way Joint Expenses Assessments, and make disbursement thereof for the payment of Berkeley Way Joint Expenses. Each Lessee shall pay its annual Berkeley Way Joint Expenses Assessment in even monthly installments equal to one twelfth (1/12) of its annual Berkeley Way Joint Expenses Assessment, with each monthly installment due on the first day of each month of the year for which the applicable Berkeley Way Annual Joint Expenses Budget is effective. Notwithstanding the forgoing, the Berkeley Way Joint Maintenance Committee may request even quarterly payments in lieu of monthly payments. In addition, in lieu of collecting Berkeley Way Joint Expenses Assessments (either in whole or in part), the Lessees may also choose and the Joint Maintenance Committee may require reimbursement of or payment to any Lessee who pays for or coordinates maintenance of a Berkeley Way Joint Expense.

(c) The Berkeley Way Joint Maintenance Committee shall oversee the use of the Berkeley Way Joint Expense Assessments received from the Lessees pursuant to Section 5.4(b), and the performance of the activities whose costs constitute Berkeley Way Joint Expenses.

5.5 Berkeley Way Special Joint Expenses Assessments. In the event the Berkeley Way Joint Maintenance Committee determines, in good faith, that the Berkeley Way Annual Joint Expenses Budget is or will become inadequate for any reason (including, but not limited to, misinformation or miscalculation, unexpected repair or replacement of any Project-Serving Component, increase in estimates of Berkeley Way Joint Expenses, or increase in the cost of the Berkeley Way Joint Policy, the Berkeley Way Joint Maintenance Committee may, at any time, levy an assessment (the "Berkeley Way Special Joint Expenses Assessment") to make up such inadequacy, which shall be allocated to the Lessee(s) in accordance with the Designated Shares (or in the event of an increase in the cost of the Berkeley Way Joint Policy due to the actions or failure to act of one or more, but not all of the Lessees, to be divided solely among the Lessees responsible for the increase in insurance as further set forth in Article 6).

5.6 Berkeley Way Reimbursement Assessments.

(a) A "Reimbursement Expense" is, subject to Section 5.8(b), any expense actually incurred or expected to be incurred by a Berkeley Way Creditor Lessee that:

(i) is the financial responsibility of a Berkeley Way Debtor Lessee under this Declaration;

(ii) arises out of noncompliance with this Declaration (or any rule or regulation duly adopted pursuant to this Declaration) by the Berkeley Way Debtor Lessee; or

(iii) arises out of inaction by the Berkeley Way Debtor Lessee that does not constitute noncompliance with this Declaration.

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(b) Every Reimbursement Expense shall be a charge levied against the Berkeley Way Debtor Lessee and against the Debtor's Lessee Parcel, as applicable (a "Berkeley Way Reimbursement Assessment").

(c) Reimbursement Expenses shall include actual and reasonable financing costs associated with the Berkeley Way Creditor Lessee advancing funds on behalf of the Berkeley Way Debtor Lessee from the time funds are advanced until the date on which the applicable Berkeley Way Reimbursement Assessment is paid.

(d) Berkeley Way Reimbursement Assessments shall be enforced in the manner set forth in Section 5.7.

#### 5.7 Payment and Enforcement of Assessments.

(a) A Berkeley Way Creditor Lessee shall provide notice to a Berkeley Way Debtor Lessee of the amount and due date of any Berkeley Way Assessment. Notice shall be delivered not less than thirty (30) and not more than sixty (60) days prior to the Berkeley Way Assessment becoming due.

(b) Each Berkeley Way Assessment obligation is a personal obligation of the Berkeley Way Debtor Lessee against whom the Berkeley Way Assessment is levied. Berkeley Way Assessments may be offset against each other unless one Lessee objects in writing to an offset.

(c) Any Berkeley Way Assessment shall become delinquent if not paid within fifteen (15) days after the due date, and a Berkeley Way Creditor Lessee's reasonable costs in collecting the delinquent Berkeley Way Assessment (including reasonable attorneys' fees) may then be added to the Berkeley Way Assessment. Any Berkeley Way Assessment remaining unpaid as of thirty (30) days after the due date shall also have the following charges added to the Berkeley Way Assessment (together with the reasonable costs of collection, the "Additional Charges"): (i) interest at the lesser of twelve percent (12%) per annum and the maximum lawful rate; and (ii) a late charge equal to the greater of Ten Dollars (\$10) and ten percent (10%) of the delinquent Berkeley Way Assessment.

(d) If any Berkeley Way Assessment is not paid within thirty (30) days after its due date, then the Berkeley Way Creditor Lessee shall provide notice to the Berkeley Way Debtor Lessee (and shall simultaneously notify any Mortgagee who has requested a copy of the notice) stating: (i) that the Berkeley Way Assessment is delinquent; (ii) the action required to cure the default; (iii) a date, not less than thirty (30) days after the date of the notice, by which the default must be cured; and (iv) that failure to cure the default on or before the date specified in the notice may result in a lawsuit against the Berkeley Way Debtor Lessee. If a delinquent Berkeley Way Assessment and corresponding Additional Charges are not paid in full on or before the date specified in the notice, then the Berkeley Way Creditor Lessee may resort to the remedies set forth in Section 5.7(e) below.

(e) In the event any Berkeley Way Debtor Lessee fails to pay any

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Berkeley Way Assessment, any Berkeley Way Creditor Lessee(s) may, pursuant to Section 7.14 below, commence and maintain an arbitration action, or enforce any other right or remedy available at law or equity, against the Berkeley Way Debtor Lessee obligated to pay such Berkeley Way Assessment. Any ruling rendered in any action shall include the amount of the delinquent Berkeley Way Assessment, Additional Charges, and any other amounts that the ruling body may award.

#### 5.8 Reserve Accounts.

(a) Each Lessee shall establish and contribute to replacement and standard operating reserve accounts in the amount deemed appropriate by the Berkeley Way Joint Maintenance Committee to ensure such Lessee's ability to pay its share of reasonably anticipated Berkeley Way Joint Expenses as may be projected to arise in future years, based on the analysis in the Berkeley Way Annual Joint Expenses Budget. On or about January 1 of each year, each Lessee shall also deliver to the Berkeley Way Joint Maintenance Committee evidence of the amount currently held in the delivering Lessee's collective reserve accounts, including but not limited replacement reserves, standard operating reserves and operating deficit reserves.

(b) A Lessee's failure to deposit funds in its replacement and standard operating reserve account in a manner consistent with 5.8(a) will give rise to a Berkeley Way Reimbursement Assessment even if the other Lessees do not make a contribution to their own reserve account to the extent necessary to compensate for the failing Lessee's failure to contribute to its reserve account.

#### 5.9 Other Reports.

(a) For any year in which the Berkeley Way Assessments payable by a Lessee exceed Fifty Thousand Dollars (\$50,000), a review of the relevant supporting documents and financial statements of such Lessees shall be prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy. A Lessee whose relevant supporting documents and financial statements must be reviewed pursuant to this Section 5.9 shall distribute to the other Lessees and the City a copy of such review within one hundred twenty (120) days after the close of each fiscal year for which such a review must be prepared. The dollar amounts in this Section 5.9(a) shall be increased each year by CPI (or by the increase in a similar index if the described index is no longer published).

(b) Unless otherwise agreed to by the Lessees, following completion of the construction of the Project, at least once every five (5) years, the Berkeley Way Joint Maintenance Committee shall perform a physical needs assessment of the Project, and provide a copy to the City. In addition, following completion of the construction of the Project, at least one every five (5) years, the Berkeley Way Joint Maintenance Committee shall cause a study of the reserve requirements of the Property (and the cost of such study shall be a Berkeley Way Joint Expense), and provide a copy to the City. The study shall include the following items:

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(i) Identification of the major components the Maintenance of which is a Berkeley Way Joint Expense and which have, as of the date of the study, a useful life of less than thirty (30) years.

(ii) Identification of the probable remaining useful life of the components identified in Section 5.9(b)(i), as of the date of the study.

(iii) An estimate of the cost of Maintenance of the components identified in Section 5.9(b)(i), both during and at the end of their useful life.

(iv) An estimate of the total annual contribution necessary to defray the cost to Maintain the components identified in Section 5.9(b)(i), both during and at the end of their useful life, after taking into account the amount of reserve funds that are available for the Maintenance of such components as of the date of the study. Rights of Mortgagees.

(a) A Mortgagee shall be protected against Berkeley Way Assessments levied prior to foreclosure (or deed-in-lieu) of the lender's deed of trust. In other words, no Berkeley Way Assessment levied prior to foreclosure (or deed-in-lieu) of a lender's deed of trust shall result in liability for such lender (or another transferee through foreclosure) after the foreclosure.

(b) After coming into possession of a Lessee Parcel through foreclosure or deed in lieu of foreclosure, a Mortgagee (or any party coming into ownership of the Lessee Parcel through the Mortgagee) shall be subject to all Berkeley Way Assessments levied after the foreclosure sale or transfer in lieu of foreclosure other than Berkeley Way Assessments based on obligations accruing, or defaults hereunder arising prior to the date of such foreclosure or transfer in lieu of foreclosure.

## ARTICLE 6 INSURANCE

6.1 Berkeley Way Joint Insurance Policy. The Berkeley Way Joint Maintenance Committee shall select a single insurance carrier to provide the primary property insurance coverage required under this Section 6.1 for the Project (the "Berkeley Way Joint Policy"). Procurement of the Berkeley Way Joint Policy is subject to the terms of the Leases. All Lessees shall be named insureds under the Berkeley Way Joint Policy. The Berkeley Way Joint Maintenance Committee will determine which Lessee is the "first named insured" and which Lessee will provide notices of coverage. The BRIDGE Affordable Lessee shall be the initial entity designated as the "first named insured", and receive all notices under the Berkeley Way Joint Policy; this designation shall remain in place unless a change is agreed in writing amongst all Lessees. The BRIDGE Affordable Lessee shall be the initial entity to provide copies of such notices and evidence of insurance to the other Lessees and the City within five (5) days of receipt. To the extent obtainable, the Berkeley Way Joint Policy shall provide that any change or cancellation of such policy must be made in writing and sent to the Lessees at their respective principal offices and the City at least thirty (30) days before the

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effective date of change or cancellation. Costs associated with the Berkeley Way Joint Policy shall be a Berkeley Way Joint Expense payable by the Lessees according to their Designated Share. If the cost of the Berkeley Way Joint Policy is increased due to the actions or failure to act of one or more, but not all of the Lessees, the Berkeley Way Joint Maintenance Committee may levy a Berkeley Way Special Joint Expenses Assessment pursuant to Section 5.5, to be shared solely among those Lessees responsible for the increase in cost of the Berkeley Way Joint Policy. The Berkeley Way Joint Policy shall insure the Project against loss or damage by the perils insured under the standard ISO Causes of Loss - Special Form or equivalent, including broadening endorsements to protect against the perils of water intrusion and sewer and drain backup. Coverage shall be in amount equal to full replacement cost value of the Project with an "agreed amount" endorsement. Policy shall provide for a full waiver of subrogation by the insurer(s) as to any and all claims against the Lessees and their respective members, officers, directors, partners, agents, employees, and tenants. The replacement cost value of the Project covered by the Berkeley Way Joint Policy shall be redetermined and the amount of coverage adjusted accordingly from time to time as frequently as the Berkeley Way Joint Maintenance Committee shall, in good faith, deem necessary to maintain the coverage amounts, but, in any event, no less frequently than annually.

## 6.2 Other Lessee Insurance.

(a) Lessee Property Insurance. The Lessees shall each, at their sole cost and expense (not as a Berkeley Way Joint Expense) obtain property insurance covering each respective Lessee's personal property, contents, equipment, electronic data processing equipment, tools, fixtures, and the improvements and betterments added to its Lessee Parcel located thereon or used in connection therewith, insuring the Lessee against loss or damage by the perils insured under the standard ISO Causes of Loss - Special Form or equivalent, including broadening endorsements to protect against the perils of water intrusion and sewer and drain backup. Coverage shall be in amount equal to full replacement value with an "agreed amount" endorsement. In addition to the waiver of subrogation required by Section 2.4(c), each such property policy shall provide for a full waiver of subrogation by the insurer as to any and all claims against the Lessees and their respective members, officers, directors, partners, agents, employees, and tenants. Any deductible obligations shall be borne by the policyholder.

(b) Lessee Liability Insurance. Each Lessee shall respectively secure, at their sole cost and expense (not as a Berkeley Way Joint Expense) commercial general liability insurance in an amount not less than \$1,000,000 per occurrence; \$2,000,000 general aggregate; \$2,000,000 products and completed operations aggregate. A commercial umbrella and/or excess liability policy(ies) of not less than \$5,000,000 per occurrence and \$5,000,000 annual aggregate must be maintained in addition to the commercial general liability policy, which is to be scheduled as an underlying policy on the umbrella and/or excess liability policy(ies) along with the automobile liability and employers liability policies required herein. The commercial general liability coverage shall be provided under the Insurance Services Office form

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CG 00 01 or equivalent, and shall provide protection against claims resulting from bodily injury and/or property damage arising out of the respective Lessee's operations and/or use of the Project, and shall include by endorsement if not contained within the coverage form: personal & advertising injury; blanket contractual liability; bodily injury and broad form property damage; fire legal liability; and products and completed operations liability. The Lessee that is the respective policyholder shall name the other Lessees, the City and other Persons specified in the Leases as additional insureds on the general liability and umbrella/excess liability policies and provide a waiver of subrogation endorsement in favor of such additional insureds and their respective members, officers, directors, partners, agents, employees, and tenants. If any Lessee operates at more than one location, or if its policies under this Section cover operations of persons or entities other than the Lessee, the Lessee's policies shall include a "per location" endorsement that provides that the general aggregate and other limits apply separately and specifically to the Project. Any deductible obligations shall be borne by the policyholder.

(c) Lessee Automobile Liability Insurance. Each Lessee shall respectively secure, at their sole cost and expense (not as a Berkeley Way Joint Expense) commercial automobile liability insurance covering all of the Lessee's operations arising out of the use or maintenance of owned, hired and non-owned automobiles, trucks, trailers and semi-trailers, including any machinery or equipment attached thereto. Coverage shall be for limits no less than \$1,000,000 per accident, combined single limit for bodily injury and property damage. The Lessee that is the respective policyholder shall name the other Lessees, the City and other Persons specified in the Leases as additional insureds on this policy and provide a waiver of subrogation endorsement in favor of such additional insureds and their respective members, officers, directors, partners, agents, employees, and tenants. Any deductible obligations shall be borne by the policyholder.

(d) Lessee Workers Compensation & Employers Liability Insurance. Each Lessee shall respectively secure, at their sole cost and expense (not as a Berkeley Way Joint Expense) workers' compensation insurance as required by the statutes of the State in which the Project is located. In addition, Lessee shall secure and maintain employers liability insurance with limits of not less than \$1,000,000 for bodily injury by each accident; \$1,000,000 bodily injury by disease-policy limit; and \$1,000,000 bodily injury by disease each employee. Any deductible obligations shall be borne by the policyholder. Policy shall provide a waiver of subrogation endorsement in favor of each Lessee and their respective members, officers, directors, partners, agents, employees, and tenants, and the City and other Persons specified in the Leases.

(e) Other Insurance. Other than as described in this Declaration, it is the responsibility of each Lessee to secure insurance as the Lessee deems appropriate and as may be required by each Lessee's respective Mortgagees and Lease. Without limiting the foregoing, the Leases may contain specific provisions entitling the City to require higher limits of certain insurance policies under certain circumstances.

### 6.3 General Insurance Provisions.

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(a) Insurer Standards. Except as modified by the Berkeley Way Project Rules, all such policies of insurance shall be obtained from insurance companies authorized or otherwise approved to do business in California, (except for workers compensation and employers liability insurance) and with an A.M. Best rating of Class A:VII or better. In the event A.M. Best should revise its rating system, the Lessees shall (subject to the City's consent) select insurance companies with equivalent financial and policyholder's ratings under the rating system then being used by A.M. Best or in the event A.M. Best discontinues its rating system, insurance companies with equivalent financial and policyholder's ratings under such comparable rating system as the Lessees may select through the Berkeley Way Project Rules.

(b) Notices of Cancellation. To the extent obtainable, all policies shall provide that any change or cancellation of such policy must be made in writing and sent to the Lessees at their respective principal offices and the City at least thirty (30) days before the effective date of the change or cancellation.

(c) Deviation from Insurance Requirements. The Berkeley Way Joint shall be obtained at reasonable premiums in light of the market for such insurance with adequate minimum limits for coverage, endorsements, and deductibles, as determined by the good faith judgment of the Berkeley Way Joint Maintenance Committee, and subject to the City's reasonable consent which consent shall not be unreasonably withheld or delayed (and shall be deemed approved in the City does not approve or disapprove a policy within fifteen (15) business days of request for approval) provided, however, subject to each Lessee's respective Mortgagees and Lease, if the Berkeley Way Joint Maintenance Committee determines that a type or form of insurance required pursuant to this Declaration, is not of any direct benefit to one or more Lessees and the cost of the policy is a Berkeley Way Joint Expense, the Berkeley Way Joint Maintenance Committee shall reduce the proportionate share of the Annual Berkeley Way Joint Expense Budget for the non-benefited Lessee by the amount allocated for that type or form of insurance and shall reallocate that reduced amount among the benefiting Lessees according to their relative Designated Shares; and provided, further, a Lessee may request the Berkeley Way Joint Maintenance Committee to purchase coverage for such Lessee (or tenant(s) of such Lessee) (i) to include coverage for furniture, fixtures, equipment and improvements, and (ii) provide casualty insurance in addition to or excess of that required by Article 6 for such Lessee, its tenants, guests, invitees. All insurance premiums and costs resulting from such request(s) to the Berkeley Way Joint Maintenance Committee shall be charged to and paid by the requesting Lessee as a Berkeley Way Special Joint Expenses Assessment. Notwithstanding anything contained herein, in the event all Lessees agree to obtain one or more types of insurance enumerated in this Article which are in excess of the minimum limits for coverage, endorsements, and deductible set forth herein, upon obtaining prior written consent of the other Lessees, the Berkeley Way Joint Maintenance Committee shall obtain such insurance, and the premiums for such shall be a Berkeley Way Joint Expense.

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ARTICLE 7  
GENERAL PROVISIONS

7.1 Enforcement. Subject to Section 7.14 below, each Lessee, or successor thereto shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, and reservations now or hereafter imposed by the provisions of this Declaration. Failure of any Lessee to enforce any covenant or restriction in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

7.2 Invalidity of Any Provision. Should any provision or portion of this Declaration be declared invalid or in conflict with any applicable law, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.

7.3 Term; Covenants Run with the Land. The Easements created by and the covenants and restrictions of this Declaration shall run with and bind the Property and each of the Parcels in perpetuity, and shall inure to the benefit of and shall be enforceable by each Lessee, and the Lessee's respective legal representatives, heirs, successors, subtenants and assigns. It is intended that the covenants, easements, agreements, promises and duties of each Lessee set forth in this Declaration shall be construed as covenants and not as conditions, and that, to the fullest extent legally possible, all such covenants shall run with the land and/or constitute equitable servitudes as between the Parcel of the respective covenantor, as the servient tenement, and the Parcel of the respective covenantee, as the dominant tenement.

7.4 Amendments. This Declaration may only be amended in a writing executed by the Lessees. Any amendment must be recorded and shall become effective upon being recorded in the Official Records.

(a) City Approval Rights. Notwithstanding the above, this Declaration shall not be amended in any way or terminated without the prior written approval of the City.

(b) Mortgagee Approval Rights. Notwithstanding the above, this Declaration shall not be amended or terminated without the prior written approval of each Mortgagee holding a Mortgage on a Lessee Parcel.

(c) Limited Partner Approval Rights. Notwithstanding the above, this Declaration shall not be amended or terminated without the prior written approval of the investor limited partners of the BRIDGE Affordable Partnership and the BFHP Hope Center Partnership, if any (the "Limited Partners"), which approval shall not be withheld unreasonably. Failure of any of the Limited Partners to respond in writing within forty-five (45) business days of receipt of a written request for approval of an amendment to or termination of this Declaration, either by approving the amendment or termination or by stating specific reasons for withholding approval, shall be deemed to be approval by any such Limited Partner.

7.5 Damage or Destruction.

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(a) Lessees to Rebuild. Except as set out in Section 7.5(b) below and subject to the rights of Mortgagee and the terms of the Leases, in the event there is any damage or destruction to any portion of the Project as a result of fire or other casualty, the Project shall be repaired and reconstructed in accordance with the Plans and Specifications, as modified by the Lessees, and the provisions for repair and reconstruction as set forth in this Section 7.5. Subject to the rights of Mortgagees, if all such damage or destruction has occurred within the portion of a Project located entirely within one Lessee Parcel, then any cost of repair or reconstruction above the amount of insurance proceeds received for the loss shall be paid by the Lessee of that Lessee Parcel. If the damage or destruction affects more than one Lessee Parcel, then the Berkeley Way Joint Maintenance Committee shall coordinate the repair or reconstruction activities and the cost to repair or reconstruct which are above the amount of insurance proceeds received for the loss shall be divided in an equitable manner (reflecting the amount of repair work needed for each Lessee Parcel) between the Lessee Parcels and paid within a commercially reasonable time as established by the Joint Maintenance Committee.

(b) Lessees Fail to Rebuild. Subject to the terms of the Leases, if any portion of the Project is materially damaged or destroyed by fire or other casualty ("materially damaged or destroyed" is defined for the purpose of this Section 7.5(b) as any damage for which the cost of repair or reconstruction, as determined by a licensed contractor selected by the Lessees, is equal to or greater than Five Hundred Thousand Dollars (\$500,000), as adjusted by a fraction whose numerator is the Consumer Price Index (1982-84=100) for all Urban Consumers published by the United States Department of Labor, Bureau of Labor Statistics for the San Francisco-Oakland-Hayward area, or any successor thereof ("CPI"), last published on the date of damage or destruction, and whose denominator is the CPI last published prior to the Effective Date), and if the Lessees agree not to rebuild, then the BRIDGE Affordable Lessee or such other Lessee selected by the Berkeley Way Joint Maintenance Committee, shall use all reasonable efforts to sell the Project. Subject to the rights of each Lessee's respective Mortgagees in regards to each Lessee's respective share of the proceeds, all insurance proceeds received shall be divided among the Lessees in an equitable manner reflecting the amount of damage sustained by each Lessee's Parcel, and the sales proceeds attributable to the Project shall be distributed to the Lessees in proportion to the fair market value of each Lessee Parcel as determined at the time of sale of the Project. The fair market value of each Lessee Parcel shall be determined by a MAI qualified appraiser jointly selected by the Lessees. If the Lessees cannot agree on an appraiser, then each Lessee shall select an appraiser and the selected appraisers will select another appraiser and this appraiser shall be the appraiser to determine the fair market value of each Lessee Parcel.

(c) Insurance Trustee. Subject to the rights of Mortgagees described above and the City under the Leases (if applicable), all insurance proceeds and other amounts required to be paid in connection with any work of repair or restoration to be undertaken hereunder shall (unless otherwise agreed to by the Lessees) be paid by, or behalf of, the Lessees to an insurance trustee for periodic disbursement to the Lessee of the damaged Lessee Parcel, if the damage is confined to one Lessee Parcel, as the

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work of repair and reconstruction progresses in accordance with prudent construction loan disbursement practices. If the repair work affects more than one Lessee Parcel, such funds shall be periodically disbursed to the BRIDGE Affordable Lessee (or such other Lessee selected by the Berkeley Way Joint Maintenance Committee) for disbursement to the affected Lessees. The insurance trustee shall be a national bank or a nationally recognized title company reasonably acceptable to the Lessees.

7.6 Condemnation. Any total or partial taking of the Project by eminent domain shall be governed by the Leases.

7.7 Limitation of Restrictions on Lessees. The completion of construction of the Project, and the ability of each Lessee to occupy its Lessee Parcel and use such parcel in accordance with this Declaration is essential to the establishment and welfare of the Project as a combined development. In order that such work may be completed and the Project be established as a fully occupied community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

(a) Prevent any Lessee or its contractors or subcontractors from doing on or within any Lessee Parcel whatever is reasonably necessary or advisable in connection with the completion of such work (including construction of, or addition to, any construction that may occur at a date or dates following completion of construction of the remainder of the Project); or

(b) Prevent any Lessee or its representatives from erecting, constructing, or maintaining on any part or parts of the Lessee Parcels such structures as may be reasonable and necessary for the conduct of their business of completing such work and establishing the Project as a combined commercial and residential community; or

(c) Prevent any Lessee from maintaining such sign or signs on any of the Lessee Parcels as may be necessary for the sale, lease, or disposition thereof, to the extent permitted by Section 4.4.

Each Lessee shall make, and shall cause its contractors and subcontractors to make, reasonable efforts to avoid disturbing, while completing any work on the Project, the use and enjoyment of the Lessee Parcels by the other Lessees and their respective Users.

7.8 Lessee's Compliance. Each Lessee shall be liable for performance of, and is bound by and shall comply with, the provisions of this Declaration and the Berkeley Way Project Rules.

7.9 City Manager Authority Limitations. Any amendment to this Declaration, including any amendment which affect or relates to (i) the boundaries of any Parcel; (ii) the grant of any easement, (iii) the permitted use of any Parcel, or (iv) any other material provision of this Declaration, shall require approval by the City's City Council. Subject to the foregoing, the City's City Manager may issue without City Council

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approval any consent or approval which City is entitled to provide under this Declaration, including without limitation: (w) certain Maintenance matters under Section 3.1; (x) certain insurance matters under Article 6; and (v) approval of Berkeley Way Project Rules under Section 7.13.

7.10 Singular and Plural; Gender. The singular and plural number and masculine, feminine and neuter gender shall each include the other where the context requires.

7.11 Notices, Demands and Communications. Except as otherwise provided in this Declaration, formal notices, demands, and communications among the Lessees shall be sufficiently given if, and shall not be deemed given unless, delivered personally, with a delivery receipt; sent by United States Postal Service, certified mail, return receipt requested or sent by reputable overnight delivery service with a receipt showing date of delivery, or by electronic transmission with follow-up by one of the previous three methods, to the address of the City and Lessees as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by notice to the other parties as provided in this Section. Delivery shall be deemed to have occurred at the time indicated on the receipt as the date of delivery, the date of refusal of delivery, or the date the item was returned as undeliverable.

7.12 No Discrimination. No Lessee shall, either directly or indirectly, forbid or unlawfully restrict the conveyance, encumbrance, leasing, mortgaging, or occupancy of its Lessee Parcel, or a part thereof, to any person on account of race, color, creed, religion, sex, sexual orientation, marital status, ancestry, national origin, familial status, or handicap.

7.13 Rights of Mortgagees. The rights of a Lessee under this Declaration shall be subject to the rights of a Mortgagee to such Lessee. No breach or violation of the Declaration shall defeat or render invalid the lien of any Mortgage upon a Lessee Parcel made in good faith and for value.

7.14 Berkeley Way Project Rules. Subject to the City's reasonable consent if requested by the City, the Lessees may develop mutually acceptable rules (the "Berkeley Way Project Rules") to address matters pertaining to the mutually convenient use and operation of the Project in addition to the matters set forth in this Declaration. If the Lessees cannot develop mutually acceptable Berkeley Way Project Rules then the Lessees shall submit the issues in dispute to mediation in accordance with Section 7.14. The Berkeley Way Project Rules shall be in writing and copies shall be provided to all Lessees, and all amendments to such Berkeley Way Project Rules must be in writing and approved by all Lessees.

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7.15 Dispute Resolution. In the event that the Lessees are unable to agree on any aspect of the requirements of this Declaration, or if there is a dispute as to a Lessee's performance, then any Lessee shall be entitled to mediation in accordance with the following procedures:

(a) Formal Mediation of Disputes. Any Lessee may request the dispute be mediated through a mediation before a retired judge or justice from the Judicial Arbitration & Mediation Services, Inc., or its successor-in-interest, or such other alternative dispute resolution service reasonably acceptable to the Lessees, (in each event such entity is referred to herein as "JAMS") pursuant to the mediation process described in this Section 7.14.

(b) Initiating Mediation. The Lessee desiring the mediation (the "Requesting Party") shall send written notice to the other party (the "Receiving Party") in accordance with Section 7.10 requesting mediation. The Receiving Party shall have thirty (30) days from receipt of the written request to submit the matter to mediation. Within ten (10) days after receipt of the Receiving Party's agreement to submit the matter to mediation, the Requesting Party shall send written demand to the Dispute Resolution Administrator of JAMS (the "Administrator") at the office of JAMS in or closest to the City with the names, addresses, telephone numbers and e-mail addresses of all parties to this Declaration and a brief synopsis of the claim, controversy, difference, or disputed matters and a proposed solution to the problem, with copies sent to the Receiving Party.

(c) Selection of Mediator. As soon as practicable after the demand is served upon JAMS, the Administrator will contact the Lessees to select a mutually agreeable mediator. If the Lessees have no particular mediator in mind or cannot agree on a mediator, the Administrator will submit a list of mediators, and their resumes, numbering at least one more than there are parties. Each Lessee may then strike one name and the Administrator will designate the mediator from the list of remaining names.

(d) Hearings-Scheduling/Parties Present. After the mediator has been selected, the Lessees shall promptly agree upon a date and time for the initial conference with the mediator, but no later than thirty (30) days after the date the mediator was selected. The Lessees understand and agree that, besides counsel, each Lessee may bring only such additional persons as are needed to respond to questions, contribute information and participate in the negotiations. The number of additional parties may be agreed upon in advance with the assistance and advice of the mediator.

(e) Position Papers. No later than seven (7) days before the first scheduled mediation session, each Lessee shall deliver a concise written summary of its position, together with any appropriate documents, views and a proposed solution to the matters in controversy to the mediator and also serve a copy on all other parties.

(f) Participation by Mediator. Once familiar with the case, the mediator will give recommendations on terms of possible settlement conditions to be imposed

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upon the Lessees (if appropriate). The mediator's opinion shall be based on the material and information then available to the Lessees, excluding any information given to the mediator in confidence during a separate caucus. The opinions and recommendations of the mediator are not binding on the Lessees.

(g) Confidentiality of Proceedings. The mediation process is to be considered settlement negotiation for the purpose of all state and federal rules protecting disclosures made during such conferences from the later discovery or use in evidence. The Lessees agree that the provisions of California Evidence Code Section 1152.5 shall apply to any mediation conducted hereunder. The entire procedure is confidential, and no stenographic or other record shall be made except to memorialize a settlement record. All conduct, statements, promises, offers, views and opinions, oral or written, made during the mediation by any party or a party's agent, employee, or attorney are confidential and, where appropriate, are to be considered work product and privileged. Such conduct, statements, promises, offers, views and opinions shall not be subject to discovery or admissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties; provided, however, that evidence otherwise subject to discovery or admissible is not excluded from discovery or admission in evidence simply as a result of it having been used in connection with this settlement process.

(h) Fees and Costs. The fees and costs of the mediation shall conform to the then current fee schedule at JAMS and, in the absence of a written agreement to the contrary, shall be shared equally by the parties in the mediation, but any other costs incurred in connection with the dispute resolution shall be borne by the Lessee incurring such costs.

(i) Termination of Mediation Process. The mediation process shall continue until the matter is resolved, or the mediator makes a good faith finding that all settlement possibilities have been exhausted and there is no possibility of resolution through mediation. To the extent possible, mediation shall be conducted from 9:00 a.m. to 5:00 p.m., with a one (1)-hour break, on consecutive days. In no event shall a Lessee be required to mediate for more than five (5) days.

(j) Condition Precedent to Litigation. The Lessees agree and acknowledge that any dispute arising from this Declaration brought before a court of competent jurisdiction shall first be subject to the mediation process, as set forth in this Section 7.14, as a condition precedent. Any such mediation shall be nonbinding except to the extent otherwise expressly provided herein.

Notwithstanding the foregoing, nothing in this Section 7.14 shall prohibit a Lessee from pursuing the rights set forth in Section 7.17.

7.16 Default Shall not Permit Termination of Declaration. No default under this Declaration shall entitle any Lessee to terminate, cancel or otherwise rescind this Declaration; provided, however, that this limitation shall not affect any other rights or remedies that the Lessees may have by reason of any default under this Declaration.

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7.17 Violation a Nuisance. The result of every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance, and every remedy allowed by law or equity against a Lessee for nuisance, either public or private, shall be available to and may be exercised by the other Lessee.

7.18 Right to Enjoin/Specific Performance. In the event of any violation or threatened violation of any of the provisions of this Declaration by a Lessee or User, the other Lessee shall have the right to apply to a court of competent jurisdiction for an injunction against such violation or threatened violation, or for specific performance of the subject provision, but nothing in this Section shall be deemed to affect whether or not injunctive relief or specific performance is available on account of such violation or threatened violation. The dispute resolution process set forth in Section 7.14 shall not apply to this Section 7.17.

7.19 Title of Parts and Sections. Any titles of the sections or subsections of this Declaration are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Declaration's provisions.

7.20 Applicable Law. This Declaration shall be interpreted under and pursuant to the laws of the State of California.

7.21 Legal Actions. Without limiting Section 7.14 above, if any legal action is commenced to interpret or to enforce the terms of this Declaration or to collect damages as a result of any breach of this Declaration, then the Lessee prevailing in any such action shall be entitled to recover against the Lessee not prevailing all reasonable attorneys' fees and costs incurred in such action (and any subsequent action or proceeding to enforce any judgment entered pursuant to an action on this Declaration).

7.22 No Partnership; Joint Venture or Principal-Agent Relationship. Neither anything in this Declaration nor any acts of the Lessees shall be deemed by any Lessee, or by any third Person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between the Lessees.

7.23 Declaration for Exclusive Benefit of the Lessees. Except for provisions expressly stated to be for the benefit of a Mortgagee and City, the provisions of this Declaration are for the exclusive benefit of the Lessees and successors and assigns, and not for the benefit of, nor give rise to any claim or cause of action by, any third Person.

7.24 Estoppel Certificate. Within ten (10) days after a written request of a Lessee or the City, the other Lessee(s) shall, issue to such requesting Lessee, or to any Mortgagee, or to any prospective purchaser or prospective Mortgagee specified by such requesting Lessee, or to any other Person reasonably designated by the requesting Lessee or the City (if requested by the City), an estoppel certificate stating: (a) whether the Lessee to whom the request has been directed knows of any default under this Declaration and, if there are known defaults, specifying the nature thereof; (b) whether to such Lessee's knowledge this Declaration has been modified or amended in any way

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(or if it has, then stating the nature thereof); and (c) that to the Lessee's knowledge this Declaration as of that date is in full force and effect or, if not, so stating.

7.25 No Dedication. Nothing contained in this Declaration shall be deemed to create or result in a dedication of any portion of the Lessee Parcels for public use or to create any rights in the general public.

7.26 Time of Essence. Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Declaration.

7.27 Multiple Originals; Counterparts. This Declaration may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

7.28 Further Assurances. In addition to the actions recited herein and contemplated to be performed, executed, and/or delivered hereunder, each Lessee will perform, execute and/or deliver or cause to be performed, executed and/or delivered any and all such further acts, instruments, deeds and assurances as may be reasonably required to provide for the use and operation of the Property and the Lessee Parcels in an efficient and coordinated manner as contemplated hereby.

7.29 City As Fee Owner. Unless and until the City is a Lessee as defined in this Declaration, it will have no responsibilities or liabilities under this Declaration.

7.30 Severability. If any term of this Declaration is held in a final disposition by a court of competent jurisdiction to be invalid, then the remaining terms shall continue in full force unless the rights and obligations of the Lessees have been materially altered by such holding of invalidity.

12-19-2019

The undersigned has executed this Declaration as of the Effective Date.

CITY OF BERKELEY

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

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

BFHP HOPE CENTER LP,  
a California limited partnership

By: Hope Center Housing LLC,  
a California limited liability company,  
its managing general partner

By: BRIDGE Housing Corporation,  
a California nonprofit public benefit corporation,  
its co-member

By: \_\_\_\_\_  
Smitha Seshadri  
Executive Vice President

By: Berkeley Food and Housing Project,  
a California nonprofit religious corporation,  
its co-member

By: \_\_\_\_\_  
Callenne Egan  
Executive Director

[Signatures continue on following page]

DRAFT

12-19-2019

BRIDGE Berkeley Way LP,  
a California limited partnership

By: BRIDGE Berkeley Way LLC,  
a California limited liability company,  
its Managing General Partner

By: BRIDGE Housing Corporation,  
a California nonprofit public benefit corporation,  
its sole member and manager

By: \_\_\_\_\_  
Smitha Seshadri,  
Executive Vice President

12-19-2019

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public

DRAFT

12-19-2019

EXHIBIT A  
(Property Description)

DRAFT

12-19-2019

EXHIBIT B  
(Parcel Map)

12-19-2019

RECORDING REQUESTED BY:  
AND WHEN RECORDED MAIL TO:

Goldfarb & Lipman LLP  
1300 Clay Street, Eleventh Floor  
Oakland, CA 94612  
Attn: Heather Gould

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**DECLARATION OF AND AGREEMENT REGARDING COVENANTS, CONDITIONS  
AND RESTRICTIONS  
PROVIDING FOR RECIPROCAL EASEMENTS, JOINT USE AND  
MAINTENANCE FOR THE BERKELEY WAY PROJECT**

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**DECLARATION OF AND AGREEMENT REGARDING COVENANTS, CONDITIONS  
AND RESTRICTIONS PROVIDING FOR RECIPROCAL EASEMENTS, JOINT USE  
AND MAINTENANCE FOR THE BFHP HOPE CENTER**

THIS DECLARATION OF AND AGREEMENT REGARDING COVENANTS, CONDITIONS AND RESTRICTIONS PROVIDING FOR RECIPROCAL EASEMENTS, JOINT USE AND MAINTENANCE FOR THE BFHP HOPE CENTER (the "Hope Center Declaration") is made as of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date"), by the City of Berkeley (the "City") as owner of the fee interest in the Hope Center Property described herein, and BFHP Hope Center LP (the "BFHP Hope Center Partnership"), as lessee of said Hope Center Property (City and said lessee being referred to herein collectively as the "Hope Center Declarants"), with reference to the following facts:

RECITALS

A. These Recitals refer to and utilize certain capitalized terms, the definitions of which are identified in Article 1 below.

B. The City owns certain real property located at 2012 Berkeley Way in Berkeley, California, as more particularly described in Exhibit A attached hereto and incorporated herein (the "Hope Center Property") The Hope Center Property in this Hope Center Declaration is referred to as the BFHP Hope Center Parcels under the Berkley Way REA. Hope Center Declarants have caused the subdivision of the Hope Center Property pursuant to the Map. The Map and this Hope Center Declaration collectively delineate the Permanent Supportive Housing Parcel and the Temporary Housing Parcel. The Permanent Supportive Housing Development is located on the Permanent Supportive Housing Parcel. The Temporary Housing Development is located on the Temporary Housing Parcel.

C. City has no current intention of developing the Permanent Supportive Housing Development, the Temporary Housing Development or the Hope Center Parcels comprising the Hope Center Property. Concurrently with the making of this Hope Center Declaration, the City has leased both the Permanent Supportive Housing Development and the Temporary Housing Development to the BFHP Hope Center Partnership for the purpose of developing the Permanent Supportive Housing Development and the Temporary Housing Development, which collectively are the BFHP Hope Center Development. BFHP Hope Center Partnership is intended to be the long term lessee and operator of the Permanent Supportive Housing Development portion of the BFHP Hope Center and BFHP Hope Center LLC is intended to be the long term lessee and operator of the Temporary Housing Development portion of the BFHP Hope Center.

D. Pursuant to this Hope Center Declaration, the Hope Center Declarants are (i) setting forth certain rights and responsibilities pertaining to the easements affecting the Hope Center Property granted herein and by virtue of the Map, and (ii) providing for the management, maintenance and operation of the Hope Center Parcels, and certain

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joint uses thereof. Certain other matters are identified in the Berkeley Way REA executed and recorded concurrently herewith.

E. The Hope Center Project is not a common interest development as defined by Civil Code Section 4100. The Hope Center Project and the Hope Center Lessees are therefore not subject to the Davis-Stirling Common Interest Development Act (codified at Civil Code Sections 4000 et seq.).

WITH REFERENCE TO THE FACTS RECITED ABOVE, the Hope Center Declarants declare and agree as follows:

ARTICLE 1  
DEFINITIONS

1.1 Definitions. Capitalized terms not otherwise defined in this Hope Center Declaration shall have the meaning set forth below:

- (a) "Berkeley Way Annual Joint Expenses Budget" is defined in Section 5.3 of the Berkeley Way REA.
- (b) "Berkeley Way Joint Maintenance Committee" means the committee responsible for the coordination of the Maintenance under the Berkeley Way REA, as set forth in more detail in Section 5.1 of the Berkeley Way REA.
- (c) "Berkeley Way Project-Serving Components" has the meaning set forth in Section 1.1 of the Berkeley Way REA.
- (d) "Berkeley Way Property" means the Hope Center Property and the BRIDGE Affordable Parcel.
- (e) "Berkeley Way REA" means the Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for the Berkeley Way between the City, BRIDGE Affordable Partnership and the BFHP Hope Center Partnership dated \_\_\_\_\_ and recorded in the Official Records substantially concurrently herewith.
- (f) "BFHP Hope Center Development" means the Permanent Supportive Housing Development and Temporary Housing Development located on the Hope Center Property.
- (g) "BFHP Hope Center LLC" means BFHP Hope Center LLC, a California limited liability company.
- (h) "BFHP Hope Center Partnership" means BFHP Hope Center Partnership, a California limited partnership.
- (i) "BRIDGE Affordable Parcel" means the portion of the Berkeley

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Way Property designated as "Parcel C" on the Map.

(j) "BRIDGE Affordable Partnership" means BRIDGE Berkeley Way LP, a California limited partnership.

(k) "City" has the meaning set forth in the preamble of this Hope Center Declaration.

(l) "Hope Center Annual Joint Expenses Budget" has the meaning given in Section 5.5.

(m) "Hope Center Assessments" means Hope Center Joint Expenses Assessments, Hope Center Reimbursement Assessments and/or Hope Center Special Joint Expenses Assessments.

(n) "Hope Center Creditor Lessee" means a Hope Center Lessee to whom a Hope Center Assessment is owed by another Hope Center Lessee or a Hope Center Lessee seeking to ensure payments required under Section 5.10 are made to a reserve account.

(o) "Hope Center Debtor Lessee" means a Hope Center Lessee who owes either a Hope Center Assessment to another Hope Center Lessee or a payment required under Section 5.10 to be made to its reserve account which Hope Center Assessment or payment has not been made when due.

(p) "Hope Center Declarants" has the meaning set forth in the preamble of this Hope Center Declaration.

(q) "Hope Center Declaration" means this Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing Reciprocal Easements, Joint Use and Maintenance for the BFHP Hope Center, and all amendments, modifications and supplements executed in accordance herewith.

(r) "Hope Center Designated Share" means the following percentages for Maintenance of Hope Center Project-Serving Components (which were calculated based upon the gross square footage of the Hope Center Parcels):

|                                     |     |
|-------------------------------------|-----|
| Permanent Supportive Housing Lessee | 75% |
| Temporary Housing Lessee            | 25% |

Notwithstanding the forgoing, the Hope Center Designated Share paid by a Hope Center Lessee may be modified by the Hope Center Lessees (with the consent of the City) for costs associated with Hope Center Project-Serving Components which benefit more than one but not all of the Hope Center Lessees or which are later determined to provide disproportionate benefit to one or more Hope Center Lessee. Any such modification shall cause costs to be allocated in an equitable manner solely among the benefited Hope Center Lessees

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(s) "Hope Center Easements" means the easements granted through this Hope Center Declaration. The Hope Center Easements will be described by function or location rather than by precise measurement on the Map or the Plans and Specifications.

(t) "Hope Center Improvements" mean the BFHP Hope Center Development, and all other improvements and fixtures that may be built on and/or installed in any of the Hope Center Lessee Parcels from time to time, including landscaping.

(u) "Hope Center Joint Expenses" means, collectively, (i) all costs and expenses of Maintenance of Hope Center Project-Serving Components, and (ii) any other expenses provided for in a Hope Center Annual Joint Expenses Budget or that this Hope Center Declaration provides to be paid by a Hope Center Lessee according to its Hope Center Designated Share.

(v) "Hope Center Joint Expenses Assessment" has the meaning given in Section 5.6.

(w) "Hope Center Joint Maintenance Committee" means the committee responsible for the coordination of the Maintenance of Hope Center Project-Serving Components and other duties as set forth in more detail in Section 5.2 below.

(x) "Hope Center Lessee" means (i) the Permanent Supportive Housing Lessee or (ii) the Temporary Housing Lessee (each being referred to herein as a "Hope Center Lessee" and collectively referred to as the "Hope Center Lessees").

(y) "Hope Center Lessee Parcel" means any of the Permanent Supportive Housing Parcel, or the Temporary Housing Parcel (each being referred to herein as a "Hope Center Lessee Parcel" and collectively referred to as "Hope Center Lessee Parcels").

(z) "Hope Center Project" means, collectively, the Hope Center Parcels, and all Hope Center Improvements constructed on such Hope Center Parcels.

(aa) "Hope Center Project Rules" means the rules that may be adopted by the Hope Center Lessees from time to time, pursuant to Section 7.11 to address certain issues not fully addressed in this Hope Center Declaration.

(bb) "Hope Center Project-Serving Components" means (i) components of the Hope Center Improvements that service both of the Hope Center Lessee Parcels such as the structural walls, elevators, stairways, and (ii) components of any system in the Hope Center Improvements that services both Hope Center Parcels. Hope Center Project-Serving Components include the MPOE room, electric room, gas meter, trash room, bed bug room, elevators, sewer ejector pump, sewer lateral, domestic water connection, and other utility installations contained within and immediately surrounded by or attached to any structure or space which is part of the Hope Center Project and passes through both Hope Center Lessee Parcels (as required to provide power, light,

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telephone, cable television, gas, water, sanitary sewerage, storm sewerage, and drainage services); other usual appurtenances; and any other Hope Center Project element which is not located solely within one Hope Center Parcel and which the Hope Center Lessees determine to be a Hope Center Project-Serving Component, except utility equipment which is part of a discrete and complete system servicing only one Hope Center Lessee Parcel. In addition, Berkeley Way Project-Serving Components are not Hope Center Project-Serving Components under this Hope Center Declaration.

(cc) "Hope Center Property" means that certain real property described in Exhibit A. The Hope Center Property consists of the Permanent Supportive Housing Parcel and the Temporary Housing Parcel portions of the Berkeley Way Property designated as "Parcel A" and "Parcel B", respectively, on the Map.

(dd) "Hope Center Parcels" means the Hope Center Lessee Parcels.

(ee) "Hope Center Reimbursement Assessment" has the meaning given in Section 5.8(b).

(ff) "Hope Center Reimbursement Expense" has the meaning given in Section 5.8(a).

(gg) "Hope Center Special Joint Expenses Assessment" has the meaning given in Section 5.7.

(hh) "Leases" means the Permanent Supportive Housing Ground Lease and Temporary Housing Ground Lease, as either may be amended from time to time.

(ii) "Maintain" means undertake Maintenance.

(jj) "Maintenance" means the maintaining (including cleaning and routine, day to day, janitorial services), repairing and replacing of any improvement on a Hope Center Parcel (including a Hope Center Project-Serving Component, or related to a Hope Center Easement).

(kk) "Map" means that certain parcel map entitled Parcel Map No. 11051 filed in the Official Records on \_\_\_\_\_, 2020 as file number \_\_\_\_\_, subdividing the Berkeley Way Property into the Hope Center Parcels, and BRIDGE Affordable Parcel a copy of which is attached to this Hope Center Declaration as Exhibit B and incorporated herein.

(ll) "Mortgage" means a recorded mortgage or deed of trust encumbering a Hope Center Parcel, which is given as security by a Hope Center Lessee for the payment of money or performance of an obligation.

(mm) "Mortgagee" means any Person, bank, savings and loan association, insurance company, or other financial institution that is either a mortgagee under a mortgage or the beneficiary under a deed of trust and any holder, governmental guarantor, or insurer of any such mortgage or deed of trust.

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(nn) "Official Records" means the Official Records of the County of Alameda, State of California.

(oo) "Permanent Supportive Housing Development" means approximately fifty-three (53) units of affordable supportive housing units located on the Permanent Supportive Housing Parcel.

(pp) "Permanent Supportive Housing Ground Lease" means that certain ground lease entered into by and between the City and the BFHP Hope Center Partnership for the Permanent Supportive Housing Parcel, as amended from time to time.

(qq) "Permanent Supportive Housing Lessee" means (i) the long term tenant or lessee of the Permanent Supportive Housing Parcel pursuant to the Permanent Supportive Housing Ground Lease, or a replacement thereof, as well as the successors or assigns of any such lessee, or (ii) if the Permanent Supportive Housing Ground Lease expires or is terminated and is not replaced by a long term lease, the fee owner, from time to time, of the Permanent Supportive Housing Parcel. The BFHP Hope Center Partnership is the initial Permanent Supportive Housing Lessee.

(rr) "Permanent Supportive Housing Parcel" means the portion of the Hope Center Property designated as "Parcel A" on the Map.

(ss) "Permanent Supportive Housing Hope Center Project-Serving Components" means a Hope Center Project-Serving Components located on the Permanent Supportive Housing Parcel.

(tt) "Person" shall have the meaning set forth in the Berkeley Way REA.

(uu) "Plans and Specifications" shall have the meaning set forth in the Berkeley Way REA.

(vv) "Temporary Housing Development" means approximately forty-four (44) beds of temporary housing, a services center and administrative office space.

(ww) "Temporary Housing Parcel" means the portion of the Hope Center Property designated as "Parcel B" on the Map.

(xx) "Temporary Housing Lessee" means (i) the long term lessee of the Temporary Housing Parcel pursuant to Temporary Housing Ground Lease, or a replacement thereof, as well as the successors or assigns of any such lessee, or (ii) if the Temporary Housing Ground Lease expires or is terminated and is not replaced by a long term lease, the fee owner, from time to time, of the Temporary Housing Parcel. BFHP Hope Center Partnership is the initial Temporary Housing Lessee, but the parties anticipate that BFHP Hope Center LLC will be the Temporary Housing Lessee following completion of construction and issuance of the IRS 8609 (Low Income Housing Tax Credit Allocation and Certification) for the Permanent Supportive Housing Development.

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(yy) "Temporary Housing Ground Lease" means the ground lease to be entered into by and between the City and the Temporary Housing Lessee for all or part of the Temporary Housing Parcel, as amended from time to time.

(zz) "Temporary Housing Hope Center Project-Serving Component" means a Hope Center Project-Serving Component located on the Temporary Housing Parcel.

(aaa) "Users" is defined in the Berkeley Way REA.

1.2 Exhibits. The following exhibits are attached to and incorporated into this Hope Center Declaration:

- Exhibit A     Legal Description of the Hope Center Property
- Exhibit B     Parcel Map

ARTICLE 2

DIVISION OF HOPE CENTER PROPERTY, GRANT OF EASEMENTS

2.1 General Description of Hope Center Property.

(a) General Boundaries. The Permanent Supportive Housing Parcel and the Temporary Housing Parcel have the boundaries shown on the Map.

(b) Hope Center Property. The Hope Center Property will contain the BFHP Hope Center Development to be developed by the BFHP Partnership. The Hope Center Property is comprised of the Permanent Supportive Housing Parcel and the Temporary Housing Parcel.

2.2 No Separate Conveyance of Hope Center Easements. The ownership of each of the Hope Center Parcels includes the benefit of, and is encumbered by and is subject, to the Hope Center Easements, as applicable. The Hope Center Easements are (i) established through this Hope Center Declaration and are to be conveyed, as applicable, with each of the Hope Center Lessee Parcels (ii) cannot be modified, terminated or relocated (except as set forth in this Hope Center Declaration), and (iii) may not be separated or separately conveyed. The benefit and burden of each Hope Center Easement, as applicable, shall be deemed to be conveyed with its respective Hope Center Parcel, even though the description in the instrument of conveyance may refer only to the fee or leasehold title to such Hope Center Parcel. The Hope Center Easements are essential and necessary for the development and ongoing operation of the Hope Center Improvements.

2.3 Grant of Hope Center Easements. Through this Hope Center Declaration, the Hope Center Declarants hereby grant and establish the following easements affecting the Hope Center Project and the Hope Center Parcels.

(a) Easement for Temporary Housing Access; Use; Ingress and Egress.

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(i) Entry Easement. The Temporary Housing Lessee is hereby granted, and the Temporary Housing Parcel shall have the benefit of and the Permanent Supportive Housing Parcel shall be burdened by, a non-exclusive easement in, on, under, over and across the entryway of the Permanent Supportive Housing Parcel for access to the Temporary Housing Development from Berkeley Way (the "Entry Easement").

(ii) Elevator Easement. The Temporary Housing Lessee is hereby granted, and the Temporary Housing Parcel shall have the benefit of and the Permanent Supportive Housing Parcel shall be burdened by, a non-exclusive easement across eastern portion of the first floor of the Permanent Supportive Housing Parcel (the "Elevator Easement") for access to the elevator in the Permanent Supportive Housing Parcel and use of such elevator on and between the first floor and the second floor of the Hope Center Project.

(iii) Stairway Easement. The Temporary Housing Lessee is hereby granted, and the Temporary Housing Parcel shall have the benefit of and the Permanent Supportive Housing Parcel shall be burdened by, non-exclusive easement across the Permanent Supportive Housing Parcel stairways for emergency exit purposes (the "Stairway Easement").

(iv) Emergency Exit Easement. The Temporary Housing Lessee is hereby granted, and the Temporary Housing Parcel shall have the benefit of and the Permanent Supportive Housing Parcel shall be burdened by, a non-exclusive emergency exit easement across the Permanent Supportive Housing Parcel to allow access to the exterior courtyard and Southern Egress Easement (as defined in the Berkeley Way REA) for emergency exit purposes (the "Emergency Exit Easement").

(v) Access to and Use of Trash Room Easement. The Temporary Housing Lessee is hereby granted, and the Temporary Housing Parcel shall have the benefit of and the Permanent Supportive Housing Parcel shall be burdened by, a non-exclusive easement to access and use the trash room located on the ground floor of the Permanent Supportive Housing Parcel (the "Trash Room Easement").

(vi) Access to and Use of Mail Box Easement. The Temporary Housing Lessee is hereby granted, and the Temporary Housing Parcel shall have the benefit of and the Permanent Supportive Housing Parcel shall be burdened by, a non-exclusive easement to access and use the mailbox area located on the first floor of the Permanent Supportive Housing Parcel for Temporary Housing Lessee employee and management agent mail (the "Mail Box Easement").

The exact location of the Elevator Easement, Trash Room Easement and Mailbox Easement shall be reasonably determined by the Permanent Supportive Housing Lessee.

(b) Easement for Permanent Supportive Housing Access; Use; Ingress and Egress.

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(i) PSH Access Easement. The Permanent Supportive Housing Lessee is hereby granted, and the Permanent Supportive Housing Parcel shall have the benefit of and the Temporary Housing Parcel shall be burdened by, a non-exclusive easement in, on, under, over and across the entry way of the Temporary Housing Parcel for access to the Permanent Supportive Housing Parcel ("PSH Access Easement").

(ii) Courtyard Easement. The Permanent Supportive Housing Lessee is hereby granted, and the Permanent Supportive Housing Parcel shall have the benefit of and the Temporary Housing Parcel shall be burdened by, a non-exclusive easement in, on, under, over and across the Temporary Housing Parcel to the courtyard area of the Permanent Supportive Housing Parcel.

(iii) Bed Bug Room Easement. The Permanent Supportive Housing Lessee is hereby granted, and the Permanent Supportive Housing Lessee shall have the benefit of and the Temporary Housing Parcel shall be burdened by, a non-exclusive easement to access and use the bed bug room located on the first floor of the Temporary Housing Parcel (the "Bed Bug Room Easement").

The exact location of the Bed Bug Room Easement and Courtyard Easement shall be reasonably determined by the Temporary Housing Lessee.

#### 2.4 Hold Harmless.

(a) Each Hope Center Lessee (an "Indemnifying Lessee") shall indemnify, defend, and hold each of the other Hope Center Lessees (the "Indemnified Lessees") harmless from all liability, damage, cost, or expense incurred by any of the Indemnified Lessees arising out of the utilization by the Indemnifying Lessee or any of its Users of any of the Hope Center Easements within any such Indemnified Lessee's Hope Center Lessee Parcel, or arising out of any violation by such Indemnifying Lessee of its obligations under this Hope Center Declaration, except to the extent that any such liability, damage, cost or expense results from the negligence or willful misconduct of the Indemnified Lessee.

(b) Each Hope Center Lessee shall indemnify, defend, and hold each of the other Hope Center Lessees harmless from all liability, damage, cost, or expense incurred by any such other Hope Center Lessee arising out of any liens, including, but not limited to, mechanics' and materialmen's liens, imposed on the Hope Center Lessee Parcel of such other Hope Center Lessee as a consequence of any work or labor done, supplies furnished, or services rendered at the request of the contracting Hope Center Lessee or any of its Users.

(c) Each Hope Center Lessee shall cause any property insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against any other Hope Center Lessee in connection with any damage covered by such property insurance policy to the personal and real property improvements located in or on the Hope Center Lessee Parcel or such other Hope

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Center Lessee and/or the Hope Center Project that are caused by or result from risks insured against under any property insurance policies carried by such Hope Center Lessee and in force at the time of any such damage.

ARTICLE 3  
MAINTENANCE AND ALTERATIONS

3.1 Maintenance of the Hope Center Lessee Parcels.

(a) Maintenance of the Permanent Supportive Housing Parcel.

(i) Maintenance of the Permanent Supportive Housing Parcel including the Berkeley Way Project-Serving Components located on the Permanent Supportive Housing Parcel and the Permanent Supportive Housing Hope Center Project-Serving Components shall be performed by the Permanent Supportive Housing Lessee. The Permanent Supportive Housing Lessee shall manage, maintain in good condition, repair, and replace the Hope Center Improvements on the Permanent Supportive Housing Parcel, except for those items (if any) which another Hope Center Lessee or Lessee (as defined in the Berkeley Way REA) has been designated to manage, maintain, repair, and replace as described in this Hope Center Declaration or the Berkeley Way REA.

(ii) The Temporary Housing Lessee shall have the right to perform Maintenance of the Permanent Supportive Housing Parcel to the extent necessary to mitigate an emergency situation. Before performing Maintenance under this paragraph, the Temporary Housing Lessee shall first take all reasonable steps to contact the Permanent Supportive Housing Lessee to permit such Hope Center Lessee to perform the necessary Maintenance.

(iii) Except as provided in Section 3.1(c) and (d), Section 3.2 and the Berkeley Way REA, the cost of Maintenance of the Permanent Supportive Housing Parcel shall be borne by the Permanent Supportive Housing Lessee provided that failure of the other Hope Center Lessees to tender its respective cost amount shall not relieve Temporary Housing Lessee from performing its required Maintenance under this Hope Center Declaration.

(b) Maintenance of the Temporary Housing Parcel.

(i) Maintenance of the Temporary Housing Parcel including the Berkeley Way Project-Serving Components and the Housing Hope Center Project-Serving Components located on the Temporary Housing Parcel shall be performed by the Temporary Housing Lessee. The Temporary Housing Lessee, shall manage, maintain in good condition, repair, and replace the Hope Center Improvements on the Temporary Housing Parcel, except for those items (if any) which another Hope Center Lessee or Lessee (as defined in the Berkeley Way REA) has been designated to manage, maintain, repair, and replace as described in this Hope Center Declaration or the Berkeley Way REA.

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(ii) The Permanent Supportive Housing Lessee shall have the right to perform Maintenance on the Temporary Housing Parcel to the extent necessary to mitigate an emergency situation. Before performing Maintenance under this paragraph, the Permanent Supportive Housing Lessee shall first take all reasonable steps to contact the Temporary Housing Lessee to permit such Hope Center Lessee to perform the necessary Maintenance.

(iii) Except as provided in Section 3.1(c) and (d), Section 3.2, and the Berkeley Way REA, the cost of Maintenance of the Temporary Housing Parcel shall be borne by the Temporary Housing Lessee provided that failure of the other Hope Center Lessees to tender its respective cost amount shall not relieve Temporary Housing Lessee from performing its required Maintenance under this Hope Center Declaration.

(c) Cost of Maintenance of Hope Center Project-Serving Components. The cost of Maintenance of the Hope Center Project-Serving Components shall be borne by the Hope Center Lessees in their Hope Center Designated Shares.

(d) Cost for Maintenance Caused by Another Hope Center Lessee. Subject to Section 2.4(c), the cost of any Maintenance of any Hope Center Parcel required as a result of any act or omission (including without limitation failure to timely perform its own Maintenance obligations) of the other Hope Center Lessee or its Users shall be borne solely by such Hope Center Lessee.

3.2 Specific Maintenance. Each Hope Center Lessee will coordinate its repair and Maintenance of any Hope Center Project-Serving Components with the Hope Center Joint Maintenance Committee. Costs to Maintain and repair Hope Center Project-Serving Components shall be allocated in a manner consistent with Article 5 and paid for with Hope Center Assessments or by other method of reimbursement agreed to by the Hope Center Lessees in writing.

3.3 Prohibited Alterations; Alterations to Hope Center Project-Serving Components.

(a) Subject to the requirements of the Leases, no Hope Center Lessee shall, without the prior written consent of the other Hope Center Lessees construct or alter any Hope Center Improvements on such Hope Center Lessee's Parcel that will do any of the following:

(i) Unreasonably interfere with any other Hope Center Lessee's use and enjoyment of its Hope Center Lessee Parcel;

(ii) Cause the termination or nonrenewal of insurance policies or an increase in insurance premiums for another Hope Center Lessee;

(iii) Adversely affect or impair the architectural integrity of the Hope Center Project or the appearance or aesthetics of a portion of a Hope Center Parcel that is visible from another Hope Center Parcel;

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(iv) Interfere with or alter the fire or acoustical rating of any wall separating a Hope Center Lessee Parcel from another Hope Center Lessee Parcel; or

(v) Violate the Hope Center Lessee's Lease.

(b) Prior to performing any alteration to any Hope Center Project-Serving Component located on a Hope Center Lessee Parcel (except for cosmetic alterations, such as painting, that are not visible from the exterior of the Hope Center Project or another Parcel), the Hope Center Lessee proposing to undertake the alteration shall:

(i) Provide the other Hope Center Lessees copies of the plans and specifications for the work to be performed; and

(ii) Request and obtain the written approval of the other Hope Center Lessees, which approval shall not be unreasonably withheld, conditioned, or delayed.

#### ARTICLE 4 USE RESTRICTIONS; OPERATIONS; TRANSFER

In addition to all of the covenants contained in this Hope Center Declaration, in the Berkeley Way REA and in the Leases, the use of the Hope Center Property is subject to the following:

4.1 Tenant Selection. Tenant and occupant admission and selection at the Permanent Supportive Housing Development and the Temporary Housing Development shall be performed in compliance with applicable law and the public funding requirements.

4.2 Regulatory Compliance. The Hope Center Lessees will comply with all regulatory and financing requirements applicable to their respective Hope Center Parcels in effect as of the date of this Agreement; and any use conflicting with such requirements shall be subject to the prior written approval of the Hope Center Lessees.

4.3 Services. Each Hope Center Lessee will provide services to its respective residents or occupants in compliance with Public Funding requirements, and as necessary to allow all other residents and occupants to enjoy and benefit from the Hope Center Project.

4.4 Transfer of Temporary Housing Development. From and after transfer of the Temporary Housing Development by the BFHP Hope Center Partnership to the BFHP Hope Center LLC, the Temporary Housing Lessee (and its successor) may not transfer any membership or ownership interest or transfer its interest in the Temporary Housing Lease without the prior written approval of the City and the Permanent Supportive Housing Lessee. The City and the Permanent Supportive Housing Lessee's consent shall be within their sole and absolute discretion. The provisions of this Section 4.4 are essential to the Hope Center Project given the integration of the Temporary

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Housing Development within the Hope Center Project and its proximity to the Permanent Supportive Housing Development. Nothing in this Section 4.4 is intended to prevent the City from exercising its rights to terminate the Temporary Housing Ground Lease pursuant to the terms of such lease or to prevent the City or County of Alameda from exercising any foreclosure rights under their financing for the Temporary Housing Development. However, if the City or County obtains fee or leasehold title to the Temporary Housing Parcel, the Permanent Supportive Housing Lessee shall have the right to review and approve the property manager and service provider for the Temporary Housing Development, as well as the operating budget and services plan.

## ARTICLE 5

### JOINT MAINTENANCE EXPENSES, ASSESSMENTS AND RESERVES

5.1 Berkeley Way REA Joint Maintenance Committee. The Berkeley Way REA establishes the Berkeley Way Joint Maintenance Committee. The Permanent Supportive Housing Lessee will serve as the member of the Berkeley Way Joint Maintenance Committee on behalf of the Permanent Supportive Housing Lessee and the Temporary Housing Lessee (the "BFHP Hope Center Committee Representative"). The BFHP Hope Center Representative may resign at, any time by giving written notice to the Hope Center Lessees.

5.2 Hope Center Joint Maintenance Committee. In order to determine those costs and expenses that are necessary to include in the Berkeley Way Annual Joint Expenses Budget established under the Berkeley Way REA, and in order to determine the Hope Center Annual Joint Expenses Budget, the Hope Center Lessees will operate a Hope Center Joint Maintenance Committee. Each Hope Center Lessee will appoint one representative to serve as a member of the Hope Center Joint Maintenance Committee. Each member of the Hope Center Joint Maintenance Committee may be removed from office at any time by his/her appointing Hope Center Lessee with or without cause. Any member of the Hope Center Joint Maintenance Committee may resign at any time by giving written notice to the appointing Hope Center Lessee and Hope Center Joint Maintenance Committee.

(a) Meetings. The Hope Center Joint Maintenance Committee shall meet annually, prior to the date that the Berkeley Way Joint Maintenance Committee will meet and in no event later than August 1 of each year, and at such other times as the members of the Hope Center Joint Maintenance Committee may determine. Both members of the Hope Center Joint Maintenance Committee must be present to conduct business and approve actions.

(b) Compensation. No member of the Hope Center Joint Maintenance Committee shall receive compensation for any service he or she may render to the Hope Center Joint Maintenance Committee.

5.3 Duties. The duties of the Hope Center Joint Maintenance Committee shall include (i) coordination of Maintenance of the Hope Center Project-Serving Components, and repair after damage or destruction to the Hope Center Project

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(Section 5.4 below); (ii) preparation of the Hope Center Annual Joint Expenses Budget (Section 5.5 below); (iii) establishing, levying and collecting Hope Center Joint Assessments (Sections 5.6 and 5.7 below); (iv) establishing and monitoring reserves for reasonably anticipated contingencies and repairs or replacements of Hope Center Project-Serving Components (Section 5.10 below). In the event the Hope Center Joint Maintenance Committee members cannot agree on a particular decision, following mediation under Section 7.12, the Permanent Supportive Housing Lessee member will control as to the decision provided that any such decision must be consistent with the terms of this Hope Center Declaration.

(a) Limitation of Liability. The members of the Hope Center Joint Maintenance Committee shall not be liable to the Hope Center Lessees, their Users, or other person for any injury, death, loss or damage due to theft, other breaches of security, failures, or interruption of services, or other circumstances pertaining to activities within the Hope Center Joint Maintenance Committee's control. Each member of the Hope Center Joint Maintenance Committee shall be entitled to indemnification by the Hope Center Lessees against all expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any proceeding to which such member may be a party, or in which such member may become involved, by reason of the fact that he or she was or is a member of the Hope Center Joint Maintenance Committee.

#### 5.4 Coordination of Hope Center Joint Maintenance and Repair after Damage or Destruction.

(a) Maintenance Coordination. The Hope Center Joint Maintenance Committee is authorized to provide service to, and assure that, each BFHP Hope Center Project-Serving Component is operated, maintained, repaired, and replaced in a first-class condition, and otherwise in accordance with the standards of this Hope Center Declaration. Such authorization includes the right to inspect and monitor each Hope Center Lessee's Maintenance of Hope Center Project-Serving Components located on their respective Hope Center Lessee Parcel, coordinate Maintenance between Hope Center Lessees, and authorize contracts to perform any Maintenance the Hope Center Joint Maintenance Committee reasonably determines is not being properly performed.

(b) Damage or Destruction Repair Coordination. The Hope Center Joint Maintenance Committee is authorized to coordinate the repair or restoration activities necessitated by damage or destruction affecting more than one Hope Center Lessee Parcel, subject to the rights of Mortgagees. The Hope Center Joint Maintenance Committee shall have the right to authorize contracts to perform any repair or restoration work the Hope Center Joint Maintenance Committee reasonably determines is not being properly performed.

(c) Contracting. Permanent Supportive Housing Lessee (or any other Hope Center Lessee or property management agent selected by the Hope Center Joint Maintenance Committee), as the agent of the Hope Center Joint Maintenance

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Committee, shall have the right to solicit bids, enter into contracts with third parties on behalf of the Hope Center Joint Maintenance Committee, and take all other steps reasonably necessary or appropriate to perform the duties of the Hope Center Joint Maintenance Committee consistent with the then-current Hope Center Annual Joint Expenses Budget or as otherwise authorized to be undertaken by the Hope Center Joint Maintenance Committee; provided, however, that if the activities of the Hope Center Joint Maintenance Committee are necessitated by a Hope Center Lessee not performing its required Maintenance, repair or restoration activities, the costs incurred by the Hope Center Joint Maintenance Committee to perform such activities shall be a Hope Center Reimbursement Assessment charged pursuant to Section 5.8 below.

#### 5.5 Hope Center Annual Joint Expenses Budget.

(a) Before the meeting of the Berkeley Way Joint Maintenance Committee, and in any event by September 1 of each year, the Hope Center Joint Maintenance Committee shall meet to discuss the Hope Center Joint Expenses that the Hope Center Lessees expect to be incurred in the following calendar year. By October 1, the Hope Center Joint Maintenance Committee shall prepare and deliver to the Hope Center Lessees a written budget describing in reasonable detail the Hope Center Joint Expenses that the Hope Center Lessees expect to be incurred in the following calendar year (the "Hope Center Annual Joint Expenses Budget"). The Hope Center Annual Joint Expenses Budget shall also specify the contribution that each Hope Center Lessee must make, during the following calendar year, to its reserve account pursuant to Section 5.9(b).

(b) The Hope Center Annual Joint Expenses Budget shall account for all expected ordinary and extraordinary Hope Center Joint Expenses to be incurred in a calendar year, including expenses expected to be incurred by the Hope Center Joint Maintenance Committee for management, accounting or other services, and (ii) any previously unreconciled past payments of Hope Center Reimbursement Assessments for Hope Center Joint Expenses or Hope Center Joint Expenses Assessments for Hope Center Reimbursement Expenses. The Hope Center Annual Joint Expenses Budget shall also describe the following: (1) the current estimated replacement cost, estimated remaining life, and estimated useful life of each major component the Maintenance of which is a Hope Center Joint Expense; (2) the current estimate of the amount of cash reserves necessary to perform Maintenance on such major components; (3) the current estimate of accumulated cash reserves actually set aside by the Hope Center Lessees to perform Maintenance on such major components (as further discussed in Section 5.10); and (4) a statement addressing the procedures used for the calculation and establishment of those reserves to defray the Maintenance of major components the Maintenance of which is a Hope Center Joint Expense.

(c) The Hope Center Annual Joint Expenses Budget shall allocate Hope Center Joint Expenses to each Hope Center Lessee in proportion to their Hope Center Designated Shares except that each Hope Center Lessee shall be responsible for windows and doors primarily serving its respective Hope Center Parcel.

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(d) Unless one or more of the Hope Center Lessees objects in writing in a timely manner to the Hope Center Annual Joint Expenses Budget pursuant to Section 5.3(e) below, the Hope Center Annual Joint Expenses Budget shall be effective as of January 1 of the following year.

(e) If any affected Hope Center Lessee disputes the Hope Center Annual Joint Expenses Budget proposed by the Hope Center Joint Maintenance Committee and the Hope Center Lessees are unable to resolve their differences within a reasonable time, then the parties shall submit the Hope Center Annual Joint Expenses Budget in question to an arbitrator jointly selected by the parties (or if the Hope Center Lessees cannot agree on an arbitrator, then each Hope Center Lessee will select an arbitrator and the selected arbitrators will select a third arbitrator and the third arbitrator shall be the arbitrator to resolve the dispute over the Hope Center Annual Joint Expenses Budget). By December 25, the arbitrator shall confirm or revise the Hope Center Annual Joint Expenses Budget as the arbitrator determines to be appropriate, and such confirmed or revised Hope Center Annual Joint Expenses Budget shall be effective as of January 1 of the following year. The fees of the arbitrator or arbitrators shall be a Hope Center Joint Expense, but any other costs incurred in connection with the arbitration shall be borne by the Hope Center Lessee incurring such costs.

#### 5.6 Hope Center Joint Expenses Assessments.

(a) Each Hope Center Lessee's Hope Center Designated Share of Hope Center Joint Expenses, as set forth in the Hope Center Annual Joint Expenses Budget from time to time, shall be a charge levied against such Hope Center Lessee and its Hope Center Lessee Parcel and may be collected as the "Hope Center Joint Expenses Assessment", enforceable in the manner set forth in Section 5.7.

(b) The Hope Center Joint Maintenance Committee will from time to time select a Hope Center Lessee to receive and hold, in trust, the Hope Center Joint Expenses Assessments and make disbursements of such assessment for the payment of Hope Center Joint Expenses. Initially, the Hope Center Lessee to hold and disburse such payments is the Permanent Supportive Housing Lessee. Each Hope Center Lessee shall pay its annual Hope Center Joint Expenses Assessment in even monthly installments equal to one twelfth (1/12) of its annual Hope Center Joint Expenses Assessment, with each monthly installment due on the first day of each month of the year for which the applicable Hope Center Annual Joint Expenses Budget is effective. Notwithstanding the forgoing, the Hope Center Joint Maintenance Committee may request even quarterly payments in lieu of monthly payments. In addition, in lieu of collecting Hope Center Joint Expenses Assessments (either in whole or in part), the Hope Center Lessees may also choose and the Joint Maintenance Committee may require reimbursement of or payment to any Hope Center Lessee who pays for or coordinates Maintenance of a Hope Center Joint Expense.

(c) The Hope Center Joint Maintenance Committee shall oversee the use of the Hope Center Joint Expense Assessments received from the Hope Center

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Lessees pursuant to Section 5.5(b), and the performance of the activities whose costs constitute Hope Center Joint Expenses.

5.7 Hope Center Special Joint Expenses Assessments. In the event the Hope Center Joint Maintenance Committee determines, in good faith, that the Hope Center Annual Joint Expenses Budget is or will become inadequate for any reason (including, but not limited to, misinformation or miscalculation, unexpected repair or replacement of any Hope Center Project-Serving Component, or increase in estimates of Hope Center Joint Expenses, the Hope Center Joint Maintenance Committee may, at any time, levy an assessment (a "Hope Center Special Joint Expenses Assessment") to make up such inadequacy, which shall be allocated to the Hope Center Lessee(s) in accordance with the Hope Center Designated Shares.

5.8 Hope Center Reimbursement Assessments.

(a) A "Hope Center Reimbursement Expense" is, subject to Section 5.10(b), any expense actually incurred or expected to be incurred by a Hope Center Creditor Lessee that:

(i) is the financial responsibility of a Hope Center Debtor Lessee under this Hope Center Declaration;

(ii) arises out of noncompliance with this Hope Center Declaration (or any rule or regulation duly adopted pursuant to this Hope Center Declaration) by the Hope Center Debtor Lessee; or

(iii) arises out of inaction by the Hope Center Debtor Lessee that does not constitute noncompliance with this Hope Center Declaration.

(b) Every Hope Center Reimbursement Expense shall be a charge levied against the Hope Center Debtor Lessee and against the Debtor's Lessee Parcel, as applicable (a "Hope Center Reimbursement Assessment").

(c) Hope Center Reimbursement Expenses shall include actual and reasonable financing costs associated with the Hope Center Creditor Lessee advancing funds on behalf of the Hope Center Debtor Lessee from the time funds are advanced until the date on which the applicable Hope Center Reimbursement Assessment is paid.

(d) Hope Center Reimbursement Assessments shall be enforced in the manner set forth in Section 5.9.

5.9 Payment and Enforcement of Assessments.

(a) A Hope Center Creditor Lessee shall provide notice to a Hope Center Debtor Lessee of the amount and due date of any Hope Center Assessment. Notice shall be delivered not less than thirty (30) and not more than sixty (60) days prior to the Hope Center Assessment becoming due.

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(b) Each Hope Center Assessment obligation is a personal obligation of the Hope Center Debtor Lessee against whom the Hope Center Assessment is levied. Hope Center Assessments may be offset against each other unless one Hope Center Lessee objects in writing to an offset.

(c) Any Hope Center Assessment shall become delinquent if not paid within fifteen (15) days after the due date, and a Hope Center Creditor Lessee's reasonable costs in collecting the delinquent Hope Center Assessment (including reasonable attorneys' fees) may then be added to the Hope Center Assessment. Any Hope Center Assessment remaining unpaid as of thirty (30) days after the due date shall also have the following charges added to the Hope Center Assessment (together with the reasonable costs of collection, the "Additional Charges"): (i) interest at the lesser of twelve percent (12%) per annum and the maximum lawful rate; and (ii) a late charge equal to the greater of Ten Dollars (\$10) and ten percent (10%) of the delinquent Hope Center Assessment.

(d) If any Hope Center Assessment is not paid within thirty (30) days after its due date, then the Hope Center Creditor Lessee shall provide notice to the Hope Center Debtor Lessee (and shall simultaneously notify any Mortgagee who has requested a copy of the notice) stating: (i) that the Hope Center Assessment is delinquent; (ii) the action required to cure the default; (iii) a date, not less than thirty (30) days after the date of the notice, by which the default must be cured; and (iv) that failure to cure the default on or before the date specified in the notice may result in a lawsuit against the Hope Center Debtor Lessee. If a delinquent Hope Center Assessment and corresponding Additional Charges are not paid in full on or before the date specified in the notice, then the Hope Center Creditor Lessee may resort to the remedies set forth in Section 5.9(e) below.

(e) In the event any Hope Center Debtor Lessee fails to pay any Hope Center Assessment, any Hope Center Creditor Lessee(s) may, pursuant to Section 7.12 below, commence and maintain mediation, or enforce any other right or remedy available at law or equity, against the Hope Center Debtor Lessee obligated to pay such Hope Center Assessment. Any ruling rendered in any action shall include the amount of the delinquent Hope Center Assessment, Additional Charges, and any other amounts that the ruling body may award.

#### 5.10 Reserve Accounts.

(a) Each Hope Center Lessee shall establish and contribute to replacement and standard operating reserve accounts in the amount deemed appropriate by the Hope Center Joint Maintenance Committee to ensure such Hope Center Lessee's ability to pay its share of reasonably anticipated Hope Center Joint Expenses as may be projected to arise in future years, based on the analysis in the Hope Center Annual Joint Expenses Budget. On or about January 1 of each year, each Hope Center Lessee shall deliver to the Hope Center Joint Maintenance Committee evidence of the amount currently held in the delivering Hope Center Lessee's collective reserve accounts, including but not limited to replacement reserves, standard operating

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reserves and operating deficit reserves.

(b) A Hope Center Lessee's failure to deposit funds in its replacement and standard operating reserve account in a manner consistent with Section 5.10(a) will give rise to a Hope Center Reimbursement Assessment even if the other Hope Center Lessees do not make a contribution to their own reserve account to the extent necessary to compensate for the failing Hope Center Lessee's failure to contribute to its reserve account.

#### 5.11 Other Reports.

(a) For any year in which the Hope Center Assessments payable by a Hope Center Lessee exceed Fifteen Thousand Dollars (\$15,000), a review of the relevant supporting documents and financial statements of such Hope Center Lessees shall be prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy, and provided to the City. A Hope Center Lessee whose relevant supporting documents and financial statements must be reviewed pursuant to this Section shall distribute to the other Hope Center Lessees a copy of such review within one hundred twenty (120) days after the close of each fiscal year for which such a review must be prepared. The dollar amounts in this Section 5.11 shall be increased each year by CPI (as defined in the Berkeley Way REA) (or by the increase in a similar index if the described index is no longer published).

(b) Unless otherwise agreed to by the Hope Center Lessees, following completion of the construction of the Hope Center Project, at least once every five (5) years, the Hope Center Joint Maintenance Committee shall perform a physical needs assessment of the Hope Center Project, and provide a copy to the City. In addition, following completion of the construction of the Hope Center Project, at least one every five (5) years the Hope Center Joint Maintenance Committee shall cause a study of the reserve requirements of the Hope Center Property (and the cost of such study shall be a Hope Center Joint Expense), and provide a copy to the City. The study shall include the following items:

(i) Identification of the major components the Maintenance of which is a Hope Center Joint Expense and which have, as of the date of the study, a useful life of less than thirty (30) years.

(ii) Identification of the probable remaining useful life of the components identified in Section 5.11(b)(i), as of the date of the study.

(iii) An estimate of the cost of Maintenance of the components identified in Section 5.11(b)(i), both during and at the end of their useful life.

(iv) An estimate of the total annual contribution necessary to defray the cost to Maintain the components identified in Section 5.11(b)(i), both during and at the end of their useful life, taking into account the amount of reserve funds that are available for Maintenance of such components as of the date of the study.

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5.12 Rights of Mortgagees. A Mortgagee shall be protected against Hope Center Assessments levied prior to foreclosure (or deed-in-lieu) of the lender's deed of trust. In other words, no Hope Center Assessment levied prior to foreclosure (or deed-in-lieu) of a lender's deed of trust shall result in liability for such lender (or another transferee through foreclosure) after the foreclosure.

(a) After coming into possession of a Hope Center Lessee Parcel through foreclosure or deed in lieu of foreclosure, a Mortgagee (or any party coming into ownership of the Hope Center Lessee Parcel through the Mortgagee) shall be subject to all Hope Center Assessments levied after the foreclosure sale or transfer in lieu of foreclosure other than Hope Center Assessments based on obligations accruing, or defaults hereunder arising prior to the date of such foreclosure or transfer in lieu of foreclosure.

## ARTICLE 6 INSURANCE

The Hope Center Lessees will comply with the insurance provision in the Berkeley Way REA.

## ARTICLE 7 GENERAL PROVISIONS

7.1 Enforcement. Subject to Section 7.12 below, each Hope Center Lessee, or successor thereto shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, and reservations now or hereafter imposed by the provisions of this Hope Center Declaration. Failure of any Hope Center Lessee to enforce any covenant or restriction in this Hope Center Declaration shall in no event be deemed a waiver of the right to do so thereafter.

7.2 Invalidity of Any Provision. Should any provision or portion of this Hope Center Declaration be declared invalid or in conflict with any applicable law, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.

7.3 Term; Covenants Run with the Land. The Hope Center Easements created by and the covenants and restrictions of this Hope Center Declaration shall run with and bind the Hope Center Property and each of the Hope Center Parcels in perpetuity and shall inure to the benefit of and shall be enforceable by each Hope Center Lessee and the Hope Center Lessee's respective legal representatives, heirs, successors, subtenants and assigns. It is intended that the covenants, easements, agreements, promises and duties of each Hope Center Lessee set forth in this Hope Center Declaration shall be construed as covenants and not as conditions, and that, to the fullest extent legally possible, all such covenants shall run with the land and/or constitute equitable servitudes as between the Hope Center Parcel of the respective covenantor, as the servient tenement, and the Hope Center Parcel of the respective covenantee, as the dominant tenement.

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7.4 Amendments. This Hope Center Declaration may only be amended in a writing executed by the Hope Center Lessees. Any amendment must be recorded and shall become effective upon being recorded in the Official Records.

(a) City Approval Rights. Notwithstanding the above, this Hope Center Declaration shall not be amended in any way or terminated without the prior written approval of the City.

(b) Mortgagee Approval Rights. Notwithstanding the above, this Hope Center Declaration shall not be amended or terminated without the prior written approval of each Mortgagee holding a Mortgage on a Hope Center Lessee Parcel.

(c) Limited Partner Approval Rights. Notwithstanding the above, this Hope Center Declaration shall not be amended or terminated without the prior written approval of the investor limited partners of the BFHP Hope Center Partnership, if applicable (the "Limited Partner"), which approval shall not be withheld unreasonably. Failure of any of the Limited Partner to respond in writing within forty-five (45) business days of receipt of a written request for approval of an amendment to or termination of this Hope Center Declaration, either by approving the amendment or termination or by stating specific reasons for withholding approval, shall be deemed to be approval by any such Limited Partner.

7.5 Hope Center Lessee's Compliance. Each Hope Center Lessee shall be liable for performance of, and is bound by and shall comply with, the provisions of this Hope Center Declaration and the Hope Center Project Rules.

7.6 City Manager Authority Limitations. Any amendment to this Hope Center Declaration, including any amendment which affects or relates to: (i) the grant of any easement, (ii) the permitted use of any Parcel, or (iii) any other material provision of this Hope Center Declaration, shall require approval by the City's City Council. Subject to the foregoing, the City's City Manager may issue without City Council approval any consent or approval which City is entitled to provide under this Hope Center Declaration, including without limitation consents under Section 4.4.

7.7 Singular and Plural; Gender. The singular and plural number and masculine, feminine and neuter gender shall each include the other where the context requires.

7.8 Notices, Demands and Communications. Except as otherwise provided in this Hope Center Declaration, formal notices, demands, and communications among the Hope Center Lessees shall be sufficiently given if, and shall not be deemed given unless, delivered personally, with a delivery receipt; sent by United States Postal Service, certified mail, return receipt requested or sent by reputable overnight delivery service with a receipt showing date of delivery, or by electronic transmission with follow-up by one of the previous three methods, to the address of the Hope Center Declarant and Hope Center Lessees as follows:

12-19-2019

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Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by notice to the other parties as provided in this Section. Delivery shall be deemed to have occurred at the time indicated on the receipt as the date of delivery, the date of refusal of delivery, or the date the item was returned as undeliverable.

7.9 No Discrimination. No Hope Center Lessee shall, either directly or indirectly, forbid or restrict the conveyance, encumbrance, leasing, mortgaging, or occupancy of its Hope Center Lessee Parcel, or a part thereof, to any person on account of race, color, creed, religion, sex, sexual orientation, marital status, ancestry, national origin, familial status, or handicap.

7.10 Rights of Mortgagees. The rights of a Hope Center Lessee under this Hope Center Declaration shall be subject to the rights of a Mortgagee to such Hope Center Lessee. No breach or violation of the Hope Center Declaration shall defeat or render invalid the lien of any Mortgage upon a Hope Center Lessee Parcel made in good faith and for value.

7.11 Hope Center Project Rules. Subject to the City's reasonable consent if requested by the City, the Hope Center Lessees may develop mutually acceptable rules (the "Hope Center Project Rules") to address matters pertaining to the mutually convenient use and operation of the Hope Center Project in addition to the matters set forth in this Hope Center Declaration and not inconsistent with the Berkeley Way Project Rules under the Berkeley Way REA. If the Hope Center Lessees cannot develop mutually acceptable Hope Center Project Rules then the Hope Center Lessees shall submit the issues in dispute to mediation in accordance with Section 7.12. The Hope Center Project Rules shall be in writing and copies shall be provided to both Hope Center Lessees, and all amendments to such Hope Center Project Rules must be in writing and approved by both Hope Center Lessees.

7.12 Dispute Resolution. In the event that the Hope Center Lessees are unable to agree on any aspect of the requirements of this Hope Center Declaration, or if there is a dispute as to a Hope Center Lessee's performance, then any Hope Center Lessee shall be entitled to mediation in accordance with the following procedures:

(a) Formal Mediation of Disputes. Any Hope Center Lessee may request the dispute be mediated through a mediation before a retired judge or justice from the Judicial Arbitration & Mediation Services, Inc., or its successor-in-interest, or such other alternative dispute resolution service reasonably acceptable to the Hope Center Lessees, (in each event such entity is referred to herein as "JAMS") pursuant to the mediation process described in this Section 7.12.

(b) Initiating Mediation. The Hope Center Lessee desiring the mediation (the "Requesting Party") shall send written notice to the other party (the

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"Receiving Party") in accordance with Section 7.8 requesting mediation. The Receiving Party shall have thirty (30) days from receipt of the written request to submit the matter to mediation. Within ten (10) days after receipt of the Receiving Party's agreement to submit the matter to mediation, the Requesting Party shall send written demand to the Dispute Resolution Administrator of JAMS (the "Administrator") at the office of JAMS in or closest to the City with the names, addresses, telephone numbers and e-mail addresses of all parties to this Hope Center Declaration and a brief synopsis of the claim, controversy, difference, or disputed matters and a proposed solution to the problem, with copies sent to the Receiving Party.

(c) Selection of Mediator. As soon as practicable after the demand is served upon JAMS, the Administrator will contact the Hope Center Lessees to select a mutually agreeable mediator. If the Hope Center Lessees have no particular mediator in mind or cannot agree on a mediator, the Administrator will submit a list of mediators, and their resumes, numbering at least one more than there are parties. Each Hope Center Lessee may then strike one name and the Administrator will designate the mediator from the list of remaining names.

(d) Hearings-Scheduling/Parties Present. After the mediator has been selected, the Hope Center Lessees shall promptly agree upon a date and time for the initial conference with the mediator, but no later than thirty (30) days after the date the mediator was selected. The Hope Center Lessees understand and agree that, besides counsel, each Hope Center Lessee may bring only such additional persons as are needed to respond to questions, contribute information and participate in the negotiations. The number of additional parties may be agreed upon in advance with the assistance and advice of the mediator.

(e) Position Papers. No later than seven (7) days before the first scheduled mediation session, each Hope Center Lessee shall deliver a concise written summary of its position, together with any appropriate documents, views and a proposed solution to the matters in controversy to the mediator and also serve a copy on all other parties.

(f) Participation by Mediator. Once familiar with the case, the mediator will give recommendations on terms of possible settlement conditions to be imposed upon the Hope Center Lessees (if appropriate). The mediator's opinion shall be based on the material and information then available to the Hope Center Lessees, excluding any information given to the mediator in confidence during a separate caucus. The opinions and recommendations of the mediator are not binding on the Hope Center Lessees.

(g) Confidentiality of Proceedings. The mediation process is to be considered settlement negotiation for the purpose of all state and federal rules protecting disclosures made during such conferences from the later discovery or use in evidence. The Hope Center Lessees agree that the provisions of California Evidence Code Section 1152.5 shall apply to any mediation conducted hereunder. The entire procedure is confidential, and no stenographic or other record shall be made except to

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memorialize a settlement record. All conduct, statements, promises, offers, views and opinions, oral or written, made during the mediation by any party or a party's agent, employee, or attorney are confidential and, where appropriate, are to be considered work product and privileged. Such conduct, statements, promises, offers, views and opinions shall not be subject to discovery or admissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties; provided, however, that evidence otherwise subject to discovery or admissible is not excluded from discovery or admission in evidence simply as a result of it having been used in connection with this settlement process.

(h) Fees and Costs. The fees and costs of the mediation shall conform to the then current fee schedule at JAMS and, in the absence of a written agreement to the contrary, shall be shared equally by the parties in the mediation, but any other costs incurred in connection with the dispute resolution shall be borne by the Hope Center Lessee incurring such costs.

(i) Termination of Mediation Process. The mediation process shall continue until the matter is resolved, or the mediator makes a good faith finding that all settlement possibilities have been exhausted and there is no possibility of resolution through mediation. To the extent possible, mediation shall be conducted from 9:00 a.m. to 5:00 p.m., with a one (1)-hour break, on consecutive days. In no event shall a Hope Center Lessee be required to mediate for more than five (5) days.

(j) Condition Precedent to Litigation. The Hope Center Lessees agree and acknowledge that any dispute arising from this Hope Center Declaration brought before a court of competent jurisdiction shall first be subject to the mediation process, as set forth in this Section 7.12, as a condition precedent. Any such mediation shall be nonbinding except to the extent otherwise expressly provided herein.

Notwithstanding the foregoing, nothing in this Section 7.12 shall prohibit a Hope Center Lessee from pursuing the rights set forth in Section 7.15.

7.13 Default Shall not Permit Termination of Hope Center Declaration. No default under this Hope Center Declaration shall entitle any Hope Center Lessee to terminate, cancel or otherwise rescind this Hope Center Declaration; provided, however, that this limitation shall not affect any other rights or remedies that the Hope Center Lessees may have by reason of any default under this Hope Center Declaration.

7.14 Violation a Nuisance. The result of every act or omission whereby any provision of this Hope Center Declaration is violated in whole or in part is hereby declared to be a nuisance, and every remedy allowed by law or equity against a Hope Center Lessee for nuisance, either public or private, shall be available to and may be exercised by the other Hope Center Lessee.

7.15 Right to Enjoin/Specific Performance. In the event of any violation or threatened violation of any of the provisions of this Hope Center Declaration by a Hope Center Lessee or User, the other Hope Center Lessee shall have the right to apply to a

12-19-2019

court of competent jurisdiction for an injunction against such violation or threatened violation, or for specific performance of the subject provision, but nothing in this Section shall be deemed to affect whether or not injunctive relief or specific performance is available on account of such violation or threatened violation. The dispute resolution process set forth in Section 7.12 shall not apply to this Section 7.15.

7.16 Title of Parts and Sections. Any titles of the sections or subsections of this Hope Center Declaration are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Hope Center Declaration's provisions.

7.17 Applicable Law. This Hope Center Declaration shall be interpreted under and pursuant to the laws of the State of California.

7.18 Legal Actions. Without limiting Section 7.12 above, if any legal action is commenced to interpret or to enforce the terms of this Hope Center Declaration or to collect damages as a result of any breach of this Hope Center Declaration, then the Hope Center Lessee prevailing in any such action shall be entitled to recover against the Hope Center Lessee not prevailing all reasonable attorneys' fees and costs incurred in such action (and any subsequent action or proceeding to enforce any judgment entered pursuant to an action on this Hope Center Declaration).

7.19 No Partnership; Joint Venture or Principal-Agent Relationship. Neither anything in this Hope Center Declaration nor any acts of the Hope Center Lessees shall be deemed by any Hope Center Lessee, or by any third Person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between the Hope Center Lessees.

7.20 Hope Center Declaration for Exclusive Benefit of the Hope Center Lessees. Except for provisions expressly stated to be for the benefit of a Mortgagee or the City, the provisions of this Hope Center Declaration are for the exclusive benefit of the Hope Center Lessees and successors and assigns, and not for the benefit of, nor give rise to any claim or cause of action by, any third Person.

7.21 Estoppel Certificate. Within ten (10) days after a written request of a Hope Center Lessee, the other Hope Center Lessee shall, issue to such requesting Hope Center Lessee or the City, or to any Mortgagee, or to any prospective purchaser or prospective Mortgagee specified by such requesting Hope Center Lessee, or to any other Person reasonably designated by the requesting Hope Center Lessee, or to the City (if required by the City), an estoppel certificate stating: (a) whether the Hope Center Lessee to whom the request has been directed knows of any default under this Hope Center Declaration and, if there are known defaults, specifying the nature thereof; (b) whether to such Hope Center Lessee's knowledge this Hope Center Declaration has been modified or amended in any way (or if it has, then stating the nature thereof); and (c) that to the Hope Center Lessee's knowledge this Hope Center Declaration as of that date is in full force and effect or, if not, so stating.

7.22 No Dedication. Nothing contained in this Hope Center Declaration shall

12-19-2019

be deemed to create or result in a dedication of any portion of the Hope Center Lessee Parcels for public use or to create any rights in the general public.

7.23 Time of Essence. Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Hope Center Declaration.

7.24 Relationship to Berkeley Way REA. The Hope Center Declarants intend this Hope Center Declaration to be consistent with the Berkeley Way REA. To the extent of any conflict between the Berkeley Way REA and this Hope Center Declaration, the Berkeley Way REA shall control.

7.25 Multiple Originals; Counterparts. This Hope Center Declaration may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

7.26 Further Assurances. In addition to the actions recited herein and contemplated to be performed, executed, and/or delivered hereunder, each Hope Center Lessee will perform, execute and/or deliver or cause to be performed, executed and/or delivered any and all such further acts, instruments, deeds and assurances as may be reasonably required to provide for the use and operation of the Hope Center Property and the Hope Center Lessee Parcels in an efficient and coordinated manner as contemplated hereby.

7.27 City As Fee Owner. Unless and until the City is a Hope Center Lessee as defined in this Hope Center Declaration, it will have no responsibilities or liabilities under this Hope Center Declaration.

7.28 Severability. If any term of this Hope Center Declaration is held in a final disposition by a court of competent jurisdiction to be invalid, then the remaining terms shall continue in full force unless the rights and obligations of the Hope Center Lessees have been materially altered by such holding of invalidity.

DRAFT

12-19-2019

The undersigned has executed this Hope Center Declaration as of the Effective Date.

CITY OF BERKELEY

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

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

BFHP HOPE CENTER LP,  
a California limited partnership

By: Hope Center Housing LLC,  
a California limited liability company,  
its managing general partner

By: BRIDGE Housing Corporation,  
a California nonprofit public benefit corporation,  
its co-member

By: \_\_\_\_\_  
Smitha Seshadri  
Executive Vice President

By: Berkeley Food and Housing Project,  
a California nonprofit religious corporation,  
its co-member

By: \_\_\_\_\_  
Callenne Egan  
Executive Director

[Signatures continue on following page]

12-19-2019

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public

DRAFT

12-19-2019

EXHIBIT A

(Hope Center Property Description)

DRAFT

12-19-2019

EXHIBIT B  
(Parcel Map)

DRAFT

12-19-2019

RECORDING REQUESTED BY:  
AND WHEN RECORDED MAIL TO:

Goldfarb & Lipman LLP  
1300 Clay Street, Eleventh Floor  
Oakland, CA 94612  
Attn: Heather Gould

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**DECLARATION OF AND AGREEMENT REGARDING COVENANTS, CONDITIONS  
AND RESTRICTIONS  
PROVIDING FOR RECIPROCAL EASEMENTS, JOINT USE AND  
MAINTENANCE FOR THE BFHP HOPE CENTER**

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EXHIBIT A..... HOPE CENTER PROPERTY DESCRIPTION

EXHIBIT B..... PARCEL MAP

**OWNER'S STATEMENT**

(I, WE) HEREBY STATE THAT (I, WE) (AM, ARE) THE OWNER(S) OF, OR HAVE SOME RIGHT, TITLE OR INTEREST IN THE LAND DELINEATED AND EMBRACED WITHIN THE EXTERIOR BOUNDARY LINES ON THE HEREIN EMBODIED PARCEL MAP ENTITLED "PARCEL MAP 11051" CITY OF BERKELEY, COUNTY OF ALAMEDA, STATE OF CALIFORNIA". THAT (I, WE) CONSENT TO THE PREPARATION AND FILING OF THIS PARCEL MAP.

OWNER(S): CITY OF BERKELEY, A MUNICIPAL CORPORATION  
 BY: \_\_\_\_\_  
 NAME: \_\_\_\_\_  
 TITLE: \_\_\_\_\_

**OWNER'S ACKNOWLEDGEMENT**

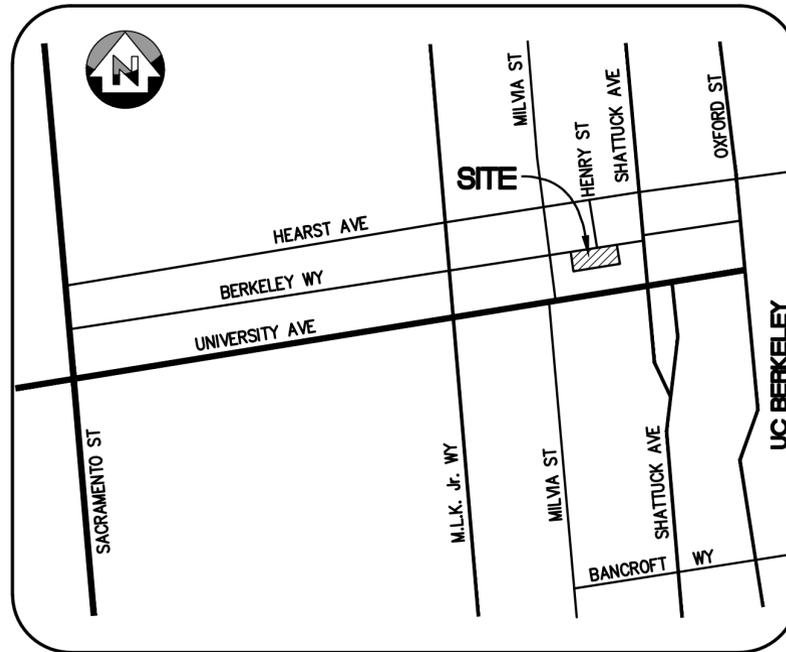
A NOTARY PUBLIC OR OTHER OFFICE COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THE DOCUMENT.

STATE OF CALIFORNIA )  
 ) S.S.  
 COUNTY OF \_\_\_\_\_ )  
 ON \_\_\_\_\_, 20\_\_\_\_, BEFORE ME, \_\_\_\_\_, A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED \_\_\_\_\_, WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES) AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT, THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.  
 I CERTIFY UNDER PENALTY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.  
 WITNESS MY HAND AND OFFICIAL SEAL  
 SIGNATURE: \_\_\_\_\_ NOTARY PUBLIC PRINTED NAME \_\_\_\_\_  
 MY COMMISSION EXPIRES: \_\_\_\_\_  
 MY COMMISSION NUMBER: \_\_\_\_\_  
 COUNTY OF PRINCIPAL PLACE OF BUSINESS: \_\_\_\_\_

**SURVEYOR'S STATEMENT**

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE TO THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF \_\_\_\_\_ IN AUGUST, 2019. I HEREBY STATE THIS PARCEL MAP CONFORMS TO THE APPROVED OR CONDITIONALLY APPROVED TENTATIVE PARCEL MAP, IF ANY. I HEREBY STATE THAT THE MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

DATE: \_\_\_\_\_ PRELIMINARY  
 KELLY S. JOHNSON, PLS  
 L.S. NO. 9126



**VICINITY MAP**  
 N.T.S.

**CITY ENGINEER'S STATEMENT**

I HAVE EXAMINED THIS MAP AND THE SUBDIVISION AS SHOWN IS SUBSTANTIALLY THE SAME AS IT APPEARS ON THE TENTATIVE MAP (IF ANY) AND ANY APPROVED ALTERATIONS THEREOF. THIS MAP CONFORMS TO THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES. I AM SATISFIED THAT THIS MAP IS TECHNICALLY CORRECT.

DATE: \_\_\_\_\_  
 NISHA A. PATEL, RCE 72491  
 CITY ENGINEER

**CITY CONSULTANT SURVEYOR'S STATEMENT**

THIS MAP CONFORMS TO THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES. I, \_\_\_\_\_, DO HEREBY STATE THAT IT HAS BEEN EXAMINED BY ME, OR UNDER DIRECTION BY CITY OF BERKELEY STAFF, AND I AM SATISFIED THAT IT IS TECHNICALLY CORRECT.

DATE: \_\_\_\_\_ PLS NO. \_\_\_\_\_

**PLANNING DIRECTOR'S STATEMENT**

THIS MAP HAS BEEN APPROVED BY THE PLANNING DIRECTOR, CITY OF BERKELEY ON 20\_\_\_\_, AND WHEN RECORDED BECOMES THE OFFICIAL MAP OF THIS LAND DIVISION.

DATE: \_\_\_\_\_  
 TIMOTHY BURROUGHS  
 PLANNING DIRECTOR

**CLERK OF THE BOARD OF SUPERVISORS CERTIFICATE**

I, ANIKA CAMPBELL-BELTON, CLERK OF THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DO HEREBY STATE THAT CERTIFICATES HAVE BEEN FILED AND DEPOSITS HAVE BEEN MADE IN CONFORMANCE WITH THE REQUIREMENTS OF SECTIONS 66492 AND 66493 OF THE GOVERNMENT CODE OF THE STATE OF CALIFORNIA.

ANIKA CAMPBELL-BELTON  
 CLERK OF THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA  
 DATE: \_\_\_\_\_  
 BY: \_\_\_\_\_  
 DEPUTY COUNTY CLERK

**COUNTY RECORDER'S STATEMENT**

FILED THIS FOR RECORD THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, AT \_\_\_\_\_ M. IN BOOK \_\_\_\_\_ OR PARCEL MAPS, AT PAGES \_\_\_\_\_, AT THE REQUEST OF \_\_\_\_\_ TITLE COMPANY.

FEE: \_\_\_\_\_  
 SERIES: \_\_\_\_\_  
 MELISSA WILK  
 COUNTY RECORDER IN AND FOR THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA  
 BY: \_\_\_\_\_  
 DEPUTY RECORDER

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- SHEET 2 LAND OF THE CITY OF BERKELEY
- SHEET 3 KEY MAP
- SHEET 4 PARCEL A LEVEL 1 DETAILS
- SHEET 5 PARCEL A LEVEL 2 DETAILS
- SHEET 6 PARCEL A LEVEL 3 AND UP DETAILS
- SHEET 7 PARCEL B LEVEL 1 DETAILS
- SHEET 8 PARCEL B LEVEL 2 DETAILS
- SHEET 9 PARCEL C LEVEL 1 DETAILS
- SHEET 10 PARCEL C LEVEL 2 DETAILS
- SHEET 11 PARCEL C LEVEL 3 AND UP DETAILS

**PARCEL MAP NO. 11051**

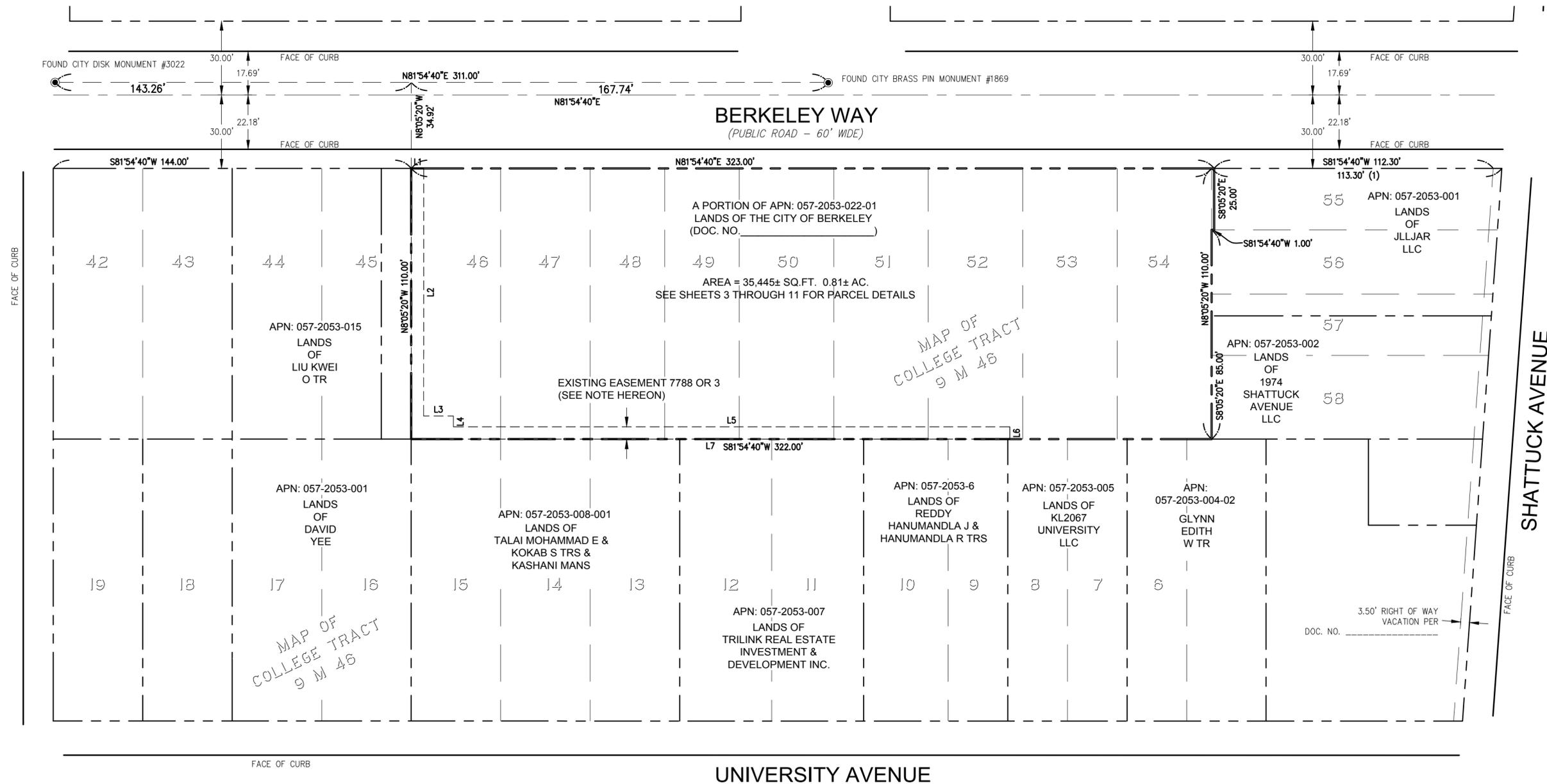
CONSISTING OF THREE AIR RIGHTS PARCELS  
 BEING A RESUBDIVISION OF PORTIONS OF LOTS 46-54 OF  
 "MAP OF COLLEGE TRACT", FILED ON JANUARY 31, 1880, IN MAP BOOK 9, PAGE 46  
 ALAMEDA COUNTY RECORDS AND THE WESTERN 1 FOOT OF LOT 55.

CITY OF BERKELEY COUNTY OF ALAMEDA

SEPTEMBER, 2019

CONSISTING OF 11 SHEETS

**SANDIS** CIVIL ENGINEERS SURVEYORS PLANNERS  
 1700 Winchester Boulevard, Campbell, CA 95008 | P. 408.636.0900 | F. 408.636.0999 | www.sandis.net  
 SILICON VALLEY TRI-VALLEY CENTRAL VALLEY SACRAMENTO EAST BAY/SF

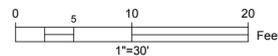


**BASIS OF BEARINGS**

THE BEARINGS SHOWN AS NORTH 81°54'40" EAST BETWEEN FOUND MONUMENTS, ON THE MONUMENT LINE OF BERKELEY WAY, AS DEPICTED ON TRACT MAP 7888, FILED SEPTEMBER 3, 2009 IN BOOK 305 OF MAPS, AT PAGES 18-20, ALAMEDA COUNTY RECORDS AND THE WESTERN 1 FOOT OF LOT 55.

**SURVEY REFERENCES**

- (1) MAP OF COLLEGE TRACT, BOOK 9 OF MAPS, PAGE 46, ALAMEDA COUNTY RECORDS
- (2) TRACT MAP NO. 7888, BOOK 305 OF MAPS, PAGE 20, ALAMEDA COUNTY RECORDS
- (3) EXISTING PEDESTRIAN PASSAGE EASEMENT BOOK 7788, PAGE 3
- (4) AN EASEMENT, NOT CLEARLY DEFINED OF RECORD, FOR PEDESTRIAN PASSAGE RECORDED SEPTEMBER 21, 1955, BOOK 7788, PAGE 3, OFFICIAL RECORDS. IT IS THE INTENT TO DEFINE THE LOCATION OF SAID EASEMENT TO THE AREA SHOWN HEREON AS "PRIVATE EMERGENCY EGRESS EASEMENT BENEFIT OF LOTS 9, 10, 11 AND 12", WHICH ARE ADJOINING LOTS SHOWN ON THE MAP OF COLLEGE TRACT BERKELEY.



| Line | Length | Direction        |
|------|--------|------------------|
| L1   | 5.01   | N81° 55' 05.58"E |
| L2   | 100.62 | S08° 05' 07.27"E |
| L3   | 12.00  | N81° 52' 23.81"E |
| L4   | 4.38   | S08° 05' 20.00"E |
| L5   | 223.80 | N81° 54' 40.00"E |
| L6   | 5.00   | S08° 05' 20.00"E |
| L7   | 240.81 | S81° 54' 40.00"W |

**LEGEND**

- SUBJECT EXTERIOR PROPERTY LINES
- VACATED LOT LINE
- AIR RIGHT PARCEL LINE
- FACE OF CURB
- CENTERLINE ROAD
- LOT LINE
- EASEMENT LINE (#)
- RECORD REFERENCE

NOTE: IT IS THE INTENT TO RELOCATE EXISTING EASEMENT 7788, PAGE 3 TO THE AREA SHOWN HEREON AS "EXISTING EASEMENT 7788 OR 3"

**PARCEL MAP NO. 11051**

CONSISTING OF THREE AIR RIGHTS PARCELS BEING A RESUBDIVISION OF PORTIONS OF LOTS 46-54 OF "MAP OF COLLEGE TRACT", FILED ON JANUARY 31, 1880, IN MAP BOOK 9, PAGE 46 ALAMEDA COUNTY RECORDS AND THE WESTERN 1 FOOT OF LOT 55.

CITY OF BERKELEY COUNTY OF ALAMEDA

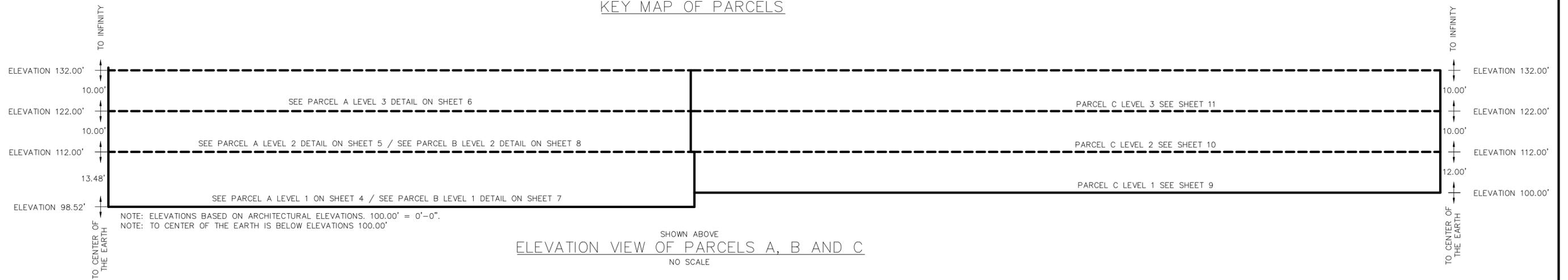
SEPTEMBER, 2019

CONSISTING OF 11 SHEETS

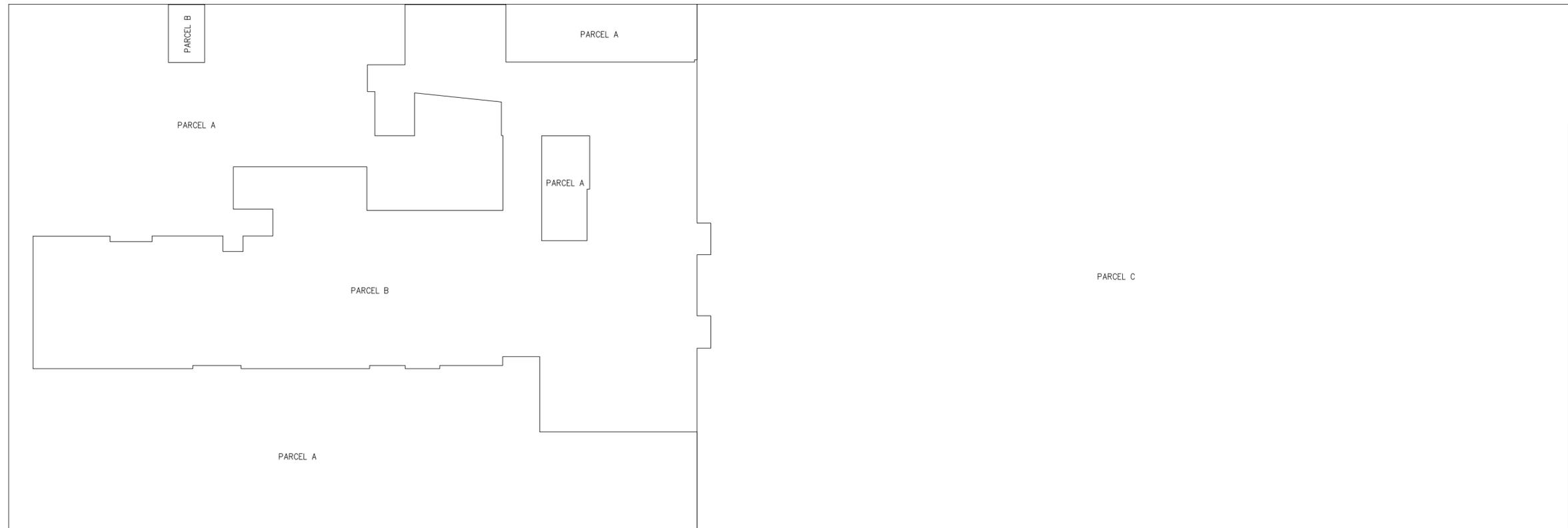
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 SILICON VALLEY TRI-VALLEY CENTRAL VALLEY SACRAMENTO EAST BAY/SF

OWNER/SUBDIVIDER  
CITY OF BERKELEY

KEY MAP OF PARCELS

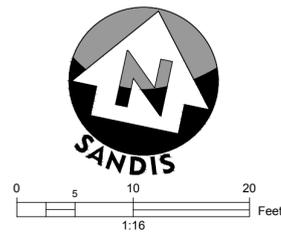


SHOWN ABOVE  
ELEVATION VIEW OF PARCELS A, B AND C  
NO SCALE



FOR PARCEL A DETAILS SEE SHEETS 4-6  
FOR PARCEL B DETAILS SEE SHEETS 7-8  
FOR PARCEL C DETAILS SEE SHEETS 9-11

SHOWN ABOVE  
PARCEL A, B AND C LEVEL 1  
SCALE: 1"=16'



# PARCEL MAP NO. 11051

CONSISTING OF THREE AIR RIGHTS PARCELS  
BEING A RESUBDIVISION OF PORTIONS OF LOTS 46-54 OF  
"MAP OF COLLEGE TRACT", FILED ON JANUARY 31, 1880, IN MAP BOOK 9, PAGE 46  
ALAMEDA COUNTY RECORDS AND THE WESTERN 1 FOOT OF LOT 55.

CITY OF BERKELEY COUNTY OF ALAMEDA

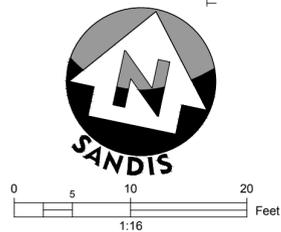
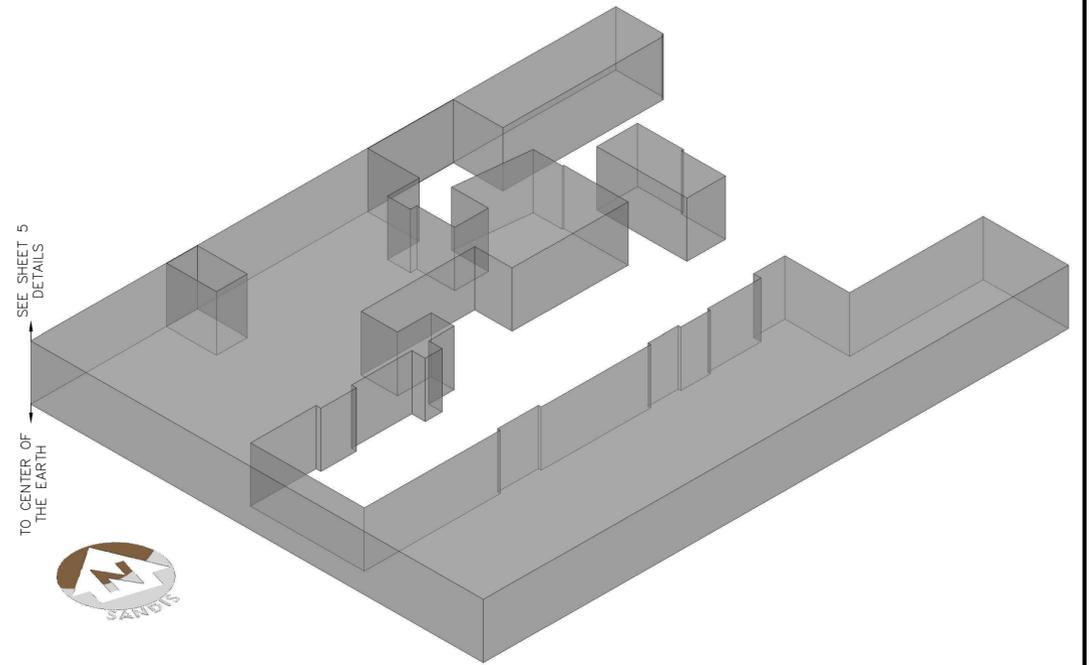
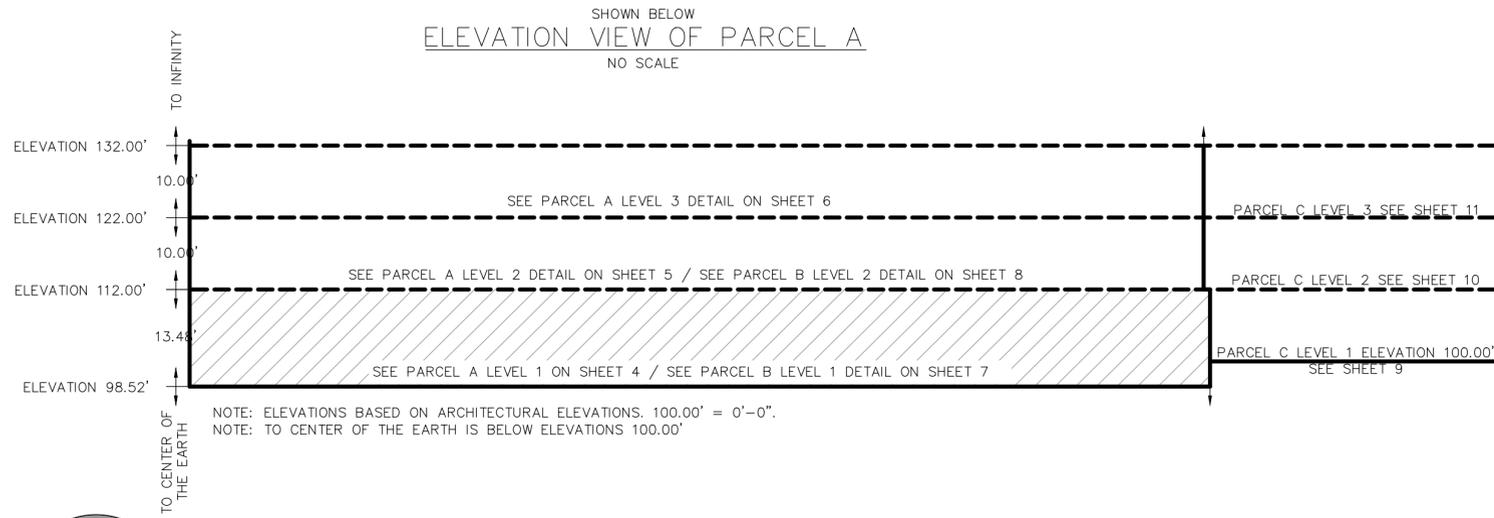
SEPTEMBER, 2019

CONSISTING OF 11 SHEETS

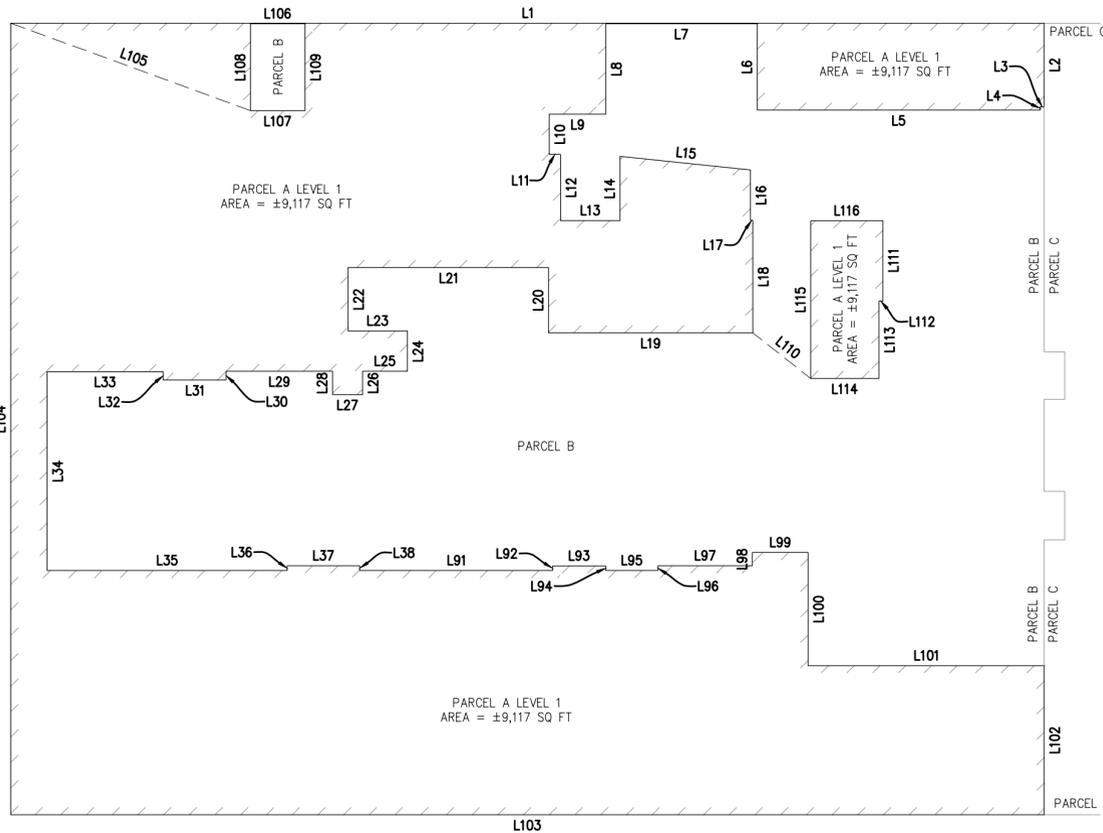
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SILICON VALLEY TRI-VALLEY CENTRAL VALLEY SACRAMENTO EAST BAY/SF



SHOWN BELOW  
PARCEL A LEVEL 1  
SCALE: 1"=16'



| Line | Length | Direction        |
|------|--------|------------------|
| L1   | 142.10 | N81° 54' 40.00"E |
| L2   | 11.59  | S08° 05' 20.00"E |
| L3   | 0.52   | S81° 54' 40.00"W |
| L4   | 0.50   | S08° 05' 20.00"E |
| L5   | 38.93  | S81° 54' 40.00"W |
| L6   | 12.00  | N08° 05' 21.43"W |
| L7   | 20.83  | S81° 54' 40.00"W |
| L8   | 12.55  | S08° 05' 20.00"E |
| L9   | 7.77   | S81° 54' 40.00"W |
| L10  | 5.59   | S08° 05' 20.00"E |
| L11  | 1.55   | N81° 54' 40.00"E |
| L12  | 9.20   | S08° 05' 20.00"E |
| L13  | 8.18   | N81° 54' 40.00"E |
| L14  | 8.93   | N08° 05' 20.00"W |
| L15  | 18.02  | N87° 54' 40.00"E |
| L16  | 7.03   | S08° 05' 20.00"E |
| L17  | 0.33   | N81° 54' 40.00"E |
| L18  | 15.62  | S08° 05' 20.00"E |
| L19  | 28.09  | S81° 54' 40.00"W |
| L20  | 9.08   | N08° 05' 20.00"W |

| Line | Length | Direction        |
|------|--------|------------------|
| L21  | 27.58  | S81° 54' 40.00"W |
| L22  | 8.82   | S08° 05' 20.00"E |
| L23  | 8.18   | N81° 54' 40.00"E |
| L24  | 5.59   | S08° 05' 20.00"E |
| L25  | 6.18   | S81° 54' 40.00"W |
| L26  | 3.26   | S08° 05' 20.00"E |
| L27  | 4.13   | S81° 54' 40.00"W |
| L28  | 3.26   | N08° 05' 20.00"W |
| L29  | 14.62  | S81° 54' 40.00"W |
| L30  | 1.22   | S08° 05' 20.00"E |
| L31  | 8.68   | S81° 54' 40.00"W |
| L32  | 1.17   | N08° 05' 20.00"W |
| L33  | 15.93  | S81° 54' 40.00"W |
| L34  | 27.65  | S08° 05' 20.00"E |
| L35  | 33.01  | N81° 54' 40.00"E |
| L36  | 0.67   | N08° 05' 20.00"W |
| L37  | 9.97   | N81° 54' 40.00"E |
| L38  | 0.67   | S08° 05' 20.00"E |
| L39  | 26.52  | N81° 54' 40.00"E |
| L40  | 0.65   | N08° 05' 20.00"W |

| Line | Length | Direction        |
|------|--------|------------------|
| L93  | 7.33   | N81° 54' 40.00"E |
| L94  | 0.65   | S08° 05' 20.00"E |
| L95  | 7.17   | N81° 54' 40.00"E |
| L96  | 0.67   | N08° 05' 20.00"W |
| L97  | 12.99  | N81° 54' 40.00"E |
| L98  | 1.83   | N08° 05' 20.00"W |
| L99  | 7.65   | N81° 54' 40.00"E |
| L100 | 15.71  | S08° 05' 20.00"E |
| L101 | 32.47  | N81° 54' 40.00"E |
| L102 | 20.72  | S08° 05' 20.00"E |
| L103 | 142.10 | S81° 54' 40.00"W |
| L104 | 110.00 | N08° 05' 20.00"W |
| L105 | 35.14  | S77° 49' 48.20"E |
| L106 | 7.49   | N81° 54' 40.00"E |
| L107 | 7.49   | S81° 54' 40.00"W |
| L108 | 12.07  | N08° 05' 20.00"W |
| L109 | 12.07  | S08° 05' 20.00"E |
| L110 | 10.18  | S59° 36' 30.50"E |
| L111 | 11.16  | S08° 05' 20.00"E |
| L112 | 0.53   | S81° 54' 40.00"W |

| Line | Length | Direction        |
|------|--------|------------------|
| L113 | 10.75  | S08° 04' 54.42"E |
| L114 | 9.38   | S81° 54' 40.00"W |
| L115 | 21.91  | N08° 05' 20.00"W |
| L116 | 9.92   | N81° 54' 40.00"E |

LEGEND

- BUILDING INTERIOR PARCEL LINE
- ADJACENT PARCEL LINE
- PARCEL TIE LINE
- LOT LINE

**PARCEL MAP NO. 11051**

CONSISTING OF THREE AIR RIGHTS PARCELS  
BEING A RESUBDIVISION OF PORTIONS OF LOTS 46-54 OF  
"MAP OF COLLEGE TRACT", FILED ON JANUARY 31, 1880, IN MAP BOOK 9, PAGE 46  
ALAMEDA COUNTY RECORDS AND THE WESTERN 1 FOOT OF LOT 55.

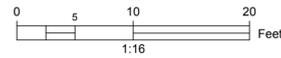
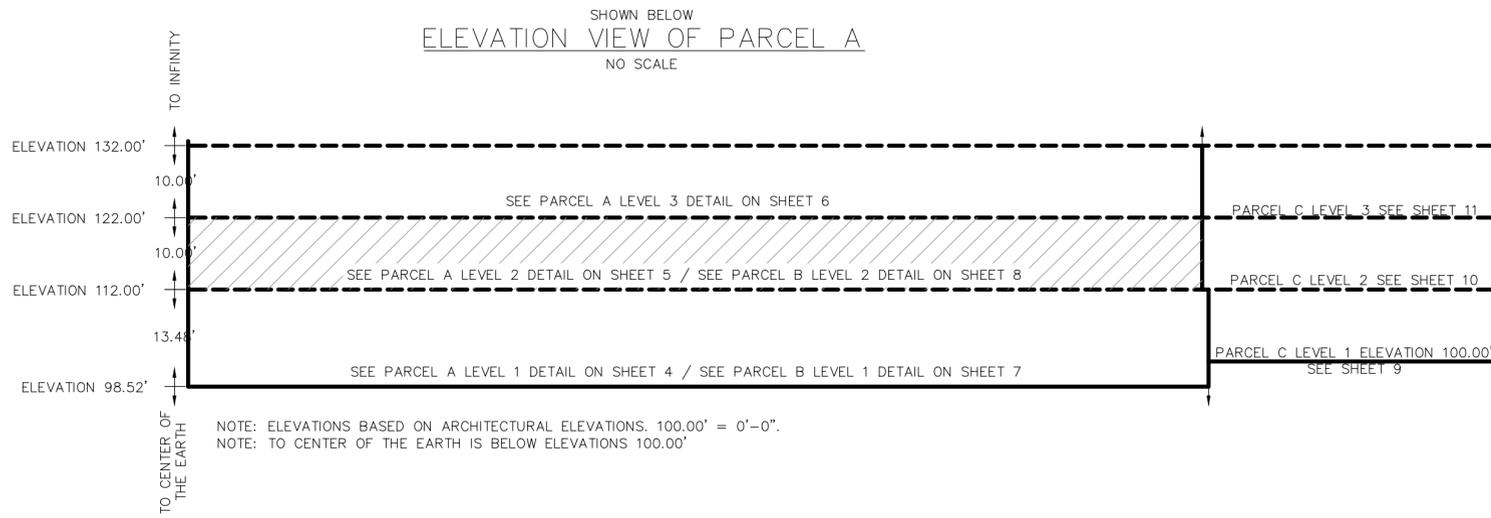
CITY OF BERKELEY COUNTY OF ALAMEDA

SEPTEMBER, 2019

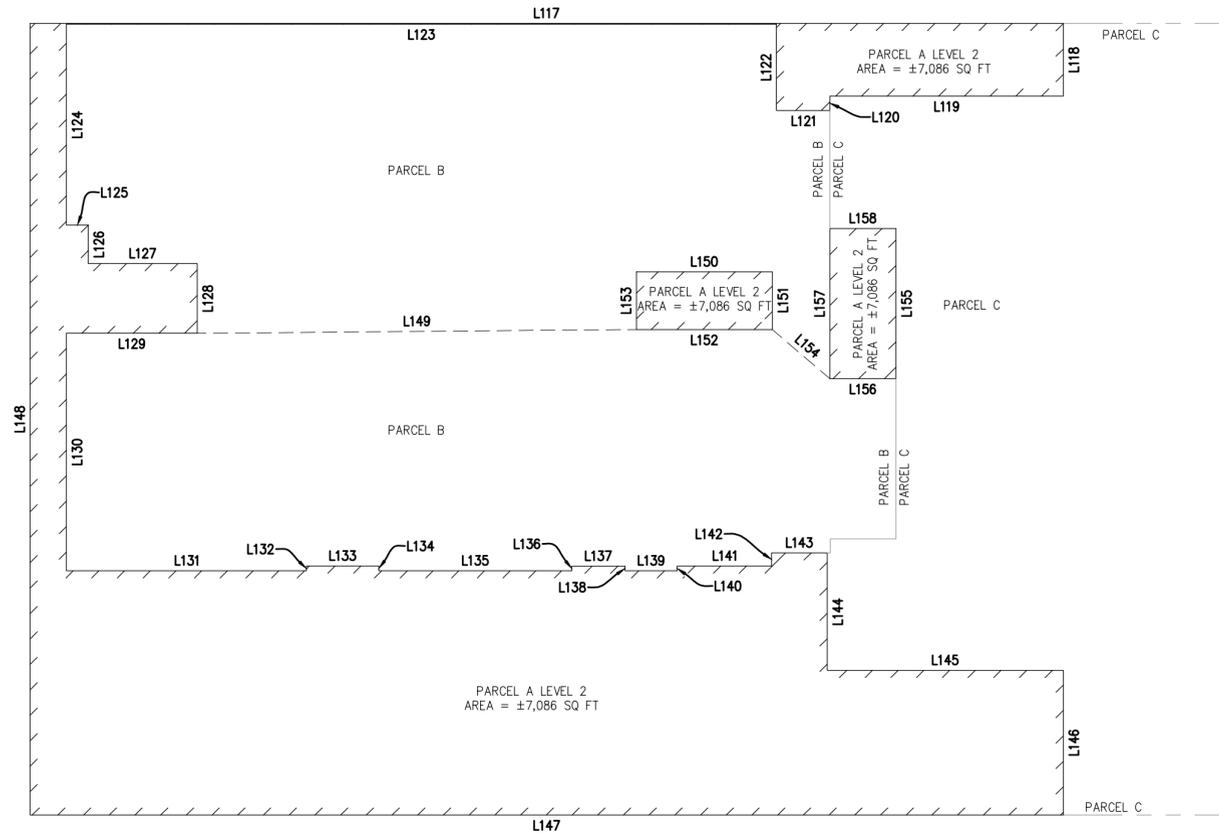
CONSISTING OF 11 SHEETS

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SILICON VALLEY TRI-VALLEY CENTRAL VALLEY SACRAMENTO EAST BAY/SF



SHOWN BELOW  
**PARCEL A LEVEL 2**  
SCALE: 1"=16'



| Line | Length | Direction        |
|------|--------|------------------|
| L117 | 142.10 | N81° 54' 40.00"E |
| L118 | 10.09  | S08° 05' 20.00"E |
| L119 | 32.09  | S81° 54' 40.00"W |
| L120 | 2.00   | S08° 05' 20.00"E |
| L121 | 7.35   | S81° 54' 40.00"W |
| L122 | 12.00  | N08° 05' 21.43"W |
| L123 | 97.65  | S81° 54' 40.00"W |
| L124 | 27.94  | S08° 05' 20.00"E |
| L125 | 3.00   | N81° 54' 40.00"E |
| L126 | 5.35   | S08° 05' 20.00"E |
| L127 | 14.99  | N81° 54' 40.00"E |
| L128 | 9.68   | S08° 05' 19.13"E |
| L129 | 17.99  | S81° 54' 46.67"W |
| L130 | 33.01  | S08° 05' 20.00"E |
| L131 | 33.01  | N81° 54' 40.00"E |
| L132 | 0.67   | N08° 05' 20.00"W |
| L133 | 9.97   | N81° 54' 40.00"E |
| L134 | 0.67   | S08° 05' 20.00"E |
| L135 | 26.52  | N81° 54' 40.00"E |
| L136 | 0.65   | N08° 05' 20.00"W |

| Line | Length | Direction        |
|------|--------|------------------|
| L137 | 7.33   | N81° 54' 40.00"E |
| L138 | 0.65   | S08° 05' 20.00"E |
| L139 | 7.17   | N81° 54' 40.00"E |
| L140 | 0.67   | N08° 05' 20.00"W |
| L141 | 12.99  | N81° 54' 40.00"E |
| L142 | 1.83   | N08° 05' 20.00"W |
| L143 | 7.65   | N81° 54' 40.00"E |
| L144 | 16.33  | S08° 05' 20.00"E |
| L145 | 32.47  | N81° 54' 40.00"E |
| L146 | 20.09  | S08° 05' 20.00"E |
| L147 | 142.10 | S81° 54' 40.00"W |
| L148 | 110.00 | N08° 05' 20.00"W |
| L149 | 60.41  | N81° 24' 59.76"E |
| L150 | 18.67  | N81° 54' 40.00"E |
| L151 | 8.02   | S08° 05' 20.00"E |
| L152 | 18.67  | S81° 54' 40.00"W |
| L153 | 8.02   | N08° 05' 20.00"W |
| L154 | 10.47  | S57° 19' 23.65"E |
| L155 | 20.89  | S08° 05' 20.00"E |
| L156 | 9.08   | S81° 54' 40.00"W |

| Line | Length | Direction        |
|------|--------|------------------|
| L157 | 20.89  | N08° 05' 20.00"W |
| L158 | 9.08   | N81° 54' 40.00"E |

**LEGEND**

- BUILDING INTERIOR PARCEL LINE
- ADJACENT PARCEL LINE
- PARCEL TIE LINE
- LOT LINE

**PARCEL MAP NO. 11051**

CONSISTING OF THREE AIR RIGHTS PARCELS  
BEING A RESUBDIVISION OF PORTIONS OF LOTS 46-54 OF  
"MAP OF COLLEGE TRACT", FILED ON JANUARY 31, 1880, IN MAP BOOK 9, PAGE 46  
ALAMEDA COUNTY RECORDS AND THE WESTERN 1 FOOT OF LOT 55.

CITY OF BERKELEY COUNTY OF ALAMEDA

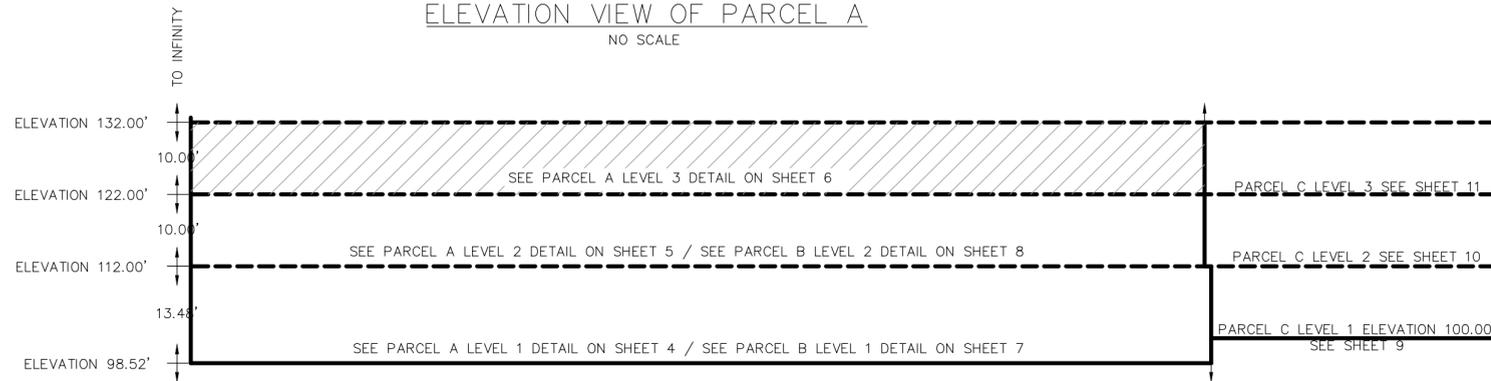
SEPTEMBER, 2019

CONSISTING OF 11 SHEETS

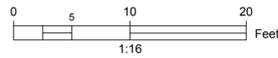
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SILICON VALLEY TRI-VALLEY CENTRAL VALLEY SACRAMENTO EAST BAY/SF

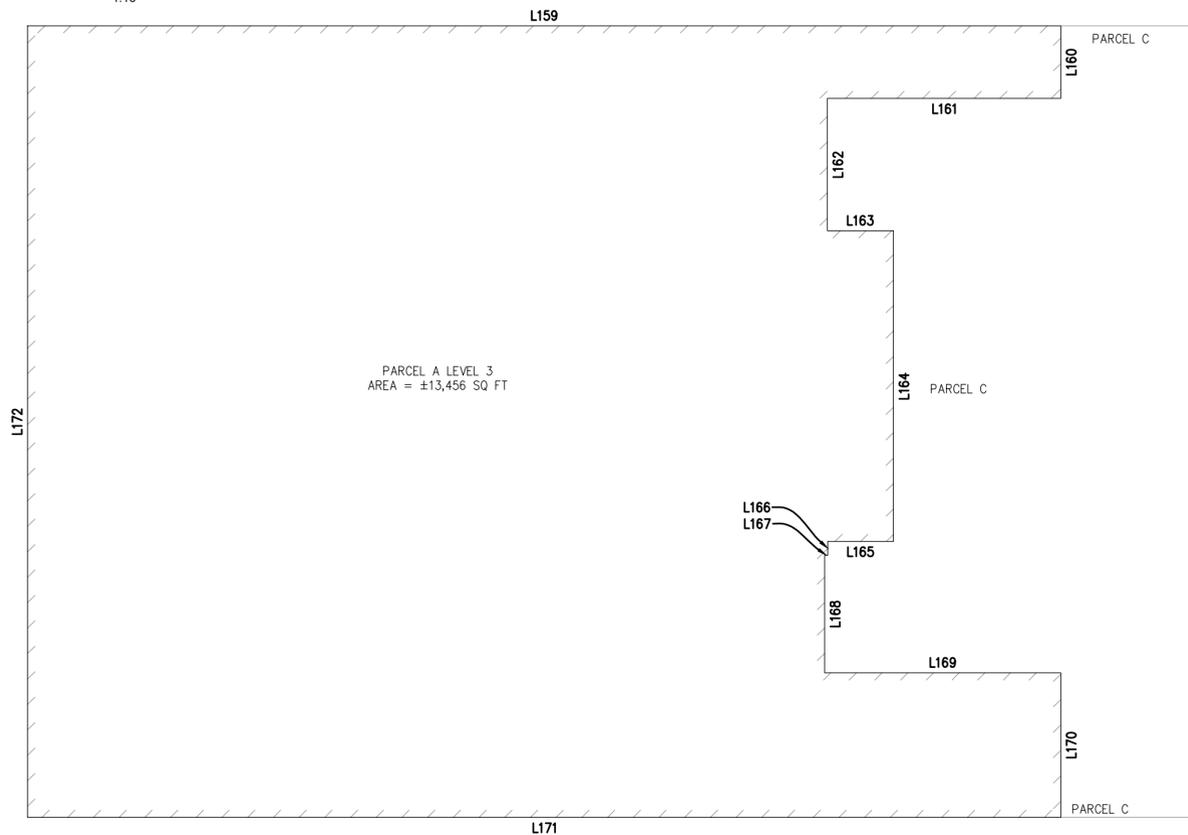
SHOWN BELOW  
ELEVATION VIEW OF PARCEL A  
NO SCALE



NOTE: ELEVATIONS BASED ON ARCHITECTURAL ELEVATIONS. 100.00' = 0'-0".  
NOTE: TO CENTER OF THE EARTH IS BELOW ELEVATIONS 100.00'

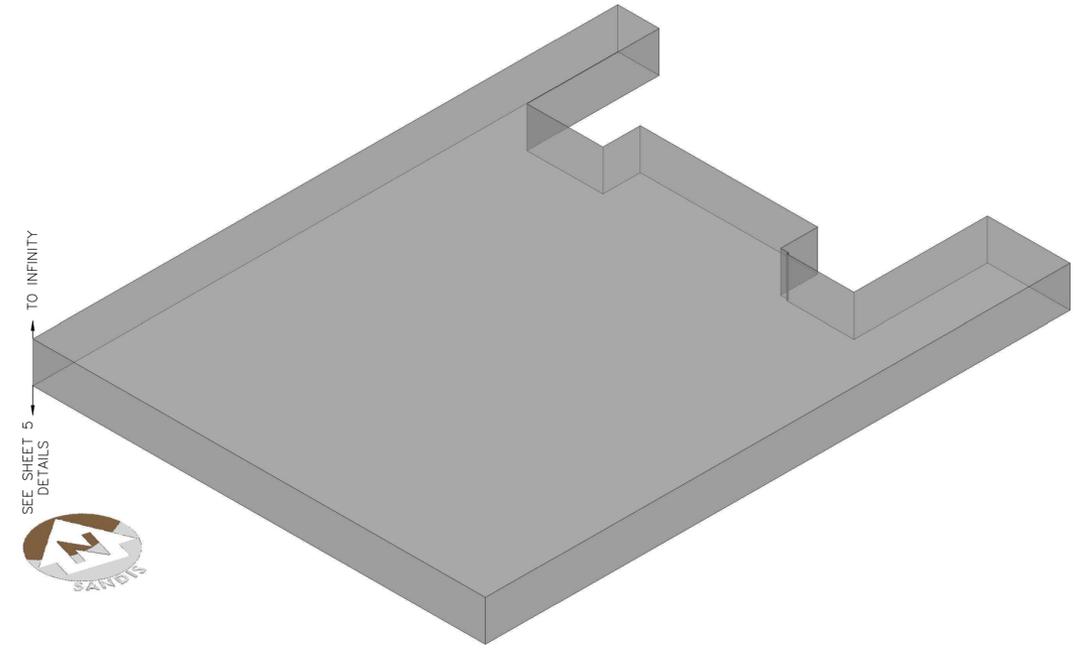


SHOWN BELOW  
PARCEL A LEVEL 3 AND UP  
SCALE: 1"=16'



| Line | Length | Direction        |
|------|--------|------------------|
| L159 | 142.10 | N81° 54' 40.00"E |
| L160 | 10.09  | S08° 05' 20.00"E |
| L161 | 32.09  | S81° 54' 40.00"W |
| L162 | 18.40  | S08° 05' 20.00"E |
| L163 | 9.08   | N81° 54' 40.00"E |
| L164 | 43.16  | S08° 05' 20.00"E |
| L165 | 9.02   | S81° 54' 40.00"W |
| L166 | 1.93   | S08° 05' 20.00"E |
| L167 | 0.44   | S81° 54' 40.00"W |
| L168 | 16.33  | S08° 05' 20.00"E |
| L169 | 32.47  | N81° 54' 40.00"E |
| L170 | 20.09  | S08° 05' 20.00"E |
| L171 | 142.10 | S81° 54' 40.00"W |
| L172 | 110.00 | N08° 05' 20.00"W |

SHOWN ABOVE  
ISOMETRIC VIEW OF PARCEL A LEVEL 3  
SCALE: 1"=20'



LEGEND

- BUILDING INTERIOR PARCEL LINE
- ADJACENT PARCEL LINE
- PARCEL TIE LINE
- LOT LINE

# PARCEL MAP NO. 11051

CONSISTING OF THREE AIR RIGHTS PARCELS  
BEING A RESUBDIVISION OF PORTIONS OF LOTS 46-54 OF  
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ALAMEDA COUNTY RECORDS AND THE WESTERN 1 FOOT OF LOT 55.

CITY OF BERKELEY COUNTY OF ALAMEDA

SEPTEMBER, 2019

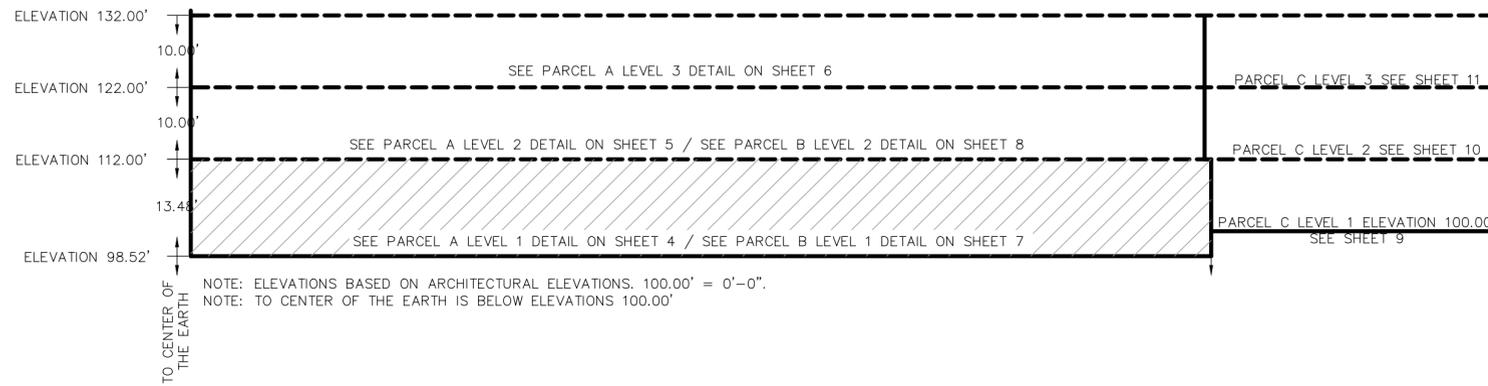
CONSISTING OF 11 SHEETS

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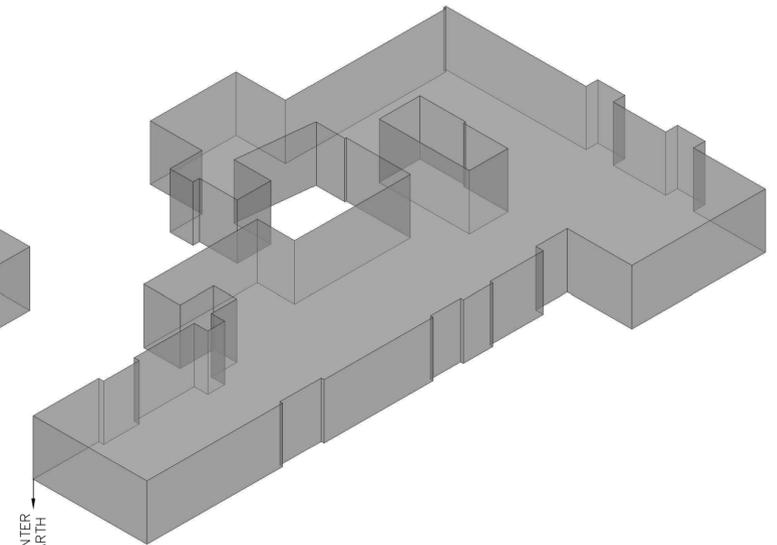
SHOWN BELOW  
ELEVATION VIEW OF PARCEL B  
NO SCALE



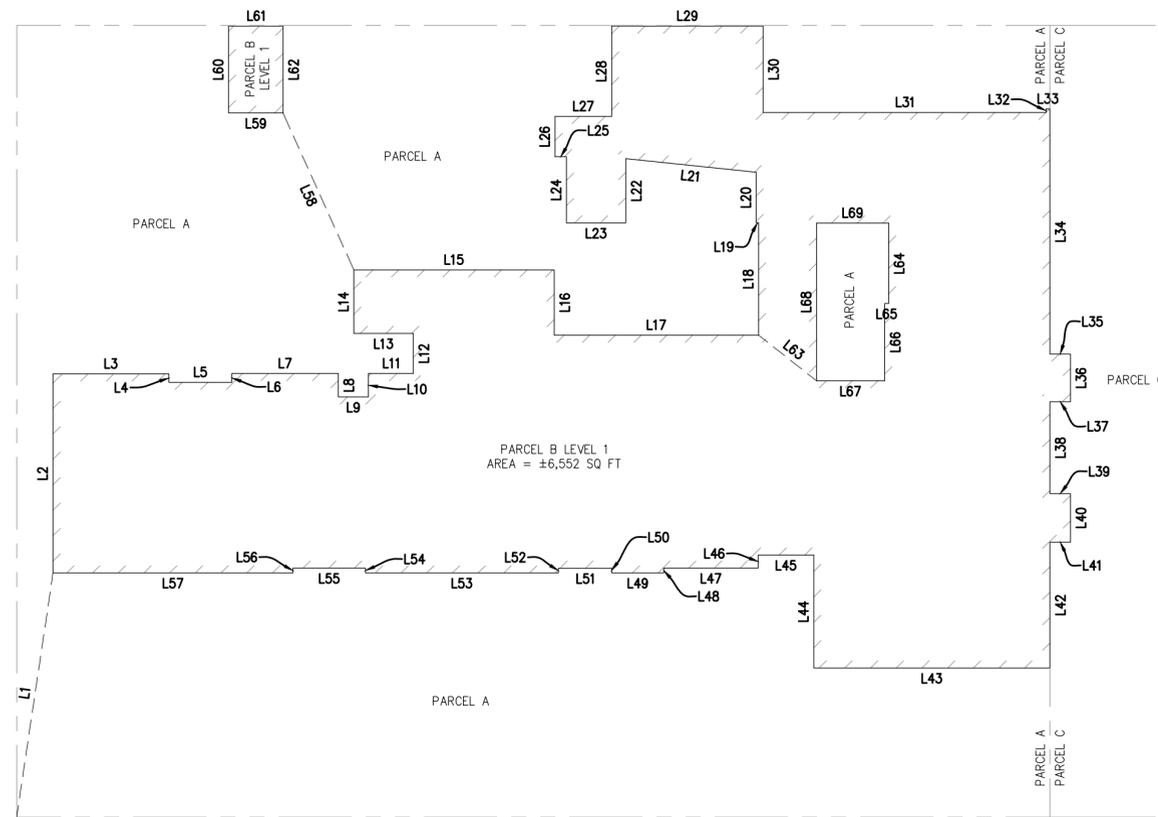
NOTE: ELEVATIONS BASED ON ARCHITECTURAL ELEVATIONS. 100.00' = 0'-0".  
NOTE: TO CENTER OF THE EARTH IS BELOW ELEVATIONS 100.00'



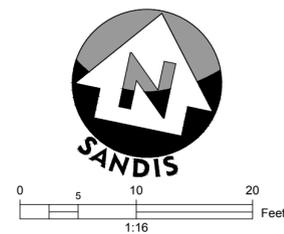
SEE DETAILS ON SHEET 8



SHOWN ABOVE  
ISOMETRIC VIEW OF PARCEL B LEVEL 1  
SCALE: 1"=20'



SHOWN ABOVE  
PARCEL B LEVEL 1  
SCALE: 1"=16'



| Line | Length | Direction        |
|------|--------|------------------|
| L1   | 34.30  | N00° 18' 42.98"E |
| L2   | 27.65  | N08° 05' 20.00"W |
| L3   | 15.93  | N81° 54' 40.00"E |
| L4   | 1.17   | S08° 05' 20.00"E |
| L5   | 8.68   | N81° 54' 40.00"E |
| L6   | 1.22   | N08° 05' 20.00"W |
| L7   | 14.62  | N81° 54' 40.00"E |
| L8   | 3.26   | S08° 05' 20.00"E |
| L9   | 4.13   | N81° 54' 40.00"E |
| L10  | 3.26   | N08° 05' 20.00"W |
| L11  | 6.18   | N81° 54' 40.00"E |
| L12  | 5.59   | N08° 05' 20.00"W |
| L13  | 8.18   | S81° 54' 40.00"W |
| L14  | 8.82   | N08° 05' 20.00"W |
| L15  | 27.58  | N81° 54' 40.00"E |
| L16  | 9.08   | S08° 05' 20.00"E |
| L17  | 28.09  | N81° 54' 40.00"E |
| L18  | 15.62  | N08° 05' 20.00"W |
| L19  | 0.33   | S81° 54' 40.00"W |
| L20  | 7.03   | N08° 05' 20.00"W |

| Line | Length | Direction        |
|------|--------|------------------|
| L21  | 18.02  | S87° 54' 40.00"W |
| L22  | 8.93   | S08° 05' 20.00"E |
| L23  | 8.18   | S81° 54' 40.00"W |
| L24  | 9.20   | N08° 05' 20.00"W |
| L25  | 1.55   | S81° 54' 40.00"W |
| L26  | 5.59   | N08° 05' 20.00"W |
| L27  | 7.77   | N81° 54' 40.00"E |
| L28  | 12.55  | N08° 05' 20.00"W |
| L29  | 20.83  | N81° 54' 40.00"E |
| L30  | 12.00  | S08° 05' 21.43"E |
| L31  | 38.93  | N81° 54' 40.00"E |
| L32  | 0.50   | N08° 05' 20.00"W |
| L33  | 0.52   | N81° 54' 40.00"E |
| L34  | 34.08  | S08° 05' 20.00"E |
| L35  | 2.83   | N81° 54' 40.00"E |
| L36  | 6.62   | S08° 05' 20.00"E |
| L37  | 2.83   | S81° 54' 40.00"W |
| L38  | 12.76  | S08° 05' 20.00"E |
| L39  | 2.83   | N81° 54' 40.00"E |
| L40  | 6.75   | S08° 05' 20.00"E |

| Line | Length | Direction        |
|------|--------|------------------|
| L41  | 2.83   | S81° 54' 40.00"W |
| L42  | 17.48  | S08° 05' 20.00"E |
| L43  | 32.47  | S81° 54' 40.00"W |
| L44  | 15.71  | N08° 05' 20.00"W |
| L45  | 7.65   | S81° 54' 40.00"W |
| L46  | 1.83   | S08° 05' 20.00"E |
| L47  | 12.99  | S81° 54' 40.00"W |
| L48  | 0.67   | S08° 05' 20.00"E |
| L49  | 7.17   | S81° 54' 40.00"W |
| L50  | 0.65   | N08° 05' 20.00"W |
| L51  | 7.33   | S81° 54' 40.00"W |
| L52  | 0.65   | S08° 05' 20.00"E |
| L53  | 26.52  | S81° 54' 40.00"W |
| L54  | 0.67   | N08° 05' 20.00"W |
| L55  | 9.97   | S81° 54' 40.00"W |
| L56  | 0.67   | S08° 05' 20.00"E |
| L57  | 33.01  | S81° 54' 40.00"W |
| L58  | 23.87  | N32° 08' 40.92"W |
| L59  | 7.49   | S81° 54' 40.00"W |
| L60  | 12.07  | N08° 05' 20.00"W |

| Line | Length | Direction        |
|------|--------|------------------|
| L61  | 7.49   | N81° 54' 40.00"E |
| L62  | 12.07  | S08° 05' 20.00"E |
| L63  | 10.18  | S59° 36' 30.50"E |
| L64  | 11.16  | S08° 05' 20.00"E |
| L65  | 0.53   | S81° 54' 40.00"W |
| L66  | 10.75  | S08° 04' 54.42"E |
| L67  | 9.38   | S81° 54' 40.00"W |
| L68  | 21.91  | N08° 05' 20.00"W |
| L69  | 9.92   | N81° 54' 40.00"E |

LEGEND

- BUILDING INTERIOR PARCEL LINE
- ADJACENT PARCEL LINE
- PARCEL TIE LINE
- LOT LINE

**PARCEL MAP NO. 11051**

CONSISTING OF THREE AIR RIGHTS PARCELS  
BEING A RESUBDIVISION OF PORTIONS OF LOTS 46-54 OF  
"MAP OF COLLEGE TRACT", FILED ON JANUARY 31, 1880, IN MAP BOOK 9, PAGE 46  
ALAMEDA COUNTY RECORDS AND THE WESTERN 1 FOOT OF LOT 55.

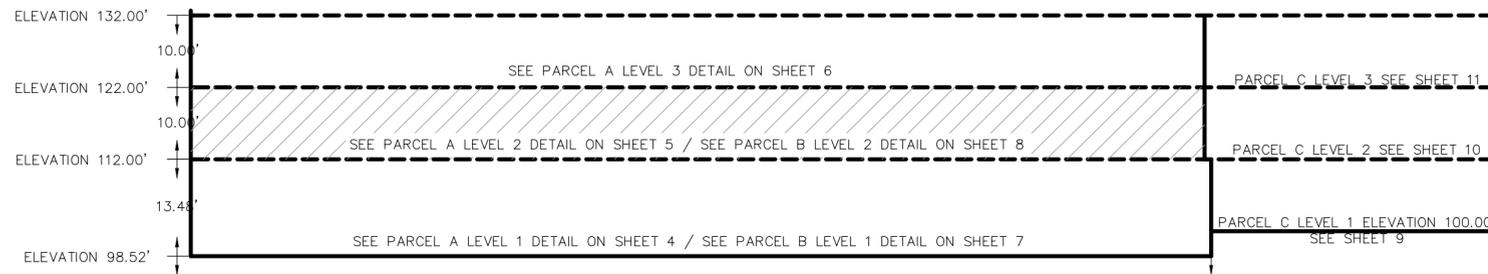
CITY OF BERKELEY COUNTY OF ALAMEDA

SEPTEMBER, 2019

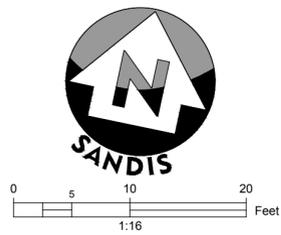
CONSISTING OF 11 SHEETS

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SILICON VALLEY TRI-VALLEY CENTRAL VALLEY SACRAMENTO EAST BAY/SF

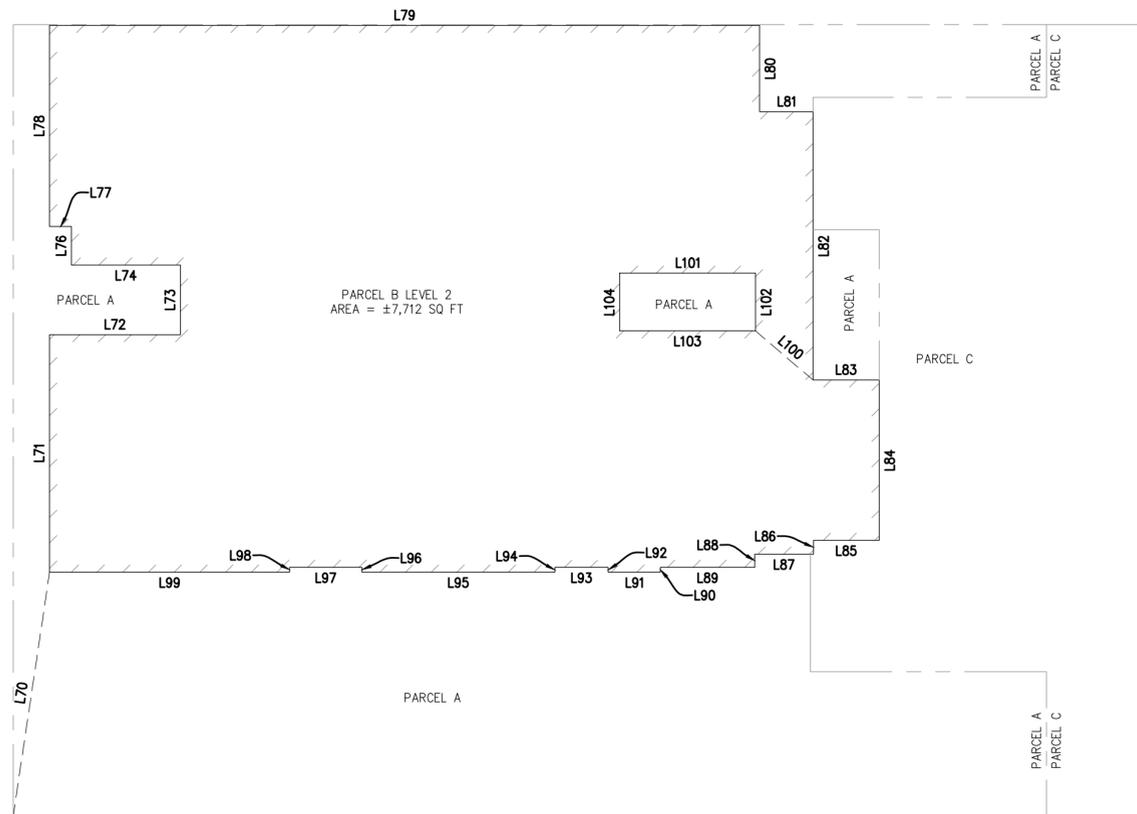
SHOWN BELOW  
ELEVATION VIEW OF PARCEL B  
NO SCALE



NOTE: ELEVATIONS BASED ON ARCHITECTURAL ELEVATIONS. 100.00' = 0'-0".  
NOTE: TO CENTER OF THE EARTH IS BELOW ELEVATIONS 100.00'



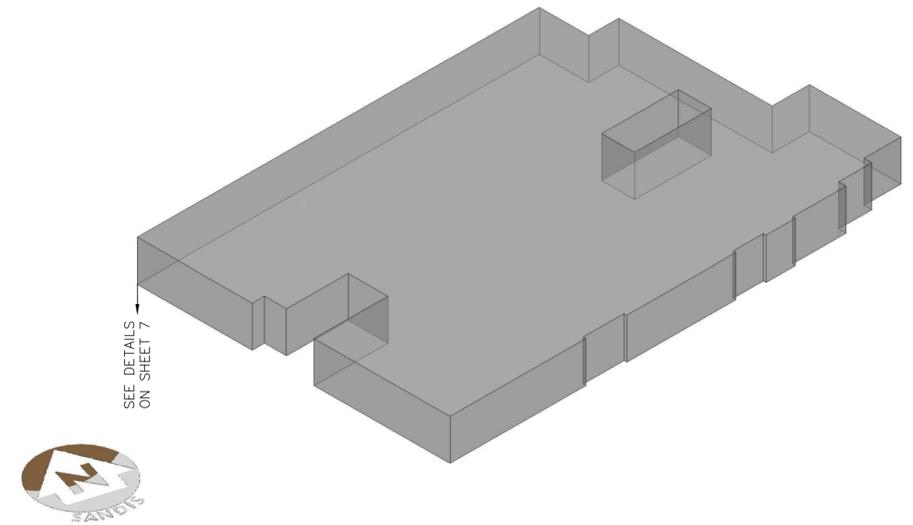
SHOWN BELOW  
PARCEL B LEVEL 2  
SCALE: 1"=16'



| Line | Length | Direction        |
|------|--------|------------------|
| L70  | 34.30  | N00° 18' 42.98"E |
| L71  | 33.01  | N08° 05' 20.00"W |
| L72  | 17.99  | N81° 54' 46.67"E |
| L73  | 9.68   | N08° 05' 19.13"W |
| L74  | 14.99  | S81° 54' 40.00"W |
| L76  | 5.35   | N08° 05' 20.00"W |
| L77  | 3.00   | S81° 54' 40.00"W |
| L78  | 27.94  | N08° 05' 20.00"W |
| L79  | 97.65  | N81° 54' 40.00"E |
| L80  | 12.00  | S08° 05' 21.43"E |
| L81  | 7.35   | N81° 54' 40.00"E |
| L82  | 37.28  | S08° 05' 20.00"E |
| L83  | 9.08   | N81° 54' 40.00"E |
| L84  | 22.27  | S08° 05' 20.00"E |
| L85  | 9.02   | S81° 54' 40.00"W |
| L86  | 1.93   | S08° 05' 20.00"E |
| L87  | 8.08   | S81° 54' 40.00"W |
| L88  | 1.83   | S08° 05' 20.00"E |
| L89  | 12.99  | S81° 54' 40.00"W |
| L90  | 0.67   | S08° 05' 20.00"E |

| Line | Length | Direction        |
|------|--------|------------------|
| L91  | 7.17   | S81° 54' 40.00"W |
| L92  | 0.65   | N08° 05' 20.00"W |
| L93  | 7.33   | S81° 54' 40.00"W |
| L94  | 0.65   | S08° 05' 20.00"E |
| L95  | 26.52  | S81° 54' 40.00"W |
| L96  | 0.67   | N08° 05' 20.00"W |
| L97  | 9.97   | S81° 54' 40.00"W |
| L98  | 0.67   | S08° 05' 20.00"E |
| L99  | 33.01  | S81° 54' 40.00"W |
| L100 | 10.47  | S57° 19' 23.65"E |
| L101 | 18.67  | N81° 54' 40.00"E |
| L102 | 8.02   | S08° 05' 20.00"E |
| L103 | 18.67  | S81° 54' 40.00"W |
| L104 | 8.02   | N08° 05' 20.00"W |

SHOWN ABOVE  
ISOMETRIC VIEW OF PARCEL B LEVEL 2  
SCALE: 1"=20'



LEGEND

- BUILDING INTERIOR PARCEL LINE
- ADJACENT PARCEL LINE
- PARCEL TIE LINE
- LOT LINE

**PARCEL MAP NO. 11051**

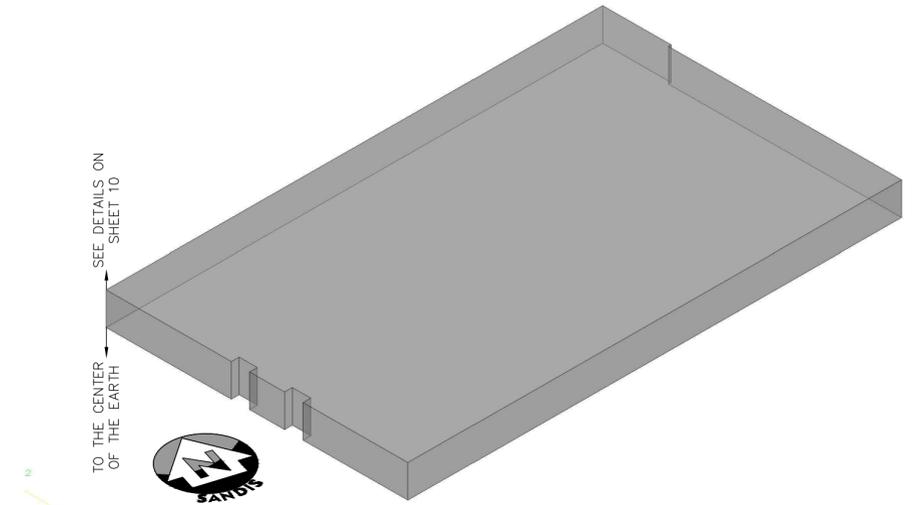
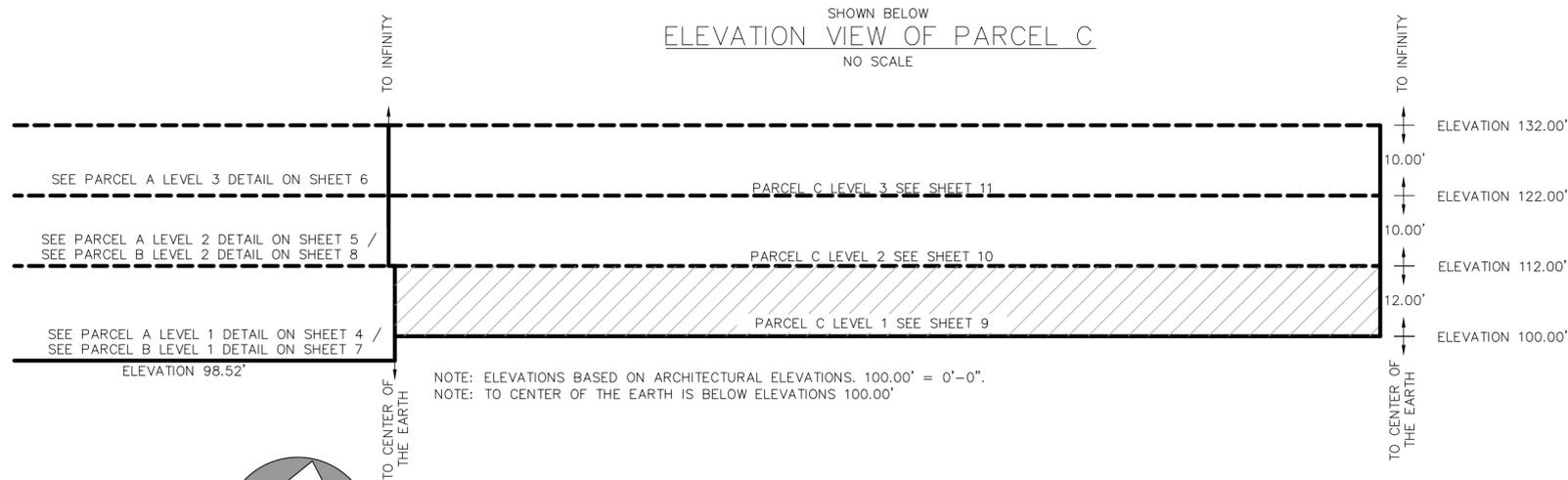
CONSISTING OF THREE AIR RIGHTS PARCELS  
BEING A RESUBDIVISION OF PORTIONS OF LOTS 46-54 OF  
"MAP OF COLLEGE TRACT", FILED ON JANUARY 31, 1880, IN MAP BOOK 9, PAGE 46  
ALAMEDA COUNTY RECORDS AND THE WESTERN 1 FOOT OF LOT 55.

CITY OF BERKELEY COUNTY OF ALAMEDA

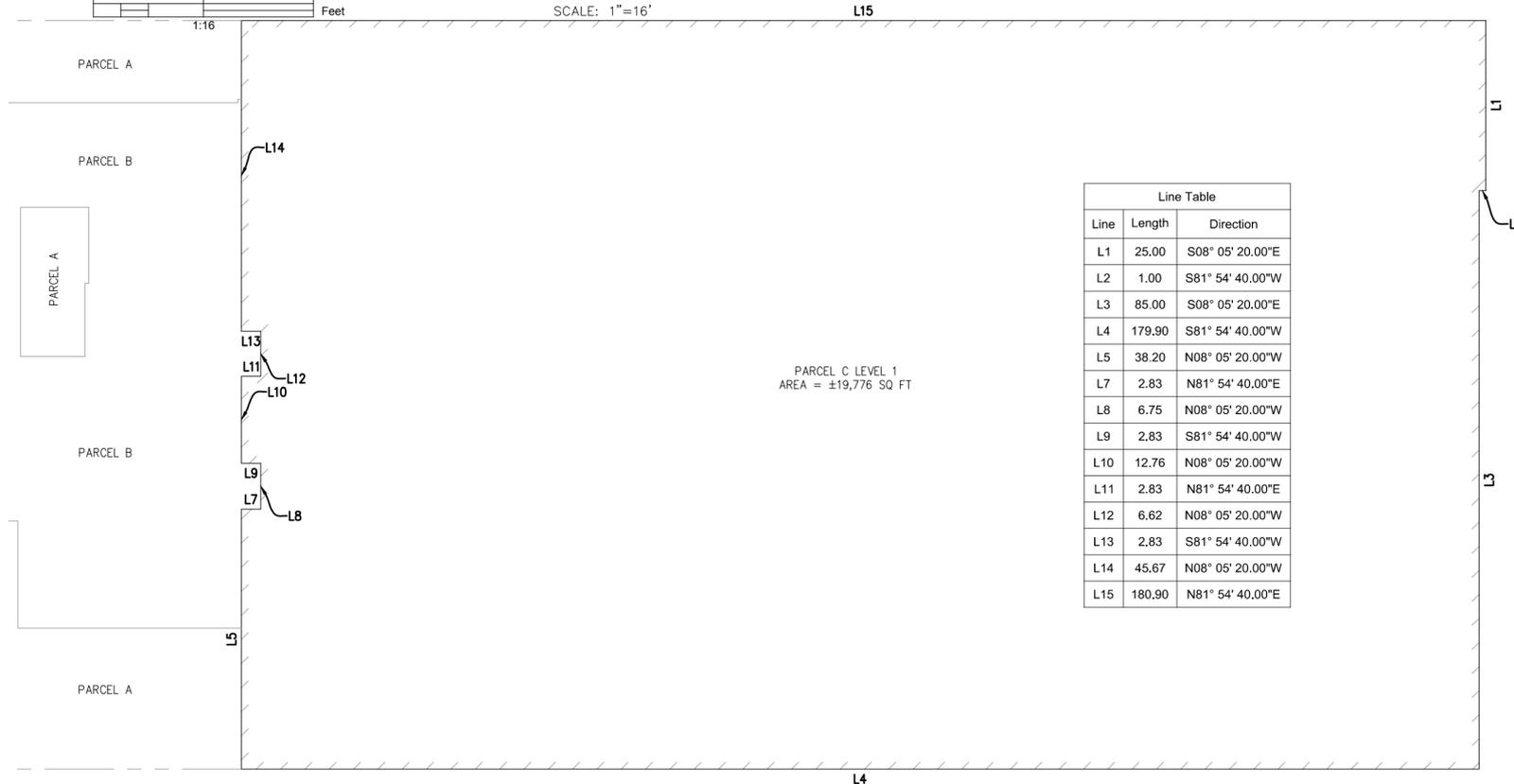
SEPTEMBER, 2019

CONSISTING OF 11 SHEETS

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SILICON VALLEY TRI-VALLEY CENTRAL VALLEY SACRAMENTO EAST BAY/SF



SHOWN BELOW  
PARCEL C LEVEL 1  
SCALE: 1"=16'



Line Table

| Line | Length | Direction        |
|------|--------|------------------|
| L1   | 25.00  | S08° 05' 20.00"E |
| L2   | 1.00   | S81° 54' 40.00"W |
| L3   | 85.00  | S08° 05' 20.00"E |
| L4   | 179.90 | S81° 54' 40.00"W |
| L5   | 38.20  | N08° 05' 20.00"W |
| L7   | 2.83   | N81° 54' 40.00"E |
| L8   | 6.75   | N08° 05' 20.00"W |
| L9   | 2.83   | S81° 54' 40.00"W |
| L10  | 12.76  | N08° 05' 20.00"W |
| L11  | 2.83   | N81° 54' 40.00"E |
| L12  | 6.62   | N08° 05' 20.00"W |
| L13  | 2.83   | S81° 54' 40.00"W |
| L14  | 45.67  | N08° 05' 20.00"W |
| L15  | 180.90 | N81° 54' 40.00"E |

LEGEND

- BUILDING INTERIOR PARCEL LINE
- ADJACENT PARCEL LINE
- PARCEL TIE LINE
- LOT LINE

# PARCEL MAP NO. 11051

CONSISTING OF THREE AIR RIGHTS PARCELS  
BEING A RESUBDIVISION OF PORTIONS OF LOTS 46-54 OF  
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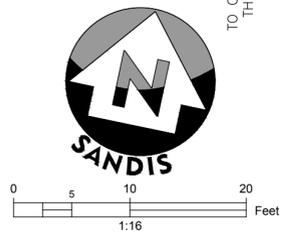
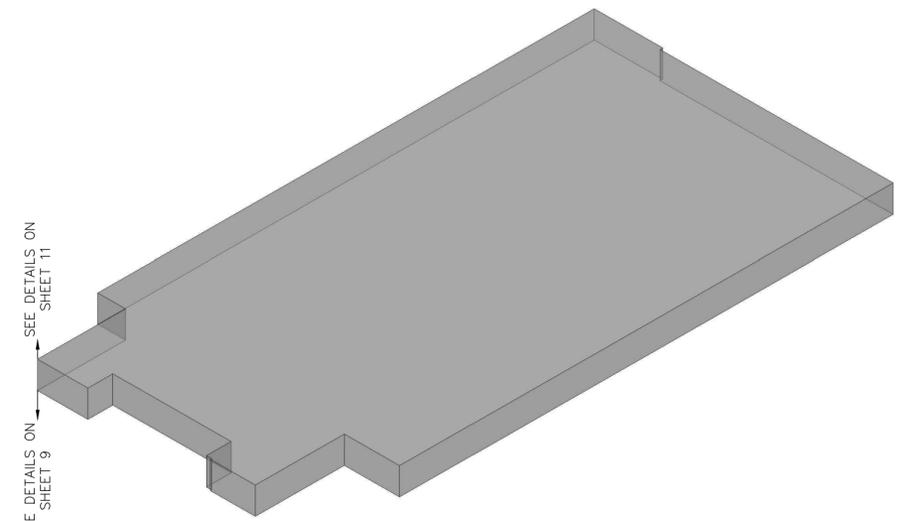
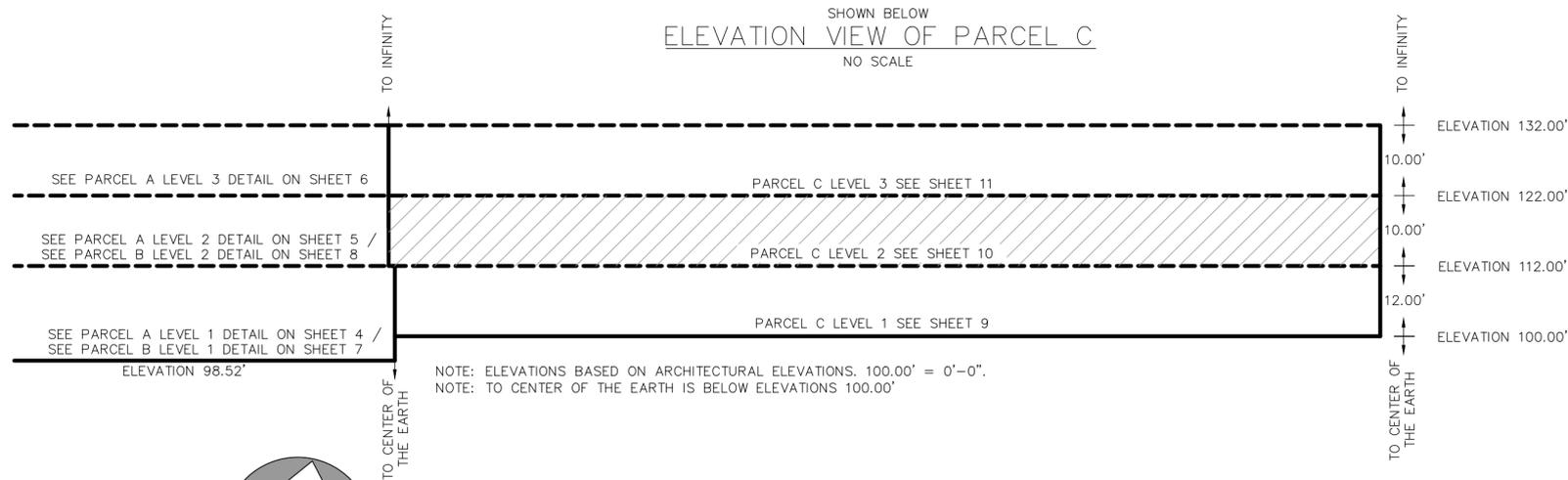
SEPTEMBER, 2019

CONSISTING OF 11 SHEETS

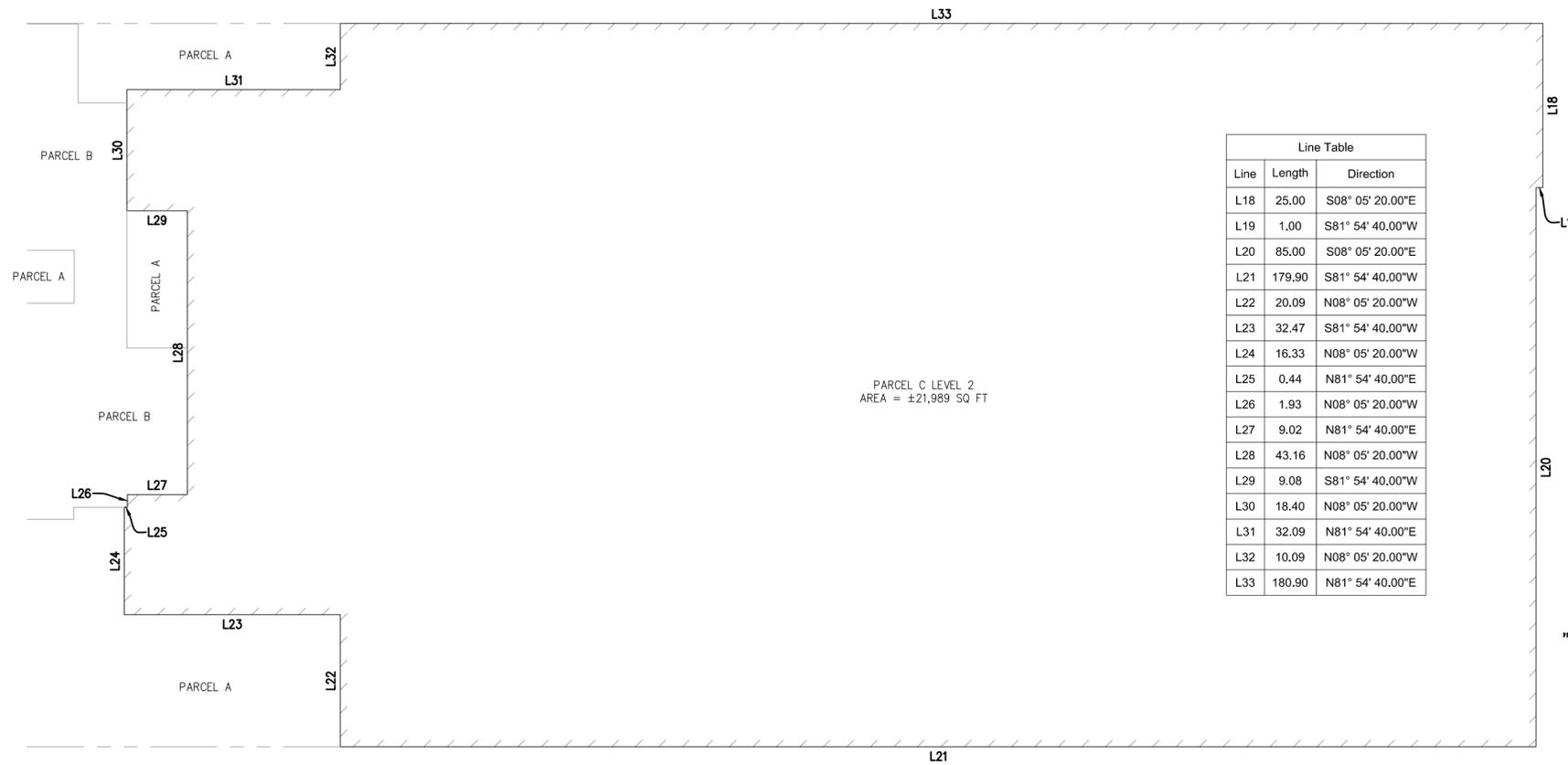
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SILICON VALLEY TRI-VALLEY CENTRAL VALLEY SACRAMENTO EAST BAY/SF



SHOWN BELOW  
PARCEL C LEVEL 2  
SCALE: 1"=16'



| Line Table |        |                  |
|------------|--------|------------------|
| Line       | Length | Direction        |
| L18        | 25.00  | S08° 05' 20.00"E |
| L19        | 1.00   | S81° 54' 40.00"W |
| L20        | 85.00  | S08° 05' 20.00"E |
| L21        | 179.90 | S81° 54' 40.00"W |
| L22        | 20.09  | N08° 05' 20.00"W |
| L23        | 32.47  | S81° 54' 40.00"W |
| L24        | 16.33  | N08° 05' 20.00"W |
| L25        | 0.44   | N81° 54' 40.00"E |
| L26        | 1.93   | N08° 05' 20.00"W |
| L27        | 9.02   | N81° 54' 40.00"E |
| L28        | 43.16  | N08° 05' 20.00"W |
| L29        | 9.08   | S81° 54' 40.00"W |
| L30        | 18.40  | N08° 05' 20.00"W |
| L31        | 32.09  | N81° 54' 40.00"E |
| L32        | 10.09  | N08° 05' 20.00"W |
| L33        | 180.90 | N81° 54' 40.00"E |

LEGEND

|                               |  |
|-------------------------------|--|
| BUILDING INTERIOR PARCEL LINE |  |
| ADJACENT PARCEL LINE          |  |
| PARCEL TIE LINE               |  |
| LOT LINE                      |  |

# PARCEL MAP NO. 11051

CONSISTING OF THREE AIR RIGHTS PARCELS  
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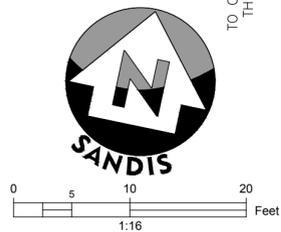
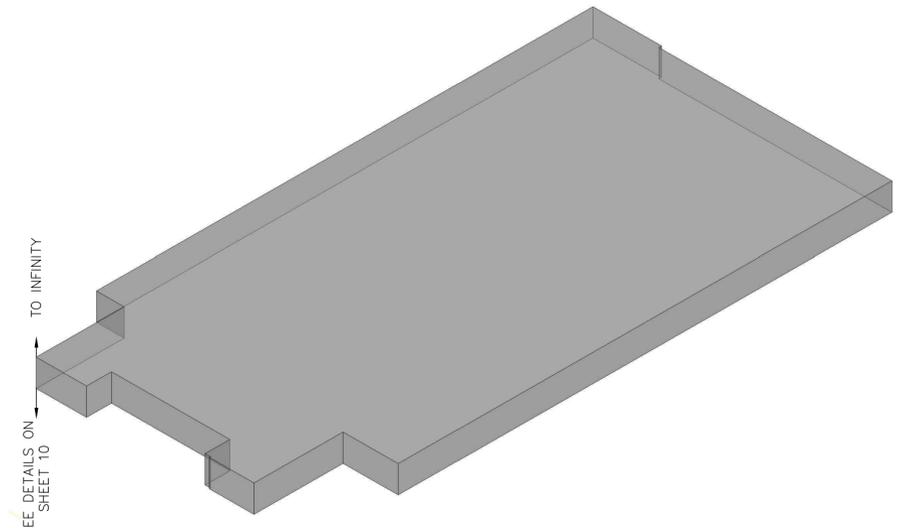
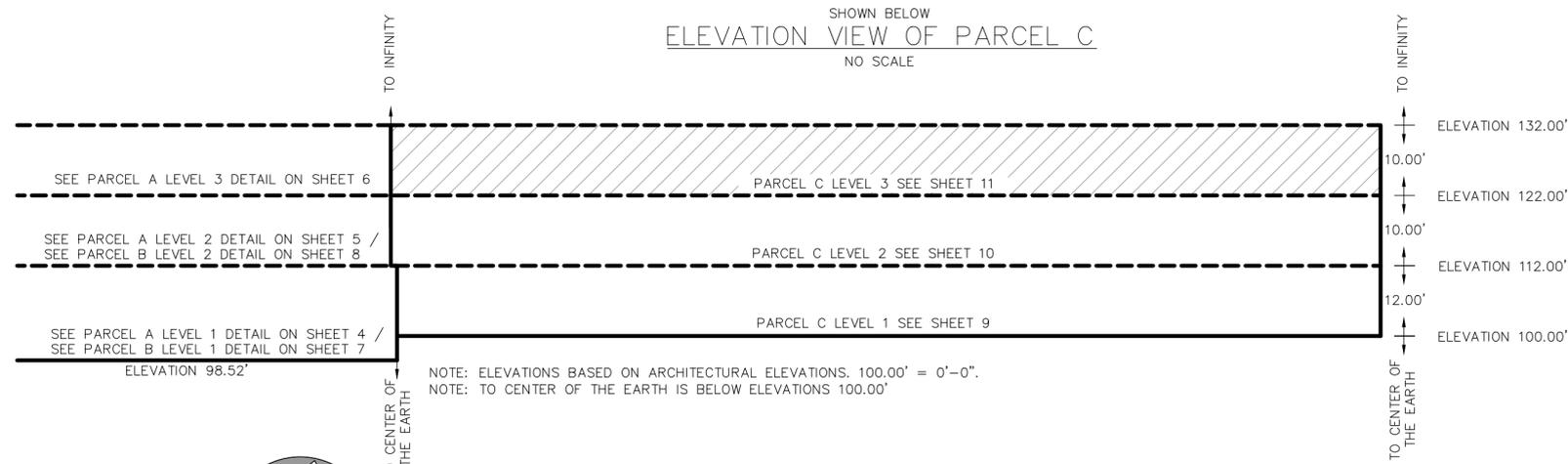
SEPTEMBER, 2019

CONSISTING OF 11 SHEETS

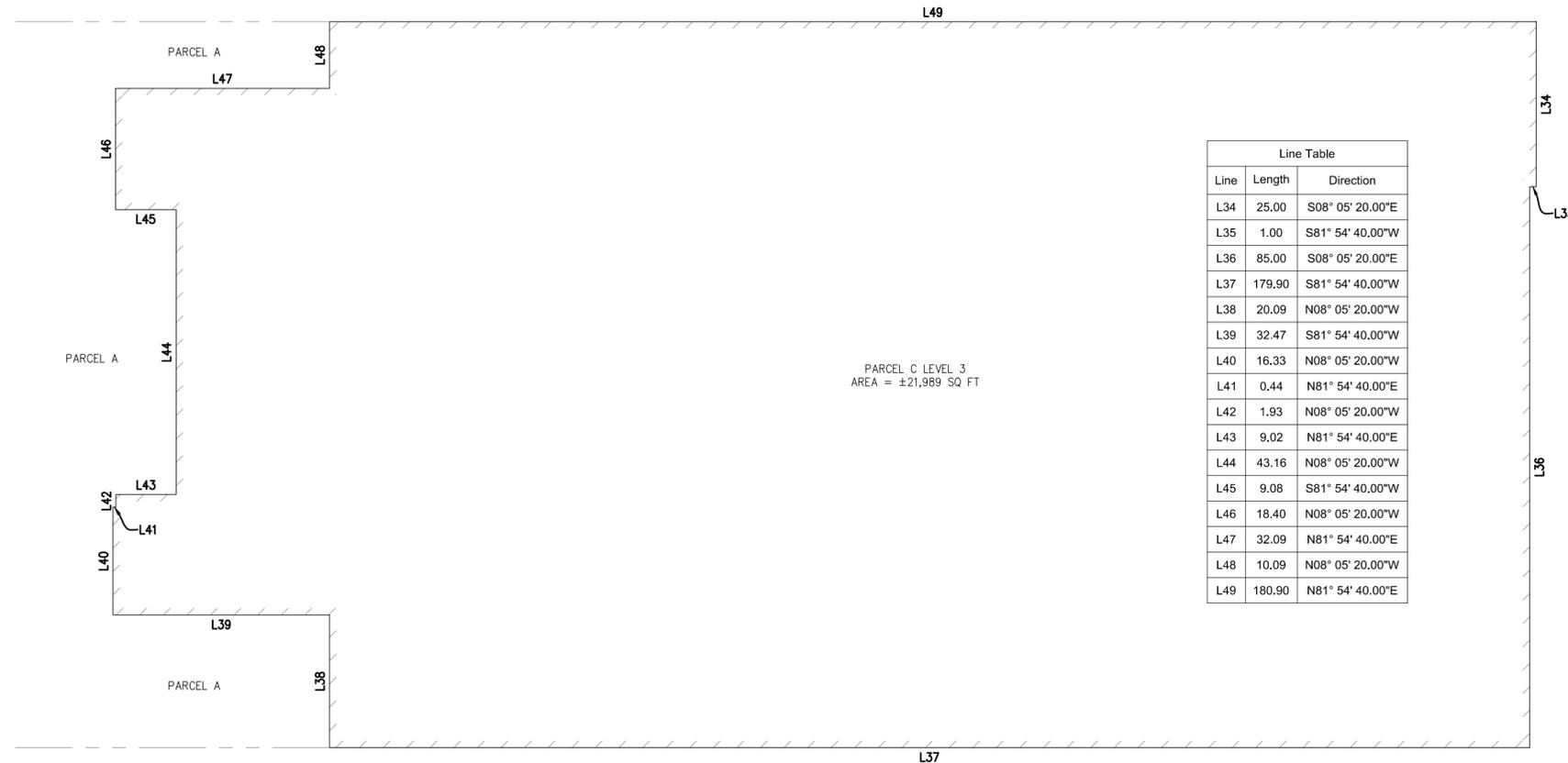
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SILICON VALLEY TRI-VALLEY CENTRAL VALLEY SACRAMENTO EAST BAY/SF



SHOWN BELOW  
PARCEL C LEVEL 3 AND UP  
SCALE: 1"=16'



| Line Table |        |                  |
|------------|--------|------------------|
| Line       | Length | Direction        |
| L34        | 25.00  | S08° 05' 20.00"E |
| L35        | 1.00   | S81° 54' 40.00"W |
| L36        | 85.00  | S08° 05' 20.00"E |
| L37        | 179.90 | S81° 54' 40.00"W |
| L38        | 20.09  | N08° 05' 20.00"W |
| L39        | 32.47  | S81° 54' 40.00"W |
| L40        | 16.33  | N08° 05' 20.00"W |
| L41        | 0.44   | N81° 54' 40.00"E |
| L42        | 1.93   | N08° 05' 20.00"W |
| L43        | 9.02   | N81° 54' 40.00"E |
| L44        | 43.16  | N08° 05' 20.00"W |
| L45        | 9.08   | S81° 54' 40.00"W |
| L46        | 18.40  | N08° 05' 20.00"W |
| L47        | 32.09  | N81° 54' 40.00"E |
| L48        | 10.09  | N08° 05' 20.00"W |
| L49        | 180.90 | N81° 54' 40.00"E |

**LEGEND**

|                               |  |
|-------------------------------|--|
| BUILDING INTERIOR PARCEL LINE |  |
| ADJACENT PARCEL LINE          |  |
| PARCEL TIE LINE               |  |
| LOT LINE                      |  |

**PARCEL MAP NO. 11051**

CONSISTING OF THREE AIR RIGHTS PARCELS  
BEING A RESUBDIVISION OF PORTIONS OF LOTS 46-54 OF  
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SEPTEMBER, 2019

CONSISTING OF 11 SHEETS

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**SILICON VALLEY TRI-VALLEY CENTRAL VALLEY SACRAMENTO EAST BAY/SF**

## ORDINANCE NO. 7,686-N.S.

AMENDING BERKELEY MUNICIPAL CODE TITLE 12 TO ESTABLISH GENERAL REGULATIONS AND SPECIFIC OPERATING STANDARDS FOR CANNABIS BUSINESSES; AMENDING CHAPTERS 12.21 AND 12.22

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 12.21.020 is amended to read as follows:

**12.21.020 Definitions**

A. "Active Ingredients" means, in the case of dried cannabis flowers, extractions or infusions, delta-9- tetrahydrocannabinolic acid, delta-9-tetrahydrocannabinol, cannabidiolic acid, cannabidiol, and any cannabinoid or propyl cannabinoid derivative when present in amounts greater than .5% by dry weight, and any mono- or sesquiterpenoid present in an amount exceeding .3% of a product's dry weight.

B. "Adult Use Cannabis" means Cannabis and Cannabis Products intended for consumption by adults 21 and over, and that is not Medicinal Cannabis.

C. "Adulterant" means any poisonous or deleterious substance that may render Cannabis or Cannabis Products impure or injurious to health, as determined by the City's Environmental Health or Public Health Divisions.

D. "Adulterated" means any Cannabis or Cannabis Product with Contaminants exceeding any testing thresholds and/or containing any Adulterant.

E. "Batch" shall have the same meaning as set forth in MAUCRSA, as amended from time to time.

F. "Cannabis" shall have the same meaning as set forth in Section 26001 of the Business and Professions Code, as amended from time to time, and includes both adult-use and medicinal cannabis.

G. "Cannabis Business" is a business possessing a State license as specified in Section 26050 of the Business and Professions Code, as amended from time to time, and includes Cannabis Businesses with an "A" designation ("ACB") and Cannabis Businesses with an "M" designation ("MCB").

H. "Cannabis By-Products" means delta-8-THC and cannabidiol when present in amounts greater than 0.2% of a product's dry weight.

I. "Cannabis Compound(s)" means any or all of the following chemicals, as the context requires:

1. "THC" or "'9-THC" means "9-tetrahydrocannabinol, (")-(6aR,10aR)-6,6,9-trimethyl-3-pentyl-6a,7,8,10a- tetrahydro-6H-benzo[c]chromen-1-ol.

2. "THCA" or "'9-THCA" means the acid form of THC.

3. "CBD" or "Cannabidiol" means 2-[(1R,6R)-6-isopropenyl-3-methylcyclohex-2-en-1-yl]-5-pentylbenzene-1,3- diol.

4. "CBDA" or "Cannabidiolic acid" means the acid form of CBD.

5. "CBN" or "Cannabinol" means 6,6,9-trimethyl-3-pentyl-benzo[c]chromen-1-ol.

J. "Cannabis Cultivation Facility" or "Facility" shall have the same meaning as "cultivation site" as set forth in Section 26001 of the Businesses and Professions Code. It includes "Major Cannabis Cultivation Facility", defined as follows:

"Major Cannabis Cultivation Facility" means a Facility that is between 10,000 sf and 22,000 sf in total canopy area.

"Minor Cannabis Cultivation Facility" means a facility that is less than 10,000 sf in total canopy area.

K. "Cannabis Products" shall have the same meaning as set forth in Section 26001 of the Business and Professions Code, as amended from time to time, and includes both medicinal and adult-use Concentrates and Cannabis Products.

L. Cannabis Retailer

1. "Retailer" means both Storefront Retailers and Delivery-Only Retailers.

2. "Cannabis Retailer" shall mean an ACB ("A-Retailer") or MCB ("M-Retailer") that is authorized under Chapter 12.22, Title 23, and California law to dispense Cannabis at a non-residential location. A Retailer may deliver to its Qualified Patients, Primary Caregivers, or adult consumers and provide other incidental services to its Qualified Patients, Primary Caregivers, or adult consumers to the extent permitted by California law.

M. "Cannabis Waste" means contaminated Cannabis or Cannabis Products that cannot be rendered safe and any Cannabis or Cannabis Products that have been designated as a waste by a Cannabis Business, or regulatory authority. Cannabis Waste does not include materials from the cultivation and manufacturing processes not known to be contaminated with pesticide or heavy metal residues and which may be composted by an approved process.

N. "Concentrate" shall have the same meaning as set forth in Section 26001 of the Business and Professions Code, as amended from time to time.

O. "Contaminant" means any pesticide, residual solvent or microbiological organism or product thereof, heavy metal, or any other Adulterant as determined by the Environmental Health Division.

P. "Cosmetic Cannabis Product" means any article, or its components, intended to be rubbed, poured, sprinkled, or sprayed on, introduced to, or otherwise applied to, the human body, or any part of the human body, that is not an Edible Cannabis product and includes tinctures.

Q. "Cultivate" and "Commercial Cultivation" mean any activity involving the planting, growing, harvesting, drying, curing, grading or trimming of cannabis requiring a license pursuant to MAUCRSA, as amended from time to time.

R. "Cultivator" means an individual or entity required to be licensed to cultivate cannabis pursuant to MAUCRSA, as amended from time to time.

S. "Deliver" and "Delivery" shall mean any transit of Cannabis or Cannabis Product from a Retailer to a Customer at a residence.

T. "Delivery-Only Retailer" is a Retailer that is limited to acquiring Cannabis and delivering it to its Qualified Patients, Primary Caregivers, and adult consumers, and does not have a location to which Qualified Patients, Primary Caregivers, and adult consumers may come to acquire Cannabis or any other good or service.

U. "Designated Cannabis Smoking Room" means a designated area on the premises of a Cannabis Business where customers may smoke cannabis.

V. "Designated Cannabis Smoking Room Ventilation System" means a ventilation system capable of removing all detectable odors, smoke and by-products of combustion.

W. "Distributor" means an individual or entity required to be licensed as a distributor pursuant to MAUCRSA, as amended from time to time.

X. "Edible Cannabis Product" (or "Edible") means a cannabis product that is intended to be used, in whole or in part, for human consumption, including but not limited to, chewing gum, but excluding products set forth in Division 15 (commencing with Section 32501) of the Food and Agricultural Code. An edible cannabis product is not considered food, as defined by Section 109935 of the health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.

Y. "Lounge" is a Storefront Retailer that has a Designated Cannabis Smoking Room or a room for consuming edibles that meets State requirements.

Z. "Manufacturer" means an individual or entity required to be licensed as a manufacturer pursuant to MAUCRSA, as amended from time to time.

AA. "Medicinal Cannabis" means Cannabis and Cannabis Products intended as medicine for those with a valid physician's recommendation in compliance with California law.

BB. "Microbusiness" shall have the same meaning set forth in MAUCRSA, as amended from time to time, and includes "Retail Nursery Microbusiness", defined as follows:

1. "Retail Nursery Microbusiness" is restricted to either a Class 1 or Class 2 Nursery that sells plants and seeds on a retail basis, either at a location to which Customers may come to acquire cannabis plants or seeds, or by delivering plants or seeds. No other cannabis products may be sold at this type of use. Distribution is limited to those products directly related to this business. No cannabis consumption is permitted on site.

CC. "Nursery" means an individual or entity required to be licensed as a Type 4 Cultivator pursuant to MAUCRSA, as amended from time to time, and includes "Class 1 Nursery" and "Class 2 Nursery," defined as follows:

1. "Class 1 Nursery" means a nursery that only produces immature plants, such as cuttings or clones.

2. "Class 2 Nursery" means a nursery that produces mature plants with flowers for the purpose of producing seeds, whether for distribution to a Retailer or for research purposes. A Class 2 Nursery may also produce cuttings or clones.

DD. "Primary Caregiver" shall have the same meaning as set forth in Section 26001 of the Business and Professions Code, as amended from time to time.

EE. "Principal" means any person that has direct or non-delegated indirect authority over the management or policies of a Cannabis Business.

FF. "Protected Health Information" means documentation of a an MCB's Qualified Patient's medical history or condition other than a physician's recommendation, an identification card issued pursuant to Health and Safety Code Section 11362.7 et seq., or the written designation of a Primary Caregiver by a Qualified Patient or identification card holder. Protected Health Information shall not include information conveyed by a Qualified Patient to a Retailer regarding such Qualified Patient's medical condition, information conveyed by a Qualified Patient to a Retailer regarding efforts to ameliorate or otherwise address symptoms associated with such Qualified Patient's medical condition, or

information regarding Cannabis or Medicinal Cannabis Products provided to a Qualified Patient.

GG. "Qualified Patient" shall have the same meaning as provided in California Health and Safety Code Section 11362.7.

HH. "Solvent" means any substance in which another substance is dissolved, forming a solution.

II. "Storefront Retailer" is a Retailer with a location to which Customers, Qualified Patients or Primary Caregivers may come to acquire Cannabis or any other good or service.

JJ. "Tincture" means an extract of Cannabis or solution of such, typically made with food-grade alcohol or glycerin.

KK. "Temporary Cannabis Event" shall mean an activity required to be licensed as a temporary cannabis event pursuant to MAUCRSA, as amended from time to time. Such events may involve onsite sale and consumption of cannabis goods and must be operated by a state-licensed event organizer.

Section 2. That Berkeley Municipal Code Section 12.22.040 is amended to read as follows:

**12.22.040 Retailers**

Retailers shall comply with the operating standards set forth in this Section.

A. Retailers must obtain operating permits from and allow inspections by the City of Berkeley Environmental Health Division.

B. Retailers may be open to the public and conduct deliveries according to the hours of their respective zoning districts, except as restricted by State law (Code of Regulations Title 16, Division 42, Chapter 3, Section 5403).

C. A Retailer may deliver cannabis only to the extent allowed by its State license.

D. Accessibility. Retailers shall comply with all physical accessibility requirements that would be applicable to a newly-constructed building, except that pre-existing Retailers permitted under Ordinance No. 6826-N.S. shall not be required to comply with such requirements as long as they remain in the same location as when this Chapter became effective, except as may be required by other laws.

E. Signage.

1. All Retailers must either provide to each Customer or prominently display at all points of sale a notice containing the language set forth in this Section.

a. If provided to each Customer, the notice shall be printed on paper that is no less than 5 inches by 8 inches in size, and shall be printed in no smaller than 18-point font.

b. If prominently displayed at all points of sale, the notice shall be printed on a poster no less than 3 feet by 3 feet in size, shall be printed in no smaller than a 28-point font, displayed prominently behind the main dispensing counter at eye-level (i.e., with mid-point five feet above the floor).

2. All Retailers must prominently display a notice as set forth in subsection 12.22.040.E that contains the following language:

"The use of cannabis may impair a person's ability to drive a motor vehicle or operate heavy machinery."

All Retailers that provide delivery services, including Delivery-only Retailers, must provide this notice to each delivery Customer as set forth in subsection 12.22.040.E.

3. All Retailers must prominently display a notice as set forth in subsection 12.22.040.E that contains the following language:

“WARNING: Cannabis is not tested by local, state or federal governmental agencies for health, safety, or efficacy. There may be health risks associated with the consumption of cannabis or cannabis products.”

All Retailers that provide delivery services, including Delivery-only Retailers, must provide this notice to each Customer as set forth in subsection 12.22.040.E.

4. Any M-Retailer that allows Customer visits must prominently display a notice as set forth in subsection 12.22.040.E that contains the following language:

"This M-Retailer provides medicinal cannabis only to Qualified Patients and their Primary Caregivers, who must have a valid California Medical Marijuana Identification Card or a verifiable, written recommendation from a physician for medicinal cannabis."

All M-Retailers that provide delivery services, including Delivery-only M-Retailers, must provide this notice to each delivery Customer as set forth in subsection 12.22.040.E.

5. All M-Retailers must prominently display a notice as set forth in subsection 12.22.040.E that contains the following language:

"This Medicinal Cannabis Retailer is licensed in accordance with the laws of the City of Berkeley and the State of California. The sale or diversion of medicinal cannabis for non-medical purposes is a violation of State and local laws."

All M-Retailers that provide delivery services, including Delivery-only M-Retailers, must provide this notice to each delivery Customer as set forth in subsection 12.22.040.E.

6. Any A-Retailer that allows Customer visits must prominently display a notice as set forth in subsection 12.22.040.E that contains the following language:

"This Adult-Use Cannabis Retailer is licensed in accordance with the laws of the City of Berkeley and the State of California. The sale or diversion of adult- use cannabis to persons under the age of 21 is a violation of State and local laws."

All A-Retailers that provide delivery services, including Delivery-only A-Retailers, must provide this notice to each delivery Customer as set forth in subsection 12.22.040.E.

7. All Retailers must prominently display a notice as set forth in subsection 12.22.040.E that contains the following language:

“GOVERNMENT WARNING: THIS PRODUCT CONTAINS CANNABIS, A SCHEDULE 1 CONTROLLED SUBSTANCE. KEEP OUT OF REACH OF CHILDREN AND ANIMALS. CANNABIS PRODUCTS MAY ONLY BE POSSESSED OR CONSUMED BY PERSONS 21 YEARS OF AGE OR OLDER UNLESS THE PERSON IS A QUALIFIED PATIENT. THE INTOXICATING EFFECTS OF CANNABIS PRODUCTS MAY BE DELAYED UP TO TWO HOURS. CANNABIS USE WHILE PREGNANT OR BREASTFEEDING MAY BE HARMFUL. CONSUMPTION OF

CANNABIS PRODUCTS IMPAIRS YOUR ABILITY TO DRIVE AND OPERATE MACHINERY. PLEASE USE EXTREME CAUTION.”

All Retailers that provide delivery services, including Delivery-only Retailers, must provide this notice to each Customer as set forth in subsection 12.22.040.E.

F. Consumption of Cannabis

1. The consumption of Cannabis or Cannabis Products in public places is prohibited.
2. Notwithstanding subsection 12.22.040.F.1, the consumption of Cannabis and Cannabis Products is permitted at a Lounge. The consumption permitted at a Lounge will be based on whether the Lounge is equipped with a Designated Cannabis Smoking Room outfitted with a Designated Cannabis Smoking Room Ventilation System.

G. Delivery Requirements

1. Medicinal and Adult Use cannabis may be delivered by a Retailer, as long as the deliveries comply with the appropriate State license.
2. All Retailers that provide delivery services must comply with the following requirements.
  - a. All vehicles used for delivery shall be maintained and operated in a manner and in a condition required by law and applicable regulations.
  - b. The following persons may not drive delivery vehicles:
    - i. a person who does not possess a valid driver’s license;
    - ii. a person who has been at fault within the immediately preceding two years in any motor vehicle accident causing death or personal injury;
    - iii. a person who has been at fault in three or more motor vehicle accidents within the previous 12 months;
    - iv. a person who has been under suspension, revocation or probation within the last five years by the Department of Motor Vehicles for a cause involving the safe operation of a motor vehicle;
    - v. a person who has been convicted of any of the following misdemeanor offenses within the past five years: driving under the influence or reckless driving involving alcohol or reckless driving involving bodily injury;
    - vi. a person who has been convicted of any of the following offenses: a second or subsequent conviction for driving under the influence, or any felony conviction for driving under the influence (with or without injury), or vehicular manslaughter, or habitual traffic offender.
  - c. The following persons may not be involved in making deliveries:
    - i. any person who is required to register as a sex offender under Section 290 of the California Penal Code;
    - ii. any person who has within the past ten years been convicted of any felony offense involving moral turpitude.
  - d. Persons involved in making deliveries must have in their possession a copy of the document memorializing the City’s approval of the delivery service.
  - e. Persons involved in making deliveries may not be armed.
  - f. Delivery vehicles may not advertise any activity related to Cannabis, carry symbols or emblems related to Cannabis, or advertise the name of the Retailer.

g. Delivery of Cannabis shall be directly to the residence of the Customer unless said residence is in a park, school or hospital. Deliveries to parks, schools, hospitals, and all non-residential locations are prohibited.

h. Deliveries may occur only between the hours of 8:00 a.m. and 10:00 p.m.

i. Delivery vehicles shall not carry or transport at any one time an amount of Cannabis, Cannabis Products, cash and/or cash equivalents worth, in total, more than three thousand dollars (\$3,000).

j. All orders to be delivered shall be packaged by the name or identification number of the Customer for whom the delivery is intended.

k. The person responsible for making deliveries shall have a copy of the record of all delivery requests while making deliveries.

l. All Retailers that provide delivery service shall maintain at all times Commercial General Liability insurance providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury with limits of not less than One Million Dollars (\$1,000,000) per occurrence and Comprehensive Automobile Liability (owned, non-owned, hired) providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than One Million Dollars (\$1,000,000). The Commercial General Liability policy shall provide contractual liability, shall include a severability of interest or equivalent wording, shall specify that insurance coverage afforded to the City shall be primary, and shall name the City, its officials and employees as additional insured. Failure to maintain insurance as required herein at all times shall be grounds for immediate suspension of the privilege of providing delivery service.

#### H. M-Retailers

1. M-Retailers must not admit any person without first verifying his or her status as a Qualified Patient or Primary Caregiver.

2. No physician recommendations for Medicinal Cannabis may be provided on site.

3. M-Retailers may not provide more Medicinal Cannabis to a Qualified Patient or Primary Caregiver than is necessary for the personal medicinal use of the Qualified Patient for whom the Medicinal Cannabis is intended, and may not dispense more Medicinal Cannabis to a Qualified Patient or Primary Caregiver per day than permitted by State law.

4. M-Retailers must take all practicable steps necessary to prevent and deter diversion of Medicinal Cannabis to any person who is not a Qualified Patient or Primary Caregiver. M-Retailers must limit access to Medicinal Cannabis to authorized personnel only. M-Retailers must maintain an inventory management system that accounts for all Medicinal Cannabis separately from Adult Use Cannabis if both types are sold or distributed at the Retailer.

5. M-Retailers must not admit any Qualified Patient under 18 years of age pursuant to MAUCRSA.

6. Medicinal Cannabis for low income persons

a. At least 2% (by weight) of the annual amount of Medicinal Cannabis in dried plant form provided by a M-Retailer to Qualified Patients and Primary Caregivers shall be provided at no cost to very low-income Qualified Patients who are Berkeley residents or their Primary Caregivers. This amount shall be calculated every six months, based on the

amount dispensed during the immediately preceding six months. Medicinal Cannabis provided under this Section shall be the same quality on average as Medicinal Cannabis that is dispensed to other persons.

b. For purposes of this Section, income shall be verified using federal income tax returns or another reliable method approved by the City Manager.

c. For purposes of this Section, "very low income" shall mean the household income levels established by the U.S. Department of Housing and Urban Development.

d. M-Retailers shall keep an accurate roster of very low-income Qualified Patients who are Berkeley residents, which shall include a copy of either a California Medical Cannabis Identification Card or a physician's recommendation, and, if using a Primary Caregiver, a written authorization from the Qualified Patient to be represented by such Primary Caregiver. Such records shall be maintained in a manner that protects the confidentiality of the Qualified Patient and Primary Caregiver.

e. M-Retailers shall track distributions to very low-income Qualified Patients (or their Primary Caregivers) in an inventory management system compatible with the state Track-and-Trace program. M-Retailers shall generate a report every six (6) months showing the total percentage of Medicinal Cannabis sales distributed to Berkeley residents. If an M-Retailer voluntarily expands the program to residents outside of Berkeley, that percentage shall be calculated separately.

l. A-Retailers must not admit any person under 21 years of age. If an A-Retailer also holds an M-Retailer license, access to the M-Retailer portion of the establishment is subject to the requirements of subsection 12.22.040.H.

Section 3. That Berkeley Municipal Code Section 12.22.090 is amended to read as follows:

**12.22.090 Microbusinesses**

A. Microbusinesses must obtain separate City-issued operating permits for each activity conducted on the premises.

B. Microbusinesses are subject to the operating standards set forth in this Chapter for each activity conducted on the premises.

C. If the operating standards for the activities are different, the more restrictive standard shall apply, except as follows:

1. Signage for Retail Nursery Microbusinesses and Retail Storefront Microbusinesses shall be subject to the regulations for storefront Retailers.

D. If the operating permit for one of the activities is revoked, the entire Microbusiness must cease operation until all operating permits at the premises are reinstated.

Section 4: Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on January 28, 2020, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.

Noes: None.

Absent: Hahn.

ORDINANCE NO. 7,687-N.S.

AMENDING BERKELEY MUNICIPAL CODE TITLE 20 TO ESTABLISH GENERAL REGULATIONS AND SPECIFIC OPERATING STANDARDS FOR CANNABIS BUSINESSES; AMENDING CHAPTER 20.40

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 20.40.110 is amended to read as follows:

**Section 20.40.110 Permitted signs.**

A. Retailers that have a storefront and allow customer visits are allowed on-premises signs as set forth in BMC Chapter 20.24.

B. Delivery-Only Retailers in C-prefixed districts are allowed business complex signs as set forth in BMC Section 20.16.070.

C. Delivery-Only Retailers in M-prefixed districts and non-retailers are allowed on-premises signs as set forth in BMC Chapter 20.32.

Section 2. That Berkeley Municipal Code Section 20.40.120 is amended to read as follows:

**Section 20.40.120 Number of signs permitted on premises.**

A. The number of on-premises signs for Cannabis Retailers are limited to BMC Section 20.24.030.

B. The number of on-premises signs for Cannabis non-retailers and Delivery-Only Retailers in M-prefixed districts are limited to BMC Section 20.32.030.

Section 3. That Berkeley Municipal Code Section 20.40.130 is amended to read as follows:

**Section 20.40.130 Sign area limitations.**

A. The sign area for all signs of Retailers that have a storefront shall not exceed seven and a half (7.5) percent of the building face of the premises or seventy-five (75) square feet, whichever is less.

B. The sign area for all signs of Delivery-Only Retailers in C-prefixed districts are subject to BMC Section 20.16.070.

C. The sign area for all signs of Delivery-Only Retailers in M-prefixed districts and non-Retailers shall not exceed twelve (12) square feet.

D. Signage may not include depictions of cannabis or cannabis products. Logos with such depictions are also prohibited on signs. A Cannabis Business that used a logo depicting cannabis or a cannabis product prior to the adoption of this ordinance, and was based in Berkeley prior to 2020, is not subject to the requirements of this subsection and may continue to use the logo.

Section 4: Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on January 28, 2020, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.

Noes: None.

Absent: Hahn.

ORDINANCE NO. 7,688-N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 23C.25 TO MODIFY THE  
CANNABIS USES ORDINANCE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 23C.25 is repealed and readopted to read as follows:

**Chapter 23C.25**

**Cannabis Uses**

**Sections:**

**23C.25.010 Retail Uses**

**23C.25.020 Cannabis Cultivation**

**23C.25.030 Cannabis Manufacturing, Testing Labs and Distribution**

**23C.25.040 Microbusinesses**

**Section 23C.25.010 Cannabis Retail**

A. General

1. Cannabis Retailer, including Storefront Retailer, Delivery-Only Retailer, A-Retailer, and M-Retailer, is defined in Section 12.21.020.
2. An M-Retailer existing and authorized as of January 1, 2010 that does not comply with this Section may continue at its current medical cannabis dispensing location as a legal nonconforming use. Notwithstanding Section 23C.04.060 or subdivision (B) of this Section, the Zoning Officer may approve an Administrative Use Permit to allow the expansion of a legal nonconforming medical cannabis dispensary onto an adjacent parcel.
3. Cannabis Retailers in good standing with State and local regulations, including obtaining all necessary licenses and full payment of all fees and with no outstanding violations, may seek approval for a change in location. Applications for a change of location shall be evaluated based on the requirements to operate a Cannabis Business effective at the time of the proposed change.

B. Storefront Retailers

1. Storefront Retailers are permitted in C-prefixed Districts with a Zoning Certificate, and must maintain compliance with Chapters 12.21 and 12.22 and security regulations that may be promulgated by the Chief of Police.
2. Storefront Retailers are subject to approval through the selection process set

forth in Section 12.22.020.

3. Up to seven Storefront Retail permits may be issued, one of which is reserved for an Equity Candidate as defined in Section 12.21.020. This limit to the number of Storefront Retailers shall not be reconsidered for a period of three years from the effective date of this ordinance.
4. Expansion of an approved Storefront Retailer must comply with the development standards for the Zoning District in which it is located.
5. Storefront Retailers may operate as a Retail Storefront Microbusiness as defined in Chapter 12.21 subject to obtaining all required State and local licenses.
6. Buffers
  - a. Storefront Retailers may not be located within 600 feet of another Storefront Retailer or a public or private elementary school, 1,000 feet of a public or private middle school or high school, or 600 feet of a City-operated community center or skate park.
  - b. Notwithstanding Subsection 23C.25.010.B.6.a, a seventh Storefront Retailer, to be operated by an equity business, may not be located within 600 feet of another Storefront Retailer or School.

C. Delivery-Only Retailers

1. Seven Delivery-Only Retailers are permitted citywide, four of which shall be operated by Equity Businesses, and three of which shall be non-Equity Businesses.
2. Delivery-Only Retailers are subject to approval through the selection process set forth in Section 12.22.020.
3. Delivery-Only Retailers are permitted with a Zoning Certificate in C-prefixed Districts other than the C-N District.
4. Delivery-Only Retailers are permitted in the M District, shall be evaluated and regulated for Zoning purposes in the same way as Warehouse-Based Non-Store Retailers, and shall be subject to the numeric and buffer requirements set forth in this Section for Delivery-Only Retailers.
5. Delivery-Only Retailers may not be located within 300 feet of any School or City-operated community center or skate park.
6. Delivery-Only Retailers may not be located in a street-fronting tenant space in C-prefixed Districts.

D. Lounges

1. A Lounge, as defined in Section 12.21.020, may be permitted at an approved Retailer subject to approval of a Use Permit.
2. Lounges must comply with the operational standards established by the

City's Department of Health, Housing and Community Services.

**Section 23C.25.020 Commercial Cannabis Cultivation**

- A. Commercial Cannabis Cultivation is defined in Chapter 12.21.
- B. Commercial Cannabis Cultivation is permitted with a Zoning Certificate in the M District, subject to the following limitations:
  - 1. Commercial Cannabis Cultivation shall only occur at licensed Cannabis Businesses.
  - 2. Cannabis may not be dispensed and client, patient or member services and retail sales are prohibited at Cannabis Cultivation Facilities.
- C. The total citywide canopy area of Cannabis Cultivation Facilities is limited to 180,000 square feet.
  - a. No more than six Major Cannabis Cultivation Facilities are permitted.
  - b. The total canopy area of all Minor Cannabis Cultivation Facilities shall not exceed 48,000 sf plus any area not used by a Major Cannabis Cultivation Facility.
  - c. Separate spaces used by different licensees may be aggregated at the same location.
  - d. Commercial Cannabis Cultivation is prohibited outside of a building.
- D. Cannabis Nurseries, as defined in Chapter 12.21, are subject to the same regulations as Cannabis Cultivation Facilities.
- E. Cannabis Cultivation Facilities shall comply with all regulations in Chapter 12.22, security regulations promulgated by the Chief of Police, and the requirements of this Chapter, and may include testing, processing, manufacturing and food preparation only to the extent expressly permitted by MAUCRSA.
- F. Cannabis Cultivation Facilities may not be located within 300 feet of a School or City-operated community center or skate park.
- G. No Major Cannabis Cultivation Facilities may be approved until the City Council adopts a licensing process and standards for such uses. Such standards shall include a requirement that indoor cultivation uses provide for an energy offset through a program specified by the City to offset the net increased energy that is used by the Facility as compared to a regular industrial facility, and may include, but shall not be limited to, whether proposed Facilities will provide a percentage of all usable product cultivated at no cost to very low income patients and will use organic methods in cultivation and processing to the maximum extent reasonable; and whether their form of organization, ownership and practices ensure equity and accountability, low prices and an adequate supply of high quality cannabis to Customers.

**Section 23C.25.030 Cannabis Manufacturing, Testing Labs and Distribution**

- A. Cannabis Manufacturers, Testing Labs and Distributors shall be evaluated and regulated for Zoning purposes in the same way as comparable non-Cannabis uses, as follows:

| Cannabis Use                                | Equivalent Non-Cannabis Use |
|---------------------------------------------|-----------------------------|
| Manufacturing, processing, food Preparation | Light Manufacturing         |
| Testing labs                                | Testing Labs                |
| Distribution                                | Wholesale Uses              |

- B. Cannabis Manufacturers, Testing Labs and Distributors may not be located within 300 feet of a School.

**Section 23C.25.040 Microbusinesses**

- A. Microbusinesses are defined in Chapter 12.21.
- B. Microbusinesses are subject to the development standards set forth in this Chapter for each use conducted on the premises, with the following exceptions:
- C. In cases where development standards and permit thresholds apply for different uses conducted on the premises differ, the more restrictive standards apply.
- D. Retail Nursery Microbusinesses
  1. For purposes of this Section, “Existing Nursery” means a legally established plant nursery in the City of Berkeley as of the adoption of this ordinance.
  2. Up to two Existing Nurseries may convert to Retail Nursery Microbusiness, either: 1) with a Zoning Certificate in C- and M-prefixed Districts if an Existing Nursery complies with the development standards set forth in the Zoning Ordinance and in this Chapter for each use conducted on the premises; or 2) subject to a Use Permit for the substantial expansion or change in character to non-conforming uses in R-prefixed Districts. Retail Nursery Microbusinesses are not subject to the numeric or canopy limitations of other Retailers or Cannabis Cultivators.
  3. Zoning Certificates and/or Use Permits shall be issued to Existing Nurseries on a first-come, first-served basis. The right to retain one of the allocated Zoning Certificates shall be determined based on the date of issuance of a concurrent Business License and establishing and continuously operating the business or, if a Use Permit is required, on the date the application for the Use Permit is deemed complete so long as the Use Permit is implemented with a Businesses License within 30 days of approval and establishing and continuously operating the business.

4. The 600-foot buffer required between Cannabis Retailers shall not apply between Storefront Cannabis Retailers and Retail Nursery Microbusinesses.

Section 2: Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on January 28, 2020, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.

Noes: None.

Absent: Hahn.

ORDINANCE NO. 7,689-N.S.

AMENDING BERKELEY MUNICIPAL CODE SUB-TITLE 23E TO MODIFY USE TABLES RELATED TO CANNABIS USES

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That the “Retail Sales” section of Table 23E.36.030 in Chapter 23E.36 Section 23E.36.030 of the Berkeley Municipal Code is amended to read as follows:

**Table 23E.36.030 C-1 General Commercial District Provisions: Uses Permitted**

| Use                                                                    | Classification | Special Requirements (if any)                                                                                                                                                                   |
|------------------------------------------------------------------------|----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Retail Sales                                                           |                |                                                                                                                                                                                                 |
| All Retail Sales Uses, except those listed below                       | ZC*            | As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores)                                                                                                       |
| Alcoholic Beverage Retail Sales including Liquor Stores and Wine Shops | UP(PH)         | Includes sale for off-site consumption at restaurants<br>Prohibited within the University Avenue Strategic Plan Overlay (unless in conjunction with a restaurant or general food product store) |
| Department Stores                                                      | ZC*            |                                                                                                                                                                                                 |
| Firearm/Munitions Businesses                                           | UP(PH)         | Prohibited on any property devoted to residential use                                                                                                                                           |
| Pawn Shops, including Auction Houses                                   | UP(PH)         | Prohibited within the University Avenue Strategic Plan Overlay                                                                                                                                  |
| Pet Stores, including Sales and Grooming of Animals (but not Boarding) | UP(PH)         |                                                                                                                                                                                                 |
| Smoke Shops                                                            | UP(PH)         | Prohibited if within 1,400 feet of a school or public park                                                                                                                                      |
| Cannabis Retailer                                                      | ZC             | ZC shall only be issued after business is approved through the selection process                                                                                                                |

| Use                    | Classification | Special Requirements (if any)                                                                                                                                                                                                 |
|------------------------|----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                        |                | Subject to the requirements of Chapter <a href="#">23C.25</a> and BMC Chapters 12.21 and <a href="#">12.22</a>                                                                                                                |
| Delivery-Only Retailer | ZC             | <p>ZC shall only be considered after business is approved through a selection process approved by the City Council per BMC Section 12.22.020.</p> <p>Subject to restrictions on the ground floor; see Section 23C.25.010.</p> |

Section 2. That the “Retail Sales” section of Table 23E.44.030 in Chapter 23E.44 Section 23E.44.030 of the Berkeley Municipal Code is amended to read as follows:

**Table 23E.44.030 C-E Elmwood Commercial District Provisions: Uses Permitted**

| Use                                                                     | Classification    | Special Requirements (if any)                                                                                                                                                                                                                                                                                                                                                                       |
|-------------------------------------------------------------------------|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Retail Sales</b>                                                     |                   |                                                                                                                                                                                                                                                                                                                                                                                                     |
| All Retail Sales Uses, except those listed below                        | ZC*               | As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores).                                                                                                                                                                                                                                                                                                          |
| Alcoholic Beverage Retail Sales, including liquor stores and wine shops | UP(PH)            | Includes sale for off-site consumption at restaurants                                                                                                                                                                                                                                                                                                                                               |
| Department Stores<br>Over 3,000 s.f.                                    | ZC*<br>Prohibited |                                                                                                                                                                                                                                                                                                                                                                                                     |
| Drugstores                                                              | ZC*               | A new or expanded Drugstore is prohibited if it is over 5000 square feet in Gross Floor Area, and within 1000 feet of any property containing an existing Drugstore, as measured by a straight line from the nearest point of the property line of the parcel on which the Drugstore is proposed to the nearest point of the property line of the parcel on which the nearest Drugstore is located. |
| Firearm/Munitions Businesses                                            | UP(PH)            | Prohibited on any property devoted to residential use                                                                                                                                                                                                                                                                                                                                               |
| Pawn Shops, including Auction Houses                                    | Prohibited        |                                                                                                                                                                                                                                                                                                                                                                                                     |
| Pet Stores, including Sales and Grooming of Animals                     | UP(PH)            | Does not include boarding of animals                                                                                                                                                                                                                                                                                                                                                                |

| Use                    | Classification | Special Requirements (if any)                                                                                                                                                                                          |
|------------------------|----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Smoke Shops            | UP(PH)         | Prohibited if within 1,400 feet of a school or public park                                                                                                                                                             |
| Cannabis Retailer      | ZC             | ZC shall only be issued after business is approved through the selection process<br>Subject to the requirements of Chapter <a href="#">23C.25</a> and BMC Chapters 12.21 and <a href="#">12.22</a>                     |
| Delivery-Only Retailer | ZC             | ZC shall only be considered after business is approved through a selection process approved by the City Council per BMC Section 12.22.020.<br><br>Subject to restrictions on the ground floor; see Section 23C.25.010. |

Section 3. That the “Retail Sales” section of Table 23E.48.030 in Chapter 23E.48 Section 23E.48.030 of the Berkeley Municipal Code is amended to read as follows:

**Table 23E.48.030 C-Ns North Shattuck Commercial District Provisions: Uses Permitted**

| Use                                                                     | Classification    | Special Requirements (if any)                                                                                                                                                                                                                                                                                                                                                                       |
|-------------------------------------------------------------------------|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Retail Sales                                                            |                   |                                                                                                                                                                                                                                                                                                                                                                                                     |
| All Retail Sales Uses, except those listed below                        | ZC*               | As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores).                                                                                                                                                                                                                                                                                                          |
| Alcoholic Beverage Retail Sales, including liquor stores and wine shops | UP(PH)            | Includes sale for off-site consumption at restaurants                                                                                                                                                                                                                                                                                                                                               |
| Department Stores<br>Over 3,000 s.f.                                    | ZC*<br>Prohibited |                                                                                                                                                                                                                                                                                                                                                                                                     |
| Drugstores                                                              | ZC*               | A new or expanded Drugstore is prohibited if it is over 5000 square feet in Gross Floor Area, and within 1000 feet of any property containing an existing Drugstore, as measured by a straight line from the nearest point of the property line of the parcel on which the Drugstore is proposed to the nearest point of the property line of the parcel on which the nearest Drugstore is located. |
| Firearm/Munitions Businesses                                            | UP(PH)            | Prohibited on any property devoted to residential use                                                                                                                                                                                                                                                                                                                                               |
| Pawn Shops, including Auction Houses                                    | Prohibited        |                                                                                                                                                                                                                                                                                                                                                                                                     |
| Pet Stores, including Sales and Grooming of                             | UP(PH)            |                                                                                                                                                                                                                                                                                                                                                                                                     |

| Use                        | Classification | Special Requirements (if any)                                                                                                                                                                                          |
|----------------------------|----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Animals (but not Boarding) |                |                                                                                                                                                                                                                        |
| Smoke Shops                | UP(PH)         | Prohibited if within 1,400 feet of a school or public park                                                                                                                                                             |
| Cannabis Retailer          | ZC             | ZC shall only be issued after business is approved through the selection process<br>Subject to the requirements of Chapter <a href="#">23C.25</a> and BMC Chapters 12.21 and <a href="#">12.22</a>                     |
| Delivery-Only Retailer     | ZC             | ZC shall only be considered after business is approved through a selection process approved by the City Council per BMC Section 12.22.020.<br><br>Subject to restrictions on the ground floor; see Section 23C.25.010. |

Section 4. That the “Retail Sales” section of Table 23E.52.030 in Chapter 23E.52 Section 23E.52.030 of the Berkeley Municipal Code is amended to read as follows:

**Table 23E.52.030 C-SA South Area Commercial District Provisions: Uses**

**Permitted**

| Use                                                                     | Classification | Special Requirements (if any)                                                                                                                                                                      |
|-------------------------------------------------------------------------|----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Retail Sales                                                            |                |                                                                                                                                                                                                    |
| All Retail Sales Uses, except those listed below                        | ZC*            | As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores)                                                                                                          |
| Alcoholic Beverage Retail Sales, including liquor stores and wine shops | UP(PH)         | Includes sale for off-site consumption at restaurants<br>No sales of distilled alcoholic beverages are allowed along Adeline Street south of Ashby Avenue                                          |
| Department Stores<br>Over 3,000 s.f.                                    | ZC*<br>UP(PH)  |                                                                                                                                                                                                    |
| Firearm/Munitions Businesses                                            | UP(PH)         | Prohibited on any property devoted to residential use                                                                                                                                              |
| Pawn Shops                                                              | Prohibited     | Including Auction Houses                                                                                                                                                                           |
| Pet Stores                                                              | UP(PH)         | Including Sales and Grooming of Animals (but not Boarding)                                                                                                                                         |
| Smoke Shops                                                             | UP(PH)         | Prohibited if within 1,400 feet of a school or public park                                                                                                                                         |
| Cannabis Retailer                                                       | ZC             | ZC shall only be issued after business is approved through the selection process<br>Subject to the requirements of Chapter <a href="#">23C.25</a> and BMC Chapters 12.21 and <a href="#">12.22</a> |
| <u>Delivery-Only Retailer</u>                                           | <u>ZC</u>      | <u>ZC shall only be considered after business is approved through a selection process</u>                                                                                                          |

| Use | Classification | Special Requirements (if any)                                                                                                                            |
|-----|----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|
|     |                | <p><u>approved by the City Council per BMC Section 12.22.020.</u></p> <p><u>Subject to restrictions on the ground floor; see Section 23C.25.010.</u></p> |

Section 5. That the “Retail Sales” section of Table 23E.56.030 in Chapter 23E.56 Section 23E.56.030 of the Berkeley Municipal Code is amended to read as follows:

**Table 23E.56.030 C-T Telegraph Avenue Commercial District Provisions: Uses Permitted**

| Use                                                                     | Classification | Special Requirements (if any)                                                                                                                                                                                          |
|-------------------------------------------------------------------------|----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Retail Sales                                                            |                |                                                                                                                                                                                                                        |
| All Retail Sales Uses, except those listed below                        | ZC             | As defined in Sub-title <a href="#">23F</a> , except otherwise listed (does not include Video Rental Stores)                                                                                                           |
| Alcoholic Beverage Retail Sales including liquor stores and wine shops  | Prohibited     | Includes sale for off-site consumption at restaurants                                                                                                                                                                  |
| Department Stores Over 3,000 s.f.                                       | ZC<br>UP(PH)   |                                                                                                                                                                                                                        |
| Drug Paraphernalia (any use involving the sale or distribution thereof) | Prohibited     | As defined in California Health and Safety Code Section <a href="#">11364.5(d)</a>                                                                                                                                     |
| Firearm/Munitions Businesses                                            | UP(PH)         | Prohibited on any property devoted to residential use                                                                                                                                                                  |
| Pawn Shops                                                              | Prohibited     | Including Auction Houses                                                                                                                                                                                               |
| Pet Stores                                                              | UP(PH)         | Including Sales and Grooming of Animals (but not Boarding)                                                                                                                                                             |
| Smoke Shops                                                             | UP(PH)         | Prohibited if within 1,400 feet of a school or public park                                                                                                                                                             |
| Delivery-Only Retailer                                                  | ZC             | ZC shall only be considered after business is approved through a selection process approved by the City Council per BMC Section 12.22.020.<br><br>Subject to restrictions on the ground floor; see Section 23C.25.010. |

Section 6. That the “Retail Sales” section of Table 23E.60.030 in Chapter 23E.60 Section 23E.60.030 of the Berkeley Municipal Code is amended to read as follows:

**Table 23E.60.030 C-SO Solano Avenue Commercial District Provisions: Uses Permitted**

| Use                                                                     | Classification    | Special Requirements (if any)                                                                                                                                                                                                                                                                                                                                                                       |
|-------------------------------------------------------------------------|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Retail Sales                                                            |                   |                                                                                                                                                                                                                                                                                                                                                                                                     |
| All Retail Sales Uses, except those listed below                        | ZC*               | As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores)                                                                                                                                                                                                                                                                                                           |
| Alcoholic Beverage Retail Sales, including liquor stores and wine shops | UP(PH)            | Includes sale for off-site consumption at restaurants                                                                                                                                                                                                                                                                                                                                               |
| Department Stores<br>Over 3,000 s.f.                                    | ZC*<br>Prohibited |                                                                                                                                                                                                                                                                                                                                                                                                     |
| Drugstores                                                              | ZC*               | A new or expanded Drugstore is prohibited if it is over 5000 square feet in Gross Floor Area, and within 1000 feet of any property containing an existing Drugstore, as measured by a straight line from the nearest point of the property line of the parcel on which the Drugstore is proposed to the nearest point of the property line of the parcel on which the nearest Drugstore is located. |
| Firearm/Munitions Businesses                                            | UP(PH)            | Prohibited on any property devoted to residential use                                                                                                                                                                                                                                                                                                                                               |
| Pawn Shops                                                              | Prohibited        |                                                                                                                                                                                                                                                                                                                                                                                                     |
| Pet Stores including Sales and Grooming of Animals (but not Boarding)   | UP(PH)            |                                                                                                                                                                                                                                                                                                                                                                                                     |

| Use                    | Classification | Special Requirements (if any)                                                                                                                                                                                          |
|------------------------|----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Smoke Shops            | UP(PH)         | Prohibited if within 1,400 feet of a school or public park                                                                                                                                                             |
| Cannabis Retailer      | ZC             | ZC shall only be issued after business is approved through the selection process<br>Subject to the requirements of Chapter <a href="#">23C.25</a> and BMC Chapters 12.21 and <a href="#">12.22</a>                     |
| Delivery-Only Retailer | ZC             | ZC shall only be considered after business is approved through a selection process approved by the City Council per BMC Section 12.22.020.<br><br>Subject to restrictions on the ground floor; see Section 23C.25.010. |

Section 7. That the “Retail Sales” section of Table 23E.64.030 in Chapter 23E.64 Section 23E.64.030 of the Berkeley Municipal Code is amended to read as follows:

**Table 23E.64.030 C-W West Berkeley Commercial District Provisions: Uses Permitted**

| Use                                                                                | Permits Required to Establish, Expand or Change Use (sq. ft.) |             |               | Special Requirements (if any)                                                                                                                                                                      |
|------------------------------------------------------------------------------------|---------------------------------------------------------------|-------------|---------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Retail Sales                                                                       |                                                               |             |               |                                                                                                                                                                                                    |
| Retail uses as defined in Sub-title <a href="#">23F</a> , except otherwise listed. |                                                               |             |               |                                                                                                                                                                                                    |
|                                                                                    | Under 3,500                                                   | 3,500-7,500 | 7,500 or more |                                                                                                                                                                                                    |
| All Retail Sales Uses, except those specified below                                | ZC                                                            | AUP         | UP(PH)*       | *Except when part of a combination commercial/residential use; see Mixed Use Development heading                                                                                                   |
| Alcoholic Beverage Retail Sales, including liquor stores and wine shops            | UP(PH)                                                        |             |               | Includes sale for off-site consumption at restaurants                                                                                                                                              |
| Firearm/Munitions Businesses                                                       | UP(PH)                                                        |             |               | Prohibited on any property devoted to residential use                                                                                                                                              |
| Pawn Shops, including Auction Houses                                               | UP(PH)                                                        |             |               |                                                                                                                                                                                                    |
| Smoke Shops                                                                        | UP(PH)                                                        |             |               | Prohibited if within 1,400 feet of a school or public park                                                                                                                                         |
| Cannabis Retailer                                                                  | ZC                                                            |             |               | ZC shall only be issued after business is approved through the selection process<br>Subject to the requirements of Chapter <a href="#">23C.25</a> and BMC Chapters 12.21 and <a href="#">12.22</a> |

| Use                    | Permits Required to Establish, Expand or Change Use (sq. ft.) | Special Requirements (if any)                                                                                                                                                                                                 |
|------------------------|---------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Delivery-Only Retailer | ZC                                                            | <p>ZC shall only be considered after business is approved through a selection process approved by the City Council per BMC Section 12.22.020.</p> <p>Subject to restrictions on the ground floor; see Section 23C.25.010.</p> |

Section 8. That the “Retail Sales” section of Table 23E.68.030 in Chapter 23E.68 Section 23E.68.030 of the Berkeley Municipal Code is amended to read as follows:

**Table 23E.68.030 C-DMU Downtown Mixed Use District Provisions: Uses Permitted**

| Use                                                                     | Classification | Special Requirements                                                                                                                                                                            |
|-------------------------------------------------------------------------|----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Retail Sales</b>                                                     |                |                                                                                                                                                                                                 |
| All Retail Sales Uses, except those listed below                        | ZC             | As defined in Sub-title <a href="#">23F</a> , except otherwise listed                                                                                                                           |
| Alcoholic Beverage Retail Sales, including liquor stores and wine shops | UP(PH)         | Includes sale for off-site consumption at restaurants                                                                                                                                           |
| Department Stores<br>Under 10,000 s.f.                                  | AUP<br>ZC      |                                                                                                                                                                                                 |
| Firearm/Munitions Businesses                                            | Prohibited     |                                                                                                                                                                                                 |
| Pawn Shops, including Auction Houses                                    | UP(PH)         |                                                                                                                                                                                                 |
| Pet Stores, including Sales and Grooming of Animals (but not Boarding)  | UP(PH)         |                                                                                                                                                                                                 |
| Smoke Shops                                                             | Prohibited     |                                                                                                                                                                                                 |
| Cannabis Retailer                                                       | ZC             | ZC shall only be issued after business is approved through the selection process Subject to the requirements of Chapter <a href="#">23C.25</a> and BMC Chapters 12.21 and <a href="#">12.22</a> |
| Delivery-Only Retailer                                                  | ZC             | ZC shall only be considered after business is approved through a selection process approved by the City Council per BMC Section 12.22.020.                                                      |

| Use | Classification | Special Requirements                                                 |
|-----|----------------|----------------------------------------------------------------------|
|     |                | Subject to restrictions on the ground floor; see Section 23C.25.010. |

Section 9: Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on January 28, 2020, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.

Noes: None.

Absent: Hahn.

ORDINANCE NO. 7,690-N.S.

AMENDING BERKELEY MUNICIPAL CODE SUB-TITLE 23F TO ADD AND MODIFY RELATED TO CANNABIS USES; AMENDING CHAPTER 23F.04

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 23E.04 is amended to revise the definitions of “Microbusiness” and “Warehouse Based Non-Store Retail” as follows:

**Chapter 23F.04  
Definitions**

**Sections:**

**23F.04.010 Definitions**

**Microbusiness:** Cannabis use involving more than one State license. See BMC Chapter 12.21 for definition.

**Retail Nursery Microbusiness:** A microbusiness that is restricted to growing and selling cannabis plants and seeds. See BMC Chapter 12.21 for definition.

**Retail Storefront Microbusiness:** A microbusiness that is restricted to a Storefront Retailer with limited manufacturing and distribution activities. See BMC Chapter 12.21 for definition and limitations.

**Warehouse Based Non-Store Retail:** Retail activity that is based on sales without on-site customer visits. Such activity includes, but is not limited to, catalog sales, internet web sites, and phone orders. Goods are both stored and distributed from site. This use includes Delivery-Only Retailers located in the Manufacturing (M) District.

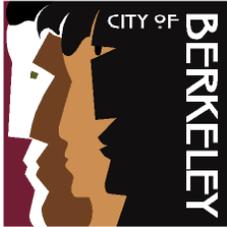
Section 2: Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old Berkeley City Hall, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on January 28, 2020, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.

Noes: None.

Absent: Hahn.



Office of the City Manager

CONSENT CALENDAR  
February 11, 2020

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Subject: Appointment of Director of Health, Housing, and Community Services  
 Department

RECOMMENDATION

Adopt a Resolution confirming the appointment of Dr. Lisa Warhuus as the Director of the Health, Housing and Community Services Department (HHCS) to be effective March 9, 2020 at an annual salary of \$188,000

FISCAL IMPACTS OF RECOMMENDATION

The annual salary and benefits for the HHCS Director are included in the Fiscal Year 2020 HHCS budget. The position is supported through: General Fund #010 at 49%, Health (Short/Doyle) Fund #065 at 15%, Community Action Program Fund #351 at 2%, CDBG Fund #370 at 24%, and Health State Aid Real Trust Fund #958 at 10%.

CURRENT SITUATION AND ITS EFFECTS

In February of 2019, the former Director of HHCS, Paul Buddenhagen, moved into the City Manager's Office, and HHCS Deputy Director, Kelly Wallace, has been serving as the City's Interim HHCS Director while the City conducted a search for a new permanent director.

The City retained CPS HR Consulting, an executive search firm, to conduct an extensive, nationwide search for a new Director. The City then conducted a competitive interview process.

In accordance with the City Charter, Section 28(b) of Article VII, I am submitting my selection for the Director of Health, Housing and Community Services to the City Council for confirmation. I have selected Dr. Warhuus for appointment to the Director position. I am requesting confirmation of this appointment so that I may formally offer this regular at will benefited department head position to Dr. Warhuus, to be effective March 9, 2020.

BACKGROUND

The Health, Housing and Community Services Department strives to enhance community life and support health and wellness for all. The department is committed to social and environmental justice and to promoting equity in health, housing and

economic opportunity. It is the third largest department in the City with 246 employees and a budget of nearly \$55 million.

The department consists of six divisions: Aging Services, Environmental Health, Housing and Community Services, Office of the Director, Mental Health and Public Health. These complex divisions support people throughout the city with a broad and diverse set of work, including affordable housing development, senior centers, homeless services, restaurant health inspections, community based mental health services, public health clinics and much more.

The Director of HHCS provides overall leadership, policy development and management for the Department; manages the Department's fiscal activities including budgeting, accounting payroll, purchasing and billings to external funders. The Director's primary responsibility is to work closely with staff, City leadership, key public and private partner agencies and the community to ascertain the community's needs and lead implementation of programs and equitable service delivery that responds to and addresses the community's needs.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

#### RATIONALE FOR RECOMMENDATION

The City retained CPS HR, an executive search firm, to conduct a search for the Director of Health, Housing and Community Services. CPS HR discussed the position with industry leaders, executives from various professional associations, potential candidates and other sources to identify and recruit candidates for the Director of HHCS position. 134 applications were received; 33 initial screening interviews were conducted by CPS HR; eighteen applicants were interviewed, and a final interview was conducted by the City Manager and Deputy City Managers.

Based upon the results of that process, I am pleased to recommend that the Council confirm the appointment of Dr. Warhuus.

Dr. Warhuus has nearly 20 years of public sector experience, with expertise in public health. She is currently the Director of Children and Youth Initiatives for Alameda County's Health Care Services Agency. In this role she directs the Center for Healthy Schools and Communities with a combined budget of \$71 million and responsibilities for administering 28 school health centers, mental health in more than 200 schools, family resource centers in school districts and REACH Ashland Youth Center and health services in six additional youth centers. This work supports the healthy development of immigrant youth, youth in the juvenile justice system, boys and men of color and many more people.

Dr. Warhuus has an MA and PhD in Psychology from Aarhus University in Denmark, a BA in Psychology from UC Berkeley, and is a certified coach for organizational and relationship systems. She also has deep roots in Berkeley having grown up here and graduated from Berkeley High School.

Dr. Warhuus's extensive public sector management experience, education and background clearly demonstrate her commitment and ability to help people who the Health, Housing and Community Services Department strives to help.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Dee Williams-Ridley, City Manager, City Manager's Office (510) 981-7000

Attachments:

1: Resolution

RESOLUTION NO. ##,###-N.S.

CONFIRMING THE APPOINTMENT OF LISA WARHUUS AS DIRECTOR OF  
HEALTH, HOUSING AND COMMUNITY SERVICES

WHEREAS, Dr. Warhuus has nearly 20 years of public sector experience, with expertise in public health, budgeting and systems development; and

WHEREAS, Dr. Warhuus previously served as Director of Children and Youth Initiatives for Alameda County's Health Care Services Agency, directing a \$71 million operation; and

WHEREAS, Dr. Warhuus has an MA and PhD in Psychology from Aarhus University in Denmark, a BA in Psychology from UC Berkeley, and is a certified coach for organizational and relationship systems.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby confirms the City Manager's appointment of Dr. Lisa Warhuus as the Director of Health, Housing and Community Services with an annual salary of \$188,000, on the same terms and conditions as other regular at will employees, effective March 9, 2020.



Office of the City Manager

CONSENT CALENDAR  
February 11, 2020

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Henry Oyekanmi, Director, Finance  
 Subject: Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on February 11, 2020

RECOMMENDATION

Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.

FISCAL IMPACTS OF RECOMMENDATION

Total estimated cost of items included in this report is \$12,528,300.

| <u>PROJECT</u>                                                                                                | <u>Fund</u>       | <u>Source</u>                                                           | <u>Amount</u>       |
|---------------------------------------------------------------------------------------------------------------|-------------------|-------------------------------------------------------------------------|---------------------|
| Berkeley Marina Roadway Improvement Project on University Ave/ Marina Blvd/ Spinnaker Way                     | 608<br>127<br>511 | Marina Operations<br>State Transportation<br>Tax<br>T1 – Infrastructure | \$7,348,300         |
| On-Site Veterinary Services for Berkeley Animal Care Services                                                 | 011               | Discretionary                                                           | \$180,000           |
| Solid Waste & Recycling Transfer Station Replacement Project - CA Environmental Quality Act (CEQA) Compliance | 601               | Zero Waste                                                              | \$5,000,000         |
| <b>Total:</b>                                                                                                 |                   |                                                                         | <b>\$12,528,300</b> |

CURRENT SITUATION AND ITS EFFECTS

On May, 6, 2008, Council adopted Ordinance No. 7,035-N.S. effective June 6, 2008, which increased the City Manager's purchasing authority for services to \$50,000. As a result, this required report submitted by the City Manager to Council is now for those purchases in excess of \$100,000 for goods; and \$200,000 for playgrounds and

Formal Bid Solicitations and Request for Proposals  
Scheduled for Possible Issuance After Council  
Approval on February 11, 2020

CONSENT CALENDAR  
February 11, 2020

construction; and \$50,000 for services. If Council does not object to these items being sent out for bid or proposal within one week of them appearing on the agenda, and upon final notice to proceed from the requesting department, the IFB (Invitation for Bid) or RFP (Request for Proposal) may be released to the public and notices sent to the potential bidder/respondent list.

#### BACKGROUND

On May 6, 2008, Council adopted Ordinance No. 7,035-N.S., amending the City Manager's purchasing authority for services.

#### ENVIRONMENTAL SUSTAINABILITY

The Finance Department reviews all formal bid and proposal solicitations to ensure that they include provisions for compliance with the City's environmental policies. For each contract that is subject to City Council authorization, staff will address environmental sustainability considerations in the associated staff report to City Council.

#### RATIONALE FOR RECOMMENDATION

Need for the services.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CONTACT PERSON

Darryl Sweet, General Services Manager, Finance, 510-981-7329

#### Attachments:

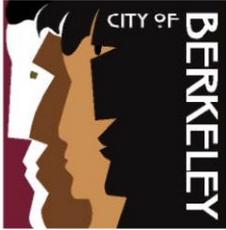
- 1: Formal Bid Solicitations and Request for Proposals Scheduled For Possible Issuance After Council Approval on February 11, 2020
  - a) Berkeley Marina Roadway Improvement Project on University Ave/ Marina Blvd/ Spinnaker Way
  - b) On-Site Veterinary Services for Berkeley Animal Care Services
  - c) Solid Waste & Recycling Transfer Station Replacement Project - CA  
Environmental Quality Act (CEQA) Compliance

Note: Original of this attachment with live signature of authorizing personnel is on file in General Services.

DATE SUBMITTED: February 11, 2020

| SPECIFICATION NO.  | DESCRIPTION OF GOODS / SERVICES BEING PURCHASED                                                               | APPROX. RELEASE DATE | APPROX. BID OPENING DATE | INTENDED USE                                                                                                                                                                                                                                                                                    | ESTIMATED COST                                                                                                         | BUDGET CODE TO BE CHARGED                                                                                                                                                                                                             | DEPT. / DIVISION      | CONTACT NAME & PHONE      |
|--------------------|---------------------------------------------------------------------------------------------------------------|----------------------|--------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|---------------------------|
| 20-11388-C         | Berkeley Marina Roadway Improvement Project on University Ave/ Marina Blvd/ Spinnaker Way                     | 2/18/2020            | 3/24/2020                | This project will construct roadway improvements on three main streets in the Marina including:<br>1) University Ave Lane Reconfiguration (from West Frontage Road to Marina Blvd,<br>2) Marina Blvd Pavement Rehabilitation, 3) Spinnaker Way Pavement Rehabilitation and Drainage Improvement | \$7,348,300                                                                                                            | 608-52-545-000-0000-000-473-665110-PRWT119006; \$3,000,000 (Marina Fund)<br><br>127-54-PW-623 -673-3012-000-431-665110-PWENST2001; \$1,000,000 (PW Street CIP)<br><br>511-52-545-000-0000-000-473-665110-PRWT119006; \$3,348,300 (T1) | PRW/Waterfront        | Nelson Lam<br>981-6395    |
| <b>DEPT. TOTAL</b> |                                                                                                               |                      |                          |                                                                                                                                                                                                                                                                                                 | <b>\$7,348,300</b>                                                                                                     |                                                                                                                                                                                                                                       |                       |                           |
| 20-11389-C         | On-Site Veterinary Services for Berkeley Animal Care Services                                                 | 2/12/2020            | 3/17/2020                | On site veterinary services for Animal Care Services                                                                                                                                                                                                                                            | \$180,000<br>\$60,000 annually for three years                                                                         | 011-21-203-000-0000-000-424-612410                                                                                                                                                                                                    | CM<br>Animal Services | Amelia Funghi<br>981-6603 |
| <b>DEPT. TOTAL</b> |                                                                                                               |                      |                          |                                                                                                                                                                                                                                                                                                 | <b>\$180,000</b>                                                                                                       |                                                                                                                                                                                                                                       |                       |                           |
| 20-11390-C         | Solid Waste & Recycling Transfer Station Replacement Project - CA Environmental Quality Act (CEQA) Compliance | 3/26/2020            | 4/20/2020                | The Solid Waste & Recycling Transfer Station Feasibility Study has developed two (2) concepts and the next step – comply with CEQA requirements for both concepts                                                                                                                               | FY 2020<br>\$250,000<br>FY 2021<br>\$2,500,000<br>FY 2022<br>\$2,000,000<br>FY 2023<br>\$250,000<br>Total: \$5,000,000 | 601-54-627-734-3023-000-472-612990-                                                                                                                                                                                                   | PW/<br>Zero Waste     | Greg Apa<br>981-6359      |
| <b>DEPT. TOTAL</b> |                                                                                                               |                      |                          |                                                                                                                                                                                                                                                                                                 | <b>\$5,000,000</b>                                                                                                     |                                                                                                                                                                                                                                       |                       |                           |
| <b>GRAND TOTAL</b> |                                                                                                               |                      |                          |                                                                                                                                                                                                                                                                                                 | <b>\$12,528,300</b>                                                                                                    |                                                                                                                                                                                                                                       |                       |                           |





Office of the City Manager

CONSENT CALENDAR  
February 11, 2020

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: LaTanya Bellow, Director of Human Resources  
Subject: Contract No. 9649 Amendment: Sloan Sakai LLP for Continued Chief Labor Negotiator Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 9649 increasing the contract amount by \$235,000 with Sloan Sakai LLP for Chief Labor Negotiator services, for a revised total contract amount not to exceed \$450,000.

FISCAL IMPACTS OF RECOMMENDATION

The contract amendment with Sloan Sakai LLP for Chief Labor Negotiator services will add \$235,000 to the existing contract through end of the year 2020. Funding for the additional funds is available in the Fiscal Year budget under the General Fund for Human Resources Personnel 011-34-343-000-0000-000-412-612990. The City of Berkeley recently approved a carryover adjustment of \$70,000 and an appropriation of \$450,000 for labor negotiations in the First Amendment to the FY 2020 Annual Appropriations Ordinance.

|                                    |                  |
|------------------------------------|------------------|
| Current Contract Amount            | \$215,000        |
| Proposed Increase (this amendment) | \$235,000        |
| <b>Total New Contract Amount</b>   | <b>\$450,000</b> |

CURRENT SITUATION AND ITS EFFECTS

Under the direction of the City Council and the City Manager, the Human Resources Department is responsible for labor relations activities including serving as the City's Chief Spokesperson for collective bargaining, preparing contract language, researching and analyzing union proposals, analyzing survey data, costing proposals, and preparing presentations to the City Council. The City Attorney's Office provides consultation to the Human Resources Department in the collective bargaining process. Staff negotiates successor Memoranda of Understanding / Memorandum Agreements (MOU/MA) with the labor organizations pursuant to the labor-management provisions

of the Meyers-Milias Brown Act. There are seven (7) labor organizations representing the majority of City staff:

| Labor Organization                                                                                              | Term of MOU              |
|-----------------------------------------------------------------------------------------------------------------|--------------------------|
| Service Employees International Union, Local 1021 Maintenance and Clerical Chapters                             | June 2018 – June 2020    |
| Service Employees International Union, Local 1021 Community Services & Part-Time Recreation Leaders Association | October 2018 – June 2020 |
| International Brotherhood of Electrical Workers, Local 1245                                                     | October 2018 – June 2020 |
| Berkeley Police Association                                                                                     | June 2017 – June 2020    |
| Berkeley Fire Fighters Association Local 1227 I.A.F.F.                                                          | June 2017 – June 2020    |
| Berkeley Chief Fire Officers Association Local 1227 I.A.F.F.                                                    | June 2018 – June 2020    |
| Public Employees Union Local 1                                                                                  | October 2018 – June 2020 |

Due to workload and staffing changes in the Human Resources Department, the City entered into contract with the law firm of Sloan Sakai LLP for the services of Dania Torres-Wong, an experienced labor negotiator with various other local public agencies.

**BACKGROUND**

Sloan Sakai LLP was selected through a competitive bidding process. Since May 2015, Ms. Torres-Wong has served as Lead Negotiator for the City with both Service Employees International Union Local 1021 Maintenance and Clerical Chapters (SEIU Local 1021MC) as well as with the Service Employees International Union Local 1021 Community Services and Part-Time Recreation Leaders Association (SEIU Local 1021CSU/PTRLA). Her services include meeting with the City Manager and other staff to analyze and prepare the City's proposals and to analyze union proposals. In addition, Ms. Torres-Wong will meet in closed session with the Mayor and Council. Ms. Torres-Wong is an effective negotiator and established good professional relationships with both labor and management representatives and was instrumental in negotiating a fair and equitable agreement with SEIU Local 1021.

Currently, Sloan Sakai LLP's contract with the City expires on December 31, 2020 and is close to reaching the total limit of \$215,000. This contract amendment will allow the City to continue to utilize Ms. Torres-Wong's services as Chief Spokesperson in MOU /MA negotiations with SEIU Local 1021 M&C and CSU/PTRLA throughout the 2020 negotiations period.

**ENVIRONMENTAL SUSTAINABILITY**

There are no identifiable environmental effects or opportunities associated with the

subject of this report.

RATIONALE FOR RECOMMENDATION

Sloan Sakai LLP offers the City a professional and cost-effective solution to the City's labor relations requirements.

ALTERNATIVE ACTIONS CONSIDERED

Conduct collective bargaining with existing staff, which would negatively impact the Human Resources Department's ability to meet other service demands given that all of the City's labor contracts expire at the same time.

CONTACT PERSON

LaTanya Bellow, Director of Human Resources, Human Resources Department, 981-6807

Attachments

1: Resolution

RESOLUTION NO. ##,###-N.S.

CONTRACT NO. 9649 AMENDMENT: SLOAN SAKAI LLP FOR CHIEF LABOR  
NEGOTIATOR SERVICES

WHEREAS, the City is required by law to meet and confer in good faith with labor organizations representing City staff in an attempt to reach agreement on successor Memoranda of Understanding; and

WHEREAS, on May 22, 2014, the City entered into a contract with Renne Sloan Holtzman Sakai LLP (Contract No. 9649) for attorney Dania Torres-Wong to perform Chief Labor Negotiator services in the City's negotiations with the Service Employees International Union Local 1021 Maintenance and Clerical Chapter; and Service Employees International Union Local 1021 Community Services and Part-Time Recreation Leaders Association; and

WHEREAS, Sloan Sakai LLP was selected through a competitive bidding process; and

WHEREAS, Ms. Torres-Wong has been the City's Chief Labor Negotiator since the City and SEIU Local 1021 began meet and confer in May 2015; and

WHEREAS, the City is close to reaching its contract limit of \$215,000 and unless contract amount is increased, the City would be without the services of a Chief Labor Negotiator; and

WHEREAS, funding for this amendment is available in the current year budget in budget code General Fund for Human Resources Personnel 011-34-343-000-0000-000-412-612990.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute an amendment to Contract No. 9649 with Sloan Sakai LLP for Chief Labor Negotiator services to increase the amount by \$235,000, for a total not to exceed \$450,000. A record signature copy of said contract and any amendments to be on file in the Office of the City Clerk.



Office of the City Manager

CONSENT CALENDAR  
February 11, 2020

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Kelly Wallace, Interim Director, Health, Housing & Community Services  
 Subject: Funding Application: State of California Department of Housing and  
 Community Development for CalHome Funds

RECOMMENDATION

Adopt a Resolution authorizing the City Manager, or her designee, to submit an application to the State of California Department of Housing and Community Development (HCD) for a minimum of \$1,000,000 and up to \$5,000,000 in funding under the CalHome Owner-Occupied Rehabilitation Program, and if awarded, execute the Standard Agreement, and any subsequent amendments or modifications thereto.

FISCAL IMPACTS OF RECOMMENDATION

If the City's application is successful, CalHOME funds would be used to augment the budget for the City's Senior and Disabled Home Rehabilitation Loan Program (SDRLP). The CalHome Program does not require the City to provide matching funds to participate in the program, however the City currently allocates Community Development Block Grant (CDBG) funds for staffing to deliver the program and for rehabilitation costs.

CURRENT SITUATION AND ITS EFFECTS

The California Department of Housing and Community Development has issued a Notice of Funding Availability (NOFA) under the CalHome Program with funds from the Affordable Housing Bond Act Trust Fund of 2018, making \$57 million available to local communities.

City Council must adopt a resolution authorizing the City Manager to submit an application for funding. The maximum funding request for owner-occupied home rehabilitation is \$5,000,000. The maximum individual loan amount is set by HCD and under this grant would be \$75,000. HCD allows the City to charge from zero to three percent simple interest under the program. The City of Berkeley has used CalHome funds to partially fund the Senior and Disabled Rehabilitation Loan Program (SDRLP) since 2001. Under SDRLP, City staff make zero interest deferred loans which are repaid when title to the property changes hands, either as a result of a sale of the property or the death of the homeowner, or in 30 years, whichever comes first.

### BACKGROUND

Since 2001, the City has received four CalHome grants providing a total of \$2,350,000 in loans for Berkeley homeowners which enabled recipients of program assistance to remain in their homes as they age. The City does not currently have an active CalHome grant with HCD, but the program is using loan repayments to fund new loans. These “reuse” funds currently amount to approximately \$400,000, which could support approximately 8 projects. If the HHCS Department is successful in receiving new CalHOME funding, the department will continue to use the new and reuse CalHome funds to assist low-income seniors and disabled homeowners to rehabilitate their homes with zero interest loans. The City also allocates CDBG funds to deliver the program and provide funds for rehabilitation loans.

The City’s Senior and Disabled Home Rehabilitation Loan Program is aligned with a Strategic Plan Priority Project, advancing our goal to maintain affordable housing and housing support service for our most vulnerable low-income senior and disabled community members.

### ENVIRONMENTAL SUSTAINABILITY

The SDRLP assists low-income homeowners with health and safety repairs so that they can remain in their homes as they age. Many of the home repairs increase energy and water efficiency through the replacement of older, less efficient or broken HVAC systems, single paned windows, leaky plumbing and roofs, and the installation of attic and wall insulation and vapor barriers. Structural improvements, such as foundation work, are also common. Each project is also assessed for a sewer lateral replacement. All new fixtures are Energy Star qualified and work performed adheres to the most recent Energy Code as enforced by the City’s Department of Planning and Development.

### RATIONALE FOR RECOMMENDATION

The City’s existing housing rehabilitation program meets the guidelines for consideration under CalHome Program since it offers loans to low-income seniors and disabled homeowners. The City of Berkeley does not have an open CalHome grant, and us currently only using CalHome reuse funds, which are limited and dependent on loan repayments. If the application is successful, the City will be able to continue to administer the program and provide the necessary loan assistance to a minimum of 10 to 15 low-income Berkeley homeowners over the 36 month period.

### ALTERNATIVE ACTIONS CONSIDERED

If the City does not pursue this funding opportunity, the Senior and Disabled Home Rehabilitation Loan Program will be limited to the CalHome reuse fund account which fluctuates as loans are repaid and new loans executed. Obtaining a new CalHome grant would guarantee new funds for 36 months to assist low-income homeowners to make the repairs necessary to remain in their homes. If the City is unsuccessful in this application, the City would need to consider freezing the program until CalHome reuse

Funding Application: State of California Department of Housing and Community Development for  
CalHome Funds

CONSENT CALENDAR  
February 11, 2020

funds are again available and/or possibly seek private funding sources, likely at higher interest rates, in order to continue this vital program.

CONTACT PERSON

Rhianna Babka, Community Service Specialist III, HHCS, (510) 981-5410

Attachments:

1: Resolution

RESOLUTION NO. ##,###-N.S.

FUNDING APPLICATION: STATE OF CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT FOR CALHOME FUNDS FOR USE IN THE SENIOR AND DISABLED HOME REHABILITATION LOAN PROGRAM

WHEREAS, the City Council continues to support housing rehabilitation loans for senior and disabled homeowners in the City and desires to increase funding to this program when funding is available; and

WHEREAS, the City of Berkeley, a subdivision of the State of California, wishes to apply for and receive an allocation of funds through the CalHome Program; and

WHEREAS, the California Department of Housing and Community Development (hereinafter referred to as "HCD") has issued a Notice of Funding Availability ("NOFA") on December 23, 2019 for the CalHome program established by Chapter 84, Statutes of 2000 (SB 1656 Alarcon), and codified in Chapter 6 (commencing with Section 50650) of Part 2 of Division 31 of the Health and Safety Code ("the statute"). Pursuant to the statute, HCD is authorized to approve funding allocations utilizing monies made available by the State Legislature to the CalHome program, subject to the terms and conditions of the statute and the CalHome Program Regulations adopted by HCD in April 2004; and

WHEREAS, the City of Berkeley wishes to submit an application to obtain from HCD an allocation of CalHome funds for a minimum amount of \$1,000,000 and a maximum amount of \$5,000,000 for housing rehabilitation activities for low-income senior and disabled homeowners throughout the City.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager, or her designee, is hereby authorized to submit an application to the CalHome Program; the execution of a standard agreement if selected for such funding and any amendments thereto; and any related documents necessary to participate in the CalHome program in response to the NOFA issued on December 23, 2019.

BE IT FURTHER RESOVLED that the City of Berkeley shall submit to HCD an application to participate in the CalHome Program in response to the NOFA issued on December 23, 2019 which will request a funding allocation for the following activities:

A minimum of one million dollars (\$1,000,000) and up to five million dollars (\$5,000,000) will be used to provide home rehabilitation loans to low-income Senior and Disabled homeowners in Berkeley so that they may remain in their homes as they age.

BE IT FURTHER RESOLVED that if the application for funding is approved, the City of Berkeley hereby agrees to use the CalHome funds for eligible activities in the manner

February 11, 2020

presented in the application as approved by HCD and in accordance with program regulations cited above. The application in full is incorporated as part of the Standard Agreement. Any and all activities funded, information provided, and timeliness represented in the application are enforceable through the Standard Agreement. The City of Berkeley, acknowledges and agrees that it may be required to execute any and all other instruments necessary or required by HCD for participation in the CalHome Program.

BE IT FURTHER RESOLVED that the City Manager, or her designee in the event that sufficient evidence of designation is provided to the Department, is authorized to execute in the name of the City of Berkeley, the application, the Standard Agreement, and any subsequent amendments or modifications thereto, as well as any other documents required by HCD for participation in the CalHome Program, and any amendments thereto.

BE IT FURTHER RESOLVED that the City Manager, or her designee, is authorized to approve loan applications under the existing Senior and Disabled Home Rehabilitation Loan Program, to execute any agreements or contracts and to take related actions necessary to facilitate the program in keeping with the intent of this resolution. A record signature copy of the executed CalHome Standard Agreement shall be on file in the Office of the City Clerk.





Office of the City Manager

CONSENT CALENDAR  
February 11, 2020

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Kelly Wallace, Interim Director, Health, Housing & Community Services  
 Subject: Jointly Apply for Infill Infrastructure Grant Funding for Projects Seeking City Funding through the 2019 Housing Trust Fund Request for Proposals

RECOMMENDATION

Adopt two resolutions that enable affordable housing development projects that applied for City funding through the 2019 Housing Trust Fund Request for Proposals to access State of California Infill Infrastructure Grant (IIG) funds by:

1. Authorizing the City Manager to prepare and submit a joint application with each of the following developers proposing to use IIG funds:
  - a. Satellite Affordable Housing Associates (for Blake Apartments at 2527 San Pablo);
  - b. Resources for Community Development (for Maudelle Miller Shirek Community at 2001 Ashby); and
2. Authorizing the City Manager to take actions needed for the City's participation in the IIG program by adopting state-required terms about submitting applications, entering into the State's Standard Agreement and other documents.

FISCAL IMPACTS OF RECOMMENDATION

There are no direct fiscal impacts for being a joint applicant for IIG funds. If awarded, the funds will go directly to the project sponsors. However, as a joint applicant, the City may share responsibility for completing the affordable housing development. Staff will evaluate the requirements and risks, and if needed, enter into side agreements with project sponsors to clarify responsibilities and mitigate risk to the City. If successful, the applications would bring up to \$12.5M in financing for local affordable housing projects.

CURRENT SITUATION AND ITS EFFECTS

City Council passed Resolution Number 69,211-N.S. on December 10, 2019, authorizing the City to jointly apply for Infill Infrastructure Grant (IIG) funding with developers that applied for City funding through the 2019 Housing Trust Fund Request for Proposals (HTF RFP). The December 10 IIG staff report acknowledged that the IIG Notice of Funding Availability did not include a resolution template. On December 31,

2019 the state released its IIG resolution requirements. Resolution Number 69,211-N.S. did not include all of the state's required language and therefore is not sufficient for the application due on February 18, 2020. The attached resolutions, one for each project applying for IIG funds in the current round include all the required elements, and will enable both applications to proceed.

The following projects received funding reservations through the City's 2019 Housing Trust Fund RFP and are now seeking IIG funding from the state:

- Satellite Affordable Housing Associates for 2527 San Pablo (Blake Apartments)
- Resources for Community Development for 2001 Ashby Avenue (Maudelle Miller Shirek Community)

BRIDGE Housing Corporation was awarded funding through the 2019 HTF RFP but is not pursuing IIG funds at this time. Jointly applying for IIG funds is a Strategic Plan Priority Project, advancing our goal to create affordable housing and housing support service for our most vulnerable community members.

#### BACKGROUND

IIG promotes infill housing development and funds infrastructure improvements related to site preparation or demolition, utility service, pedestrian and bicycle infrastructure, environmental remediation, and other improvements related to the affordable housing development.

Other state funding programs have required joint applications between the City and developer, and the City submitted successful joint applications for Affordable Housing and Sustainable Communities funds (for Grayson Apartments at 2748 San Pablo) and No Place Like Home funds (for Berkeley Way and Maudelle Miller Shirek Community). Joint applicants are typically required to accept joint liability, but the City and joint applicant may enter into a side agreement that establishes project responsibilities and indemnifies the City. Joint applications also demonstrate the City's commitment to advancing affordable housing locally.

#### ENVIRONMENTAL SUSTAINABILITY

There are no environmental sustainability effects directly associated with the recommendations in this report.

#### RATIONALE FOR RECOMMENDATION

The Council already approved acting as a joint applicant on both applications with Resolution Number 69,211-N.S. on December 10, 2019. The attached resolutions are consistent with that action, and add the state's preferred language and certain details such as the project name to the resolutions.

ALTERNATIVE ACTIONS CONSIDERED

The City could submit noncompliant resolutions with the IIG application. The state will require compliant resolutions that contain the language required for IIG joint applications. Submitting noncompliant resolutions could delay each project and would not be consistent with the City's Strategic Plan goal; it is therefore not recommended.

CONTACT PERSON

Jenny Wyant, Community Development Project Coordinator, HHCS, 510-981-5228

Attachments:

- 1: Resolution – Authorization to Jointly Apply for an Award from the Infill Infrastructure Program for Blake Apartments
- 2: Resolution – Authorization to Jointly Apply for an Award from the Infill Infrastructure Program for Maudelle Miller Shirek Community

RESOLUTION NO. ##,###-N.S.

AUTHORIZATION TO JOINTLY APPLY FOR AN AWARD FROM THE INFILL  
INFRASTRUCTURE PROGRAM FOR BLAKE APARTMENTS

WHEREAS, the City of Berkeley ("City" or "Recipient"), a California charter city, wishes to apply for and receive an allocation of funds through the Infill Infrastructure Grant Program ("IIG"); and

WHEREAS, the City will jointly apply for IIG funds with Satellite Affordable Housing Associates for Blake Apartments located at 2527 San Pablo Avenue; and

WHEREAS, The State of California Department of Housing and Community Development (the "Department") has issued a Notice of Funding Availability ("NOFA") for IIG established under Assembly Bill 101 (Chapter 159, Statutes of 2019) and Part 12.5 (commencing with section 53559) of Division 31 of the Health and Safety Code, which authorizes the Department to approve funding allocations utilizing monies made available by the State Legislature, subject to the terms and conditions of the statute and the IIG Guidelines implemented October 30, 2019.

NOW, THEREFORE, BE IT RESOLVED that the Recipient pursuant to the above-described Notice of Funding Availability wishes to apply for and receive an allocation of funds in an amount not to exceed \$5 million (the "IIG Grant").

BE IT FURTHER RESOLVED, that in connection with the Recipient's IIG Grant, the Recipient is authorized and directed to enter into, execute, and deliver a State of California Standard Agreement, and any and all other documents required or deemed necessary or appropriate to carry into effect the full intent and purpose of the above resolution, in order to evidence the IIG Grant, the Recipient's obligations related thereto, and the Department's security therefore; including, but not limited to, an affordable housing covenant, a performance deed of trust, a disbursement agreement, and certain other documents required by the Department as security for, evidence of or pertaining to the IIG Grant, and all amendments thereto (collectively, the "IIG Grant Documents").

BE IT FURTHER RESOLVED that the City Manager or his or her designee is hereby authorized to execute the IIG Grant Documents, and any amendment or modifications thereto, on behalf of the City.

BE IT FURTHER RESOLVED that this resolution shall take effect immediately upon its passage.

February 11, 2020

RESOLUTION NO. ##,###-N.S.

AUTHORIZATION TO JOINTLY APPLY FOR AN AWARD FROM THE INFILL  
INFRASTRUCTURE PROGRAM FOR MAUELLE MILLER SHIREK COMMUNITY

WHEREAS, the City of Berkeley ("City" or "Recipient"), a California charter city, wishes to apply for and receive an allocation of funds through the Infill Infrastructure Grant Program ("IIG"); and

WHEREAS, the City will jointly apply for IIG funds with Resources for Community Development for Maudelle Miller Shirek Community located at 2001 Ashby Avenue; and

WHEREAS, The State of California Department of Housing and Community Development (the "Department") has issued a Notice of Funding Availability ("NOFA") for IIG established under Assembly Bill 101 (Chapter 159, Statutes of 2019) and Part 12.5 (commencing with section 53559) of Division 31 of the Health and Safety Code, which authorizes the Department to approve funding allocations utilizing monies made available by the State Legislature, subject to the terms and conditions of the statute and the IIG Guidelines implemented October 30, 2019.

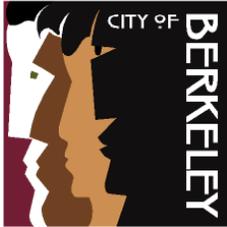
NOW, THEREFORE, BE IT RESOLVED that the Recipient pursuant to the above-described Notice of Funding Availability wishes to apply for and receive an allocation of funds in an amount not to exceed \$7.5 million (the "IIG Grant").

BE IT FURTHER RESOLVED, that in connection with the Recipient's IIG Grant, the Recipient is authorized and directed to enter into, execute, and deliver a State of California Standard Agreement, and any and all other documents required or deemed necessary or appropriate to carry into effect the full intent and purpose of the above resolution, in order to evidence the IIG Grant, the Recipient's obligations related thereto, and the Department's security therefore; including, but not limited to, an affordable housing covenant, a performance deed of trust, a disbursement agreement, and certain other documents required by the Department as security for, evidence of or pertaining to the IIG Grant, and all amendments thereto (collectively, the "IIG Grant Documents").

BE IT FURTHER RESOLVED that the City Manager or his or her designee is hereby authorized to execute the IIG Grant Documents, and any amendment or modifications thereto, on behalf of the City.

BE IT FURTHER RESOLVED that this resolution shall take effect immediately upon its passage.





Office of the City Manager

CONSENT CALENDAR  
February 11, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Kelly Wallace, Interim Director, Health, Housing and Community Services Department

Subject: Contract No. 19F-4404: Community Services Block Grant Discretionary Funding for June 1, 2019 – May 31, 2020

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to modify the scope and deliverables for Community Services Block Grant (CSBG) Contract Number 19F-4404 and execute any resultant agreements and amendments to provide services to low-income people for the period June 1, 2019 – May 31, 2020. Instead of providing short-term rental assistance, CSBG funds will be used for a mobile shower program operated by Project We Hope's Dignity on Wheels.

FISCAL IMPACTS OF RECOMMENDATION

This action would redirect Community Services Block Grant (CSBG) discretionary funds allocated for the period June 1, 2019 – May 31, 2020 in the amount of \$30,000 (Community Action Program Fund - 334-51-504-530-0000-000-000-431110-) to a different use. The CSBG allocation amount was already appropriated as part of the City's anti-poverty Community Action Fund for FY2020.

CURRENT SITUATION AND ITS EFFECTS

On June 25, 2019, City Council authorized the City Manager and her designee to execute CSBG Contract Number 19F-4404 for the amount of \$30,000 (Resolution No. 68,970 N.S.). This funding was allocated to Shelter Plus Care for the period June 1, 2019 through May 31, 2020 to provide rental assistance services for formerly homeless individuals. CSBG funds were intended to be used for security deposits and rental subsidies for homeless residents for a temporary period until a new federal grant, which started January 1, 2020, could absorb the costs. Due mostly to a very tight housing market these funds remain available and can be redirected without impact to the Shelter Plus Care program.

In December, City staff were notified by Lava Mae, which has been providing a mobile shower service in Berkeley through private donations, that they would no longer be able to provide this service in Berkeley as they were changing their service model. They recommended that the City reach out to another provider of mobile shower services to

determine if they could assume the service. City staff met with representatives from Lava Mae and from Project We Hope's Dignity on Wheels program, which provides mobile showers for various cities, including the City of Oakland. For \$30,000, Dignity on Wheels would be able to provide two sessions of mobile shower service per week until May 31, 2020.

At its January 15, 2020 meeting, the Human Welfare and Community Action Commission (HWCAC) passed a motion (M/S/C: Bookstein/Dunner; Vote: Ayes - Dunner, Smith, Kohn, Bookstein, Deyhim, Romo, Sim; Noes – None; Abstain – Sood, Omodele, Behm-Steinberg; Absent - None) to recommend that City Council authorize the City Manager to approve the amended CSBG contract for 2020. The City Manager has the authority to enter into a contract for services totaling \$50,000 or less.

### BACKGROUND

The City of Berkeley is a Community Action Agency (CAA) and receives Community Services Block Grant funds (CSBG) to support anti-poverty programs. CSBG funds are part of the federal Department of Health and Human Services budget passed through the state to local CAAs. The HWCAC acts as an advisory tri-partite Board to the Council providing public participation in the administration of the CSBG funds.

Community Services Block Grant (CSBG) provided discretionary anti-poverty funds to the City of Berkeley. The City received a one-time amount of \$30,000 of discretionary funds for the period of June 1, 2019 – May 31, 2020. On April 1, 2019 the HWCAC recommended accepting these funds, and they were allocated to Shelter Plus Care to provide rental assistance to formerly homeless individuals.

### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

### RATIONALE FOR RECOMMENDATION

Utilizing these one-time funds before their expiration to continue mobile shower services for homeless residents addresses an important City goal and objective of the CSBG program to assist low-income residents in Berkeley make strides towards self-sufficiency.

### ALTERNATIVE ACTIONS CONSIDERED

No alternative actions were considered.

### CONTACT PERSON

Mary-Claire Katz, Associate Management Analyst, Health, Housing & Community Services Department, (510) 981-5414

Attachments:

1: Resolution

RESOLUTION NO. ##,###-N.S.

CONTRACT NO. 19F-4404: 2019 COMMUNITY SERVICES BLOCK GRANT (CSBG)

WHEREAS, the City of Berkeley is a Community Action Agency and receives CSBG funds as the Berkeley Community Action Agency to support anti-poverty programs; and

WHEREAS, the Human Welfare and Community Action Commission (HWCAC) acts as an advisory tri-partite Board to the Council providing public participation in the governing process; and

WHEREAS, at the April 17, 2019 HWCAC meeting a motion was passed recommending that the City accept the Community Service Block Grant Discretionary Funds; and

WHEREAS, at the January 15, 2020 HWCAC meeting a motion was passed to recommend that City Council change the recipient from the Shelter Plus Care program to Project We Hope's Dignity on Wheels mobile shower program; and

WHEREAS, this CSBG revenue contract covers the calendar year 2019-2020 (June 1, 2019 through May 31, 2020) for the contract amount of \$30,000 (Community Action Program Fund - 334-51-504-530-0000-000-000-431110-), CMS No. YD82Z; and

WHEREAS, the funds have historically been used to support homeless services and will continue to support services for low-income Berkeley residents; (budget code (334-51-504-530-0000-000-444-Various to 334-51-504-535-0000-000-444-Various).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized to modify the scope of services which are part of the Community Service Block Grant Contract Number 19F-4404, and to change the recipient from the Shelter Plus Care program to Project We Hope's Dignity on Wheels mobile shower program, and execute any resultant agreements and amendments that may increase the contract amount to provide low-income services for the time period June 1, 2019 – May 31, 2020. A record signature copy of said agreement and any amendments shall be on file in the office of the City Clerk.





Office of the Mayor

CONSENT CALENDAR  
February 11, 2020

To: Honorable Members of the City Council  
 From: Mayor Jesse Arreguín and Councilmember Ben Bartlett  
 Subject: Support of HR 5038 – Farm Workforce Modernization Act of 2019

RECOMMENDATION

Adopt a Resolution supporting House Resolution (HR) 5038 – the Farm Workforce Modernization Act of 2019. Send a copy of the Resolution to Representatives Zoe Lofgren and Barbara Lee, Senators Dianne Feinstein and Kamala Harris, and President Donald Trump.

BACKGROUND

There are 2.4 million farmworkers in the United States, a majority of whom are undocumented. California is a significant source of the country's food resources, producing \$43 billion in agricultural goods annually including a third of all vegetables and two thirds of fruits and nuts. In California, approximately 75% of farmworkers are undocumented. These farmworkers play a crucial role in the state and country's economy, yet many of them live in fear, concerned that their livelihood will be uprooted through deportations.

House Resolution (HR) 5038, known as the Farm Workforce Modernization Act of 2019, is a bipartisan bill introduced by U.S. Representative Zoe Lofgren. The bill creates a path to legal immigration status for undocumented farmworkers, and ultimately citizenship. Specifically, it would allow workers to apply for Certified Agricultural Worker (CAW) status if they have worked in agriculture for at least 180 days over the past two years prior to the introduction of the bill. Farmworkers with a CAW status would be authorized to work in any industry, but they must continue to work in agriculture at least 100 days per year to qualify for renewal (the status lasts for 5.5 years and can be renewed indefinitely). CAW status also grants holders the ability to travel in and out of the United States. Spouse and children of a CAW worker are also given the same protections.

Once a person receives CAW status, they can apply for Legal Permanent Resident Status, more commonly known as a Green Card. In order to achieve Legal Permanent Resident Status, a person will need to work in agriculture for at least 100 days annually for:

- 4 years for those who have worked in the industry for more than 10 years
- 8 years if they have worked in the industry for less than ten years prior to the introduction of the bill.

The bill also addresses affordable housing for farmworkers. This would earmark increased federal funding for farmworker housing in rural communities and ensure that new housing is suitable for families.

The bill, introduced in November 2019, cleared the House after a bipartisan vote of 260-165. It is currently in the Senate Committee on the Judiciary.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

Not applicable.

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

- 1: Resolution
- 2: Text of HR 5038

RESOLUTION NO. ##,###-N.S.

IN SUPPORT OF HR 5038 –FARM WORKFORCE MODERNIZATION ACT OF 2019

WHEREAS, there are an estimated 2.4 million farmworkers in the United States, a majority of whom are undocumented, including approximately 75% in California; and

WHEREAS, California is home to a significant proportion of America's agricultural industry, growing a third of all vegetables and two thirds of fruit and nuts in the country, and contributing \$43 billion in goods annually; and

WHEREAS, farmworkers are an important part of our state and nation's economy, yet many live in fear, concerned that their livelihood will be uprooted through deportations;; and

WHEREAS, House Resolution (HR) 5038, known as Farm Workforce Modernization Act of 2019, introduced by U.S. Representative Zoe Lofgren creates a path to immigration status for undocumented farmworkers and ultimately citizenship; and

WHEREAS, the bill creates the Certified Agricultural Worker (CAW) status which allows people who have worked in agriculture for at least 180 days within two years prior to the introduction of the bill and their families to travel in and out of the United States and apply for Legal Permanent Residency Status, commonly known as a Green Card; and

WHEREAS, applicants must continue to work in agriculture for at least 100 days a year, and renew their status as a CAW every 5.5 years, which can be renewed indefinitely; and

WHEREAS, to be granted a Green Card, applicants will need to work in agriculture for at least 100 days annually for 4 years, for those who have worked in the industry for more than 10 years before the introduction of the bill, and 8 years for those who have worked in the industry for less than ten years prior to the introduction of the bill; and

WHEREAS, the bill also has provisions for the creation of affordable housing for rural farmworker families; and

WHEREAS, HR 5038 is in alignment with Berkeley values as a Sanctuary City, in that it provides undocumented residents a pathway to citizenship without fear of deportation; and

WHEREAS, the bi-partisan bill, which was introduced in November 2019, has passed the House with a 260-165 vote, and as of January 21, 2020 was referred to the Senate Committee on the Judiciary.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby supports House Resolution (HR) 5038, the Farm Workforce Modernization Act of 2019.

BE IT FURTHER RESOLVED that copies of this Resolution be sent to Representatives Zoe Lofgren and Barbara Lee, Senators Dianne Feinstein and Kamala Harris, and President Donald Trump.

116TH CONGRESS  
1ST SESSION

# H. R. 5038

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IN THE SENATE OF THE UNITED STATES

DECEMBER 12, 2019

Received; read twice and referred to the Committee on the Judiciary

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## AN ACT

To amend the Immigration and Nationality Act to provide for terms and conditions for nonimmigrant workers performing agricultural labor or services, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Farm Workforce Modernization Act of 2019”.

4 (b) TABLE OF CONTENTS.—The table of contents for  
5 this Act is as follows:

Sec. 1. Short title; table of contents.

**TITLE I—SECURING THE DOMESTIC AGRICULTURAL WORKFORCE**

**Subtitle A—Temporary Status for Certified Agricultural Workers**

- Sec. 101. Certified agricultural worker status.
- Sec. 102. Terms and conditions of certified status.
- Sec. 103. Extensions of certified status.
- Sec. 104. Determination of continuous presence.
- Sec. 105. Employer obligations.
- Sec. 106. Administrative and judicial review.

**Subtitle B—Optional Earned Residence for Long-term Workers**

- Sec. 111. Optional adjustment of status for long-term agricultural workers.
- Sec. 112. Payment of taxes.
- Sec. 113. Adjudication and decision; review.

**Subtitle C—General Provisions**

- Sec. 121. Definitions.
- Sec. 122. Rulemaking; Fees.
- Sec. 123. Background checks.
- Sec. 124. Protection for children.
- Sec. 125. Limitation on removal.
- Sec. 126. Documentation of agricultural work history.
- Sec. 127. Employer protections.
- Sec. 128. Correction of social security records.
- Sec. 129. Disclosures and privacy.
- Sec. 130. Penalties for false statements in applications.
- Sec. 131. Dissemination of information.
- Sec. 132. Exemption from numerical limitations.
- Sec. 133. Reports to Congress.
- Sec. 134. Grant program to assist eligible applicants.
- Sec. 135. Authorization of appropriations.

**TITLE II—ENSURING AN AGRICULTURAL WORKFORCE FOR THE  
FUTURE**

**Subtitle A—Reforming the H-2A Temporary Worker Program**

- Sec. 201. Comprehensive and streamlined electronic H-2A platform.
- Sec. 202. H-2A program requirements.
- Sec. 203. Agency roles and responsibilities.
- Sec. 204. Worker protection and compliance.
- Sec. 205. Report on wage protections.

- Sec. 206. Portable H-2A visa pilot program.
- Sec. 207. Improving access to permanent residence.

Subtitle B—Preservation and Construction of Farmworker Housing

- Sec. 220. Short title.
- Sec. 221. Permanent establishment of housing preservation and revitalization program.
- Sec. 222. Eligibility for rural housing vouchers.
- Sec. 223. Amount of voucher assistance.
- Sec. 224. Rental assistance contract authority.
- Sec. 225. Funding for multifamily technical improvements.
- Sec. 226. Plan for preserving affordability of rental projects.
- Sec. 227. Covered housing programs.
- Sec. 228. New farmworker housing.
- Sec. 229. Loan and grant limitations.
- Sec. 230. Operating assistance subsidies.
- Sec. 231. Eligibility of certified workers.

Subtitle C—Foreign Labor Recruiter Accountability

- Sec. 251. Registration of foreign labor recruiters.
- Sec. 252. Enforcement.
- Sec. 253. Appropriations.
- Sec. 254. Definitions.

TITLE III—ELECTRONIC VERIFICATION OF EMPLOYMENT  
ELIGIBILITY

- Sec. 301. Electronic employment eligibility verification system.
- Sec. 302. Mandatory electronic verification for the agricultural industry.
- Sec. 303. Coordination with E-Verify Program.
- Sec. 304. Fraud and misuse of documents.
- Sec. 305. Technical and conforming amendments.
- Sec. 306. Protection of Social Security Administration programs.
- Sec. 307. Report on the implementation of the electronic employment verification system.
- Sec. 308. Modernizing and streamlining the employment eligibility verification process.
- Sec. 309. Rulemaking and Paperwork Reduction Act.

1 **TITLE I—SECURING THE DOMES-**  
2 **TIC AGRICULTURAL WORK-**  
3 **FORCE**

4 **Subtitle A—Temporary Status for**  
5 **Certified Agricultural Workers**

6 **SEC. 101. CERTIFIED AGRICULTURAL WORKER STATUS.**

7 (a) REQUIREMENTS FOR CERTIFIED AGRICULTURAL  
8 WORKER STATUS.—

9 (1) PRINCIPAL ALIENS.—The Secretary may  
10 grant certified agricultural worker status to an alien  
11 who submits a completed application, including the  
12 required processing fees, before the end of the period  
13 set forth in subsection (c) and who—

14 (A) performed agricultural labor or serv-  
15 ices in the United States for at least 1,035  
16 hours (or 180 work days) during the 2-year pe-  
17 riod preceding the date of the introduction of  
18 this Act;

19 (B) on the date of the introduction of this  
20 Act—

21 (i) is inadmissible or deportable from  
22 the United States; or

23 (ii) is under a grant of deferred en-  
24 forced departure or has temporary pro-

1           tected status under section 244 of the Im-  
2           migration and Nationality Act;

3           (C) subject to section 104, has been con-  
4           tinuously present in the United States since the  
5           date of the introduction of this Act and until  
6           the date on which the alien is granted certified  
7           agricultural worker status; and

8           (D) is not otherwise ineligible for certified  
9           agricultural worker status as provided in sub-  
10          section (b).

11          (2) DEPENDENT SPOUSE AND CHILDREN.—The  
12          Secretary may grant certified agricultural dependent  
13          status to the spouse or child of an alien granted cer-  
14          tified agricultural worker status under paragraph  
15          (1) if the spouse or child is not ineligible for cer-  
16          tified agricultural dependent status as provided in  
17          subsection (b).

18          (b) GROUNDS FOR INELIGIBILITY.—

19                (1) GROUNDS OF INADMISSIBILITY.—Except as  
20                provided in paragraph (3), an alien is ineligible for  
21                certified agricultural worker or certified agricultural  
22                dependent status if the Secretary determines that  
23                the alien is inadmissible under section 212(a) of the  
24                Immigration and Nationality Act (8 U.S.C.

1 1182(a)), except that in determining inadmis-  
2 sibility—

3 (A) paragraphs (4), (5), (7), and (9)(B) of  
4 such section shall not apply;

5 (B) subparagraphs (A), (C), (D), (F), and  
6 (G) of such section 212(a)(6) and paragraphs  
7 (9)(C) and (10)(B) of such section 212(a) shall  
8 not apply unless based on the act of unlawfully  
9 entering the United States after the date of in-  
10 troduction of this Act; and

11 (C) paragraphs (6)(B) and (9)(A) of such  
12 section 212(a) shall not apply unless the rel-  
13 evant conduct began on or after the date of fil-  
14 ing of the application for certified agricultural  
15 worker status.

16 (2) ADDITIONAL CRIMINAL BARS.—Except as  
17 provided in paragraph (3), an alien is ineligible for  
18 certified agricultural worker or certified agricultural  
19 dependent status if the Secretary determines that,  
20 excluding any offense under State law for which an  
21 essential element is the alien's immigration status  
22 and any minor traffic offense, the alien has been  
23 convicted of—

24 (A) any felony offense;

1 (B) an aggravated felony (as defined in  
2 section 101(a)(43) of the Immigration and Na-  
3 tionality Act (8 U.S.C. 1101(a)(43)) at the  
4 time of the conviction);

5 (C) two misdemeanor offenses involving  
6 moral turpitude, as described in section  
7 212(a)(2)(A)(i)(I) of the Immigration and Na-  
8 tionality Act (8 U.S.C. 1182(a)(2)(A)(i)(I)),  
9 unless an offense is waived by the Secretary  
10 under paragraph (3)(B); or

11 (D) three or more misdemeanor offenses  
12 not occurring on the same date, and not arising  
13 out of the same act, omission, or scheme of  
14 misconduct.

15 (3) WAIVERS FOR CERTAIN GROUNDS OF INAD-  
16 MISSIBILITY.—For humanitarian purposes, family  
17 unity, or if otherwise in the public interest, the Sec-  
18 retary may waive the grounds of inadmissibility  
19 under—

20 (A) paragraph (1), (6)(E), or (10)(D) of  
21 section 212(a) of the Immigration and Nation-  
22 ality Act (8 U.S.C. 1182(a)); or

23 (B) subparagraphs (A) and (D) of section  
24 212(a)(2) of the Immigration and Nationality  
25 Act (8 U.S.C. 1182(a)(2)), unless inadmis-

1           sibility is based on a conviction that would oth-  
2           erwise render the alien ineligible under subpara-  
3           graph (A), (B), or (D) of paragraph (2).

4           (c) APPLICATION.—

5           (1) APPLICATION PERIOD.—Except as provided  
6           in paragraph (2), the Secretary shall accept initial  
7           applications for certified agricultural worker status  
8           during the 18-month period beginning on the date  
9           on which the interim final rule is published in the  
10          Federal Register pursuant to section 122(a).

11          (2) EXTENSION.—If the Secretary determines,  
12          during the initial period described in paragraph (1),  
13          that additional time is required to process initial ap-  
14          plications for certified agricultural worker status or  
15          for other good cause, the Secretary may extend the  
16          period for accepting applications for up to an addi-  
17          tional 12 months.

18          (3) SUBMISSION OF APPLICATIONS.—

19                (A) IN GENERAL.—An alien may file an  
20                application with the Secretary under this sec-  
21                tion with the assistance of an attorney or a  
22                nonprofit religious, charitable, social service, or  
23                similar organization recognized by the Board of  
24                Immigration Appeals under section 292.2 of  
25                title 8, Code of Federal Regulations. The Sec-

1           retary shall also create a procedure for accept-  
2           ing applications filed by qualified designated en-  
3           tities with the consent of the applicant.

4           (B) FARM SERVICE AGENCY OFFICES.—  
5           The Secretary, in consultation with the Sec-  
6           retary of Agriculture, shall establish a process  
7           for the filing of applications under this section  
8           at Farm Service Agency offices throughout the  
9           United States.

10          (4) EVIDENCE OF APPLICATION FILING.—As  
11          soon as practicable after receiving an application for  
12          certified agricultural worker status, the Secretary  
13          shall provide the applicant with a document acknowl-  
14          edging the receipt of such application. Such docu-  
15          ment shall serve as interim proof of the alien's au-  
16          thorization to accept employment in the United  
17          States and shall be accepted by an employer as evi-  
18          dence of employment authorization under section  
19          274A(b)(1)(C) of the Immigration and Nationality  
20          Act (8 U.S.C. 1324a(b)(1)(C)), if the employer is  
21          employing the holder of such document to perform  
22          agricultural labor or services, pending a final admin-  
23          istrative decision on the application.

24          (5) EFFECT OF PENDING APPLICATION.—Dur-  
25          ing the period beginning on the date on which an

1 alien applies for certified agricultural worker status  
2 under this subtitle, and ending on the date on which  
3 the Secretary makes a final administrative decision  
4 regarding such application, the alien and any de-  
5 pendents included in the application—

6 (A) may apply for advance parole, which  
7 shall be granted upon demonstrating a legiti-  
8 mate need to travel outside the United States  
9 for a temporary purpose;

10 (B) may not be detained by the Secretary  
11 or removed from the United States unless the  
12 Secretary makes a prima facie determination  
13 that such alien is, or has become, ineligible for  
14 certified agricultural worker status;

15 (C) may not be considered unlawfully  
16 present under section 212(a)(9)(B) of the Im-  
17 migration and Nationality Act (8 U.S.C.  
18 1182(a)(9)(B)); and

19 (D) may not be considered an unauthor-  
20 ized alien (as defined in section 274A(h)(3) of  
21 the Immigration and Nationality Act (8 U.S.C.  
22 1324a(h)(3))).

23 (6) WITHDRAWAL OF APPLICATION.—The Sec-  
24 retary shall, upon receipt of a request from the ap-  
25 plicant to withdraw an application for certified agri-

1 cultural worker status under this subtitle, cease  
2 processing of the application, and close the case.  
3 Withdrawal of the application shall not prejudice  
4 any future application filed by the applicant for any  
5 immigration benefit under this Act or under the Im-  
6 migration and Nationality Act (8 U.S.C. 1101 et  
7 seq.).

8 (d) ADJUDICATION AND DECISION.—

9 (1) IN GENERAL.—Subject to section 123, the  
10 Secretary shall render a decision on an application  
11 for certified agricultural worker status not later than  
12 180 days after the date the application is filed.

13 (2) NOTICE.—Prior to denying an application  
14 for certified agricultural worker status, the Sec-  
15 retary shall provide the alien with—

16 (A) written notice that describes the basis  
17 for ineligibility or the deficiencies in the evi-  
18 dence submitted; and

19 (B) at least 90 days to contest ineligibility  
20 or submit additional evidence.

21 (3) AMENDED APPLICATION.—An alien whose  
22 application for certified agricultural worker status is  
23 denied under this section may submit an amended  
24 application for such status to the Secretary if the  
25 amended application is submitted within the applica-

1       tion period described in subsection (c) and contains  
2       all the required information and fees that were miss-  
3       ing from the initial application.

4       (e) **ALTERNATIVE H-2A STATUS.**—An alien who has  
5       not met the required period of agricultural labor or serv-  
6       ices under subsection (a)(1)(A), but is otherwise eligible  
7       for certified agricultural worker status under such sub-  
8       section, shall be eligible for classification as a non-  
9       immigrant described in section 101(a)(15)(H)(ii)(a) of the  
10      Immigration and Nationality Act (8 U.S.C.  
11      1101(a)(15)(H)(ii)(a)) upon approval of a petition sub-  
12      mitted by a sponsoring employer, if the alien has per-  
13      formed at least 575 hours (or 100 work days) of agricul-  
14      tural labor or services during the 3-year period preceding  
15      the date of the introduction of this Act. The Secretary  
16      shall create a procedure to provide for such classification  
17      without requiring the alien to depart the United States  
18      and obtain a visa abroad.

19      **SEC. 102. TERMS AND CONDITIONS OF CERTIFIED STATUS.**

20      (a) **IN GENERAL.**—

21              (1) **APPROVAL.**—Upon approval of an applica-  
22      tion for certified agricultural worker status, or an  
23      extension of such status pursuant to section 103, the  
24      Secretary shall issue—

1 (A) documentary evidence of such status to  
2 the applicant; and

3 (B) documentary evidence of certified agri-  
4 cultural dependent status to any qualified de-  
5 pendent included on such application.

6 (2) DOCUMENTARY EVIDENCE.—In addition to  
7 any other features and information as the Secretary  
8 may prescribe, the documentary evidence described  
9 in paragraph (1)—

10 (A) shall be machine-readable and tamper-  
11 resistant;

12 (B) shall contain a digitized photograph;

13 (C) shall serve as a valid travel and entry  
14 document for purposes of applying for admis-  
15 sion to the United States; and

16 (D) shall be accepted during the period of  
17 its validity by an employer as evidence of em-  
18 ployment authorization and identity under sec-  
19 tion 274A(b)(1)(B) of the Immigration and Na-  
20 tionality Act (8 U.S.C. 1324a(b)(1)(B)).

21 (3) VALIDITY PERIOD.—Certified agricultural  
22 worker and certified agricultural dependent status  
23 shall be valid for 5 1/2 years beginning on the date  
24 of approval.

1 (4) TRAVEL AUTHORIZATION.—An alien with  
2 certified agricultural worker or certified agricultural  
3 dependent status may—

4 (A) travel within and outside of the United  
5 States, including commuting to the United  
6 States from a residence in a foreign country;  
7 and

8 (B) be admitted to the United States upon  
9 return from travel abroad without first obtain-  
10 ing a visa if the alien is in possession of—

11 (i) valid, unexpired documentary evi-  
12 dence of certified agricultural worker or  
13 certified agricultural worker dependent sta-  
14 tus as described in subsection (a); or

15 (ii) a travel document that has been  
16 approved by the Secretary and was issued  
17 to the alien after the alien's original docu-  
18 mentary evidence was lost, stolen, or de-  
19 stroyed.

20 (b) ABILITY TO CHANGE STATUS.—

21 (1) CHANGE TO CERTIFIED AGRICULTURAL  
22 WORKER STATUS.—Notwithstanding section 101(a),  
23 an alien with valid certified agricultural dependent  
24 status may apply to change to certified agricultural  
25 worker status, at any time, if the alien—

1 (A) submits a completed application, in-  
2 cluding the required processing fees; and

3 (B) is not ineligible for certified agricul-  
4 tural worker status under section 101(b).

5 (2) CLARIFICATION.—Nothing in this title pro-  
6 hibits an alien granted certified agricultural worker  
7 or certified agricultural dependent status from  
8 changing status to any other nonimmigrant classi-  
9 fication for which the alien may be eligible.

10 (c) PROHIBITION ON PUBLIC BENEFITS, TAX BENE-  
11 FITS, AND HEALTH CARE SUBSIDIES.—Aliens granted  
12 certified agricultural worker or certified agricultural de-  
13 pendent status shall be considered lawfully present in the  
14 United States for all purposes for the duration of their  
15 status, except that such aliens—

16 (1) shall be ineligible for Federal means-tested  
17 public benefits to the same extent as other individ-  
18 uals who are not qualified aliens under section 431  
19 of the Personal Responsibility and Work Oppor-  
20 tunity Reconciliation Act of 1996 (8 U.S.C. 1641);

21 (2) are not entitled to the premium assistance  
22 tax credit authorized under section 36B of the Inter-  
23 nal Revenue Code of 1986 (26 U.S.C. 36B), and  
24 shall be subject to the rules applicable to individuals

1 who are not lawfully present set forth in subsection  
2 (e) of such section;

3 (3) shall be subject to the rules applicable to in-  
4 dividuals who are not lawfully present set forth in  
5 section 1402(e) of the Patient Protection and Af-  
6 fordable Care Act (42 U.S.C. 18071(e)); and

7 (4) shall be subject to the rules applicable to in-  
8 dividuals not lawfully present set forth in section  
9 5000A(d)(3) of the Internal Revenue Code of 1986  
10 (26 U.S.C. 5000A(d)(3)).

11 (d) REVOCATION OF STATUS.—

12 (1) IN GENERAL.—The Secretary may revoke  
13 certified agricultural worker or certified agricultural  
14 dependent status if, after providing notice to the  
15 alien and the opportunity to provide evidence to con-  
16 test the proposed revocation, the Secretary deter-  
17 mines that the alien no longer meets the eligibility  
18 requirements for such status under section 101(b).

19 (2) INVALIDATION OF DOCUMENTATION.—Upon  
20 the Secretary's final determination to revoke an  
21 alien's certified agricultural worker or certified agri-  
22 cultural dependent status, any documentation issued  
23 by the Secretary to such alien under subsection (a)  
24 shall automatically be rendered invalid for any pur-  
25 pose except for departure from the United States.

1 **SEC. 103. EXTENSIONS OF CERTIFIED STATUS.**

2 (a) REQUIREMENTS FOR EXTENSIONS OF STATUS.—

3 (1) PRINCIPAL ALIENS.—The Secretary may  
4 extend certified agricultural worker status for addi-  
5 tional periods of 5 1/2 years to an alien who submits  
6 a completed application, including the required proc-  
7 essing fees, within the 120-day period beginning 60  
8 days before the expiration of the fifth year of the  
9 immediately preceding grant of certified agricultural  
10 worker status, if the alien—

11 (A) except as provided in section 126(e),  
12 has performed agricultural labor or services in  
13 the United States for at least 575 hours (or  
14 100 work days) for each of the prior 5 years in  
15 which the alien held certified agricultural work-  
16 er status; and

17 (B) has not become ineligible for certified  
18 agricultural worker status under section 101(b).

19 (2) DEPENDENT SPOUSE AND CHILDREN.—The  
20 Secretary may grant or extend certified agricultural  
21 dependent status to the spouse or child of an alien  
22 granted an extension of certified agricultural worker  
23 status under paragraph (1) if the spouse or child is  
24 not ineligible for certified agricultural dependent sta-  
25 tus under section 101(b).

1           (3) WAIVER FOR LATE FILINGS.—The Sec-  
2           retary may waive an alien’s failure to timely file be-  
3           fore the expiration of the 120-day period described  
4           in paragraph (1) if the alien demonstrates that the  
5           delay was due to extraordinary circumstances be-  
6           yond the alien’s control or for other good cause.

7           (b) STATUS FOR WORKERS WITH PENDING APPLICA-  
8           TIONS.—

9           (1) IN GENERAL.—Certified agricultural worker  
10          status of an alien who timely files an application to  
11          extend such status under subsection (a) (and the  
12          status of the alien’s dependents) shall be automati-  
13          cally extended through the date on which the Sec-  
14          retary makes a final administrative decision regard-  
15          ing such application.

16          (2) DOCUMENTATION OF EMPLOYMENT AU-  
17          THORIZATION.—As soon as practicable after receipt  
18          of an application to extend certified agricultural  
19          worker status under subsection (a), the Secretary  
20          shall issue a document to the alien acknowledging  
21          the receipt of such application. An employer of the  
22          worker may not refuse to accept such document as  
23          evidence of employment authorization under section  
24          274A(b)(1)(C) of the Immigration and Nationality

1 Act (8 U.S.C. 1324a(b)(1)(C)), pending a final ad-  
2 ministrative decision on the application.

3 (c) NOTICE.—Prior to denying an application to ex-  
4 tend certified agricultural worker status, the Secretary  
5 shall provide the alien with—

6 (1) written notice that describes the basis for  
7 ineligibility or the deficiencies of the evidence sub-  
8 mitted; and

9 (2) at least 90 days to contest ineligibility or  
10 submit additional evidence.

11 **SEC. 104. DETERMINATION OF CONTINUOUS PRESENCE.**

12 (a) EFFECT OF NOTICE TO APPEAR.—The contin-  
13 uous presence in the United States of an applicant for cer-  
14 tified agricultural worker status under section 101 shall  
15 not terminate when the alien is served a notice to appear  
16 under section 239(a) of the Immigration and Nationality  
17 Act (8 U.S.C. 1229(a)).

18 (b) TREATMENT OF CERTAIN BREAKS IN PRES-  
19 ENCE.—

20 (1) IN GENERAL.—Except as provided in para-  
21 graphs (2) and (3), an alien shall be considered to  
22 have failed to maintain continuous presence in the  
23 United States under this subtitle if the alien de-  
24 parted the United States for any period exceeding

1 90 days, or for any periods, in the aggregate, ex-  
2 ceeding 180 days.

3 (2) EXTENSIONS FOR EXTENUATING CIR-  
4 CUMSTANCES.—The Secretary may extend the time  
5 periods described in paragraph (1) for an alien who  
6 demonstrates that the failure to timely return to the  
7 United States was due to extenuating circumstances  
8 beyond the alien’s control, including the serious ill-  
9 ness of the alien, or death or serious illness of a  
10 spouse, parent, son or daughter, grandparent, or sib-  
11 ling of the alien.

12 (3) TRAVEL AUTHORIZED BY THE SEC-  
13 RETARY.—Any period of travel outside of the United  
14 States by an alien that was authorized by the Sec-  
15 retary shall not be counted toward any period of de-  
16 parture from the United States under paragraph  
17 (1).

18 **SEC. 105. EMPLOYER OBLIGATIONS.**

19 (a) RECORD OF EMPLOYMENT.—An employer of an  
20 alien in certified agricultural worker status shall provide  
21 such alien with a written record of employment each year  
22 during which the alien provides agricultural labor or serv-  
23 ices to such employer as a certified agricultural worker.

24 (b) CIVIL PENALTIES.—

1           (1) IN GENERAL.—If the Secretary determines,  
2           after notice and an opportunity for a hearing, that  
3           an employer of an alien with certified agricultural  
4           worker status has knowingly failed to provide the  
5           record of employment required under subsection (a),  
6           or has provided a false statement of material fact in  
7           such a record, the employer shall be subject to a civil  
8           penalty in an amount not to exceed \$500 per viola-  
9           tion.

10           (2) LIMITATION.—The penalty under paragraph  
11           (1) for failure to provide employment records shall  
12           not apply unless the alien has provided the employer  
13           with evidence of employment authorization described  
14           in section 102 or 103.

15           (3) DEPOSIT OF CIVIL PENALTIES.—Civil pen-  
16           alties collected under this paragraph shall be depos-  
17           ited into the Immigration Examinations Fee Ac-  
18           count under section 286(m) of the Immigration and  
19           Nationality Act (8 U.S.C. 1356(m)).

20 **SEC. 106. ADMINISTRATIVE AND JUDICIAL REVIEW.**

21           (a) ADMINISTRATIVE REVIEW.—The Secretary shall  
22           establish a process by which an applicant may seek admin-  
23           istrative review of a denial of an application for certified  
24           agricultural worker status under this subtitle, an applica-  
25           tion to extend such status, or a revocation of such status.

1 (b) ADMISSIBILITY IN IMMIGRATION COURT.—Each  
 2 record of an alien’s application for certified agricultural  
 3 worker status under this subtitle, application to extend  
 4 such status, revocation of such status, and each record  
 5 created pursuant to the administrative review process  
 6 under subsection (a) is admissible in immigration court,  
 7 and shall be included in the administrative record.

8 (c) JUDICIAL REVIEW.—Notwithstanding any other  
 9 provision of law, judicial review of the Secretary’s decision  
 10 to deny an application for certified agricultural worker  
 11 status, an application to extend such status, or the deci-  
 12 sion to revoke such status, shall be limited to the review  
 13 of an order of removal under section 242 of the Immigra-  
 14 tion and Nationality Act (8 U.S.C. 1252).

15 **Subtitle B—Optional Earned**  
 16 **Residence for Long-term Workers**

17 **SEC. 111. OPTIONAL ADJUSTMENT OF STATUS FOR LONG-**  
 18 **TERM AGRICULTURAL WORKERS.**

19 (a) REQUIREMENTS FOR ADJUSTMENT OF STA-  
 20 TUS.—

21 (1) PRINCIPAL ALIENS.—The Secretary may  
 22 adjust the status of an alien from that of a certified  
 23 agricultural worker to that of a lawful permanent  
 24 resident if the alien submits a completed application,

1 including the required processing and penalty fees,  
2 and the Secretary determines that—

3 (A) except as provided in section 126(e),  
4 the alien performed agricultural labor or serv-  
5 ices for not less than 575 hours (or 100 work  
6 days) each year—

7 (i) for at least 10 years prior to the  
8 date of the enactment of this Act and for  
9 at least 4 years in certified agricultural  
10 worker status; or

11 (ii) for fewer than 10 years prior to  
12 the date of the enactment of this Act and  
13 for at least 8 years in certified agricultural  
14 worker status; and

15 (B) the alien has not become ineligible for  
16 certified agricultural worker status under sec-  
17 tion 101(b).

18 (2) DEPENDENT ALIENS.—

19 (A) IN GENERAL.—The spouse and each  
20 child of an alien described in paragraph (1)  
21 whose status has been adjusted to that of a  
22 lawful permanent resident may be granted law-  
23 ful permanent residence under this subtitle if—

24 (i) the qualifying relationship to the  
25 principal alien existed on the date on which

1 such alien was granted adjustment of sta-  
2 tus under this subtitle; and

3 (ii) the spouse or child is not ineligible  
4 for certified agricultural worker dependent  
5 status under section 101(b).

6 (B) PROTECTIONS FOR SPOUSES AND  
7 CHILDREN.—The Secretary of Homeland Secu-  
8 rity shall establish procedures to allow the  
9 spouse or child of a certified agricultural work-  
10 er to self-petition for lawful permanent resi-  
11 dence under this subtitle in cases involving—

12 (i) the death of the certified agricul-  
13 tural worker, so long as the spouse or child  
14 submits a petition not later than 2 years  
15 after the date of the worker’s death; or

16 (ii) the spouse or a child being bat-  
17 tered or subjected to extreme cruelty by  
18 the certified agricultural worker.

19 (3) DOCUMENTATION OF WORK HISTORY.—An  
20 applicant for adjustment of status under this section  
21 shall not be required to resubmit evidence of work  
22 history that has been previously submitted to the  
23 Secretary in connection with an approved extension  
24 of certified agricultural worker status.

1 (b) PENALTY FEE.—In addition to any processing  
2 fee that the Secretary may assess in accordance with sec-  
3 tion 122(b), a principal alien seeking adjustment of status  
4 under this subtitle shall pay a \$1,000 penalty fee, which  
5 shall be deposited into the Immigration Examinations Fee  
6 Account pursuant to section 286(m) of the Immigration  
7 and Nationality Act (8 U.S.C.1356(m)).

8 (c) EFFECT OF PENDING APPLICATION.—During the  
9 period beginning on the date on which an alien applies  
10 for adjustment of status under this subtitle, and ending  
11 on the date on which the Secretary makes a final adminis-  
12 trative decision regarding such application, the alien and  
13 any dependents included on the application—

14 (1) may apply for advance parole, which shall  
15 be granted upon demonstrating a legitimate need to  
16 travel outside the United States for a temporary  
17 purpose;

18 (2) may not be detained by the Secretary or re-  
19 moved from the United States unless the Secretary  
20 makes a prima facie determination that such alien  
21 is, or has become, ineligible for adjustment of status  
22 under subsection (a);

23 (3) may not be considered unlawfully present  
24 under section 212(a)(9)(B) of the Immigration and  
25 Nationality Act (8 U.S.C. 1182(a)(9)(B)); and

1           (4) may not be considered an unauthorized  
2           alien (as defined in section 274A(h)(3) of the Immi-  
3           gration and Nationality Act (8 U.S.C.  
4           1324a(h)(3))).

5           (d) EVIDENCE OF APPLICATION FILING.—As soon as  
6           practicable after receiving an application for adjustment  
7           of status under this subtitle, the Secretary shall provide  
8           the applicant with a document acknowledging the receipt  
9           of such application. Such document shall serve as interim  
10          proof of the alien’s authorization to accept employment  
11          in the United States and shall be accepted by an employer  
12          as evidence of employment authorization under section  
13          274A(b)(1)(C) of the Immigration and Nationality Act (8  
14          U.S.C. 1324a(b)(1)(C)), pending a final administrative  
15          decision on the application.

16          (e) WITHDRAWAL OF APPLICATION.—The Secretary  
17          shall, upon receipt of a request to withdraw an application  
18          for adjustment of status under this subtitle, cease proc-  
19          essing of the application, and close the case. Withdrawal  
20          of the application shall not prejudice any future applica-  
21          tion filed by the applicant for any immigration benefit  
22          under this Act or under the Immigration and Nationality  
23          Act (8 U.S.C. 1101 et seq.).

1 **SEC. 112. PAYMENT OF TAXES.**

2 (a) IN GENERAL.—An alien may not be granted ad-  
3 justment of status under this subtitle unless the applicant  
4 has satisfied any applicable Federal tax liability.

5 (b) COMPLIANCE.—An alien may demonstrate com-  
6 pliance with subsection (a) by submitting such documenta-  
7 tion as the Secretary, in consultation with the Secretary  
8 of the Treasury, may require by regulation.

9 **SEC. 113. ADJUDICATION AND DECISION; REVIEW.**

10 (a) IN GENERAL.—Subject to the requirements of  
11 section 123, the Secretary shall render a decision on an  
12 application for adjustment of status under this subtitle not  
13 later than 180 days after the date on which the application  
14 is filed.

15 (b) NOTICE.—Prior to denying an application for ad-  
16 justment of status under this subtitle, the Secretary shall  
17 provide the alien with—

18 (1) written notice that describes the basis for  
19 ineligibility or the deficiencies of the evidence sub-  
20 mitted; and

21 (2) at least 90 days to contest ineligibility or  
22 submit additional evidence.

23 (c) ADMINISTRATIVE REVIEW.—The Secretary shall  
24 establish a process by which an applicant may seek admin-  
25 istrative review of a denial of an application for adjust-  
26 ment of status under this subtitle.

1 (d) JUDICIAL REVIEW.—Notwithstanding any other  
2 provision of law, an alien may seek judicial review of a  
3 denial of an application for adjustment of status under  
4 this title in an appropriate United States district court.

## 5 **Subtitle C—General Provisions**

### 6 **SEC. 121. DEFINITIONS.**

7 In this title:

8 (1) IN GENERAL.—Except as otherwise pro-  
9 vided, any term used in this title that is used in the  
10 immigration laws shall have the meaning given such  
11 term in the immigration laws (as such term is de-  
12 fined in section 101 of the Immigration and Nation-  
13 ality Act (8 U.S.C. 1101)).

14 (2) AGRICULTURAL LABOR OR SERVICES.—The  
15 term “agricultural labor or services” means—

16 (A) agricultural labor or services as such  
17 term is used in section 101(a)(15)(H)(ii) of the  
18 Immigration and Nationality Act (8 U.S.C.  
19 1101(a)(15)(H)(ii)), without regard to whether  
20 the labor or services are of a seasonal or tem-  
21 porary nature; and

22 (B) agricultural employment as such term  
23 is defined in section 3 of the Migrant and Sea-  
24 sonal Agricultural Worker Protection Act (29  
25 U.S.C. 1802), without regard to whether the

1 specific service or activity is temporary or sea-  
2 sonal.

3 (3) APPLICABLE FEDERAL TAX LIABILITY.—

4 The term “applicable Federal tax liability” means all  
5 Federal income taxes assessed in accordance with  
6 section 6203 of the Internal Revenue Code of 1986  
7 beginning on the date on which the applicant was  
8 authorized to work in the United States as a cer-  
9 tified agricultural worker.

10 (4) APPROPRIATE UNITED STATES DISTRICT

11 COURT.—The term “appropriate United States dis-  
12 trict court” means the United States District Court  
13 for the District of Columbia or the United States  
14 district court with jurisdiction over the alien’s prin-  
15 cipal place of residence.

16 (5) CHILD.—The term “child” has the meaning

17 given such term in section 101(b)(1) of the Immi-  
18 gration and Nationality Act (8 U.S.C. 1101(b)(1)).

19 (6) CONVICTED OR CONVICTION.—The term

20 “convicted” or “conviction” does not include a judg-  
21 ment that has been expunged or set aside, that re-  
22 sulted in a rehabilitative disposition, or the equiva-  
23 lent.

24 (7) EMPLOYER.—The term “employer” means

25 any person or entity, including any labor contractor

1 or any agricultural association, that employs workers  
2 in agricultural labor or services.

3 (8) QUALIFIED DESIGNATED ENTITY.—The  
4 term “qualified designated entity” means—

5 (A) a qualified farm labor organization or  
6 an association of employers designated by the  
7 Secretary; or

8 (B) any other entity that the Secretary  
9 designates as having substantial experience,  
10 demonstrated competence, and a history of  
11 long-term involvement in the preparation and  
12 submission of application for adjustment of sta-  
13 tus under title II of the Immigration and Na-  
14 tionality Act (8 U.S.C. 1151 et seq.).

15 (9) SECRETARY.—The term “Secretary” means  
16 the Secretary of Homeland Security.

17 (10) WORK DAY.—The term “work day” means  
18 any day in which the individual is employed 5.75 or  
19 more hours in agricultural labor or services.

20 **SEC. 122. RULEMAKING; FEES.**

21 (a) RULEMAKING.—Not later than 180 days after the  
22 date of the enactment of this Act, the Secretary shall pub-  
23 lish in the Federal Register, an interim final rule imple-  
24 menting this title. Notwithstanding section 553 of title 5,  
25 United States Code, the rule shall be effective, on an in-

1 terim basis, immediately upon publication, but may be  
2 subject to change and revision after public notice and op-  
3 portunity for comment. The Secretary shall finalize such  
4 rule not later than 1 year after the date of the enactment  
5 of this Act.

6 (b) FEES.—

7 (1) IN GENERAL.—The Secretary may require  
8 an alien applying for any benefit under this title to  
9 pay a reasonable fee that is commensurate with the  
10 cost of processing the application.

11 (2) FEE WAIVER; INSTALLMENTS.—

12 (A) IN GENERAL.—The Secretary shall es-  
13 tablish procedures to allow an alien to—

14 (i) request a waiver of any fee that  
15 the Secretary may assess under this title if  
16 the alien demonstrates to the satisfaction  
17 of the Secretary that the alien is unable to  
18 pay the prescribed fee; or

19 (ii) pay any fee or penalty that the  
20 Secretary may assess under this title in in-  
21 stallments.

22 (B) CLARIFICATION.—Nothing in this sec-  
23 tion shall be read to prohibit an employer from  
24 paying any fee or penalty that the Secretary

1           may assess under this title on behalf of an alien  
2           and the alien's spouse or children.

3 **SEC. 123. BACKGROUND CHECKS.**

4           (a) SUBMISSION OF BIOMETRIC AND BIOGRAPHIC  
5 DATA.—The Secretary may not grant or extend certified  
6 agricultural worker or certified agricultural dependent sta-  
7 tus under subtitle A, or grant adjustment of status to that  
8 of a lawful permanent resident under subtitle B, unless  
9 the alien submits biometric and biographic data, in accord-  
10 ance with procedures established by the Secretary. The  
11 Secretary shall provide an alternative procedure for aliens  
12 who cannot provide all required biometric or biographic  
13 data because of a physical impairment.

14           (b) BACKGROUND CHECKS.—The Secretary shall use  
15 biometric, biographic, and other data that the Secretary  
16 determines appropriate to conduct security and law en-  
17 forcement background checks and to determine whether  
18 there is any criminal, national security, or other factor  
19 that would render the alien ineligible for status under this  
20 title. An alien may not be granted any such status under  
21 this title unless security and law enforcement background  
22 checks are completed to the satisfaction of the Secretary.

23 **SEC. 124. PROTECTION FOR CHILDREN.**

24           (a) IN GENERAL.—Except as provided in subsection  
25 (b), for purposes of eligibility for certified agricultural de-

1 pendent status or lawful permanent resident status under  
2 this title, a determination of whether an alien is a child  
3 shall be made using the age of the alien on the date on  
4 which the initial application for certified agricultural  
5 worker status is filed with the Secretary of Homeland Se-  
6 curity.

7 (b) LIMITATION.—Subsection (a) shall apply for no  
8 more than 10 years after the date on which the initial  
9 application for certified agricultural worker status is filed  
10 with the Secretary of Homeland Security.

11 **SEC. 125. LIMITATION ON REMOVAL.**

12 (a) IN GENERAL.—An alien who appears to be prima  
13 facie eligible for status under this title shall be given a  
14 reasonable opportunity to apply for such status. Such an  
15 alien may not be placed in removal proceedings or removed  
16 from the United States until a final administrative deci-  
17 sion establishing ineligibility for such status is rendered.

18 (b) ALIENS IN REMOVAL PROCEEDINGS.—Notwith-  
19 standing any other provision of the law, the Attorney Gen-  
20 eral shall (upon motion by the Secretary with the consent  
21 of the alien, or motion by the alien) terminate removal  
22 proceedings, without prejudice, against an alien who ap-  
23 pears to be prima facie eligible for status under this title,  
24 and provide such alien a reasonable opportunity to apply  
25 for such status.

1           (c) EFFECT OF FINAL ORDER.—An alien present in  
2 the United States who has been ordered removed or has  
3 been permitted to depart voluntarily from the United  
4 States may, notwithstanding such order or permission to  
5 depart, apply for status under this title. Such alien shall  
6 not be required to file a separate motion to reopen, recon-  
7 sider, or vacate the order of removal. If the Secretary ap-  
8 proves the application, the Secretary shall notify the At-  
9 torney General of such approval, and the Attorney General  
10 shall cancel the order of removal. If the Secretary renders  
11 a final administrative decision to deny the application, the  
12 order of removal or permission to depart shall be effective  
13 and enforceable to the same extent as if the application  
14 had not been made, only after all available administrative  
15 and judicial remedies have been exhausted.

16           (d) EFFECT OF DEPARTURE.—Section 101(g) of the  
17 Immigration and Nationality Act (8 U.S.C. 1101(g)) shall  
18 not apply to an alien who departs the United States—

19               (1) with advance permission to return to the  
20 United States granted by the Secretary under this  
21 title; or

22               (2) after having been granted certified agricul-  
23 tural worker status or lawful permanent resident  
24 status under this title.

1 **SEC. 126. DOCUMENTATION OF AGRICULTURAL WORK HIS-**  
2 **TORY.**

3 (a) BURDEN OF PROOF.—An alien applying for cer-  
4 tified agricultural worker status under subtitle A or ad-  
5 justment of status under subtitle B has the burden of  
6 proving by a preponderance of the evidence that the alien  
7 has worked the requisite number of hours or days required  
8 under section 101, 103, or 111, as applicable. The Sec-  
9 retary shall establish special procedures to properly credit  
10 work in cases in which an alien was employed under an  
11 assumed name.

12 (b) EVIDENCE.—An alien may meet the burden of  
13 proof under subsection (a) by producing sufficient evi-  
14 dence to show the extent of such employment as a matter  
15 of just and reasonable inference. Such evidence may in-  
16 clude—

17 (1) an annual record of certified agricultural  
18 worker employment as described in section 105(a),  
19 or other employment records from employers;

20 (2) employment records maintained by collective  
21 bargaining associations;

22 (3) tax records or other government records;

23 (4) sworn affidavits from individuals who have  
24 direct knowledge of the alien's work history; or

25 (5) any other documentation designated by the  
26 Secretary for such purpose.

1 (c) EXCEPTION FOR EXTRAORDINARY CIR-  
2 CUMSTANCES.—

3 (1) IN GENERAL.—In determining whether an  
4 alien has met the requirement under section  
5 103(a)(1)(A) or 111(a)(1)(A), the Secretary may  
6 credit the alien with not more than 575 hours (or  
7 100 work days) of agricultural labor or services in  
8 the United States if the alien was unable to perform  
9 the required agricultural labor or services due to—

10 (A) pregnancy, illness, disease, disabling  
11 injury, or physical limitation of the alien;

12 (B) injury, illness, disease, or other special  
13 needs of the alien's child or spouse;

14 (C) severe weather conditions that pre-  
15 vented the alien from engaging in agricultural  
16 labor or services; or

17 (D) termination from agricultural employ-  
18 ment, if the Secretary determines that—

19 (i) the termination was without just  
20 cause; and

21 (ii) the alien was unable to find alter-  
22 native agricultural employment after a rea-  
23 sonable job search.

24 (2) EFFECT OF DETERMINATION.—A deter-  
25 mination under paragraph (1)(D) shall not be con-

1       clusive, binding, or admissible in a separate or sub-  
2       sequent judicial or administrative action or pro-  
3       ceeding between the alien and a current or prior em-  
4       ployer of the alien or any other party.

5       **SEC. 127. EMPLOYER PROTECTIONS.**

6       (a) CONTINUING EMPLOYMENT.—An employer that  
7       continues to employ an alien knowing that the alien in-  
8       tends to apply for certified agricultural worker status  
9       under subtitle A shall not violate section 274A(a)(2) of  
10      the Immigration and Nationality Act (8 U.S.C.  
11      1324a(a)(2)) by continuing to employ the alien for the du-  
12      ration of the application period under section 101(c), and  
13      with respect to an alien who applies for certified agricul-  
14      tural status, for the duration of the period during which  
15      the alien’s application is pending final determination.

16      (b) USE OF EMPLOYMENT RECORDS.—Copies of em-  
17      ployment records or other evidence of employment pro-  
18      vided by an alien or by an alien’s employer in support of  
19      an alien’s application for certified agricultural worker or  
20      adjustment of status under this title may not be used in  
21      a civil or criminal prosecution or investigation of that em-  
22      ployer under section 274A of the Immigration and Nation-  
23      ality Act (8 U.S.C. 1324a) or the Internal Revenue Code  
24      of 1986 for the prior unlawful employment of that alien  
25      regardless of the outcome of such application.

1           (c) ADDITIONAL PROTECTIONS.—Employers that  
2 provide unauthorized aliens with copies of employment  
3 records or other evidence of employment in support of an  
4 application for certified agricultural worker status or ad-  
5 justment of status under this title shall not be subject to  
6 civil and criminal liability pursuant to such section 274A  
7 for employing such unauthorized aliens. Records or other  
8 evidence of employment provided by employers in response  
9 to a request for such records for the purpose of estab-  
10 lishing eligibility for status under this title may not be  
11 used for any purpose other than establishing such eligi-  
12 bility.

13           (d) LIMITATION ON PROTECTION.—The protections  
14 for employers under this section shall not apply if the em-  
15 ployer provides employment records to the alien that are  
16 determined to be fraudulent.

17 **SEC. 128. CORRECTION OF SOCIAL SECURITY RECORDS;**  
18 **CONFORMING AMENDMENTS.**

19           (a) IN GENERAL.—Section 208(e)(1) of the Social  
20 Security Act (42 U.S.C. 408(e)(1)) is amended—

21                   (1) in subparagraph (B)(ii), by striking “or” at  
22 the end;

23                   (2) in subparagraph (C), by inserting “or” at  
24 the end;

1           (3) by inserting after subparagraph (C) the fol-  
2           lowing:

3           “(D) who is granted certified agricultural work-  
4           er status, certified agricultural dependent status, or  
5           lawful permanent resident status under title I of the  
6           Farm Work Modernization Act of 2019,”; and

7           (4) in the undesignated matter following sub-  
8           paragraph (D), as added by paragraph (3), by strik-  
9           ing “1990.” and inserting “1990, or in the case of  
10          an alien described in subparagraph (D), if such con-  
11          duct is alleged to have occurred before the date on  
12          which the alien was granted status under title I of  
13          the Farm Work Modernization Act of 2019.”.

14          (b) EFFECTIVE DATE.—The amendments made by  
15          subsection (a) shall take effect on the first day of the sev-  
16          enth month that begins after the date of the enactment  
17          of this Act.

18          (c) CONFORMING AMENDMENTS.—

19                (1) SOCIAL SECURITY ACT.—Section 210(a)(1)  
20                of the Social Security Act (42 U.S.C. 410(a)(1)) is  
21                amended by inserting before the semicolon the fol-  
22                lowing: “(other than aliens granted certified agricul-  
23                tural worker status or certified agricultural depend-  
24                ent status under title I of the Farm Work Mod-  
25                ernization Act of 2019”.

1           (2) INTERNAL REVENUE CODE OF 1986.—Sec-  
2           tion 3121(b)(1) of the Internal Revenue Code of  
3           1986 is amended by inserting before the semicolon  
4           the following: “(other than aliens granted certified  
5           agricultural worker status or certified agricultural  
6           dependent status under title I of the Farm Work  
7           Modernization Act of 2019”.

8           (3) EFFECTIVE DATE.—The amendments made  
9           by this subsection shall apply with respect to service  
10          performed after the date of the enactment of this  
11          Act.

12          (d) AUTOMATED SYSTEM TO ASSIGN SOCIAL SECU-  
13          RITY ACCOUNT NUMBERS.—Section 205(c)(2)(B) of the  
14          Social Security Act (42 U.S.C. 405(c)(2)(B)) is amended  
15          by adding at the end the following:

16                       “(iv) The Commissioner of Social Se-  
17                       curity shall, to the extent practicable, co-  
18                       ordinate with the Secretary of the Depart-  
19                       ment of Homeland Security to implement  
20                       an automated system for the Commissioner  
21                       to assign social security account numbers  
22                       to aliens granted certified agricultural  
23                       worker status or certified agricultural de-  
24                       pendent status under title I of the Farm  
25                       Work Modernization Act of 2019. An alien

1           who is granted such status, and who was  
2           not previously assigned a social security  
3           account number, shall request assignment  
4           of a social security account number and a  
5           social security card from the Commissioner  
6           through such system. The Secretary shall  
7           collect and provide to the Commissioner  
8           such information as the Commissioner  
9           deems necessary for the Commissioner to  
10          assign a social security account number,  
11          which information may be used by the  
12          Commissioner for any purpose for which  
13          the Commissioner is otherwise authorized  
14          under Federal law. The Commissioner may  
15          maintain, use, and disclose such informa-  
16          tion only as permitted by the Privacy Act  
17          and other Federal law.”.

18 **SEC. 129. DISCLOSURES AND PRIVACY.**

19          (a) IN GENERAL.—The Secretary may not disclose  
20          or use information provided in an application for certified  
21          agricultural worker status or adjustment of status under  
22          this title (including information provided during adminis-  
23          trative or judicial review) for the purpose of immigration  
24          enforcement.

1 (b) REFERRALS PROHIBITED.—The Secretary, based  
2 solely on information provided in an application for cer-  
3 tified agricultural worker status or adjustment of status  
4 under this title (including information provided during ad-  
5 ministrative or judicial review), may not refer an applicant  
6 to U.S. Immigration and Customs Enforcement, U.S. Cus-  
7 toms and Border Protection, or any designee of either  
8 such entity.

9 (c) EXCEPTIONS.—Notwithstanding subsections (a)  
10 and (b), information provided in an application for cer-  
11 tified agricultural worker status or adjustment of status  
12 under this title may be shared with Federal security and  
13 law enforcement agencies—

14 (1) for assistance in the consideration of an ap-  
15 plication under this title;

16 (2) to identify or prevent fraudulent claims or  
17 schemes;

18 (3) for national security purposes; or

19 (4) for the investigation or prosecution of any  
20 felony not related to immigration status.

21 (d) PENALTY.—Any person who knowingly uses, pub-  
22 lishes, or permits information to be examined in violation  
23 of this section shall be fined not more than \$10,000.

24 (e) PRIVACY.—The Secretary shall ensure that ap-  
25 propriate administrative and physical safeguards are in

1 place to protect the security, confidentiality, and integrity  
2 of personally identifiable information collected, main-  
3 tained, and disseminated pursuant to this title.

4 **SEC. 130. PENALTIES FOR FALSE STATEMENTS IN APPLICA-**  
5 **TIONS.**

6 (a) **CRIMINAL PENALTY.**—Any person who—

7 (1) files an application for certified agricultural  
8 worker status or adjustment of status under this  
9 title and knowingly falsifies, conceals, or covers up  
10 a material fact or makes any false, fictitious, or  
11 fraudulent statements or representations, or makes  
12 or uses any false writing or document knowing the  
13 same to contain any false, fictitious, or fraudulent  
14 statement or entry; or

15 (2) creates or supplies a false writing or docu-  
16 ment for use in making such an application,

17 shall be fined in accordance with title 18, United States  
18 Code, imprisoned not more than 5 years, or both.

19 (b) **INADMISSIBILITY.**—An alien who is convicted  
20 under subsection (a) shall be deemed inadmissible to the  
21 United States under section 212(a)(6)(C)(i) of the Immi-  
22 gration and Nationality Act (8 U.S.C. 1182(a)(6)(C)(i)).

23 (c) **DEPOSIT.**—Fines collected under subsection (a)  
24 shall be deposited into the Immigration Examinations Fee

1 Account pursuant to section 286(m) of the Immigration  
2 and Nationality Act (8 U.S.C. 1356(m)).

3 **SEC. 131. DISSEMINATION OF INFORMATION.**

4 (a) IN GENERAL.—Beginning not later than the first  
5 day of the application period described in section 101(c)—

6 (1) the Secretary of Homeland Security, in co-  
7 operation with qualified designated entities, shall  
8 broadly disseminate information described in sub-  
9 section (b); and

10 (2) the Secretary of Agriculture, in consultation  
11 with the Secretary of Homeland Security, shall dis-  
12 seminate to agricultural employers a document con-  
13 taining the information described in subsection (b)  
14 for posting at employer worksites.

15 (b) INFORMATION DESCRIBED.—The information de-  
16 scribed in this subsection shall include—

17 (1) the benefits that aliens may receive under  
18 this title; and

19 (2) the requirements that an alien must meet to  
20 receive such benefits.

21 **SEC. 132. EXEMPTION FROM NUMERICAL LIMITATIONS.**

22 The numerical limitations under title II of the Immi-  
23 gration and Nationality Act (8 U.S.C. 1151 et seq.) shall  
24 not apply to the adjustment of aliens to lawful permanent

1 resident status under this title, and such aliens shall not  
2 be counted toward any such numerical limitation.

3 **SEC. 133. REPORTS TO CONGRESS.**

4 Not later than 180 days after the publication of the  
5 final rule under section 122(a), and annually thereafter  
6 for the following 10 years, the Secretary shall submit a  
7 report to Congress that identifies, for the previous fiscal  
8 year—

9 (1) the number of principal aliens who applied  
10 for certified agricultural worker status under subtitle  
11 A, and the number of dependent spouses and chil-  
12 dren included in such applications;

13 (2) the number of principal aliens who were  
14 granted certified agricultural worker status under  
15 subtitle A, and the number of dependent spouses  
16 and children who were granted certified agricultural  
17 dependent status;

18 (3) the number of principal aliens who applied  
19 for an extension of their certified agricultural worker  
20 status under subtitle A, and the number of depend-  
21 ent spouses and children included in such applica-  
22 tions;

23 (4) the number of principal aliens who were  
24 granted an extension of certified agricultural worker  
25 status under subtitle A, and the number of depend-

1 ent spouses and children who were granted certified  
2 agricultural dependent status under such an exten-  
3 sion;

4 (5) the number of principal aliens who applied  
5 for adjustment of status under subtitle B, and the  
6 number of dependent spouses and children included  
7 in such applications;

8 (6) the number of principal aliens who were  
9 granted lawful permanent resident status under sub-  
10 title B, and the number of spouses and children who  
11 were granted such status as dependents;

12 (7) the number of principal aliens included in  
13 petitions described in section 101(e), and the num-  
14 ber of dependent spouses and children included in  
15 such applications; and

16 (8) the number of principal aliens who were  
17 granted H-2A status pursuant to petitions described  
18 in section 101(e), and the number of dependent  
19 spouses and children who were granted H-4 status.

20 **SEC. 134. GRANT PROGRAM TO ASSIST ELIGIBLE APPLI-**  
21 **CANTS.**

22 (a) **ESTABLISHMENT.**—The Secretary shall establish  
23 a program to award grants, on a competitive basis, to eli-  
24 gible nonprofit organizations to assist eligible applicants

1 under this title by providing them with the services de-  
2 scribed in subsection (c).

3 (b) ELIGIBLE NONPROFIT ORGANIZATION.—For  
4 purposes of this section, the term “eligible nonprofit orga-  
5 nization” means an organization described in section  
6 501(c)(3) of the Internal Revenue Code of 1986 (exclud-  
7 ing a recipient of funds under title X of the Economic  
8 Opportunity Act of 1964 (42 U.S.C. 2996 et seq.)) that  
9 has demonstrated qualifications, experience, and expertise  
10 in providing quality services to farm workers or aliens.

11 (c) USE OF FUNDS.—Grant funds awarded under  
12 this section may be used for the design and implementa-  
13 tion of programs that provide—

14 (1) information to the public regarding the eli-  
15 gibility and benefits of certified agricultural worker  
16 status authorized under this title; and

17 (2) assistance, within the scope of authorized  
18 practice of immigration law, to individuals submit-  
19 ting applications for certified agricultural worker  
20 status or adjustment of status under this title, in-  
21 cluding—

22 (A) screening prospective applicants to as-  
23 sess their eligibility for such status;

1 (B) completing applications, including pro-  
2 viding assistance in obtaining necessary docu-  
3 ments and supporting evidence; and

4 (C) providing any other assistance that the  
5 Secretary determines useful to assist aliens in  
6 applying for certified agricultural worker status  
7 or adjustment of status under this title.

8 (d) SOURCE OF FUNDS.—In addition to any funds  
9 appropriated to carry out this section, the Secretary may  
10 use up to \$10,000,000 from the Immigration Examina-  
11 tions Fee Account under section 286(m) of the Immigra-  
12 tion and Nationality Act (8 U.S.C. 1356(m)) to carry out  
13 this section.

14 (e) ELIGIBILITY FOR SERVICES.—Section 504(a)(11)  
15 of Public Law 104–134 (110 Stat. 1321–53 et seq.) shall  
16 not be construed to prevent a recipient of funds under title  
17 X of the Economic Opportunity Act of 1964 (42 U.S.C.  
18 2996 et seq.) from providing legal assistance directly re-  
19 lated to an application for status under this title or to  
20 an alien granted such status.

21 **SEC. 135. AUTHORIZATION OF APPROPRIATIONS.**

22 There is authorized to be appropriated to the Sec-  
23 retary, such sums as may be necessary to implement this  
24 title, including any amounts needed for costs associated

1 with the initiation of such implementation, for each of fis-  
2 cal years 2020 through 2022.

3 **TITLE II—ENSURING AN AGRICULTURAL WORKFORCE FOR**  
4 **CULTURAL WORKFORCE FOR**  
5 **THE FUTURE**

6 **Subtitle A—Reforming the H-2A**  
7 **Temporary Worker Program**

8 **SEC. 201. COMPREHENSIVE AND STREAMLINED ELECTRONIC H-2A PLATFORM.**  
9

10 (a) STREAMLINED H-2A PLATFORM.—

11 (1) IN GENERAL.—Not later than 12 months  
12 after the date of the enactment of this Act, the Sec-  
13 retary of Homeland Security, in consultation with  
14 the Secretary of Labor, the Secretary of Agriculture,  
15 the Secretary of State, and United States Digital  
16 Service, shall ensure the establishment of an elec-  
17 tronic platform through which a petition for an H-  
18 2A worker may be filed. Such platform shall—

19 (A) serve as a single point of access for an  
20 employer to input all information and sup-  
21 porting documentation required for obtaining  
22 labor certification from the Secretary of Labor  
23 and the adjudication of the H-2A petition by  
24 the Secretary of Homeland Security;

1 (B) serve as a single point of access for the  
2 Secretary of Homeland Security, the Secretary  
3 of Labor, and State workforce agencies to con-  
4 currently perform their respective review and  
5 adjudicatory responsibilities in the H-2A proc-  
6 ess;

7 (C) facilitate communication between em-  
8 ployers and agency adjudicators, including by  
9 allowing employers to—

10 (i) receive and respond to notices of  
11 deficiency and requests for information;

12 (ii) submit requests for inspections  
13 and licensing;

14 (iii) receive notices of approval and  
15 denial; and

16 (iv) request reconsideration or appeal  
17 of agency decisions; and

18 (D) provide information to the Secretary of  
19 State and U.S. Customs and Border Protection  
20 necessary for the efficient and secure processing  
21 of H-2A visas and applications for admission.

22 (2) OBJECTIVES.—In developing the platform  
23 described in paragraph (1), the Secretary of Home-  
24 land Security, in consultation with the Secretary of  
25 Labor, the Secretary of Agriculture, the Secretary of

1 State, and United States Digital Service, shall  
2 streamline and improve the H-2A process, including  
3 by—

4 (A) eliminating the need for employers to  
5 submit duplicate information and documenta-  
6 tion to multiple agencies;

7 (B) eliminating redundant processes, where  
8 a single matter in a petition is adjudicated by  
9 more than one agency;

10 (C) reducing the occurrence of common pe-  
11 tition errors, and otherwise improving and expe-  
12 diting the processing of H-2A petitions; and

13 (D) ensuring compliance with H-2A pro-  
14 gram requirements and the protection of the  
15 wages and working conditions of workers.

16 (b) ONLINE JOB REGISTRY.—The Secretary of Labor  
17 shall maintain a national, publicly-accessible online job  
18 registry and database of all job orders submitted by H-  
19 2A employers. The registry and database shall—

20 (1) be searchable using relevant criteria, includ-  
21 ing the types of jobs needed to be filled, the date(s)  
22 and location(s) of need, and the employer(s) named  
23 in the job order;

1           (2) provide an interface for workers in English,  
2           Spanish, and any other language that the Secretary  
3           of Labor determines to be appropriate; and

4           (3) provide for public access of job orders ap-  
5           proved under section 218(h)(2) of the Immigration  
6           and Nationality Act.

7   **SEC. 202. H-2A PROGRAM REQUIREMENTS.**

8           Section 218 of the Immigration and Nationality Act  
9           (8 U.S.C. 1188) is amended to read as follows:

10   **“SEC. 218. ADMISSION OF TEMPORARY H-2A WORKERS.**

11           “(a) LABOR CERTIFICATION CONDITIONS.—The Sec-  
12           retary of Homeland Security may not approve a petition  
13           to admit an H-2A worker unless the Secretary of Labor  
14           has certified that—

15                   “(1) there are not sufficient United States  
16           workers who are able, willing and qualified, and who  
17           will be available at the time and place needed, to  
18           perform the agricultural labor or services described  
19           in the petition; and

20                   “(2) the employment of the H-2A worker in  
21           such labor or services will not adversely affect the  
22           wages and working conditions of workers in the  
23           United States who are similarly employed.

24           “(b) H-2A PETITION REQUIREMENTS.—An em-  
25           ployer filing a petition for an H-2A worker to perform

1 agricultural labor or services shall attest to and dem-  
2 onstrate compliance, as and when appropriate, with all ap-  
3 plicable requirements under this section, including the fol-  
4 lowing:

5           “(1) NEED FOR LABOR OR SERVICES.—The em-  
6           ployer has described the need for agricultural labor  
7           or services in a job order that includes a description  
8           of the nature and location of the work to be per-  
9           formed, the anticipated period or periods (expected  
10          start and end dates) for which the workers will be  
11          needed, and the number of job opportunities in  
12          which the employer seeks to employ the workers.

13          “(2) NONDISPLACEMENT OF UNITED STATES  
14          WORKERS.—The employer has not and will not dis-  
15          place United States workers employed by the em-  
16          ployer during the period of employment of the H-  
17          2A worker and during the 60-day period imme-  
18          diately preceding such period of employment in the  
19          job for which the employer seeks approval to employ  
20          the H-2A worker.

21          “(3) STRIKE OR LOCKOUT.—Each place of em-  
22          ployment described in the petition is not, at the time  
23          of filing the petition and until the petition is ap-  
24          proved, subject to a strike or lockout in the course  
25          of a labor dispute.

1           “(4) RECRUITMENT OF UNITED STATES WORK-  
2           ERS.—The employer shall engage in the recruitment  
3           of United States workers as described in subsection  
4           (c) and shall hire such workers who are able, willing  
5           and qualified, and who will be available at the time  
6           and place needed, to perform the agricultural labor  
7           or services described in the petition. The employer  
8           may reject a United States worker only for lawful,  
9           job-related reasons.

10           “(5) WAGES, BENEFITS, AND WORKING CONDI-  
11           TIONS.—The employer shall offer and provide, at a  
12           minimum, the wages, benefits, and working condi-  
13           tions required by this section to the H-2A worker  
14           and all workers who are similarly employed. The em-  
15           ployer—

16           “(A) shall offer such similarly employed  
17           workers not less than the same benefits, wages,  
18           and working conditions that the employer is of-  
19           fering or will provide to the H-2A worker; and

20           “(B) may not impose on such similarly em-  
21           ployed workers any restrictions or obligations  
22           that will not be imposed on the H-2A worker.

23           “(6) WORKERS’ COMPENSATION.—If the job op-  
24           portunity is not covered by or is exempt from the  
25           State workers’ compensation law, the employer shall

1 provide, at no cost to the worker, insurance covering  
2 injury and disease arising out of, and in the course  
3 of, the worker's employment which will provide bene-  
4 fits at least equal to those provided under the State  
5 workers' compensation law.

6 “(7) COMPLIANCE WITH LABOR AND EMPLOY-  
7 MENT LAWS.—The employer shall comply with all  
8 applicable Federal, State and local employment-re-  
9 lated laws and regulations.

10 “(8) COMPLIANCE WITH FOREIGN LABOR RE-  
11 CRUITMENT LAWS.—The employer shall comply with  
12 subtitle C of title II of the Farm Workforce Mod-  
13 ernization Act of 2019.

14 “(c) RECRUITING REQUIREMENTS.—

15 “(1) IN GENERAL.—The employer may satisfy  
16 the recruitment requirement described in subsection  
17 (b)(4) by satisfying all of the following:

18 “(A) JOB ORDER.—As provided in sub-  
19 section (h)(1), the employer shall complete a  
20 job order for posting on the electronic job reg-  
21 istry maintained by the Secretary of Labor and  
22 for distribution by the appropriate State work-  
23 force agency. Such posting shall remain on the  
24 job registry as an active job order through the  
25 period described in paragraph (2)(B).

1           “(B) FORMER WORKERS.—At least 45  
2 days before each start date identified in the pe-  
3 tition, the employer shall—

4           “(i) make reasonable efforts to con-  
5 tact any United States worker the em-  
6 ployer employed in the previous year in the  
7 same occupation and area of intended em-  
8 ployment for which an H-2A worker is  
9 sought (excluding workers who were termi-  
10 nated for cause or abandoned the work-  
11 site); and

12           “(ii) post such job opportunity in a  
13 conspicuous location or locations at the  
14 place of employment.

15           “(C) POSITIVE RECRUITMENT.—During  
16 the period of recruitment, the employer shall  
17 complete any other positive recruitment steps  
18 within a multi-State region of traditional or ex-  
19 pected labor supply where the Secretary of  
20 Labor finds that there are a significant number  
21 of qualified United States workers who, if re-  
22 cruited, would be willing to make themselves  
23 available for work at the time and place needed.

24           “(2) PERIOD OF RECRUITMENT.—

1           “(A) IN GENERAL.—For purposes of this  
2 subsection, the period of recruitment begins on  
3 the date on which the job order is posted on the  
4 online job registry and ends on the date that  
5 H–2A workers depart for the employer’s place  
6 of employment. For a petition involving more  
7 than one start date under subsection (h)(1)(C),  
8 the end of the period of recruitment shall be de-  
9 termined by the date of departure of the H–2A  
10 workers for the final start date identified in the  
11 petition.

12           “(B) REQUIREMENT TO HIRE US WORK-  
13 ERS.—

14           “(i) IN GENERAL.—Notwithstanding  
15 the limitations of subparagraph (A), the  
16 employer will provide employment to any  
17 qualified United States worker who applies  
18 to the employer for any job opportunity in-  
19 cluded in the petition until the later of—

20                   “(I) the date that is 30 days  
21 after the date on which work begins;

22                   or

23                   “(II) the date on which—

1                   “(aa) 33 percent of the work  
2                   contract for the job opportunity  
3                   has elapsed; or

4                   “(bb) if the employer is a  
5                   labor contractor, 50 percent of  
6                   the work contract for the job op-  
7                   portunity has elapsed.

8                   “(ii) STAGGERED ENTRY.—For a peti-  
9                   tion involving more than one start date  
10                  under subsection (h)(1)(C), each start date  
11                  designated in the petition shall establish a  
12                  separate job opportunity. An employer may  
13                  not reject a United States worker because  
14                  the worker is unable or unwilling to fill  
15                  more than one job opportunity included in  
16                  the petition.

17                  “(iii) EXCEPTION.—Notwithstanding  
18                  clause (i), the employer may offer a job op-  
19                  portunity to an H-2A worker instead of an  
20                  alien granted certified agricultural worker  
21                  status under title I of the Farm Workforce  
22                  Modernization Act of 2019 if the H-2A  
23                  worker was employed by the employer in  
24                  each of 3 years during the most recent 4-  
25                  year period.

1           “(3) RECRUITMENT REPORT.—

2                   “(A) IN GENERAL.—The employer shall  
3 maintain a recruitment report through the ap-  
4 plicable period described in paragraph (2)(B)  
5 and submit regular updates through the elec-  
6 tronic platform on the results of recruitment.  
7 The employer shall retain the recruitment re-  
8 port, and all associated recruitment documenta-  
9 tion, for a period of 3 years from the date of  
10 certification.

11                   “(B) BURDEN OF PROOF.—If the employer  
12 asserts that any eligible individual who has ap-  
13 plied or been referred is not able, willing or  
14 qualified, the employer bears the burden of  
15 proof to establish that the individual is not able,  
16 willing or qualified because of a lawful, employ-  
17 ment-related reason.

18           “(d) WAGE REQUIREMENTS.—

19                   “(1) IN GENERAL.—Each employer under this  
20 section will offer the worker, during the period of  
21 authorized employment, wages that are at least the  
22 greatest of—

23                   “(A) the agreed-upon collective bargaining  
24 wage;

1           “(B) the adverse effect wage rate (or any  
2           successor wage established under paragraph  
3           (7));

4           “(C) the prevailing wage (hourly wage or  
5           piece rate); or

6           “(D) the Federal or State minimum wage.

7           “(2) ADVERSE EFFECT WAGE RATE DETER-  
8           MINATIONS.—

9           “(A) IN GENERAL.—Except as provided  
10           under subparagraph (B), the applicable adverse  
11           effect wage rate for each State and occupational  
12           classification for a calendar year shall be as fol-  
13           lows:

14           “(i) The annual average hourly wage  
15           for the occupational classification in the  
16           State or region as reported by the Sec-  
17           retary of Agriculture based on a wage sur-  
18           vey conducted by such Secretary.

19           “(ii) If a wage described in clause (i)  
20           is not reported, the national annual aver-  
21           age hourly wage for the occupational clas-  
22           sification as reported by the Secretary of  
23           Agriculture based on a wage survey con-  
24           ducted by such Secretary.

1           “(iii) If a wage described in clause (i)  
2 or (ii) is not reported, the Statewide an-  
3 nual average hourly wage for the standard  
4 occupational classification as reported by  
5 the Secretary of Labor based on a wage  
6 survey conducted by such Secretary.

7           “(iv) If a wage described in clause (i),  
8 (ii), or (iii) is not reported, the national av-  
9 erage hourly wage for the occupational  
10 classification as reported by the Secretary  
11 of Labor based on a wage survey con-  
12 ducted by such Secretary.

13           “(B) LIMITATIONS ON WAGE FLUCTUA-  
14 TIONS.—

15           “(i) WAGE FREEZE FOR CALENDAR  
16 YEAR 2020.—For calendar year 2020, the  
17 adverse effect wage rate for each State and  
18 occupational classification under this sub-  
19 section shall be the adverse effect wage  
20 rate that was in effect for H-2A workers  
21 in the applicable State in calendar year  
22 2019.

23           “(ii) CALENDAR YEARS 2021 THROUGH  
24 2029.—For each of calendar years 2021  
25 through 2029, the adverse effect wage rate

1 for each State and occupational classifica-  
2 tion under this subsection shall be the  
3 wage calculated under subparagraph (A),  
4 except that such wage may not—

5 “(I) be more than 1.5 percent  
6 lower than the wage in effect for H-  
7 2A workers in the applicable State  
8 and occupational classification in the  
9 immediately preceding calendar year;

10 “(II) except as provided in clause  
11 (III), be more than 3.25 percent high-  
12 er than the wage in effect for H-2A  
13 workers in the applicable State and  
14 occupational classification in the im-  
15 mediately preceding calendar year;  
16 and

17 “(III) if the application of clause  
18 (II) results in a wage that is lower  
19 than 110 percent of the applicable  
20 Federal or State minimum wage, be  
21 more than 4.25 percent higher than  
22 the wage in effect for H-2A workers  
23 in the applicable State and occupa-  
24 tional classification in the immediately  
25 preceding calendar year.

1                   “(iii) CALENDAR YEARS AFTER  
2                   2029.—For any calendar year after 2029,  
3                   the applicable wage rate described in para-  
4                   graph (1)(B) shall be the wage rate estab-  
5                   lished pursuant to paragraph (7)(D). Until  
6                   such wage rate is effective, the adverse ef-  
7                   fect wage rate for each State and occupa-  
8                   tional classification under this subsection  
9                   shall be the wage calculated under sub-  
10                  paragraph (A), except that such wage may  
11                  not be more than 1.5 percent lower or 3.25  
12                  percent higher than the wage in effect for  
13                  H–2A workers in the applicable State and  
14                  occupational classification in the imme-  
15                  diately preceding calendar year.

16                  “(3) MULTIPLE OCCUPATIONS.—If the primary  
17                  job duties for the job opportunity described in the  
18                  petition do not fall within a single occupational clas-  
19                  sification, the applicable wage rates under subpara-  
20                  graphs (B) and (C) of paragraph (1) for the job op-  
21                  portunity shall be based on the highest such wage  
22                  rates for all applicable occupational classifications.

23                  “(4) PUBLICATION; WAGES IN EFFECT.—

24                         “(A) PUBLICATION.—Prior to the start of  
25                         each calendar year, the Secretary of Labor shall

1 publish the applicable adverse effect wage rate  
2 (or successor wage rate, if any), and prevailing  
3 wage if available, for each State and occupa-  
4 tional classification through notice in the Fed-  
5 eral Register.

6 “(B) JOB ORDERS IN EFFECT.—Except as  
7 provided in subparagraph (C), publication by  
8 the Secretary of Labor of an updated adverse  
9 effect wage rate or prevailing wage for a State  
10 and occupational classification shall not affect  
11 the wage rate guaranteed in any approved job  
12 order for which recruitment efforts have com-  
13 menced at the time of publication.

14 “(C) EXCEPTION FOR YEAR-ROUND  
15 JOBS.—If the Secretary of Labor publishes an  
16 updated adverse effect wage rate or prevailing  
17 wage for a State and occupational classification  
18 concerning a petition described in subsection  
19 (i), and the updated wage is higher than the  
20 wage rate guaranteed in the work contract, the  
21 employer shall pay the updated wage not later  
22 than 14 days after publication of the updated  
23 wage in the Federal Register.

24 “(5) WORKERS PAID ON A PIECE RATE OR  
25 OTHER INCENTIVE BASIS.—If an employer pays by

1 the piece rate or other incentive method and requires  
2 one or more minimum productivity standards as a  
3 condition of job retention, such standards shall be  
4 specified in the job order and shall be no more than  
5 those normally required (at the time of the first peti-  
6 tion for H-2A workers) by other employers for the  
7 activity in the area of intended employment, unless  
8 the Secretary of Labor approves a higher minimum  
9 standard resulting from material changes in produc-  
10 tion methods.

11 “(6) GUARANTEE OF EMPLOYMENT.—

12 “(A) OFFER TO WORKER.—The employer  
13 shall guarantee the worker employment for the  
14 hourly equivalent of at least three-fourths of the  
15 work days of the total period of employment,  
16 beginning with the first work day after the ar-  
17 rival of the worker at the place of employment  
18 and ending on the date specified in the job  
19 offer. For purposes of this subparagraph, the  
20 hourly equivalent means the number of hours in  
21 the work days as stated in the job offer and  
22 shall exclude the worker’s Sabbath and Federal  
23 holidays. If the employer affords the worker less  
24 employment than that required under this para-  
25 graph, the employer shall pay the worker the

1 amount which the worker would have earned  
2 had the worker, in fact, worked for the guaran-  
3 teed number of hours.

4 “(B) FAILURE TO WORK.—Any hours  
5 which the worker fails to work, up to a max-  
6 imum of the number of hours specified in the  
7 job offer for a work day, when the worker has  
8 been offered an opportunity to do so, and all  
9 hours of work actually performed (including vol-  
10 untary work in excess of the number of hours  
11 specified in the job offer in a work day, on the  
12 worker’s Sabbath, or on Federal holidays) may  
13 be counted by the employer in calculating  
14 whether the period of guaranteed employment  
15 has been met.

16 “(C) ABANDONMENT OF EMPLOYMENT;  
17 TERMINATION FOR CAUSE.—If the worker vol-  
18 untarily abandons employment without good  
19 cause before the end of the contract period, or  
20 is terminated for cause, the worker is not enti-  
21 tled to the guarantee of employment described  
22 in subparagraph (A).

23 “(D) CONTRACT IMPOSSIBILITY.—If, be-  
24 fore the expiration of the period of employment  
25 specified in the job offer, the services of the

1 worker are no longer required for reasons be-  
2 yond the control of the employer due to any  
3 form of natural disaster before the guarantee in  
4 subparagraph (A) is fulfilled, the employer may  
5 terminate the worker’s employment. In the  
6 event of such termination, the employer shall  
7 fulfill the employment guarantee in subpara-  
8 graph (A) for the work days that have elapsed  
9 from the first work day after the arrival of the  
10 worker to the termination of employment. The  
11 employer shall make efforts to transfer a work-  
12 er to other comparable employment acceptable  
13 to the worker. If such transfer is not effected,  
14 the employer shall provide the return transpor-  
15 tation required in subsection (f)(2).

16 “(7) WAGE STANDARDS AFTER 2029.—

17 “(A) STUDY OF ADVERSE EFFECT WAGE  
18 RATE.—Beginning in fiscal year 2026, the Sec-  
19 retary of Agriculture and Secretary of Labor  
20 shall jointly conduct a study that addresses—

21 “(i) whether the employment of H-2A  
22 workers has depressed the wages of United  
23 States farm workers;

24 “(ii) whether an adverse effect wage  
25 rate is necessary to protect the wages of

1 United States farm workers in occupations  
2 in which H-2A workers are employed;

3 “(iii) whether alternative wage stand-  
4 ards would be sufficient to prevent wages  
5 in occupations in which H-2A workers are  
6 employed from falling below the wage level  
7 that would have prevailed in the absence of  
8 H-2A employment;

9 “(iv) whether any changes are war-  
10 ranted in the current methodologies for  
11 calculating the adverse effect wage rate  
12 and the prevailing wage rate; and

13 “(v) recommendations for future wage  
14 protection under this section.

15 “(B) FINAL REPORT.—Not later than Oc-  
16 tober 1, 2027, the Secretary of Agriculture and  
17 Secretary of Labor shall jointly prepare and  
18 submit a report to the Congress setting forth  
19 the findings of the study conducted under sub-  
20 paragraph (A) and recommendations for future  
21 wage protections under this section.

22 “(C) CONSULTATION.—In conducting the  
23 study under subparagraph (A) and preparing  
24 the report under subparagraph (B), the Sec-  
25 retary of Agriculture and Secretary of Labor

1 shall consult with representatives of agricultural  
2 employers and an equal number of representa-  
3 tives of agricultural workers, at the national,  
4 State and local level.

5 “(D) WAGE DETERMINATION AFTER  
6 2029.—Upon publication of the report described  
7 in subparagraph (B), the Secretary of Labor, in  
8 consultation with and the approval of the Sec-  
9 retary of Agriculture, shall make a rule to es-  
10 tablish a process for annually determining the  
11 wage rate for purposes of paragraph (1)(B) for  
12 fiscal years after 2029. Such process shall be  
13 designed to ensure that the employment of H-  
14 2A workers does not undermine the wages and  
15 working conditions of similarly employed United  
16 States workers.

17 “(e) HOUSING REQUIREMENTS.—Employers shall  
18 furnish housing in accordance with regulations established  
19 by the Secretary of Labor. Such regulations shall be con-  
20 sistent with the following:

21 “(1) IN GENERAL.—The employer shall be per-  
22 mitted at the employer’s option to provide housing  
23 meeting applicable Federal standards for temporary  
24 labor camps or to secure housing which meets the  
25 local standards for rental and/or public accommoda-

1 tions or other substantially similar class of habi-  
2 tation: Provided, That in the absence of applicable  
3 local standards, State standards for rental and/or  
4 public accommodations or other substantially similar  
5 class of habitation shall be met: Provided further,  
6 That in the absence of applicable local or State  
7 standards, Federal temporary labor camp standards  
8 shall apply.

9 “(2) FAMILY HOUSING.—Except as otherwise  
10 provided in subsection (i)(5), the employer shall pro-  
11 vide family housing to workers with families who re-  
12 quest it when it is the prevailing practice in the area  
13 and occupation of intended employment to provide  
14 family housing.

15 “(3) UNITED STATES WORKERS.—Notwith-  
16 standing paragraphs (1) and (2), an employer is not  
17 required to provide housing to United States work-  
18 ers who are reasonably able to return to their resi-  
19 dence within the same day.

20 “(4) TIMING OF INSPECTION.—

21 “(A) IN GENERAL.—The Secretary of  
22 Labor or designee shall make a determination  
23 as to whether the housing furnished by an em-  
24 ployer for a worker meets the requirements im-  
25 posed by this subsection prior to the date on

1           which the Secretary of Labor is required to  
2           make a certification with respect to a petition  
3           for the admission of such worker.

4           “(B) TIMELY INSPECTION.—The Secretary  
5           of Labor shall provide a process for—

6                   “(i) an employer to request inspection  
7                   of housing up to 60 days before the date  
8                   on which the employer will file a petition  
9                   under this section; and

10                   “(ii) annual inspection of housing for  
11                   workers who are engaged in agricultural  
12                   employment that is not of a seasonal or  
13                   temporary nature.

14           “(f) TRANSPORTATION REQUIREMENTS.—

15                   “(1) TRAVEL TO PLACE OF EMPLOYMENT.—A  
16                   worker who completes 50 percent of the period of  
17                   employment specified in the job order shall be reim-  
18                   bursed by the employer for the cost of the worker’s  
19                   transportation and subsistence from the place from  
20                   which the worker came to work for the employer (or  
21                   place of last employment, if the worker traveled  
22                   from such place) to the place of employment.

23                   “(2) TRAVEL FROM PLACE OF EMPLOYMENT.—  
24                   For a worker who completes the period of employ-  
25                   ment specified in the job order or who is terminated

1 without cause, the employer shall provide or pay for  
2 the worker's transportation and subsistence from the  
3 place of employment to the place from which the  
4 worker, disregarding intervening employment, came  
5 to work for the employer, or to the place of next em-  
6 ployment, if the worker has contracted with a subse-  
7 quent employer who has not agreed to provide or  
8 pay for the worker's transportation and subsistence  
9 to such subsequent employer's place of employment.

10 “(3) LIMITATION.—

11 “(A) AMOUNT OF REIMBURSEMENT.—Ex-  
12 cept as provided in subparagraph (B), the  
13 amount of reimbursement provided under para-  
14 graph (1) or (2) to a worker need not exceed  
15 the lesser of—

16 “(i) the actual cost to the worker of  
17 the transportation and subsistence in-  
18 volved; or

19 “(ii) the most economical and reason-  
20 able common carrier transportation  
21 charges and subsistence costs for the dis-  
22 tance involved.

23 “(B) DISTANCE TRAVELED.—For travel to  
24 or from the worker's home country, if the travel  
25 distance between the worker's home and the rel-

1           evant consulate is 50 miles or less, reimburse-  
2           ment for transportation and subsistence may be  
3           based on transportation to or from the con-  
4           sulate.

5           “(g) HEAT ILLNESS PREVENTION PLAN.—

6           “(1) IN GENERAL.—The employer shall main-  
7           tain a reasonable plan that describes the employer’s  
8           procedures for the prevention of heat illness, includ-  
9           ing appropriate training, access to water and shade,  
10          the provision of breaks, and the protocols for emer-  
11          gency response. Such plan shall—

12                   “(A) be in writing in English and, to the  
13                   extent necessary, any language common to a  
14                   significant portion of the workers if they are  
15                   not fluent in English; and

16                   “(B) be posted at a conspicuous location at  
17                   the worksite and provided to employees prior to  
18                   the commencement of labor or services.

19           “(2) CLARIFICATION.—Nothing in this sub-  
20           section is intended to limit any other Federal or  
21           State authority to promulgate, enforce, or maintain  
22           health and safety standards related to heat-related  
23           illness.

24           “(h) H-2A PETITION PROCEDURES.—

1           “(1) SUBMISSION OF PETITION AND JOB  
2 ORDER.—

3           “(A) IN GENERAL.—The employer shall  
4 submit information required for the adjudica-  
5 tion of the H-2A petition, including a job  
6 order, through the electronic platform no more  
7 than 75 calendar days and no fewer than 60  
8 calendar days before the employer’s first date of  
9 need specified in the petition.

10           “(B) FILING BY AGRICULTURAL ASSOCIA-  
11 TIONS.—An association of agricultural pro-  
12 ducers that use agricultural services may file an  
13 H-2A petition under subparagraph (A). If an  
14 association is a joint or sole employer of work-  
15 ers who perform agricultural labor or services,  
16 H-2A workers may be used for the approved  
17 job opportunities of any of the association’s  
18 producer members and such workers may be  
19 transferred among its producer members to per-  
20 form the agricultural labor or services for which  
21 the petition was approved.

22           “(C) PETITIONS INVOLVING STAGGERED  
23 ENTRY.—

24           “(i) IN GENERAL.—Except as pro-  
25 vided in clause (ii), an employer may file

1 a petition involving employment in the  
2 same occupational classification and same  
3 area of intended employment with multiple  
4 start dates if—

5 “(I) the petition involves tem-  
6 porary or seasonal employment and no  
7 more than 10 start dates;

8 “(II) the multiple start dates  
9 share a common end date;

10 “(III) no more than 120 days  
11 separate the first start date and the  
12 final start date listed in the petition;  
13 and

14 “(IV) the need for multiple start  
15 dates arises from variations in labor  
16 needs associated with the job oppor-  
17 tunity identified in the petition.

18 “(ii) LABOR CONTRACTORS.—A labor  
19 contractor may not file a petition described  
20 in clause (i) unless the labor contractor—

21 “(I) is filing as a joint employer  
22 with its contractees, or is operating in  
23 a State in which joint employment  
24 and liability between the labor con-

1 tractor and its contractees is other-  
2 wise established; or

3 “(II) has posted and is maintain-  
4 ing a premium surety bond as de-  
5 scribed in subsection (1)(1).

6 “(2) LABOR CERTIFICATION.—

7 “(A) REVIEW OF JOB ORDER.—

8 “(i) IN GENERAL.—The Secretary of  
9 Labor, in consultation with the relevant  
10 State workforce agency, shall review the  
11 job order for compliance with this section  
12 and notify the employer through the elec-  
13 tronic platform of any deficiencies not later  
14 than 7 business days from the date the  
15 employer submits the necessary informa-  
16 tion required under paragraph (1)(A). The  
17 employer shall be provided 5 business days  
18 to respond to any such notice of deficiency.

19 “(ii) STANDARD.—The job order must  
20 include all material terms and conditions  
21 of employment, including the requirements  
22 of this section, and must be otherwise con-  
23 sistent with the minimum standards pro-  
24 vided under Federal, State or local law. In  
25 considering the question of whether a spe-

1 cific qualification is appropriate in a job  
2 order, the Secretary of Labor shall apply  
3 the normal and accepted qualification re-  
4 quired by non-H-2A employers in the  
5 same or comparable occupations and crops.

6 “(iii) EMERGENCY PROCEDURES.—

7 The Secretary of Labor shall establish  
8 emergency procedures for the curing of de-  
9 ficiencies that cannot be resolved during  
10 the period described in clause (i).

11 “(B) APPROVAL OF JOB ORDER.—

12 “(i) IN GENERAL.—Upon approval of  
13 the job order, the Secretary of Labor shall  
14 immediately place for public examination a  
15 copy of the job order on the online job reg-  
16 istry, and the State workforce agency serv-  
17 ing the area of intended employment shall  
18 commence the recruitment of United  
19 States workers.

20 “(ii) REFERRAL OF UNITED STATES  
21 WORKERS.—The Secretary of Labor and  
22 State workforce agency shall keep the job  
23 order active until the end of the period de-  
24 scribed in subsection (c)(2) and shall refer

1 to the employer each United States worker  
2 who applies for the job opportunity.

3 “(C) REVIEW OF INFORMATION FOR DEFICIENCIES.—Within 7 business days of the ap-  
4 proval of the job order, the Secretary of Labor  
5 shall review the information necessary to make  
6 a labor certification and notify the employer  
7 through the electronic platform if such informa-  
8 tion does not meet the standards for approval.  
9 Such notification shall include a description of  
10 any deficiency, and the employer shall be pro-  
11 vided 5 business days to cure such deficiency.

12 “(D) CERTIFICATION AND AUTHORIZATION  
13 OF WORKERS.—Not later than 30 days before  
14 the date that labor or services are first required  
15 to be performed, the Secretary of Labor shall  
16 issue the requested labor certification if the  
17 Secretary determines that the requirements set  
18 forth in this section have been met.

19 “(E) EXPEDITED ADMINISTRATIVE AP-  
20 PEALS OF CERTAIN DETERMINATIONS.—The  
21 Secretary of Labor shall by regulation establish  
22 a procedure for an employer to request the ex-  
23 pedited review of a denial of a labor certifi-  
24 cation under this section, or the revocation of  
25

1 such a certification. Such procedure shall re-  
2 quire the Secretary to expeditiously, but no  
3 later than 72 hours after expedited review is re-  
4 quested, issue a de novo determination on a  
5 labor certification that was denied in whole or  
6 in part because of the availability of able, will-  
7 ing and qualified workers if the employer dem-  
8 onstrates, consistent with subsection (e)(3)(B),  
9 that such workers are not actually available at  
10 the time or place such labor or services are re-  
11 quired.

12 “(3) PETITION DECISION.—

13 “(A) IN GENERAL.—Not later than 7 busi-  
14 ness days after the Secretary of Labor issues  
15 the certification, the Secretary of Homeland Se-  
16 curity shall issue a decision on the petition and  
17 shall transmit a notice of action to the peti-  
18 tioner via the electronic platform.

19 “(B) APPROVAL.—Upon approval of a pe-  
20 tition under this section, the Secretary of  
21 Homeland Security shall ensure that such ap-  
22 proval is noted in the electronic platform and is  
23 available to the Secretary of State and U.S.  
24 Customs and Border Protection, as necessary,  
25 to facilitate visa issuance and admission.

1           “(C) PARTIAL APPROVAL.—A petition for  
2 multiple named beneficiaries may be partially  
3 approved with respect to eligible beneficiaries  
4 notwithstanding the ineligibility, or potential in-  
5 eligibility, of one or more other beneficiaries.

6           “(D) POST-CERTIFICATION AMEND-  
7 MENTS.—The Secretary of Labor shall provide  
8 a process for amending a request for labor cer-  
9 tification in conjunction with an H-2A petition,  
10 subsequent to certification by the Secretary of  
11 Labor, in cases in which the requested amend-  
12 ment does not materially change the petition  
13 (including the job order).

14           “(4) ROLES OF AGRICULTURAL ASSOCIA-  
15 TIONS.—

16           “(A) MEMBER’S VIOLATION DOES NOT  
17 NECESSARILY DISQUALIFY ASSOCIATION OR  
18 OTHER MEMBERS.—If an individual producer  
19 member of a joint employer association is deter-  
20 mined to have committed an act that results in  
21 the denial of a petition with respect to the  
22 member, the denial shall apply only to that  
23 member of the association unless the Secretary  
24 of Labor determines that the association or

1 other member participated in, had knowledge  
2 of, or reason to know of, the violation.

3 “(B) ASSOCIATION’S VIOLATION DOES NOT  
4 NECESSARILY DISQUALIFY MEMBERS.—

5 “(i) If an association representing ag-  
6 ricultural producers as a joint employer is  
7 determined to have committed an act that  
8 results in the denial of a petition with re-  
9 spect to the association, the denial shall  
10 apply only to the association and does not  
11 apply to any individual producer member  
12 of the association unless the Secretary of  
13 Labor determines that the member partici-  
14 pated in, had knowledge of, or reason to  
15 know of, the violation.

16 “(ii) If an association of agricultural  
17 producers certified as a sole employer is  
18 determined to have committed an act that  
19 results in the denial of a petition with re-  
20 spect to the association, no individual pro-  
21 ducer member of such association may be  
22 the beneficiary of the services of H-2A  
23 workers in the commodity and occupation  
24 in which such aliens were employed by the  
25 association which was denied during the

1 period such denial is in force, unless such  
2 producer member employs such aliens in  
3 the commodity and occupation in question  
4 directly or through an association which is  
5 a joint employer of such workers with the  
6 producer member.

7 “(5) SPECIAL PROCEDURES.—The Secretary of  
8 Labor, in consultation with the Secretary of Agri-  
9 culture and Secretary of Homeland Security, may by  
10 regulation establish alternate procedures that rea-  
11 sonably modify program requirements under this  
12 section, when the Secretary determines that such  
13 modifications are required due to the unique nature  
14 of the work involved.

15 “(6) CONSTRUCTION OCCUPATIONS.—An em-  
16 ployer may not file a petition under this section on  
17 behalf of a worker if the majority of the worker’s  
18 duties will fall within a construction or extraction oc-  
19 cupational classification.

20 “(i) NON-TEMPORARY OR -SEASONAL NEEDS.—

21 “(1) IN GENERAL.—Notwithstanding the re-  
22 quirement in section 101(a)(15)(H)(ii)(a) that the  
23 agricultural labor or services performed by an H-2A  
24 worker be of a temporary or seasonal nature, the  
25 Secretary of Homeland Security may, consistent

1 with the provisions of this subsection, approve a pe-  
2 tition for an H-2A worker to perform agricultural  
3 services or labor that is not of a temporary or sea-  
4 sonal nature.

5 “(2) NUMERICAL LIMITATIONS.—

6 “(A) FIRST 3 FISCAL YEARS.—The total  
7 number of aliens who may be issued visas or  
8 otherwise provided H-2A nonimmigrant status  
9 under paragraph (1) for the first fiscal year  
10 during which the first visa is issued under such  
11 paragraph and for each of the following two fis-  
12 cal years may not exceed 20,000.

13 “(B) FISCAL YEARS 4 THROUGH 10.—

14 “(i) IN GENERAL.—The total number  
15 of aliens who may be issued visas or other-  
16 wise provided H-2A nonimmigrant status  
17 under paragraph (1) for the first fiscal  
18 year following the fiscal years referred to  
19 in subparagraph (A) and for each of the  
20 following 6 fiscal years may not exceed a  
21 numerical limitation jointly imposed by the  
22 Secretary of Agriculture and Secretary of  
23 Labor in accordance with clause (ii).

24 “(ii) ANNUAL ADJUSTMENTS.—For  
25 each fiscal year referred to in clause (i),

1 the Secretary of Agriculture and Secretary  
2 of Labor, in consultation with the Sec-  
3 retary of Homeland Security, shall estab-  
4 lish a numerical limitation for purposes of  
5 clause (i). Such numerical limitation may  
6 not be lower 20,000 and may not vary by  
7 more than 12.5 percent compared to the  
8 numerical limitation applicable to the im-  
9 mediately preceding fiscal year. In estab-  
10 lishing such numerical limitation, the Sec-  
11 retaries shall consider appropriate factors,  
12 including—

13 “(I) a demonstrated shortage of  
14 agricultural workers;

15 “(II) the level of unemployment  
16 and underemployment of agricultural  
17 workers during the preceding fiscal  
18 year;

19 “(III) the number of H-2A work-  
20 ers sought by employers during the  
21 preceding fiscal year to engage in ag-  
22 ricultural labor or services not of a  
23 temporary or seasonal nature;

24 “(IV) the number of such H-2A  
25 workers issued a visa in the most re-

85

1 cent fiscal year who remain in the  
2 United States in compliance with the  
3 terms of such visa;

4 “(V) the estimated number of  
5 United States workers, including  
6 workers who obtained certified agri-  
7 cultural worker status under title I of  
8 the Farm Workforce Modernization  
9 Act of 2019, who worked during the  
10 preceding fiscal year in agricultural  
11 labor or services not of a temporary  
12 or seasonal nature;

13 “(VI) the number of such United  
14 States workers who accepted jobs of-  
15 fered by employers using the online  
16 job registry during the preceding fis-  
17 cal year;

18 “(VII) any growth or contraction  
19 of the United States agricultural in-  
20 dustry that has increased or decreased  
21 the demand for agricultural workers;  
22 and

23 “(VIII) any changes in the real  
24 wages paid to agricultural workers in  
25 the United States as an indication of

1 a shortage or surplus of agricultural  
2 labor.

3 “(C) SUBSEQUENT FISCAL YEARS.—For  
4 each fiscal year following the fiscal years re-  
5 ferred to in subparagraph (B), the Secretary of  
6 Agriculture and Secretary of Labor shall jointly  
7 determine, in consultation with the Secretary of  
8 Homeland Security, and after considering ap-  
9 propriate factors, including those factors listed  
10 in subclauses (I) through (VIII) of subpara-  
11 graph (B)(ii), whether to establish a numerical  
12 limitation for that fiscal year. If a numerical  
13 limitation is so established—

14 “(i) such numerical limitation may  
15 not be lower than highest number of aliens  
16 admitted under this subsection in any of  
17 the three fiscal years immediately pre-  
18 ceding the fiscal year for which the numer-  
19 ical limitation is to be established; and

20 “(ii) the total number of aliens who  
21 may be issued visas or otherwise provided  
22 H-2A nonimmigrant status under para-  
23 graph (1) for that fiscal year may not ex-  
24 ceed such numerical limitation.

1           “(D) EMERGENCY PROCEDURES.—The  
2           Secretary of Agriculture and Secretary of  
3           Labor, in consultation with the Secretary of  
4           Homeland Security, shall jointly establish by  
5           regulation procedures for immediately adjusting  
6           a numerical limitation imposed under subpara-  
7           graph (B) or (C) to account for significant  
8           labor shortages.

9           “(3) ALLOCATION OF VISAS.—

10           “(A) BI-ANNUAL ALLOCATION.—The an-  
11           nual allocation of visas described in paragraph  
12           (2) shall be evenly allocated between two halves  
13           of the fiscal year unless the Secretary of Home-  
14           land Security, in consultation with the Sec-  
15           retary of Agriculture and Secretary of Labor,  
16           determines that an alternative allocation would  
17           better accommodate demand for visas. Any un-  
18           used visas in the first half of the fiscal year  
19           shall be added to the allocation for the subse-  
20           quent half of the same fiscal year.

21           “(B) RESERVE FOR DAIRY LABOR OR  
22           SERVICES.—

23           “(i) IN GENERAL.—Of the visa num-  
24           bers made available in each half of the fis-  
25           cal year pursuant to subparagraph (A), 50

1 percent of such visas shall be reserved for  
2 employers filing petitions seeking H-2A  
3 workers to engage in agricultural labor or  
4 services in the dairy industry.

5 “(ii) EXCEPTION.—If, after 4 months  
6 have elapsed in one half of the fiscal year,  
7 the Secretary of Homeland Security deter-  
8 mines that application of clause (i) will re-  
9 sult in visas going unused during that half  
10 of the fiscal year, clause (i) shall not apply  
11 to visas under this paragraph during the  
12 remainder of such calendar half.

13 “(C) LIMITED ALLOCATION FOR CERTAIN  
14 SPECIAL PROCEDURES INDUSTRIES.—

15 “(i) IN GENERAL.—Notwithstanding  
16 the numerical limitations under paragraph  
17 (2), up to 500 aliens may be issued visas  
18 or otherwise provided H-2A nonimmigrant  
19 status under paragraph (1) in a fiscal year  
20 for range sheep or goat herding.

21 “(ii) LIMITATION.—The total number  
22 of aliens in the United States in valid H-  
23 2A status under clause (i) at any one time  
24 may not exceed 500.

1           “(iii) CLARIFICATION.—Any visas  
2           issued under this subparagraph may not be  
3           considered for purposes of the annual ad-  
4           justments under subparagraphs (B) and  
5           (C) of paragraph (2).

6           “(4) ANNUAL ROUND TRIP HOME.—

7           “(A) IN GENERAL.—In addition to the  
8           other requirements of this section, an employer  
9           shall provide H-2A workers employed under  
10          this subsection, at no cost to such workers, with  
11          annual round trip travel, including transpor-  
12          tation and subsistence during travel, to their  
13          homes in their communities of origin. The em-  
14          ployer must provide such travel within 14  
15          months of the initiation of the worker’s employ-  
16          ment, and no more than 14 months can elapse  
17          between each required period of travel.

18          “(B) LIMITATION.—The cost of travel  
19          under subparagraph (A) need not exceed the  
20          lesser of—

21                 “(i) the actual cost to the worker of  
22                 the transportation and subsistence in-  
23                 volved; or

24                 “(ii) the most economical and reason-  
25                 able common carrier transportation

1 charges and subsistence costs for the dis-  
2 tance involved.

3 “(5) FAMILY HOUSING.—An employer seeking  
4 to employ an H-2A worker pursuant to this sub-  
5 section shall offer family housing to workers with  
6 families if such workers are engaged in agricultural  
7 employment that is not of a seasonal or temporary  
8 nature. The worker may reject such an offer. The  
9 employer may not charge the worker for the work-  
10 er’s housing, except that if the worker accepts family  
11 housing, a prorated rent based on the fair market  
12 value for such housing may be charged for the work-  
13 er’s family members.

14 “(6) WORKPLACE SAFETY PLAN FOR DAIRY EM-  
15 PLOYEES.—

16 “(A) IN GENERAL.—If an employer is  
17 seeking to employ a worker in agricultural labor  
18 or services in the dairy industry pursuant to  
19 this subsection, the employer must report inci-  
20 dents consistent with the requirements under  
21 section 1904.39 of title 29, Code of Federal  
22 Regulations, and maintain an effective worksite  
23 safety and compliance plan to prevent work-  
24 place accidents and otherwise ensure safety.  
25 Such plan shall—

1           “(i) be in writing in English and, to  
2           the extent necessary, any language com-  
3           mon to a significant portion of the workers  
4           if they are not fluent in English; and

5           “(ii) be posted at a conspicuous loca-  
6           tion at the worksite and provided to em-  
7           ployees prior to the commencement of  
8           labor or services.

9           “(B) CONTENTS OF PLAN.—The Secretary  
10          of Labor, in consultation with the Secretary of  
11          Agriculture, shall establish by regulation the  
12          minimum requirements for the plan described  
13          in subparagraph (A). Such plan shall include  
14          measures to—

15               “(i) require workers (other than the  
16               employer’s family members) whose posi-  
17               tions require contact with animals to com-  
18               plete animal care training, including ani-  
19               mal handling and job-specific animal care;

20               “(ii) protect against sexual harass-  
21               ment and violence, resolve complaints in-  
22               volving harassment or violence, and protect  
23               against retaliation against workers report-  
24               ing harassment or violence; and

1           “(iii) contain other provisions nec-  
2           essary for ensuring workplace safety, as  
3           determined by the Secretary of Labor, in  
4           consultation with the Secretary of Agri-  
5           culture.

6           “(C) CLARIFICATION.—Nothing in this  
7           paragraph is intended to apply to persons or  
8           entities that are not seeking to employ workers  
9           under this section. Nothing in this paragraph is  
10          intended to limit any other Federal or State au-  
11          thority to promulgate, enforce, or maintain  
12          health and safety standards related to the dairy  
13          industry.

14          “(j) ELIGIBILITY FOR H-2A STATUS AND ADMISSION  
15          TO THE UNITED STATES.—

16                 “(1) DISQUALIFICATION.—An alien shall be in-  
17                 eligible for admission to the United States as an H-  
18                 2A worker pursuant to a petition filed under this  
19                 section if the alien was admitted to the United  
20                 States as an H-2A worker within the past 5 years  
21                 of the date the petition was filed and—

22                         “(A) violated a material provision of this  
23                         section, including the requirement to promptly  
24                         depart the United States when the alien’s au-  
25                         thorized period of admission has expired, unless

1 the alien has good cause for such failure to de-  
2 part; or

3 “(B) otherwise violated a term or condition  
4 of admission into the United States as an H-  
5 2A worker.

6 “(2) VISA VALIDITY.—A visa issued to an H-  
7 2A worker shall be valid for 3 years and shall allow  
8 for multiple entries during the approved period of  
9 admission.

10 “(3) PERIOD OF AUTHORIZED STAY; ADMIS-  
11 SION.—

12 “(A) IN GENERAL.—An alien admissible as  
13 an H-2A worker shall be authorized to stay in  
14 the United States for the period of employment  
15 specified in the petition approved by the Sec-  
16 retary of Homeland Security under this section.  
17 The maximum continuous period of authorized  
18 stay for an H-2A worker is 36 months.

19 “(B) REQUIREMENT TO REMAIN OUTSIDE  
20 THE UNITED STATES.—In the case of an H-2A  
21 worker whose maximum continuous period of  
22 authorized stay (including any extensions) has  
23 expired, the alien may not again be eligible for  
24 such stay until the alien remains outside the

1 United States for a cumulative period of at  
2 least 45 days.

3 “(C) EXCEPTIONS.—The Secretary of  
4 Homeland Security shall deduct absences from  
5 the United States that take place during an H–  
6 2A worker’s period of authorized stay from the  
7 period that the alien is required to remain out-  
8 side the United States under subparagraph (B),  
9 if the alien or the alien’s employer requests  
10 such a deduction, and provides clear and con-  
11 vincing proof that the alien qualifies for such a  
12 deduction. Such proof shall consist of evidence  
13 including, but not limited to, arrival and depart-  
14 ure records, copies of tax returns, and records  
15 of employment abroad.

16 “(D) ADMISSION.—In addition to the max-  
17 imum continuous period of authorized stay, an  
18 H–2A worker’s authorized period of admission  
19 shall include an additional period of 10 days  
20 prior to the beginning of the period of employ-  
21 ment for the purpose of traveling to the place  
22 of employment and 45 days at the end of the  
23 period of employment for the purpose of trav-  
24 eling home or seeking an extension of status  
25 based on a subsequent offer of employment if

1 the worker has not reached the maximum con-  
2 tinuous period of authorized stay under sub-  
3 paragraph (A) (subject to the exceptions in sub-  
4 paragraph (C)).

5 “(4) CONTINUING H-2A WORKERS.—

6 “(A) SUCCESSIVE EMPLOYMENT.—An H-  
7 2A worker is authorized to start new or concur-  
8 rent employment upon the filing of a nonfrivo-  
9 lous H-2A petition, or as of the requested start  
10 date, whichever is later if—

11 “(i) the petition to start new or con-  
12 current employment was filed prior to the  
13 expiration of the H-2A worker’s period of  
14 admission as defined in paragraph (3)(D);  
15 and

16 “(ii) the H-2A worker has not been  
17 employed without authorization in the  
18 United States from the time of last admis-  
19 sion to the United States in H-2A status  
20 through the filing of the petition for new  
21 employment.

22 “(B) PROTECTION DUE TO IMMIGRANT  
23 VISA BACKLOGS.—Notwithstanding the limita-  
24 tions on the period of authorized stay described  
25 in paragraph (3), any H-2A worker who—

1           “(i) is the beneficiary of an approved  
2           petition, filed under section 204(a)(1)(E)  
3           or (F) for preference status under section  
4           203(b)(3)(A)(iii); and

5           “(ii) is eligible to be granted such sta-  
6           tus but for the annual limitations on visas  
7           under section 203(b)(3)(A),  
8           may apply for, and the Secretary of Homeland  
9           Security may grant, an extension of such non-  
10          immigrant status until the Secretary of Home-  
11          land Security issues a final administrative deci-  
12          sion on the alien’s application for adjustment of  
13          status or the Secretary of State issues a final  
14          decision on the alien’s application for an immi-  
15          grant visa.

16          “(5) ABANDONMENT OF EMPLOYMENT.—

17                 “(A) IN GENERAL.—Except as provided in  
18                 subparagraph (B), an H-2A worker who aban-  
19                 dons the employment which was the basis for  
20                 the worker’s authorized stay, without good  
21                 cause, shall be considered to have failed to  
22                 maintain H-2A status and shall depart the  
23                 United States or be subject to removal under  
24                 section 237(a)(1)(C)(i).

1           “(B) GRACE PERIOD TO SECURE NEW EM-  
2           PLOYMENT.—An H-2A worker shall not be con-  
3           sidered to have failed to maintain H-2A status  
4           solely on the basis of a cessation of the employ-  
5           ment on which the alien’s classification was  
6           based for a period of 45 consecutive days, or  
7           until the end of the authorized validity period,  
8           whichever is shorter, once during each author-  
9           ized validity period.

10          “(k) REQUIRED DISCLOSURES.—

11           “(1) DISCLOSURE OF WORK CONTRACT.—Not  
12          later than the time the H-2A worker applies for a  
13          visa, the employer shall provide the worker with a  
14          copy of the work contract that includes the disclo-  
15          sures and rights under this section (or in the ab-  
16          sence of such a contract, a copy of the job order and  
17          proof of the certification described in subparagraphs  
18          (B) and (D) of subsection (h)(2)). An H-2A worker  
19          moving from one H-2A employer to a subsequent  
20          H-2A employer shall be provided with a copy of the  
21          new employment contract no later than the time an  
22          offer of employment is made by the subsequent em-  
23          ployer.

24           “(2) HOURS AND EARNINGS STATEMENTS.—

25          The employer shall furnish to H-2A workers, on or

1 before each payday, in one or more written state-  
2 ments—

3 “(A) the worker’s total earnings for the  
4 pay period;

5 “(B) the worker’s hourly rate of pay, piece  
6 rate of pay, or both;

7 “(C) the hours of employment offered to  
8 the worker and the hours of employment actu-  
9 ally worked;

10 “(D) if piece rates of pay are used, the  
11 units produced daily;

12 “(E) an itemization of the deductions  
13 made from the worker’s wages; and

14 “(F) any other information required by  
15 Federal, State or local law.

16 “(3) NOTICE OF WORKER RIGHTS.—The em-  
17 ployer must post and maintain in a conspicuous lo-  
18 cation at the place of employment, a poster provided  
19 by the Secretary of Labor in English, and, to the ex-  
20 tent necessary, any language common to a signifi-  
21 cant portion of the workers if they are not fluent in  
22 English, which sets out the rights and protections  
23 for workers employed pursuant to this section.

24 “(l) LABOR CONTRACTORS; FOREIGN LABOR RE-  
25 CRUITERS; PROHIBITION ON FEES.—

1 “(1) LABOR CONTRACTORS.—

2 “(A) SURETY BOND.—An employer that is  
3 a labor contractor who seeks to employ H–2A  
4 workers shall maintain a surety bond in an  
5 amount required under subparagraph (B). Such  
6 bond shall be payable to the Secretary of Labor  
7 or pursuant to the resolution of a civil or crimi-  
8 nal proceeding, for the payment of wages and  
9 benefits, including any assessment of interest,  
10 owed to an H–2A worker or a similarly em-  
11 ployed United States worker, or a United  
12 States worker who has been rejected or dis-  
13 placed in violation of this section.

14 “(B) AMOUNT OF BOND.—The Secretary  
15 of Labor shall annually publish in the Federal  
16 Register a schedule of required bond amounts  
17 that are determined by such Secretary to be  
18 sufficient for labor contractors to discharge fi-  
19 nancial obligations under this section based on  
20 the number of workers the labor contractor  
21 seeks to employ and the wages such workers are  
22 required to be paid.

23 “(C) PREMIUM BOND.—A labor contractor  
24 seeking to file a petition involving more than  
25 one start date under subsection (h)(1)(C) shall

1 maintain a surety bond that is at least 15 per-  
2 cent higher than the applicable bond amount  
3 determined by the Secretary under subpara-  
4 graph (B).

5 “(D) USE OF FUNDS.—Any sums paid to  
6 the Secretary under subparagraph (A) that are  
7 not paid to a worker because of the inability to  
8 do so within a period of 5 years following the  
9 date of a violation giving rise to the obligation  
10 to pay shall remain available to the Secretary  
11 without further appropriation until expended to  
12 support the enforcement of this section.

13 “(2) PROHIBITION AGAINST EMPLOYEES PAY-  
14 ING FEES.—Neither the employer nor its agents  
15 shall seek or receive payment of any kind from any  
16 worker for any activity related to the H-2A process,  
17 including payment of the employer’s attorneys’ fees,  
18 application fees, or recruitment costs. An employer  
19 and its agents may receive reimbursement for costs  
20 that are the responsibility and primarily for the ben-  
21 efit of the worker, such as government-required  
22 passport fees.

23 “(3) THIRD PARTY CONTRACTS.—The contract  
24 between an employer and any labor contractor or  
25 any foreign labor recruiter (or any agent of such

1 labor contractor or foreign labor recruiter) whom the  
2 employer engages shall include a term providing for  
3 the termination of such contract for cause if the con-  
4 tractor or recruiter, either directly or indirectly, in  
5 the placement or recruitment of H-2A workers seeks  
6 or receives payments or other compensation from  
7 prospective employees. Upon learning that a labor  
8 contractor or foreign labor recruiter has sought or  
9 collected such payments, the employer shall so termi-  
10 nate any contracts with such contractor or recruiter.

11 “(m) ENFORCEMENT AUTHORITY.—

12 “(1) IN GENERAL.—The Secretary of Labor is  
13 authorized to take such actions against employers,  
14 including imposing appropriate penalties and seeking  
15 monetary and injunctive relief and specific perform-  
16 ance of contractual obligations, as may be necessary  
17 to ensure compliance with the requirements of this  
18 section and with the applicable terms and conditions  
19 of employment.

20 “(2) COMPLAINT PROCESS.—

21 “(A) PROCESS.—The Secretary of Labor  
22 shall establish a process for the receipt, inves-  
23 tigation, and disposition of complaints alleging  
24 failure of an employer to comply with the re-

1            requirements under this section and with the ap-  
2            plicable terms and conditions of employment.

3            “(B) FILING.—A complaint referred to in  
4            subparagraph (A) may be filed not later than 2  
5            years after the date of the conduct that is the  
6            subject of the complaint.

7            “(C) COMPLAINT NOT EXCLUSIVE.—A  
8            complaint filed under this paragraph is not an  
9            exclusive remedy and the filing of such a com-  
10          plaint does not waive any rights or remedies of  
11          the aggrieved party under this law or other  
12          laws.

13          “(D) DECISION AND REMEDIES.—If the  
14          Secretary of Labor finds, after notice and op-  
15          portunity for a hearing, that the employer failed  
16          to comply with the requirements of this section  
17          or the terms and conditions of employment, the  
18          Secretary of Labor may require payment of un-  
19          paid wages, unpaid benefits, fees assessed in  
20          violation of this section, damages, and civil  
21          money penalties. The Secretary is also author-  
22          ized to impose other administrative remedies,  
23          including disqualification of the employer from  
24          utilizing the H-2A program for a period of up  
25          to 5 years in the event of willful or multiple

1 material violations. The Secretary is authorized  
2 to permanently disqualify an employer from uti-  
3 lizing the H-2A program upon a subsequent  
4 finding involving willful or multiple material  
5 violations.

6 “(E) DISPOSITION OF PENALTIES.—Civil  
7 penalties collected under this paragraph shall be  
8 deposited into the H-2A Labor Certification  
9 Fee Account established under section 203 of  
10 the Farm Workforce Modernization Act of  
11 2019.

12 “(3) STATUTORY CONSTRUCTION.—Nothing in  
13 this subsection may be construed as limiting the au-  
14 thority of the Secretary of Labor to conduct an in-  
15 vestigation—

16 “(A) under any other law, including any  
17 law affecting migrant and seasonal agricultural  
18 workers; or

19 “(B) in the absence of a complaint.

20 “(4) RETALIATION PROHIBITED.—It is a viola-  
21 tion of this subsection for any person to intimidate,  
22 threaten, restrain, coerce, blacklist, discharge, or in  
23 any other manner discriminate against, or to cause  
24 any person to intimidate, threaten, restrain, coerce,  
25 blacklist, or in any manner discriminate against, an

1 employee, including a former employee or an appli-  
2 cant for employment, because the employee—

3 “(A) has disclosed information to the em-  
4 ployer, or to any other person, that the em-  
5 ployee reasonably believes evidences a violation  
6 under this section, or any rule or regulation re-  
7 lating to this section;

8 “(B) has filed a complaint concerning the  
9 employer’s compliance with the requirements  
10 under this section or any rule or regulation per-  
11 taining to this section;

12 “(C) cooperates or seeks to cooperate in an  
13 investigation or other proceeding concerning the  
14 employer’s compliance with the requirements  
15 under this section or any rule or regulation per-  
16 taining to this section; or

17 “(D) has taken steps to exercise or assert  
18 any right or protection under the provisions of  
19 this section, or any rule or regulation pertaining  
20 to this section, or any other relevant Federal,  
21 State, or local law.

22 “(5) INTERAGENCY COMMUNICATION.—The  
23 Secretary of Labor, in consultation with the Sec-  
24 retary of Homeland Security, Secretary of State and  
25 the Equal Employment Opportunity Commission,

1 shall establish mechanisms by which the agencies  
2 and their components share information, including  
3 by public electronic means, regarding complaints,  
4 studies, investigations, findings and remedies regard-  
5 ing compliance by employers with the requirements  
6 of the H-2A program and other employment-related  
7 laws and regulations.

8 “(n) DEFINITIONS.—In this section:

9 “(1) DISPLACE.—The term ‘displace’ means to  
10 lay off a similarly employed United States worker,  
11 other than for lawful job-related reasons, in the oc-  
12 cupation and area of intended employment for the  
13 job for which H-2A workers are sought.

14 “(2) H-2A WORKER.—The term ‘H-2A worker’  
15 means a nonimmigrant described in section  
16 101(a)(15)(H)(ii)(a).

17 “(3) JOB ORDER.—The term ‘job order’ means  
18 the document containing the material terms and  
19 conditions of employment, including obligations and  
20 assurances required under this section or any other  
21 law.

22 “(4) ONLINE JOB REGISTRY.—The term ‘online  
23 job registry’ means the online job registry of the  
24 Secretary of Labor required under section 201(b) of

1 the Farm Workforce Modernization Act of 2019 (or  
2 similar successor registry).

3 “(5) SIMILARLY EMPLOYED.—The term ‘simi-  
4 larly employed’, in the case of a worker, means a  
5 worker in the same occupational classification as the  
6 classification or classifications for which the H-2A  
7 worker is sought.

8 “(6) UNITED STATES WORKER.—The term  
9 ‘United States worker’ means any worker who is—

10 “(A) a citizen or national of the United  
11 States;

12 “(B) an alien who is lawfully admitted for  
13 permanent residence, is admitted as a refugee  
14 under section 207, is granted asylum under sec-  
15 tion 208, or is an immigrant otherwise author-  
16 ized to be employed in the United States;

17 “(C) an alien granted certified agricultural  
18 worker status under title I of the Farm Work-  
19 force Modernization Act of 2019; or

20 “(D) an individual who is not an unauthor-  
21 ized alien (as defined in section 274A(h)(3))  
22 with respect to the employment in which the  
23 worker is engaging.

24 “(o) FEES; AUTHORIZATION OF APPROPRIATIONS.—

25 “(1) FEES.—

1           “(A) IN GENERAL.—The Secretary of  
2           Homeland Security shall impose a fee to proc-  
3           ess petitions under this section. Such fee shall  
4           be set at a level that is sufficient to recover the  
5           reasonable costs of processing the petition, in-  
6           cluding the reasonable costs of providing labor  
7           certification by the Secretary of Labor.

8           “(B) DISTRIBUTION.—Fees collected  
9           under subparagraph (A) shall be deposited as  
10          offsetting receipts into the immigration exami-  
11          nations fee account in section 286(m), except  
12          that the portion of fees assessed for the Sec-  
13          retary of Labor shall be deposited into the H-  
14          2A Labor Certification Fee Account established  
15          pursuant to section 203(c) of the Farm Work-  
16          force Modernization Act of 2019 .

17          “(2) APPROPRIATIONS.—There are authorized  
18          to be appropriated for each fiscal year such sums as  
19          necessary for the purposes of—

20                 “(A) recruiting United States workers for  
21                 labor or services which might otherwise be per-  
22                 formed by H-2A workers, including by ensuring  
23                 that State workforce agencies are sufficiently  
24                 funded to fulfill their functions under this sec-  
25                 tion;

1           “(B) enabling the Secretary of Labor to  
2           make determinations and certifications under  
3           this section and under section 212(a)(5)(A)(i);

4           “(C) monitoring the terms and conditions  
5           under which H-2A workers (and United States  
6           workers employed by the same employers) are  
7           employed in the United States; and

8           “(D) enabling the Secretary of Agriculture  
9           to carry out the Secretary of Agriculture’s du-  
10          ties and responsibilities under this section.”.

11 **SEC. 203. AGENCY ROLES AND RESPONSIBILITIES.**

12          (a) RESPONSIBILITIES OF THE SECRETARY OF  
13 LABOR.—With respect to the administration of the H-2A  
14 program, the Secretary of Labor shall be responsible for—

15           (1) consulting with State workforce agencies  
16          to—

17                   (A) review and process job orders;

18                   (B) facilitate the recruitment and referral  
19                   of able, willing and qualified United States  
20                   workers who will be available at the time and  
21                   place needed;

22                   (C) determine prevailing wages and prac-  
23                   tices; and

24                   (D) conduct timely inspections to ensure  
25                   compliance with applicable Federal, State, or

1 local housing standards and Federal regulations  
2 for H-2A housing;

3 (2) determining whether the employer has met  
4 the conditions for approval of the H-2A petition de-  
5 scribed in section 218 of the Immigration and Na-  
6 tionality Act (8 U.S.C. 1188);

7 (3) determining, in consultation with the Sec-  
8 retary of Agriculture, whether a job opportunity is  
9 of a seasonal or temporary nature;

10 (4) determining whether the employer has com-  
11 plied or will comply with the H-2A program require-  
12 ments set forth in section 218 of the Immigration  
13 and Nationality Act (8 U.S.C. 1188);

14 (5) processing and investigating complaints con-  
15 sistent with section 218(m) of the Immigration and  
16 Nationality Act (8 U.S.C. 1188(m));

17 (6) referring any matter as appropriate to the  
18 Inspector General of the Department of Labor for  
19 investigation;

20 (7) ensuring that guidance to State workforce  
21 agencies to conduct wage surveys is regularly up-  
22 dated; and

23 (8) issuing such rules and regulations as are  
24 necessary to carry out the Secretary of Labor's re-

1       sponsibilities under section 218 of the Immigration  
2       and Nationality Act (8 U.S.C. 1188).

3       (b) RESPONSIBILITIES OF THE SECRETARY OF  
4       HOMELAND SECURITY.—With respect to the administra-  
5       tion of the H–2A program, the Secretary of Homeland Se-  
6       curity shall be responsible for—

7               (1) adjudicating petitions for the admission of  
8       H–2A workers, which shall include an assessment as  
9       to whether each beneficiary will be employed in ac-  
10      cordance with the terms and conditions of the cer-  
11      tification and whether any named beneficiaries qual-  
12      ify for such employment;

13              (2) transmitting a copy of the final decision on  
14      the petition to the employer, and in the case of ap-  
15      proved petitions, ensuring that the petition approval  
16      is reflected in the electronic platform to facilitate the  
17      prompt issuance of a visa by the Department of  
18      State (if required) and the admission of the H–2A  
19      workers to the United States;

20              (3) establishing a reliable and secure method  
21      through which H–2A workers can access information  
22      about their H–2A visa status, including information  
23      on pending, approved, or denied petitions to extend  
24      such status;

1 (4) investigating and preventing fraud in the  
2 program, including the utilization of H-2A workers  
3 for other than allowable agricultural labor or serv-  
4 ices; and

5 (5) issuing such rules and regulations as are  
6 necessary to carry out the Secretary of Homeland  
7 Security's responsibilities under section 218 of the  
8 Immigration and Nationality Act (8 U.S.C. 1188).

9 (c) ESTABLISHMENT OF ACCOUNT AND USE OF  
10 FUNDS.—

11 (1) ESTABLISHMENT OF ACCOUNT.—There is  
12 established in the general fund of the Treasury a  
13 separate account, which shall be known as the “H-  
14 2A Labor Certification Fee Account”. Notwith-  
15 standing any other provisions of law, there shall be  
16 deposited as offsetting receipts into the account all  
17 amounts—

18 (A) collected as a civil penalty under sec-  
19 tion 218(m)(2)(E) of the Immigration and Na-  
20 tionality Act; and

21 (B) collected as a fee under section  
22 218(o)(1)(B) of the Immigration and Nation-  
23 ality Act.

24 (2) USE OF FEES.—Amounts deposited into the  
25 H-2A Labor Certification Fee Account shall be

1 available (except as otherwise provided in this para-  
2 graph) without fiscal year limitation and without the  
3 requirement for specification in appropriations Acts  
4 to the Secretary of Labor for use, directly or  
5 through grants, contracts, or other arrangements, in  
6 such amounts as the Secretary of Labor determines  
7 are necessary for the costs of Federal and State ad-  
8 ministration in carrying out activities in connection  
9 with labor certification under section 218 of the Im-  
10 migration and Nationality Act. Such costs may in-  
11 clude personnel salaries and benefits, equipment and  
12 infrastructure for adjudication and customer service  
13 processes, the operation and maintenance of an on-  
14 line job registry, and program integrity activities.  
15 The Secretary, in determining what amounts to  
16 transfer to States for State administration in car-  
17 rying out activities in connection with labor certifi-  
18 cation under section 218 of the Immigration and  
19 Nationality Act shall consider the number of H-2A  
20 workers employed in that State and shall adjust the  
21 amount transferred to that State accordingly. In ad-  
22 dition, 10 percent of the amounts deposited into the  
23 H-2A Labor Certification Fee Account shall be  
24 available to the Office of Inspector General of the  
25 Department of Labor to conduct audits and criminal

1 investigations relating to such foreign labor certifi-  
2 cation programs.

3 (3) ADDITIONAL FUNDS.—Amounts available  
4 under paragraph (1) shall be available in addition to  
5 any other funds appropriated or made available to  
6 the Department of Labor under other laws, includ-  
7 ing section 218(o)(2) of the Immigration and Na-  
8 tionality Act.

9 **SEC. 204. WORKER PROTECTION AND COMPLIANCE.**

10 (a) EQUALITY OF TREATMENT.—H-2A workers shall  
11 not be denied any right or remedy under any Federal,  
12 State, or local labor or employment law applicable to  
13 United States workers engaged in agricultural employ-  
14 ment.

15 (b) APPLICABILITY OF OTHER LAWS.—

16 (1) MIGRANT AND SEASONAL AGRICULTURAL  
17 WORKER PROTECTION ACT.—H-2A workers shall be  
18 considered migrant agricultural workers for purposes  
19 of the Migrant and Seasonal Agricultural Worker  
20 Protection Act (29 U.S.C. 1801 et seq.).

21 (2) WAIVER OF RIGHTS PROHIBITED.—Agree-  
22 ments by H-2A workers to waive or modify any  
23 rights or protections under this Act or section 218  
24 of the Immigration and Nationality Act (8 U.S.C.  
25 1188) shall be considered void or contrary to public

1 policy except as provided in a collective bargaining  
2 agreement with a bona fide labor organization.

3 (3) MEDIATION.—

4 (A) FREE MEDIATION SERVICES.—The  
5 Federal Mediation and Conciliation Service  
6 shall be available to assist in resolving disputes  
7 arising under this section between H-2A work-  
8 ers and agricultural employers without charge  
9 to the parties.

10 (B) COMPLAINT.—If an H-2A worker files  
11 a civil lawsuit alleging one or more violations of  
12 section 218 of the Immigration and Nationality  
13 Act (8 U.S.C. 1188), the Fair Labor Standards  
14 Act of 1938 (29 U.S.C. 201 et seq.), or the Mi-  
15 grant and Seasonal Agricultural Worker Protec-  
16 tion Act (29 U.S.C. 1801 et seq.), not later  
17 than 60 days after the filing of proof of service  
18 of the complaint, a party to the lawsuit may file  
19 a request with the Federal Mediation and Con-  
20 ciliation Service to assist the parties in reaching  
21 a satisfactory resolution of all issues involving  
22 all parties to the dispute.

23 (C) NOTICE.—Upon filing a request under  
24 subparagraph (B) and giving of notice to the  
25 parties, the parties shall attempt mediation

1 within the period specified in subparagraph  
2 (D), except that nothing in this paragraph shall  
3 limit the ability of a court to order preliminary  
4 injunctive relief to protect health and safety or  
5 to otherwise prevent irreparable harm.

6 (D) 90-DAY LIMIT.—The Federal Medi-  
7 ation and Conciliation Service may conduct me-  
8 diation or other nonbinding dispute resolution  
9 activities for a period not to exceed 90 days be-  
10 ginning on the date on which the Federal Medi-  
11 ation and Conciliation Service receives a request  
12 for assistance under subparagraph (B) unless  
13 the parties agree to an extension of such period.

14 (E) AUTHORIZATION OF APPROPRIA-  
15 TIONS.—

16 (i) IN GENERAL.—Subject to clause  
17 (ii), there is authorized to be appropriated  
18 to the Federal Mediation and Conciliation  
19 Service, such sums as may be necessary for  
20 each fiscal year to carry out this subpara-  
21 graph.

22 (ii) MEDIATION.—Notwithstanding  
23 any other provision of law, the Director of  
24 the Federal Mediation and Conciliation  
25 Service is authorized—

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1 (I) to conduct the mediation or  
2 other dispute resolution activities from  
3 any other account containing amounts  
4 available to the Director; and

5 (II) to reimburse such account  
6 with amounts appropriated pursuant  
7 to clause (i).

8 (F) PRIVATE MEDIATION.—If all parties  
9 agree, a private mediator may be employed as  
10 an alternative to the Federal Mediation and  
11 Conciliation Service.

12 (c) FARM LABOR CONTRACTOR REQUIREMENTS.—

13 (1) SURETY BONDS.—

14 (A) REQUIREMENT.—Section 101 of the  
15 Migrant and Seasonal Agricultural Worker Pro-  
16 tection Act (29 U.S.C. 1811), is amended by  
17 adding at the end the following:

18 “(e) A farm labor contractor shall maintain a surety  
19 bond in an amount determined by the Secretary to be suf-  
20 ficient for ensuring the ability of the farm labor contractor  
21 to discharge its financial obligations, including payment  
22 of wages and benefits to employees. Such a bond shall be  
23 available to satisfy any amounts ordered to be paid by the  
24 Secretary or by court order for failure to comply with the  
25 obligations of this Act. The Secretary of Labor shall annu-

1 ally publish in the Federal Register a schedule of required  
2 bond amounts that are determined by such Secretary to  
3 be sufficient for farm labor contractors to discharge finan-  
4 cial obligations based on the number of workers to be cov-  
5 ered.”.

6 (B) REGISTRATION DETERMINATIONS.—  
7 Section 103(a) of the Migrant and Seasonal Ag-  
8 ricultural Worker Protection Act (29 U.S.C.  
9 1813(a)), is amended—

10 (i) in paragraph (4), by striking “or”  
11 at the end;

12 (ii) in paragraph (5)(B), by striking  
13 “or” at the end;

14 (iii) in paragraph (6), by striking the  
15 period at the end and inserting “;” ; and

16 (iv) by adding at the end the fol-  
17 lowing:

18 “(7) has failed to maintain a surety bond in  
19 compliance with section 101(e); or

20 “(8) has been disqualified by the Secretary of  
21 Labor from importing nonimmigrants described in  
22 section 101(a)(15)(H)(ii) of the Immigration and  
23 Nationality Act.”.

24 (2) SUCCESSORS IN INTEREST.—

1 (A) DECLARATION.—Section 102 of the  
2 Migrant and Seasonal Agricultural Worker Pro-  
3 tection Act (29 U.S.C. 1812), is amended—

4 (i) in paragraph (4), by striking  
5 “and” at the end;

6 (ii) in paragraph (5), by striking the  
7 period at the end and inserting “; and”;  
8 and

9 (iii) by adding at the end the fol-  
10 lowing:

11 “(6) a declaration, subscribed and sworn to by  
12 the applicant, stating whether the applicant has a  
13 familial, contractual, or employment relationship  
14 with, or shares vehicles, facilities, property, or em-  
15 ployees with, a person who has been refused  
16 issuance or renewal of a certificate, or has had a  
17 certificate suspended or revoked, pursuant to section  
18 103.”.

19 (B) REBUTTABLE PRESUMPTION.—Section  
20 103 of the Migrant and Seasonal Agricultural  
21 Worker Protection Act (29 U.S.C. 1813), as  
22 amended by this Act, is further amended by in-  
23 serting after subsection (a) the following new  
24 subsection (and by redesignating the subse-  
25 quent subsections accordingly):

1 “(b)(1) There shall be a rebuttable presumption that  
2 an applicant for issuance or renewal of a certificate is not  
3 the real party in interest in the application if the appli-  
4 cant—

5 “(A) is the immediate family member of any  
6 person who has been refused issuance or renewal of  
7 a certificate, or has had a certificate suspended or  
8 revoked; and

9 “(B) identifies a vehicle, facility, or real prop-  
10 erty under paragraph (2) or (3) of section 102 that  
11 has been previously listed by a person who has been  
12 refused issuance or renewal of a certificate, or has  
13 had a certificate suspended or revoked.

14 “(2) An applicant described in paragraph (1) bears  
15 the burden of demonstrating to the Secretary’s satisfac-  
16 tion that the applicant is the real party in interest in the  
17 application.”.

18 **SEC. 205. REPORT ON WAGE PROTECTIONS.**

19 (a) Not later than 3 years after the date of the enact-  
20 ment of this Act, and every 3 years thereafter, the Sec-  
21 retary of Labor and Secretary of Agriculture shall prepare  
22 and transmit to the Committees on the Judiciary of the  
23 House of Representatives and Senate, a report that ad-  
24 dresses—

1           (1) whether, and the manner in which, the em-  
2           ployment of H-2A workers in the United States has  
3           impacted the wages, working conditions, or job op-  
4           portunities of United States farm workers;

5           (2) whether, and the manner in which, the ad-  
6           verse effect wage rate increases or decreases wages  
7           on United States farms, broken down by geographic  
8           region and farm size;

9           (3) whether any potential impact of the adverse  
10          effect wage rate varies based on the percentage of  
11          workers in a geographic region that are H-2A work-  
12          ers;

13          (4) the degree to which the adverse effect wage  
14          rate is affected by the inclusion in wage surveys of  
15          piece rate compensation, bonus payments, and other  
16          pay incentives, and whether such forms of incentive  
17          compensation should be surveyed and reported sepa-  
18          rately from hourly base rates;

19          (5) whether, and the manner in which, other  
20          factors may artificially affect the adverse effect wage  
21          rate, including factors that may be specific to a re-  
22          gion, State, or region within a State;

23          (6) whether, and the manner in which, the H-  
24          2A program affects the ability of United States

1 farms to compete with agricultural commodities im-  
2 ported from outside the United States;

3 (7) the number and percentage of farmworkers  
4 in the United States whose incomes are below the  
5 poverty line;

6 (8) whether alternative wage standards would  
7 be sufficient to prevent wages in occupations in  
8 which H-2A workers are employed from falling  
9 below the wage level that would have prevailed in the  
10 absence of the H-2A program;

11 (9) whether any changes are warranted in the  
12 current methodologies for calculating the adverse ef-  
13 fect wage rate and the prevailing wage; and

14 (10) recommendations for future wage protec-  
15 tion under this section.

16 (b) In preparing the report described in subsection  
17 (a), the Secretary of Labor and Secretary of Agriculture  
18 shall engage with equal numbers of representatives of ag-  
19 ricultural employers and agricultural workers, both locally  
20 and nationally.

21 **SEC. 206. PORTABLE H-2A VISA PILOT PROGRAM.**

22 (a) ESTABLISHMENT OF PILOT PROGRAM.—

23 (1) IN GENERAL.—Not later than 18 months  
24 after the date of the enactment of this Act, the Sec-  
25 retary of Homeland Security, in consultation with

1 the Secretary of Labor and Secretary of Agriculture,  
2 shall establish through regulation a 6-year pilot pro-  
3 gram to facilitate the free movement and employ-  
4 ment of temporary or seasonal H-2A workers to  
5 perform agricultural labor or services for agricul-  
6 tural employers registered with the Secretary of Ag-  
7 riculture. Notwithstanding the requirements of sec-  
8 tion 218 of the Immigration and Nationality Act,  
9 such regulation shall establish the requirements for  
10 the pilot program, consistent with subsection (b).  
11 For purposes of this section, such a worker shall be  
12 referred to as a portable H-2A worker, and status  
13 as such a worker shall be referred to as portable H-  
14 2A status.

15 (2) ONLINE PLATFORM.—The Secretary of  
16 Homeland Security, in consultation with the Sec-  
17 retary of Labor and the Secretary of Agriculture,  
18 shall maintain an online electronic platform to con-  
19 nect portable H-2A workers with registered agricul-  
20 tural employers seeking workers to perform tem-  
21 porary or seasonal agricultural labor or services.  
22 Employers shall post on the platform available job  
23 opportunities, including a description of the nature  
24 and location of the work to be performed, the antici-  
25 pated period or periods of need, and the terms and

1 conditions of employment. Such platform shall allow  
2 portable H-2A workers to search for available job  
3 opportunities using relevant criteria, including the  
4 types of jobs needed to be filled and the dates and  
5 locations of need.

6 (3) LIMITATION.—Notwithstanding the  
7 issuance of the regulation described in paragraph  
8 (1), the Secretary of State may not issue a portable  
9 H-2A visa and the Secretary of Homeland Security  
10 may not confer portable H-2A status on any alien  
11 until the Secretary of Homeland Security, in con-  
12 sultation with the Secretary of Labor and Secretary  
13 of Agriculture, has determined that a sufficient  
14 number of employers have been designated as reg-  
15 istered agricultural employers under subsection  
16 (b)(1) and that such employers have sufficient job  
17 opportunities to employ a reasonable number of  
18 portable H-2A workers to initiate the pilot program.

19 (b) PILOT PROGRAM ELEMENTS.—The pilot program  
20 in subsection (a) shall contain the following elements:

21 (1) REGISTERED AGRICULTURAL EMPLOY-  
22 ERS.—

23 (A) DESIGNATION.—Agricultural employ-  
24 ers shall be provided the ability to seek designa-  
25 tion as registered agricultural employers. Rea-

1 sonable fees may be assessed commensurate  
2 with the cost of processing applications for des-  
3 ignation. A designation shall be valid for a pe-  
4 riod of up to 3 years unless revoked for failure  
5 to comply with program requirements. Reg-  
6 istered employers that comply with program re-  
7 quirements may apply to renew such designa-  
8 tion for additional periods of up to 3 years for  
9 the duration of the pilot program.

10 (B) LIMITATIONS.—Registered agricultural  
11 employers may employ aliens with portable H-  
12 2A status without filing a petition. Such em-  
13 ployers shall pay such aliens at least the wage  
14 required under section 218(d) of the Immigra-  
15 tion and Nationality Act (8 U.S.C. 1188(d)).

16 (C) WORKERS' COMPENSATION.—If a job  
17 opportunity is not covered by or is exempt from  
18 the State workers' compensation law, a reg-  
19 istered agricultural employer shall provide, at  
20 no cost to the worker, insurance covering injury  
21 and disease arising out of, and in the course of,  
22 the worker's employment, which will provide  
23 benefits at least equal to those provided under  
24 the State workers' compensation law.

25 (2) DESIGNATED WORKERS.—

1 (A) IN GENERAL.—Individuals who have  
2 been previously admitted to the United States  
3 in H–2A status, and maintained such status  
4 during the period of admission, shall be pro-  
5 vided the opportunity to apply for portable H–  
6 2A status. Portable H–2A workers shall be sub-  
7 ject to the provisions on visa validity and peri-  
8 ods of authorized stay and admission for H–2A  
9 workers described in paragraphs (2) and (3) of  
10 section 218(j) of the Immigration and Nation-  
11 ality Act (8 U.S.C. 1188(j)(2) and (3)).

12 (B) LIMITATIONS ON AVAILABILITY OF  
13 PORTABLE H–2A STATUS.—

14 (i) INITIAL OFFER OF EMPLOYMENT  
15 REQUIRED.—No alien may be granted  
16 portable H–2A status without an initial  
17 valid offer of employment to perform tem-  
18 porary or agricultural labor or services  
19 from a registered agricultural employer.

20 (ii) NUMERICAL LIMITATIONS.—The  
21 total number of aliens who may hold valid  
22 portable H–2A status at any one time may  
23 not exceed 10,000. Notwithstanding such  
24 limitation, the Secretary of Homeland Se-  
25 curity may further limit the number of

1           aliens with valid portable H-2A status if  
2           the Secretary determines that there are an  
3           insufficient number of registered agricul-  
4           tural employers or job opportunities to  
5           support the employment of all such port-  
6           able H-2A workers.

7           (C) SCOPE OF EMPLOYMENT.—During the  
8           period of admission, a portable H-2A worker  
9           may perform temporary or seasonal agricultural  
10          labor or services for any employer in the United  
11          States that is designated as a registered agri-  
12          cultural employer pursuant to paragraph (1).  
13          An employment arrangement under this section  
14          may be terminated by either the portable H-2A  
15          worker or the registered agricultural employer  
16          at any time.

17          (D) TRANSFER TO NEW EMPLOYMENT.—  
18          At the cessation of employment with a reg-  
19          istered agricultural employer, a portable H-2A  
20          worker shall have 60 days to secure new em-  
21          ployment with a registered agricultural em-  
22          ployer.

23          (E) MAINTENANCE OF STATUS.—A port-  
24          able H-2A worker who does not secure new em-  
25          ployment with a registered agricultural em-

1           employer within 60 days shall be considered to  
2           have failed to maintain such status and shall  
3           depart the United States or be subject to re-  
4           moval under section 237(a)(1)(C)(i) of the Im-  
5           migration and Nationality Act (8 U.S.C.  
6           1188(a)(1)(C)(i)).

7           (3) ENFORCEMENT.—The Secretary of Labor  
8           shall be responsible for conducting investigations  
9           and random audits of employers to ensure compli-  
10          ance with the employment-related requirements of  
11          this section, consistent with section 218(m) of the  
12          Immigration and Nationality Act (8 U.S.C.  
13          1188(m)). The Secretary of Labor shall have the au-  
14          thority to collect reasonable civil penalties for viola-  
15          tions, which shall be utilized by the Secretary for the  
16          administration and enforcement of the provisions of  
17          this section.

18          (4) ELIGIBILITY FOR SERVICES.—Section 305  
19          of Public Law 99–603 (100 Stat. 3434) is amended  
20          by striking “other employment rights as provided in  
21          the worker’s specific contract under which the non-  
22          immigrant was admitted” and inserting “employ-  
23          ment-related rights”.

24          (c) REPORT.—Not later than 6 months before the  
25          end of the third fiscal year of the pilot program, the Sec-

1   retary of Homeland Security, in consultation with the Sec-  
2   retary of Labor and the Secretary of Agriculture, shall  
3   prepare and submit to the Committees on the Judiciary  
4   of the House of Representatives and the Senate, a report  
5   that provides—

6           (1) the number of employers designated as reg-  
7           istered agricultural employers, broken down by geo-  
8           graphic region, farm size, and the number of job op-  
9           portunities offered by such employers;

10          (2) the number of employers whose designation  
11          as a registered agricultural employer was revoked;

12          (3) the number of individuals granted portable  
13          H-2A status in each fiscal year, along with the  
14          number of such individuals who maintained portable  
15          H-2A status during all or a portion of the 3-year  
16          period of the pilot program;

17          (4) an assessment of the impact of the pilot  
18          program on the wages and working conditions of  
19          United States farm workers;

20          (5) the results of a survey of individuals grant-  
21          ed portable H-2A status, detailing their experiences  
22          with and feedback on the pilot program;

23          (6) the results of a survey of registered agricul-  
24          tural employers, detailing their experiences with and  
25          feedback on the pilot program;

1           (7) an assessment as to whether the program  
2           should be continued and if so, any recommendations  
3           for improving the program; and

4           (8) findings and recommendations regarding ef-  
5           fective recruitment mechanisms, including use of  
6           new technology to match workers with employers  
7           and ensure compliance with applicable labor and em-  
8           ployment laws and regulations.

9 **SEC. 207. IMPROVING ACCESS TO PERMANENT RESIDENCE.**

10          (a) **WORLDWIDE LEVEL.**—Section 201(d)(1)(A) of  
11 the Immigration and Nationality Act (8 U.S.C.  
12 1151(d)(1)(A)) is amended by striking “140,000” and in-  
13 sserting “180,000”.

14          (b) **VISAS FOR FARMWORKERS.**—Section 203(b) of  
15 the Immigration and Nationality Act (8 U.S.C. 1153(b))  
16 is amended—

17           (1) in paragraph (1) by striking “28.6 percent  
18           of such worldwide level” and inserting “40,040”;

19           (2) in paragraph (2)(A) by striking “28.6 per-  
20           cent of such worldwide level” and inserting  
21           “40,040”;

22           (3) in paragraph (3)—

23           (A) in subparagraph (A)—

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1 (i) in the matter before clause (i), by  
2 striking “28.6 percent of such worldwide  
3 level” and inserting “80,040”; and

4 (ii) by amending clause (iii) to read as  
5 follows:

6 “(iii) OTHER WORKERS.—Other quali-  
7 fied immigrants who, at the time of peti-  
8 tioning for classification under this para-  
9 graph—

10 “(I) are capable of performing  
11 unskilled labor, not of a temporary or  
12 seasonal nature, for which qualified  
13 workers are not available in the  
14 United States; or

15 “(II) can demonstrate employ-  
16 ment in the United States as an H-  
17 2A nonimmigrant worker for at least  
18 100 days in each of at least 10  
19 years.”;

20 (B) by amending subparagraph (B) to read  
21 as follows:

22 “(B) VISAS ALLOCATED FOR OTHER  
23 WORKERS.—

24 “(i) IN GENERAL.—Except as pro-  
25 vided in clauses (ii) and (iii), 50,000 of the

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1 visas made available under this paragraph  
2 shall be reserved for qualified immigrants  
3 described in subparagraph (A)(iii).

4 “(ii) PREFERENCE FOR AGRICUL-  
5 TURAL WORKERS.—Subject to clause (iii),  
6 not less than four-fifths of the visas de-  
7 scribed in clause (i) shall be reserved for—

8 “(I) qualified immigrants de-  
9 scribed in subparagraph (A)(iii)(I)  
10 who will be performing agricultural  
11 labor or services in the United States;  
12 and

13 “(II) qualified immigrants de-  
14 scribed in subparagraph (A)(iii)(II).

15 “(iii) EXCEPTION.—If because of the  
16 application of clause (ii), the total number  
17 of visas available under this paragraph for  
18 a calendar quarter exceeds the number of  
19 qualified immigrants who otherwise may be  
20 issued such a visa, clause (ii) shall not  
21 apply to visas under this paragraph during  
22 the remainder of such calendar quarter.

23 “(iv) NO PER COUNTRY LIMITS.—  
24 Visas described under clause (ii) shall be

1 issued without regard to the numerical lim-  
2 itation under section 202(a)(2).”; and

3 (C) by amending subparagraph (C) by  
4 striking “An immigrant visa” and inserting  
5 “Except for qualified immigrants petitioning for  
6 classification under subparagraph (A)(iii)(II),  
7 an immigrant visa”;

8 (4) in paragraph (4), by striking “7.1 percent  
9 of such worldwide level” and inserting “9,940”; and

10 (5) in paragraph (5)(A), in the matter before  
11 clause (i), by striking “7.1 percent of such world-  
12 wide level” and inserting “9,940”.

13 (c) PETITIONING PROCEDURE.—Section  
14 204(a)(1)(E) of the Immigration and Nationality Act (8  
15 U.S.C. 1154(a)(1)(E)) is amended by inserting “or  
16 203(b)(3)(A)(iii)(II)” after “203(b)(1)(A)”.

17 (d) DUAL INTENT.—Section 214(b) of the Immigra-  
18 tion and Nationality Act (8 U.S.C. 1184(b)) is amended  
19 by striking “section 101(a)(15)(H)(i) except subclause  
20 (b1) of such section” and inserting “clause (i), except sub-  
21 clause (b1), or (ii)(a) of section 101(a)(15)(H)”.

1 **Subtitle B—Preservation and Con-**  
2 **struction of Farmworker Hous-**  
3 **ing**

4 **SEC. 220. SHORT TITLE.**

5 This subtitle may be cited as the “Strategy and In-  
6 vestment in Rural Housing Preservation Act of 2019”.

7 **SEC. 221. PERMANENT ESTABLISHMENT OF HOUSING PRES-**  
8 **ERVATION AND REVITALIZATION PROGRAM.**

9 Title V of the Housing Act of 1949 (42 U.S.C. 1471  
10 et seq.) is amended by adding at the end the following  
11 new section:

12 **“SEC. 545. HOUSING PRESERVATION AND REVITALIZATION**  
13 **PROGRAM.**

14 “(a) ESTABLISHMENT.—The Secretary shall carry  
15 out a program under this section for the preservation and  
16 revitalization of multifamily rental housing projects fi-  
17 nanced under section 515 or both sections 514 and 516.

18 “(b) NOTICE OF MATURING LOANS.—

19 “(1) TO OWNERS.—On an annual basis, the  
20 Secretary shall provide written notice to each owner  
21 of a property financed under section 515 or both  
22 sections 514 and 516 that will mature within the 4-  
23 year period beginning upon the provision of such no-  
24 tice, setting forth the options and financial incen-  
25 tives that are available to facilitate the extension of

1 the loan term or the option to decouple a rental as-  
2 sistance contract pursuant to subsection (f).

3 “(2) TO TENANTS.—

4 “(A) IN GENERAL.—For each property fi-  
5 nanced under section 515 or both sections 514  
6 and 516, not later than the date that is 2 years  
7 before the date that such loan will mature, the  
8 Secretary shall provide written notice to each  
9 household residing in such property that in-  
10 forms them of the date of the loan maturity,  
11 the possible actions that may happen with re-  
12 spect to the property upon such maturity, and  
13 how to protect their right to reside in Federally  
14 assisted housing after such maturity.

15 “(B) LANGUAGE.—Notice under this para-  
16 graph shall be provided in plain English and  
17 shall be translated to other languages in the  
18 case of any property located in an area in which  
19 a significant number of residents speak such  
20 other languages.

21 “(c) LOAN RESTRUCTURING.—Under the program  
22 under this section, the Secretary may restructure such ex-  
23 isting housing loans, as the Secretary considers appro-  
24 priate, for the purpose of ensuring that such projects have  
25 sufficient resources to preserve the projects to provide safe

1 and affordable housing for low-income residents and farm  
2 laborers, by—

3 “(1) reducing or eliminating interest;

4 “(2) deferring loan payments;

5 “(3) subordinating, reducing, or reamortizing  
6 loan debt; and

7 “(4) providing other financial assistance, in-  
8 cluding advances, payments, and incentives (includ-  
9 ing the ability of owners to obtain reasonable re-  
10 turns on investment) required by the Secretary.

11 “(d) RENEWAL OF RENTAL ASSISTANCE.—When the  
12 Secretary offers to restructure a loan pursuant to sub-  
13 section (c), the Secretary shall offer to renew the rental  
14 assistance contract under section 521(a)(2) for a 20-year  
15 term that is subject to annual appropriations, provided  
16 that the owner agrees to bring the property up to such  
17 standards that will ensure its maintenance as decent, safe,  
18 and sanitary housing for the full term of the rental assist-  
19 ance contract.

20 “(e) RESTRICTIVE USE AGREEMENTS.—

21 “(1) REQUIREMENT.—As part of the preserva-  
22 tion and revitalization agreement for a project, the  
23 Secretary shall obtain a restrictive use agreement  
24 that obligates the owner to operate the project in ac-  
25 cordance with this title.

1           “(2) TERM.—

2                   “(A) NO EXTENSION OF RENTAL ASSIST-  
3           ANCE CONTRACT.—Except when the Secretary  
4           enters into a 20-year extension of the rental as-  
5           sistance contract for the project, the term of  
6           the restrictive use agreement for the project  
7           shall be consistent with the term of the restruc-  
8           tured loan for the project.

9                   “(B) EXTENSION OF RENTAL ASSISTANCE  
10           CONTRACT.—If the Secretary enters into a 20-  
11           year extension of the rental assistance contract  
12           for a project, the term of the restrictive use  
13           agreement for the project shall be for 20 years.

14                   “(C) TERMINATION.—The Secretary may  
15           terminate the 20-year use restrictive use agree-  
16           ment for a project prior to the end of its term  
17           if the 20-year rental assistance contract for the  
18           project with the owner is terminated at any  
19           time for reasons outside the owner’s control.

20           “(f) DECOUPLING OF RENTAL ASSISTANCE.—

21                   “(1) RENEWAL OF RENTAL ASSISTANCE CON-  
22           TRACT.—If the Secretary determines that a matur-  
23           ing loan for a project cannot reasonably be restruc-  
24           tured in accordance with subsection (c) and the  
25           project was operating with rental assistance under

1 section 521, the Secretary may renew the rental as-  
2 sistance contract, notwithstanding any provision of  
3 section 521, for a term, subject to annual appropria-  
4 tions, of at least 10 years but not more than 20  
5 years.

6 “(2) RENTS.—Any agreement to extend the  
7 term of the rental assistance contract under section  
8 521 for a project shall obligate the owner to con-  
9 tinue to maintain the project as decent, safe and  
10 sanitary housing and to operate the development in  
11 accordance with this title, except that rents shall be  
12 based on the lesser of—

13 “(A) the budget-based needs of the project;

14 or

15 “(B) the operating cost adjustment factor  
16 as a payment standard as provided under sec-  
17 tion 524 of the Multifamily Assisted Housing  
18 Reform and Affordability Act of 1997 (42  
19 U.S.C. 1437 note).

20 “(g) MULTIFAMILY HOUSING TRANSFER TECHNICAL  
21 ASSISTANCE.—Under the program under this section, the  
22 Secretary may provide grants to qualified non-profit orga-  
23 nizations and public housing agencies to provide technical  
24 assistance, including financial and legal services, to bor-  
25 rowers under loans under this title for multifamily housing

1 to facilitate the acquisition of such multifamily housing  
2 properties in areas where the Secretary determines there  
3 is a risk of loss of affordable housing.

4 “(h) TRANSFER OF RENTAL ASSISTANCE.—After the  
5 loan or loans for a rental project originally financed under  
6 section 515 or both sections 514 and 516 have matured  
7 or have been prepaid and the owner has chosen not to  
8 restructure the loan pursuant to subsection (c), a tenant  
9 residing in such project shall have 18 months prior to loan  
10 maturation or prepayment to transfer the rental assist-  
11 ance assigned to the tenant’s unit to another rental project  
12 originally financed under section 515 or both sections 514  
13 and 516, and the owner of the initial project may rent  
14 the tenant’s previous unit to a new tenant without income  
15 restrictions.

16 “(i) ADMINISTRATIVE EXPENSES.—Of any amounts  
17 made available for the program under this section for any  
18 fiscal year, the Secretary may use not more than  
19 \$1,000,000 for administrative expenses for carrying out  
20 such program.

21 “(j) AUTHORIZATION OF APPROPRIATIONS.—There  
22 is authorized to be appropriated for the program under  
23 this section \$200,000,000 for each of fiscal years 2020  
24 through 2024.”.

1 **SEC. 222. ELIGIBILITY FOR RURAL HOUSING VOUCHERS.**

2 Section 542 of the Housing Act of 1949 (42 U.S.C.  
3 1490r) is amended by adding at the end the following new  
4 subsection:

5 “(c) **ELIGIBILITY OF HOUSEHOLDS IN SECTIONS**  
6 **514, 515, AND 516 PROJECTS.**—The Secretary may pro-  
7 vide rural housing vouchers under this section for any low-  
8 income household (including those not receiving rental as-  
9 sistance) residing, for a term longer than the remaining  
10 term of their lease in effect just prior to prepayment, in  
11 a property financed with a loan made or insured under  
12 section 514 or 515 (42 U.S.C. 1484, 1485) which has  
13 been prepaid without restrictions imposed by the Secretary  
14 pursuant to section 502(c)(5)(G)(ii)(I) (42 U.S.C.  
15 1472(c)(5)(G)(ii)(I)), has been foreclosed, or has matured  
16 after September 30, 2005, or residing in a property as-  
17 sisted under section 514 or 516 that is owned by a non-  
18 profit organization or public agency.”.

19 **SEC. 223. AMOUNT OF VOUCHER ASSISTANCE.**

20 Notwithstanding any other provision of law, in the  
21 case of any rural housing voucher provided pursuant to  
22 section 542 of the Housing Act of 1949 (42 U.S.C.  
23 1490r), the amount of the monthly assistance payment for  
24 the household on whose behalf such assistance is provided  
25 shall be determined as provided in subsection (a) of such  
26 section 542.

1 **SEC. 224. RENTAL ASSISTANCE CONTRACT AUTHORITY.**

2 Subsection (d) of section 521 of the Housing Act of  
3 1949 (42 U.S.C. 1490a(d)) is amended—

4 (1) in paragraph (1), by inserting after sub-  
5 paragraph (A) the following new subparagraph (and  
6 by redesignating the subsequent subparagraphs ac-  
7 cordingly):

8 “(B) upon request of an owner of a project fi-  
9 nanced under section 514 or 515, the Secretary is  
10 authorized to enter into renewal of such agreements  
11 for a period of 20 years or the term of the loan,  
12 whichever is shorter, subject to amounts made avail-  
13 able in appropriations Acts;” and

14 (2) by adding at the end the following new  
15 paragraph:

16 “(3) In the case of any rental assistance contract au-  
17 thority that becomes available because of the termination  
18 of assistance on behalf of an assisted family—

19 “(A) at the option of the owner of the rental  
20 project, the Secretary shall provide the owner a pe-  
21 riod of 6 months before such assistance is made  
22 available pursuant to subparagraph (B) during  
23 which the owner may use such assistance authority  
24 to provide assistance of behalf of an eligible unas-  
25 sisted family that—

1           “(i) is residing in the same rental project  
2           that the assisted family resided in prior to such  
3           termination; or

4           “(ii) newly occupies a dwelling unit in such  
5           rental project during such period; and

6           “(B) except for assistance used as provided in  
7           subparagraph (A), the Secretary shall use such re-  
8           maining authority to provide such assistance on be-  
9           half of eligible families residing in other rental  
10          projects originally financed under section 515 or  
11          both sections 514 and 516 of this Act.”.

12 **SEC. 225. FUNDING FOR MULTIFAMILY TECHNICAL IM-**  
13 **PROVEMENTS.**

14          There is authorized to be appropriated to the Sec-  
15          retary of Agriculture \$50,000,000 for fiscal year 2020 for  
16          improving the technology of the Department of Agri-  
17          culture used to process loans for multifamily housing and  
18          otherwise managing such housing. Such improvements  
19          shall be made within the 5-year period beginning upon the  
20          appropriation of such amounts and such amount shall re-  
21          main available until the expiration of such 5-year period.

22 **SEC. 226. PLAN FOR PRESERVING AFFORDABILITY OF**  
23 **RENTAL PROJECTS.**

24          (a) PLAN.—The Secretary of Agriculture (in this sec-  
25          tion referred to as the “Secretary”) shall submit a written

1 plan to the Congress, not later than the expiration of the  
2 6-month period beginning on the date of the enactment  
3 of this Act, for preserving the affordability for low-income  
4 families of rental projects for which loans were made  
5 under section 515 or made to nonprofit or public agencies  
6 under section 514 and avoiding the displacement of tenant  
7 households, which shall—

8 (1) set forth specific performance goals and  
9 measures;

10 (2) set forth the specific actions and mecha-  
11 nisms by which such goals will be achieved;

12 (3) set forth specific measurements by which  
13 progress towards achievement of each goal can be  
14 measured;

15 (4) provide for detailed reporting on outcomes;  
16 and

17 (5) include any legislative recommendations to  
18 assist in achievement of the goals under the plan.

19 (b) ADVISORY COMMITTEE.—

20 (1) ESTABLISHMENT; PURPOSE.—The Sec-  
21 retary shall establish an advisory committee whose  
22 purpose shall be to assist the Secretary in preserving  
23 section 515 properties and section 514 properties  
24 owned by nonprofit or public agencies through the  
25 multifamily housing preservation and revitalization

1 program under section 545 and in implementing the  
2 plan required under subsection (a).

3 (2) MEMBER.—The advisory committee shall  
4 consist of 16 members, appointed by the Secretary,  
5 as follows:

6 (A) A State Director of Rural Develop-  
7 ment for the Department of Agriculture.

8 (B) The Administrator for Rural Housing  
9 Service of the Department of Agriculture.

10 (C) Two representatives of for-profit devel-  
11 opers or owners of multifamily rural rental  
12 housing.

13 (D) Two representatives of non-profit de-  
14 velopers or owners of multifamily rural rental  
15 housing.

16 (E) Two representatives of State housing  
17 finance agencies.

18 (F) Two representatives of tenants of mul-  
19 tifamily rural rental housing.

20 (G) One representative of a community de-  
21 velopment financial institution that is involved  
22 in preserving the affordability of housing as-  
23 sisted under sections 514, 515, and 516 of the  
24 Housing Act of 1949.

1 (H) One representative of a nonprofit or-  
2 ganization that operates nationally and has ac-  
3 tively participated in the preservation of hous-  
4 ing assisted by the Rural Housing Service by  
5 conducting research regarding, and providing fi-  
6 nancing and technical assistance for, preserving  
7 the affordability of such housing.

8 (I) One representative of low-income hous-  
9 ing tax credit investors.

10 (J) One representative of regulated finan-  
11 cial institutions that finance affordable multi-  
12 family rural rental housing developments.

13 (K) Two representatives from non-profit  
14 organizations representing farmworkers, includ-  
15 ing one organization representing farmworker  
16 women.

17 (3) MEETINGS.—The advisory committee shall  
18 meet not less often than once each calendar quarter.

19 (4) FUNCTIONS.—In providing assistance to the  
20 Secretary to carry out its purpose, the advisory com-  
21 mittee shall carry out the following functions:

22 (A) Assisting the Rural Housing Service of  
23 the Department of Agriculture to improve esti-  
24 mates of the size, scope, and condition of rental  
25 housing portfolio of the Service, including the

1 time frames for maturity of mortgages and  
2 costs for preserving the portfolio as affordable  
3 housing.

4 (B) Reviewing current policies and proce-  
5 dures of the Rural Housing Service regarding  
6 preservation of affordable rental housing fi-  
7 nanced under sections 514, 515, 516, and 538  
8 of the Housing Act of 1949, the Multifamily  
9 Preservation and Revitalization Demonstration  
10 program (MPR), and the rental assistance pro-  
11 gram and making recommendations regarding  
12 improvements and modifications to such policies  
13 and procedures.

14 (C) Providing ongoing review of Rural  
15 Housing Service program results.

16 (D) Providing reports to the Congress and  
17 the public on meetings, recommendations, and  
18 other findings of the advisory committee.

19 (5) TRAVEL COSTS.—Any amounts made avail-  
20 able for administrative costs of the Department of  
21 Agriculture may be used for costs of travel by mem-  
22 bers of the advisory committee to meetings of the  
23 committee.

1 **SEC. 227. COVERED HOUSING PROGRAMS.**

2 Paragraph (3) of section 41411(a) of the Violence  
3 Against Women Act of 1994 (34 U.S.C. 12491(a)(3)) is  
4 amended—

5 (1) in subparagraph (I), by striking “and” at  
6 the end;

7 (2) by redesignating subparagraph (J) as sub-  
8 paragraph (K); and

9 (3) by inserting after subparagraph (I) the fol-  
10 lowing new subparagraph:

11 “(J) rural development housing voucher  
12 assistance provided by the Secretary of Agri-  
13 culture pursuant to section 542 of the Housing  
14 Act of 1949 (42 U.S.C. 1490r), without regard  
15 to subsection (b) of such section, and applicable  
16 appropriation Acts; and”.

17 **SEC. 228. NEW FARMWORKER HOUSING.**

18 Section 513 of the Housing Act of 1949 (42 U.S.C.  
19 1483) is amended by adding at the end the following new  
20 subsection:

21 “(f) FUNDING FOR FARMWORKER HOUSING.—

22 “(1) SECTION 514 FARMWORKER HOUSING  
23 LOANS.—

24 “(A) INSURANCE AUTHORITY.—The Sec-  
25 retary of Agriculture may, to the extent ap-  
26 proved in appropriation Acts, insure loans

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1 under section 514 (42 U.S.C. 1484) during  
2 each of fiscal years 2020 through 2029 in an  
3 aggregate amount not to exceed \$200,000,000.

4 “(B) AUTHORIZATION OF APPROPRIATIONS  
5 FOR COSTS.—There is authorized to be appro-  
6 priated \$75,000,000 for each of fiscal years  
7 2020 through 2029 for costs (as such term is  
8 defined in section 502 of the Congressional  
9 Budget Act of 1974 (2 U.S.C. 661a)) of loans  
10 insured pursuant the authority under subpara-  
11 graph (A).

12 “(2) SECTION 516 GRANTS FOR FARMWORKER  
13 HOUSING.—There is authorized to be appropriated  
14 \$30,000,000 for each of fiscal years 2020 through  
15 2029 for financial assistance under section 516 (42  
16 U.S.C. 1486).

17 “(3) SECTION 521 HOUSING ASSISTANCE.—  
18 There is authorized to be appropriated  
19 \$2,700,000,000 for each of fiscal years 2020  
20 through 2029 for rental assistance agreements en-  
21 tered into or renewed pursuant to section 521(a)(2)  
22 (42 U.S.C. 1490a(a)(2)) or agreements entered into  
23 in lieu of debt forgiveness or payments for eligible  
24 households as authorized by section 502(c)(5)(D).”.

1 **SEC. 229. LOAN AND GRANT LIMITATIONS.**

2 Section 514 of the Housing Act of 1949 (42 U.S.C.  
3 1484) is amended by adding at the end the following:

4 “(j) PER PROJECT LIMITATIONS ON ASSISTANCE.—  
5 If the Secretary, in making available assistance in any  
6 area under this section or section 516 (42 U.S.C. 1486),  
7 establishes a limitation on the amount of assistance avail-  
8 able per project, the limitation on a grant or loan award  
9 per project shall not be less than \$5 million.”.

10 **SEC. 230. OPERATING ASSISTANCE SUBSIDIES.**

11 Subsection (a)(5) of section 521 of the Housing Act  
12 of 1949 (42 U.S.C. 1490a(a)(5)) is amended—

13 (1) in subparagraph (A) by inserting “or do-  
14 mestic farm labor legally admitted to the United  
15 States and authorized to work in agriculture” after  
16 “migrant farmworkers”;

17 (2) in subparagraph (B)—

18 (A) by striking “AMOUNT.—In any fiscal  
19 year” and inserting “AMOUNT.—

20 “(i) HOUSING FOR MIGRANT FARM-  
21 WORKERS.—In any fiscal year”;

22 (B) by inserting “providing housing for mi-  
23 grant farmworkers” after “any project”; and

24 (C) by inserting at the end the following:

25 “(ii) HOUSING FOR OTHER FARM  
26 LABOR.—In any fiscal year, the assistance

1 provided under this paragraph for any  
2 project providing housing for domestic  
3 farm labor legally admitted to the United  
4 States and authorized to work in agri-  
5 culture shall not exceed an amount equal  
6 to 50 percent of the operating costs for the  
7 project for the year, as determined by the  
8 Secretary. The owner of such project shall  
9 not qualify for operating assistance unless  
10 the Secretary certifies that the project was  
11 unoccupied or underutilized before making  
12 units available to such farm labor, and  
13 that a grant under this section will not dis-  
14 place any farm worker who is a United  
15 States worker.”; and

16 (3) in subparagraph (D), by adding at the end  
17 the following:

18 “(iii) The term ‘domestic farm labor’ has  
19 the same meaning given such term in section  
20 514(f)(3) (42 U.S.C. 1484(f)(3)), except that  
21 subparagraph (A) of such section shall not  
22 apply for purposes this section.”.

1 **SEC. 231. ELIGIBILITY OF CERTIFIED WORKERS.**

2 Subsection (a) of section 214 of the Housing and  
3 Community Development Act of 1980 (42 U.S.C. 1436a)  
4 is amended—

5 (1) in paragraph (6), by striking “or” at the  
6 end;

7 (2) by redesignating paragraph (7) as para-  
8 graph (8); and

9 (3) by inserting after paragraph (6) the fol-  
10 lowing:

11 “(7) an alien granted certified agricultural  
12 worker or certified agricultural dependent status  
13 under title I of the Farm Workforce Modernization  
14 Act of 2019, but solely for financial assistance made  
15 available pursuant to section 521 or 542 of the  
16 Housing Act of 1949 (42 U.S.C. 1490a, 1490r);  
17 or”.

18 **Subtitle C—Foreign Labor**  
19 **Recruiter Accountability**

20 **SEC. 251. REGISTRATION OF FOREIGN LABOR RECRUITERS.**

21 (a) IN GENERAL.—Not later than 1 year after the  
22 date of the enactment of this Act, the Secretary of Labor,  
23 in consultation with the Secretary of State and the Sec-  
24 retary of Homeland Security, shall establish procedures  
25 for the electronic registration of foreign labor recruiters  
26 engaged in the recruitment of nonimmigrant workers de-

1 scribed in section 101(a)(15)(H)(ii)(a) of the Immigration  
2 and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) to  
3 perform agricultural labor or services in the United States.

4 (b) PROCEDURAL REQUIREMENTS.—The procedures  
5 described in subsection (a) shall—

6 (1) require the applicant to submit a sworn dec-  
7 laration—

8 (A) stating the applicant's permanent  
9 place of residence or principal place of business,  
10 as applicable;

11 (B) describing the foreign labor recruiting  
12 activities in which the applicant is engaged; and

13 (C) including such other relevant informa-  
14 tion as the Secretary of Labor and the Sec-  
15 retary of State may require;

16 (2) include an expeditious means to update and  
17 renew registrations;

18 (3) include a process, which shall include the  
19 placement of personnel at each United States diplo-  
20 matic mission in accordance with subsection (g)(2),  
21 to receive information from the public regarding for-  
22 eign labor recruiters who have allegedly engaged in  
23 a foreign labor recruiting activity that is prohibited  
24 under this subtitle;

1           (4) include procedures for the receipt and proc-  
2           essing of complaints against foreign labor recruiters  
3           and for remedies, including the revocation of a reg-  
4           istration or the assessment of fines upon a deter-  
5           mination by the Secretary of Labor that the foreign  
6           labor recruiter has violated the requirements of this  
7           subtitle;

8           (5) require the applicant to post a bond in an  
9           amount sufficient to ensure the ability of the appli-  
10          cant to discharge its responsibilities and ensure pro-  
11          tection of workers, including payment of wages; and

12          (6) allow the Secretary of Labor and the Sec-  
13          retary of State to consult with other appropriate  
14          Federal agencies to determine whether any reason  
15          exists to deny registration to a foreign labor re-  
16          cruiter or revoke such registration.

17          (c) ATTESTATIONS.—Foreign labor recruiters reg-  
18          istering under this subtitle shall attest and agree to abide  
19          by the following requirements:

20                (1) PROHIBITED FEES.—The foreign labor re-  
21                cruiter, including any agent or employee of such for-  
22                eign labor recruiter, shall not assess any recruitment  
23                fees on a worker for any foreign labor recruiting ac-  
24                tivity.

1           (2) PROHIBITION ON FALSE AND MISLEADING  
2 INFORMATION.—The foreign labor recruiter shall not  
3 knowingly provide materially false or misleading in-  
4 formation to any worker concerning any matter re-  
5 quired to be disclosed under this subtitle.

6           (3) REQUIRED DISCLOSURES.—The foreign  
7 labor recruiter shall ascertain and disclose to the  
8 worker in writing in English and in the primary lan-  
9 guage of the worker at the time of the worker’s re-  
10 cruitment, the following information:

11           (A) The identity and address of the em-  
12 ployer and the identity and address of the per-  
13 son conducting the recruiting on behalf of the  
14 employer, including each subcontractor or agent  
15 involved in such recruiting.

16           (B) A copy of the approved job order or  
17 work contract under section 218 of the Immi-  
18 gration and Nationality Act, including all assur-  
19 ances and terms and conditions of employment.

20           (C) A statement, in a form specified by the  
21 Secretary—

22           (i) describing the general terms and  
23 conditions associated with obtaining an H-  
24 2A visa and maintaining H-2A status;

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1 (ii) affirming the prohibition on the  
2 assessment of fees described in paragraph  
3 (1), and explaining that such fees, if paid  
4 by the employer, may not be passed on to  
5 the worker;

6 (iii) describing the protections af-  
7 farded the worker under this subtitle, in-  
8 cluding procedures for reporting violations  
9 to the Secretary of State, filing a com-  
10 plaint with the Secretary of Labor, or fil-  
11 ing a civil action; and

12 (iv) describing the protections af-  
13 farded the worker by section 202 of the  
14 William Wilberforce Trafficking Victims  
15 Protection Reauthorization Act of 2008 (8  
16 U.S.C. 1375b), including the telephone  
17 number for the national human trafficking  
18 resource center hotline number.

19 (4) BOND.—The foreign labor recruiter shall  
20 agree to maintain a bond sufficient to ensure the  
21 ability of the foreign labor recruiter to discharge its  
22 responsibilities and ensure protection of workers,  
23 and to forfeit such bond in an amount determined  
24 by the Secretary under subsections (b)(1)(C)(ii) or

1 (c)(2)(C) of section 252 for failure to comply with  
2 the provisions of this subtitle.

3 (5) COOPERATION IN INVESTIGATION.—The  
4 foreign labor recruiter shall agree to cooperate in  
5 any investigation under section 252 of this subtitle  
6 by the Secretary or other appropriate authorities.

7 (6) NO RETALIATION.—The foreign labor re-  
8 cruiter shall agree to refrain from intimidating,  
9 threatening, restraining, coercing, discharging,  
10 blacklisting or in any other manner discriminating  
11 or retaliating against any worker or their family  
12 members (including a former worker or an applicant  
13 for employment) because such worker disclosed in-  
14 formation to any person based on a reason to believe  
15 that the foreign labor recruiter, or any agent or sub-  
16 contractee of such foreign labor recruiter, is engag-  
17 ing or has engaged in a foreign labor recruiting ac-  
18 tivity that does not comply with this subtitle.

19 (7) EMPLOYEES, AGENTS, AND  
20 SUBCONTRACTEES.—The foreign labor recruiter  
21 shall consent to be liable for the conduct of any  
22 agents or subcontractees of any level in relation to  
23 the foreign labor recruiting activity of the agent or  
24 subcontractee to the same extent as if the foreign  
25 labor recruiter had engaged in such conduct.

1           (8) ENFORCEMENT.—If the foreign labor re-  
2           cruiter is conducting foreign labor recruiting activity  
3           wholly outside the United States, such foreign labor  
4           recruiter shall establish a registered agent in the  
5           United States who is authorized to accept service of  
6           process on behalf of the foreign labor recruiter for  
7           the purpose of any administrative proceeding under  
8           this title or any Federal court civil action, if such  
9           service is made in accordance with the appropriate  
10          Federal rules for service of process.

11          (d) TERM OF REGISTRATION.—Unless suspended or  
12          revoked, a registration under this section shall be valid  
13          for 2 years.

14          (e) APPLICATION FEE.—The Secretary shall require  
15          a foreign labor recruiter that submits an application for  
16          registration under this section to pay a reasonable fee, suf-  
17          ficient to cover the full costs of carrying out the registra-  
18          tion activities under this subtitle.

19          (f) NOTIFICATION.—

20                  (1) EMPLOYER NOTIFICATION.—

21                          (A) IN GENERAL.—Not less frequently  
22                          than once every year, an employer of H-2A  
23                          workers shall provide the Secretary with the  
24                          names and addresses of all foreign labor re-  
25                          cruiters engaged to perform foreign labor re-

1           recruiting activity on behalf of the employer,  
2           whether the foreign labor recruiter is to receive  
3           any economic compensation for such services,  
4           and, if so, the identity of the person or entity  
5           who is paying for the services.

6           (B) AGREEMENT TO COOPERATE.—In ad-  
7           dition to the requirements of subparagraph (A),  
8           the employer shall—

9                   (i) provide to the Secretary the iden-  
10                   tity of any foreign labor recruiter whom  
11                   the employer has reason to believe is en-  
12                   gaging in foreign labor recruiting activities  
13                   that do not comply with this subtitle; and

14                   (ii) promptly respond to any request  
15                   by the Secretary for information regarding  
16                   the identity of a foreign labor recruiter  
17                   with whom the employer has a contract or  
18                   other agreement.

19           (2) FOREIGN LABOR RECRUITER NOTIFICA-  
20           TION.—A registered foreign labor recruiter shall no-  
21           tify the Secretary, not less frequently than once  
22           every year, of the identity of any subcontractee,  
23           agent, or foreign labor recruiter employee involved in  
24           any foreign labor recruiting activity for, or on behalf  
25           of, the foreign labor recruiter.

1 (g) ADDITIONAL RESPONSIBILITIES OF THE SEC-  
2 RETARY OF STATE.—

3 (1) LISTS.—The Secretary of State, in con-  
4 sultation with the Secretary of Labor shall maintain  
5 and make publicly available in written form and on  
6 the websites of United States embassies in the offi-  
7 cial language of that country, and on websites main-  
8 tained by the Secretary of Labor, regularly updated  
9 lists—

10 (A) of foreign labor recruiters who hold  
11 valid registrations under this section, includ-  
12 ing—

13 (i) the name and address of the for-  
14 eign labor recruiter;

15 (ii) the countries in which such re-  
16 cruiters conduct recruitment;

17 (iii) the employers for whom recruit-  
18 ing is conducted;

19 (iv) the occupations that are the sub-  
20 ject of recruitment;

21 (v) the States where recruited workers  
22 are employed; and

23 (vi) the name and address of the reg-  
24 istered agent in the United States who is

1 authorized to accept service of process on  
2 behalf of the foreign labor recruiter; and

3 (B) of foreign labor recruiters whose reg-  
4 istration the Secretary has revoked.

5 (2) PERSONNEL.—The Secretary of State shall  
6 ensure that each United States diplomatic mission is  
7 staffed with a person who shall be responsible for re-  
8 ceiving information from members of the public re-  
9 garding potential violations of the requirements ap-  
10 plicable to registered foreign labor recruiters and en-  
11 suring that such information is conveyed to the Sec-  
12 retary of Labor for evaluation and initiation of an  
13 enforcement action, if appropriate.

14 (3) VISA APPLICATION PROCEDURES.—The Sec-  
15 retary shall ensure that consular officers issuing  
16 visas to nonimmigrants under section  
17 101(a)(1)(H)(ii)(a) of the Immigration and Nation-  
18 ality Act (8 U.S.C. 11001(a)(1)(H)(ii)(a))—

19 (A) provide to and review with the appli-  
20 cant, in the applicant's language (or a language  
21 the applicant understands), a copy of the infor-  
22 mation and resources pamphlet required by sec-  
23 tion 202 of the William Wilberforce Trafficking  
24 Victims Protection Reauthorization Act of 2008  
25 (8 U.S.C. 1375b);

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1 (B) ensure that the applicant has a copy of  
2 the approved job offer or work contract;

3 (C) note in the visa application file wheth-  
4 er the foreign labor recruiter has a valid reg-  
5 istration under this section; and

6 (D) if the foreign labor recruiter holds a  
7 valid registration, review and include in the visa  
8 application file, the foreign labor recruiter's dis-  
9 closures required by subsection (c)(3).

10 (4) DATA.—The Secretary of State shall make  
11 publicly available online, on an annual basis, data  
12 disclosing the gender, country of origin (and State,  
13 county, or province, if available), age, wage, level of  
14 training, and occupational classification,  
15 disaggregated by State, of nonimmigrant workers  
16 described in section 101(a)(15)(H)(ii)(a) of the Im-  
17 migration and Nationality Act.

18 **SEC. 252. ENFORCEMENT.**

19 (a) DENIAL OR REVOCATION OF REGISTRATION.—

20 (1) GROUNDS FOR DENIAL OR REVOCATION.—

21 The Secretary shall deny an application for registra-  
22 tion, or revoke a registration, if the Secretary deter-  
23 mines that the foreign labor recruiter, or any agent  
24 or subcontractee of such foreign labor recruiter—

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1 (A) knowingly made a material misrepre-  
2 sentation in the registration application;

3 (B) materially failed to comply with one or  
4 more of the attestations provided under section  
5 251(c); or

6 (C) is not the real party in interest.

7 (2) NOTICE.—Prior to denying an application  
8 for registration or revoking a registration under this  
9 subsection, the Secretary shall provide written notice  
10 of the intent to deny or revoke the registration to  
11 the foreign labor recruiter. Such notice shall—

12 (A) articulate with specificity all grounds  
13 for denial or revocation; and

14 (B) provide the foreign labor recruiter with  
15 not less than 60 days to respond.

16 (3) RE-REGISTRATION.—A foreign labor re-  
17 cruiter whose registration was revoked under sub-  
18 section (a) may re-register if the foreign labor re-  
19 cruiter demonstrates to the Secretary's satisfaction  
20 that the foreign labor recruiter has not violated this  
21 subtitle in the 5 years preceding the date an applica-  
22 tion for registration is filed and has taken sufficient  
23 steps to prevent future violations of this subtitle.

24 (b) ADMINISTRATIVE ENFORCEMENT.—

25 (1) COMPLAINT PROCESS.—

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1 (A) FILING.—A complaint may be filed  
2 with the Secretary of Labor, in accordance with  
3 the procedures established under section  
4 251(b)(4) not later than 2 years after the ear-  
5 lier of—

6 (i) the date of the last action which  
7 constituted the conduct that is the subject  
8 of the complaint took place; or

9 (ii) the date on which the aggrieved  
10 party had actual knowledge of such con-  
11 duct.

12 (B) DECISION AND PENALTIES.—If the  
13 Secretary of Labor finds, after notice and an  
14 opportunity for a hearing, that a foreign labor  
15 recruiter failed to comply with any of the re-  
16 quirements of this subtitle, the Secretary of  
17 Labor may—

18 (i) levy a fine against the foreign  
19 labor recruiter in an amount not more  
20 than—

21 (I) \$10,000 per violation; and

22 (II) \$25,000 per violation, upon  
23 the third violation;

24 (ii) order the forfeiture (or partial for-  
25 feiture) of the bond and release of as much

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1 of the bond as the Secretary determines is  
2 necessary for the worker to recover prohib-  
3 ited recruitment fees;

4 (iii) refuse to issue or renew a reg-  
5 istration, or revoke a registration; or

6 (iv) disqualify the foreign labor re-  
7 cruiter from registration for a period of up  
8 to 5 years, or in the case of a subsequent  
9 finding involving willful or multiple mate-  
10 rial violations, permanently disqualify the  
11 foreign labor recruiter from registration.

12 (2) AUTHORITY TO ENSURE COMPLIANCE.—The  
13 Secretary of Labor is authorized to take other such  
14 actions, including issuing subpoenas and seeking ap-  
15 propriate injunctive relief, as may be necessary to  
16 assure compliance with the terms and conditions of  
17 this subtitle.

18 (3) STATUTORY CONSTRUCTION.—Nothing in  
19 this subsection may be construed as limiting the au-  
20 thority of the Secretary of Labor to conduct an in-  
21 vestigation—

22 (A) under any other law, including any law  
23 affecting migrant and seasonal agricultural  
24 workers; or

25 (B) in the absence of a complaint.

1 (c) CIVIL ACTION.—

2 (1) IN GENERAL.—The Secretary of Labor or  
3 any person aggrieved by a violation of this subtitle  
4 may bring a civil action against any foreign labor re-  
5 cruiter, or any employer that does not meet the re-  
6 quirements under subsection (d)(1), in any court of  
7 competent jurisdiction—

8 (A) to seek remedial action, including in-  
9 junctive relief; and

10 (B) for damages in accordance with the  
11 provisions of this subsection.

12 (2) AWARD FOR CIVIL ACTION FILED BY AN IN-  
13 DIVIDUAL.—

14 (A) IN GENERAL.—If the court finds in a  
15 civil action filed by an individual under this sec-  
16 tion that the defendant has violated any provi-  
17 sion of this subtitle, the court may award—

18 (i) damages, up to and including an  
19 amount equal to the amount of actual  
20 damages, and statutory damages of up to  
21 \$1,000 per plaintiff per violation, or other  
22 equitable relief, except that with respect to  
23 statutory damages—

24 (I) multiple infractions of a sin-  
25 gle provision of this subtitle (or of a

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1 regulation under this subtitle) shall  
2 constitute only one violation for pur-  
3 poses of this subsection to determine  
4 the amount of statutory damages due  
5 a plaintiff; and

6 (II) if such complaint is certified  
7 as a class action the court may  
8 award—

9 (aa) damages up to an  
10 amount equal to the amount of  
11 actual damages; and

12 (bb) statutory damages of  
13 not more than the lesser of up to  
14 \$1,000 per class member per vio-  
15 lation, or up to \$500,000; and  
16 other equitable relief;

17 (ii) reasonable attorneys' fees and  
18 costs; and

19 (iii) such other and further relief as  
20 necessary to effectuate the purposes of this  
21 subtitle.

22 (B) CRITERIA.—In determining the  
23 amount of statutory damages to be awarded  
24 under subparagraph (A), the court is author-  
25 ized to consider whether an attempt was made

1 to resolve the issues in dispute before the resort  
2 to litigation.

3 (C) BOND.—To satisfy the damages, fees,  
4 and costs found owing under this paragraph,  
5 the Secretary shall release as much of the bond  
6 held pursuant to section 251(c)(4) as necessary.

7 (3) SUMS RECOVERED IN ACTIONS BY THE SEC-  
8 RETARY OF LABOR.—

9 (A) ESTABLISHMENT OF ACCOUNT.—

10 There is established in the general fund of the  
11 Treasury a separate account, which shall be  
12 known as the “H-2A Foreign Labor Recruiter  
13 Compensation Account”. Notwithstanding any  
14 other provisions of law, there shall be deposited  
15 as offsetting receipts into the account, all sums  
16 recovered in an action by the Secretary of  
17 Labor under this subsection.

18 (B) USE OF FUNDS.—Amounts deposited  
19 into the H-2A Foreign Labor Recruiter Com-  
20 pensation Account and shall be paid directly to  
21 each worker affected. Any such sums not paid  
22 to a worker because of inability to do so within  
23 a period of 5 years following the date such  
24 funds are deposited into the account shall re-  
25 main available to the Secretary until expended.

1           The Secretary may transfer all or a portion of  
2           such remaining sums to appropriate agencies to  
3           support the enforcement of the laws prohibiting  
4           the trafficking and exploitation of persons or  
5           programs that aid trafficking victims.

6           (d) EMPLOYER SAFE HARBOR.—

7           (1) IN GENERAL.—An employer that hires  
8           workers referred by a foreign labor recruiter with a  
9           valid registration at the time of hiring shall not be  
10          held jointly liable for a violation committed solely by  
11          a foreign labor recruiter under this subtitle—

12                   (A) in any administrative action initiated  
13                   by the Secretary concerning such violation; or

14                   (B) in any Federal or State civil court ac-  
15                   tion filed against the foreign labor recruiter by  
16                   or on behalf of such workers or other aggrieved  
17                   party under this subtitle.

18          (2) CLARIFICATION.—Nothing in this subtitle  
19          shall be construed to prohibit an aggrieved party or  
20          parties from bringing a civil action for violations of  
21          this subtitle or any other Federal or State law  
22          against any employer who hired workers referred by  
23          a foreign labor recruiter—

24                   (A) without a valid registration at the time  
25                   of hire; or

1 (B) with a valid registration if the em-  
2 ployer knew or learned of the violation and  
3 failed to report such violation to the Secretary.

4 (e) PAROLE TO PURSUE RELIEF.—If other immigra-  
5 tion relief is not available, the Secretary of Homeland Se-  
6 curity may grant parole to permit an individual to remain  
7 legally in the United States for time sufficient to fully and  
8 effectively participate in all legal proceedings related to  
9 any action taken pursuant to subsection (b) or (c).

10 (f) WAIVER OF RIGHTS.—Agreements by employees  
11 purporting to waive or to modify their rights under this  
12 subtitle shall be void as contrary to public policy.

13 (g) LIABILITY FOR AGENTS.—Foreign labor recruit-  
14 ers shall be subject to the provisions of this section for  
15 violations committed by the foreign labor recruiter's  
16 agents or subcontractees of any level in relation to their  
17 foreign labor recruiting activity to the same extent as if  
18 the foreign labor recruiter had committed the violation.

19 **SEC. 253. APPROPRIATIONS.**

20 There is authorized to be appropriated such sums as  
21 may be necessary for the Secretary of Labor and Secretary  
22 of State to carry out the provisions of this subtitle.

23 **SEC. 254. DEFINITIONS.**

24 For purposes of this subtitle:

1           (1) FOREIGN LABOR RECRUITER.—The term  
2           “foreign labor recruiter” means any person who per-  
3           forms foreign labor recruiting activity in exchange  
4           for money or other valuable consideration paid or  
5           promised to be paid, to recruit individuals to work  
6           as nonimmigrant workers described in section  
7           101(a)(15)(H)(ii)(a) of the Immigration and Nation-  
8           ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)), including  
9           any person who performs foreign labor recruiting ac-  
10          tivity wholly outside of the United States. Such term  
11          does not include any entity of the United States  
12          Government or an employer, or employee of an em-  
13          ployer, who engages in foreign labor recruiting activ-  
14          ity solely to find employees for that employer’s own  
15          use, and without the participation of any other for-  
16          eign labor recruiter.

17          (2) FOREIGN LABOR RECRUITING ACTIVITY.—  
18          The term “foreign labor recruiting activity” means  
19          recruiting, soliciting, or related activities with re-  
20          spect to an individual who resides outside of the  
21          United States in furtherance of employment in the  
22          United States, including when such activity occurs  
23          wholly outside of the United States.

24          (3) RECRUITMENT FEES.—The term “recruit-  
25          ment fees” has the meaning given to such term

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1 under section 22.1702 of title 22 of the Code of  
 2 Federal Regulations, as in effect on the date of en-  
 3 actment of this Act.

4 (4) PERSON.—The term “person” means any  
 5 natural person or any corporation, company, firm,  
 6 partnership, joint stock company or association or  
 7 other organization or entity (whether organized  
 8 under law or not), including municipal corporations.

9 **TITLE III—ELECTRONIC**  
 10 **VERIFICATION OF EMPLOY-**  
 11 **MENT ELIGIBILITY**

12 **SEC. 301. ELECTRONIC EMPLOYMENT ELIGIBILITY**  
 13 **VERIFICATION SYSTEM.**

14 (a) IN GENERAL.—Chapter 8 of title II of the Immi-  
 15 gration and Nationality Act (8 U.S.C. 1321 et seq.) is  
 16 amended by inserting after section 274D the following:

17 **“SEC. 274E. REQUIREMENTS FOR THE ELECTRONIC**  
 18 **VERIFICATION OF EMPLOYMENT ELIGI-**  
 19 **BILITY.**

20 “(a) EMPLOYMENT ELIGIBILITY VERIFICATION SYS-  
 21 TEM.—

22 “(1) IN GENERAL.—The Secretary of Homeland  
 23 Security (referred to in this section as the ‘Sec-  
 24 retary’) shall establish and administer an electronic  
 25 verification system (referred to in this section as the

1 ‘System’), patterned on the E–Verify Program de-  
2 scribed in section 403(a) of the Illegal Immigration  
3 Reform and Immigrant Responsibility Act of 1996  
4 (8 U.S.C. 1324a note) (as in effect on the day be-  
5 fore the effective date described in section 303(a)(4)  
6 of the Farm Workforce Modernization Act of 2019),  
7 and using the employment eligibility confirmation  
8 system established under section 404 of such Act (8  
9 U.S.C. 1324a note) (as so in effect) as a foundation,  
10 through which the Secretary shall—

11 “(A) respond to inquiries made by persons  
12 or entities seeking to verify the identity and em-  
13 ployment authorization of individuals that such  
14 persons or entities seek to hire, or to recruit or  
15 refer for a fee, for employment in the United  
16 States; and

17 “(B) maintain records of the inquiries that  
18 were made, and of verifications provided (or not  
19 provided) to such persons or entities as evidence  
20 of compliance with the requirements of this sec-  
21 tion.

22 “(2) INITIAL RESPONSE DEADLINE.—The Sys-  
23 tem shall provide confirmation or a tentative non-  
24 confirmation of an individual’s identity and employ-

1       ment authorization as soon as practicable, but not  
2       later than 3 calendar days after the initial inquiry.

3           “(3) GENERAL DESIGN AND OPERATION OF  
4       SYSTEM.—The Secretary shall design and operate  
5       the System—

6           “(A) using responsive web design and  
7       other technologies to maximize its ease of use  
8       and accessibility for users on a variety of elec-  
9       tronic devices and screen sizes, and in remote  
10      locations;

11          “(B) to maximize the accuracy of re-  
12      sponses to inquiries submitted by persons or en-  
13      tities;

14          “(C) to maximize the reliability of the Sys-  
15      tem and to register each instance when the Sys-  
16      tem is unable to receive inquiries;

17          “(D) to protect the privacy and security of  
18      the personally identifiable information main-  
19      tained by or submitted to the System;

20          “(E) to provide direct notification of an in-  
21      quiry to an individual with respect to whom the  
22      inquiry is made, including the results of such  
23      inquiry, and information related to the process  
24      for challenging the results, in cases in which the  
25      individual has established a user account as de-

1 scribed in paragraph (4)(B) or an electronic  
2 mail address for the individual is submitted by  
3 the person or entity at the time the inquiry is  
4 made; and

5 “(F) to maintain appropriate administra-  
6 tive, technical, and physical safeguards to pre-  
7 vent misuse of the System and unfair immigra-  
8 tion-related employment practices.

9 “(4) MEASURES TO PREVENT IDENTITY THEFT  
10 AND OTHER FORMS OF FRAUD.—To prevent identity  
11 theft and other forms of fraud, the Secretary shall  
12 design and operate the System with the following at-  
13 tributes:

14 “(A) PHOTO MATCHING TOOL.—The Sys-  
15 tem shall display the digital photograph of the  
16 individual, if any, that corresponds to the docu-  
17 ment presented by an individual to establish  
18 identity and employment authorization so that  
19 the person or entity that makes an inquiry can  
20 compare the photograph displayed by the Sys-  
21 tem to the photograph on the document pre-  
22 sented by the individual.

23 “(B) INDIVIDUAL MONITORING AND SUS-  
24 PENSION OF IDENTIFYING INFORMATION.—The  
25 System shall enable individuals to establish user

1 accounts, after authentication of an individual's  
2 identity, that would allow an individual to—

3 “(i) confirm the individual's own em-  
4 ployment authorization;

5 “(ii) receive electronic notification  
6 when the individual's social security ac-  
7 count number or other personally identi-  
8 fying information has been submitted to  
9 the System;

10 “(iii) monitor the use history of the  
11 individual's personally identifying informa-  
12 tion in the System, including the identities  
13 of all persons or entities that have sub-  
14 mitted such identifying information to the  
15 System, the date of each query run, and  
16 the System response for each query run;

17 “(iv) suspend or limit the use of the  
18 individual's social security account number  
19 or other personally identifying information  
20 for purposes of the System; and

21 “(v) provide notice to the Department  
22 of Homeland Security of any suspected  
23 identity fraud or other improper use of  
24 personally identifying information.

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1           “(C) BLOCKING MISUSED SOCIAL SECUR-  
2           RITY ACCOUNT NUMBERS.—

3           “(i) IN GENERAL.—The Secretary, in  
4           consultation with the Commissioner of So-  
5           cial Security (referred to in this section as  
6           the ‘Commissioner’), shall develop, after  
7           publication in the Federal Register and an  
8           opportunity for public comment, a process  
9           in which social security account numbers  
10          that have been identified to be subject to  
11          unusual multiple use in the System or that  
12          are otherwise suspected or determined to  
13          have been compromised by identity fraud  
14          or other misuse, shall be blocked from use  
15          in the System unless the individual using  
16          such number is able to establish, through  
17          secure and fair procedures, that the indi-  
18          vidual is the legitimate holder of the num-  
19          ber.

20          “(ii) NOTICE.—If the Secretary blocks  
21          or suspends a social security account num-  
22          ber under this subparagraph, the Secretary  
23          shall provide notice to the persons or enti-  
24          ties that have made inquiries to the Sys-  
25          tem using such account number that the

1 identity and employment authorization of  
2 the individual who provided such account  
3 number must be re-verified.

4 “(D) ADDITIONAL IDENTITY AUTHENTICA-  
5 TION TOOL.—The Secretary shall develop, after  
6 publication in the Federal Register and an op-  
7 portunity for public comment, additional secu-  
8 rity measures to adequately verify the identity  
9 of an individual whose identity may not be  
10 verified using the photo tool described in sub-  
11 paragraph (A). Such additional security meas-  
12 ures—

13 “(i) shall be kept up-to-date with  
14 technological advances; and

15 “(ii) shall be designed to provide a  
16 high level of certainty with respect to iden-  
17 tity authentication.

18 “(E) CHILD-LOCK PILOT PROGRAM.—The  
19 Secretary, in consultation with the Commis-  
20 sioner, shall establish a reliable, secure program  
21 through which parents or legal guardians may  
22 suspend or limit the use of the social security  
23 account number or other personally identifying  
24 information of a minor under their care for  
25 purposes of the System. The Secretary may im-

1           plement the program on a limited pilot basis be-  
2           fore making it fully available to all individuals.

3           “(5) RESPONSIBILITIES OF THE COMMISSIONER  
4           OF SOCIAL SECURITY.—The Commissioner, in con-  
5           sultation with the Secretary, shall establish a reli-  
6           able, secure method, which, within the time periods  
7           specified in paragraph (2) and subsection  
8           (b)(4)(D)(i)(II), compares the name and social secu-  
9           rity account number provided in an inquiry against  
10          such information maintained by the Commissioner in  
11          order to validate (or not validate) the information  
12          provided by the person or entity with respect to an  
13          individual whose identity and employment authoriza-  
14          tion the person or entity seeks to confirm, the cor-  
15          respondence of the name and number, and whether  
16          the individual has presented a social security ac-  
17          count number that is not valid for employment. The  
18          Commissioner shall not disclose or release social se-  
19          curity information (other than such confirmation or  
20          nonconfirmation) under the System except as pro-  
21          vided under this section.

22          “(6) RESPONSIBILITIES OF THE SECRETARY OF  
23          HOMELAND SECURITY.—

24                 “(A) IN GENERAL.—The Secretary of  
25                 Homeland Security shall establish a reliable, se-

1 cure method, which, within the time periods  
2 specified in paragraph (2) and subsection  
3 (b)(4)(D)(i)(II), compares the name and identi-  
4 fication or other authorization number (or any  
5 other information determined relevant by the  
6 Secretary) which are provided in an inquiry  
7 against such information maintained or  
8 accessed by the Secretary in order to validate  
9 (or not validate) the information provided, the  
10 correspondence of the name and number, and  
11 whether the individual is authorized to be em-  
12 ployed in the United States.

13 “(B) TRAINING.—The Secretary shall pro-  
14 vide and regularly update training materials on  
15 the use of the System for persons and entities  
16 making inquiries.

17 “(C) AUDIT.—The Secretary shall provide  
18 for periodic auditing of the System to detect  
19 and prevent misuse, discrimination, fraud, and  
20 identity theft, to protect privacy and assess  
21 System accuracy, and to preserve the integrity  
22 and security of the information in the System.

23 “(D) NOTICE OF SYSTEM CHANGES.—The  
24 Secretary shall provide appropriate notification  
25 to persons and entities registered in the System

1 of any change made by the Secretary or the  
2 Commissioner related to permitted and prohib-  
3 ited documents, and use of the System.

4 “(7) RESPONSIBILITIES OF THE SECRETARY OF  
5 STATE.—As part of the System, the Secretary of  
6 State shall provide to the Secretary of Homeland Se-  
7 curity access to passport and visa information as  
8 needed to confirm that a passport or passport card  
9 presented under subsection (b)(3)(A)(i) confirms the  
10 employment authorization and identity of the indi-  
11 vidual presenting such document, and that a pass-  
12 port, passport card, or visa photograph matches the  
13 Secretary of State’s records, and shall provide such  
14 assistance as the Secretary of Homeland Security  
15 may request in order to resolve tentative noncon-  
16 firmations or final nonconfirmations relating to such  
17 information.

18 “(8) UPDATING INFORMATION.—The Commis-  
19 sioner, the Secretary of Homeland Security, and the  
20 Secretary of State shall update records in their cus-  
21 tody in a manner that promotes maximum accuracy  
22 of the System and shall provide a process for the  
23 prompt correction of erroneous information, includ-  
24 ing instances in which it is brought to their atten-

1 tion through the tentative nonconfirmation review  
2 process under subsection (b)(4)(D).

3 “(9) MANDATORY AND VOLUNTARY SYSTEM  
4 USES.—

5 “(A) MANDATORY USERS.—Except as oth-  
6 erwise provided under Federal or State law,  
7 such as sections 302 and 303 of the Farm  
8 Workforce Modernization Act of 2019, nothing  
9 in this section shall be construed as requiring  
10 the use of the System by any person or entity  
11 hiring, recruiting, or referring for a fee, an in-  
12 dividual for employment in the United States.

13 “(B) VOLUNTARY USERS.—Beginning  
14 after the date that is 30 days after the date on  
15 which final rules are published under section  
16 309(a) of the Farm Workforce Modernization  
17 Act of 2019, a person or entity may use the  
18 System on a voluntary basis to seek verification  
19 of the identity and employment authorization of  
20 individuals the person or entity is hiring, re-  
21 cruiting, or referring for a fee for employment  
22 in the United States

23 “(C) PROCESS FOR NON-USERS.—The em-  
24 ployment verification process for any person or  
25 entity hiring, recruiting, or referring for a fee,

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1 an individual for employment in the United  
2 States shall be governed by section 274A(b) un-  
3 less the person or entity—

4 “(i) is required by Federal or State  
5 law to use the System; or

6 “(ii) has opted to use the System vol-  
7 untarily in accordance with subparagraph  
8 (B).

9 “(10) NO FEE FOR USE.—The Secretary may  
10 not charge a fee to an individual, person, or entity  
11 related to the use of the System.

12 “(b) NEW HIRES, RECRUITMENT, AND REFERRAL.—  
13 Notwithstanding section 274A(b), the requirements re-  
14 ferred to in paragraphs (1)(B) and (3) of section 274A(a)  
15 are, in the case of a person or entity that uses the System  
16 for the hiring, recruiting, or referring for a fee, an indi-  
17 vidual for employment in the United States, the following:

18 “(1) INDIVIDUAL ATTESTATION OF EMPLOY-  
19 MENT AUTHORIZATION.—During the period begin-  
20 ning on the date on which an offer of employment  
21 is accepted and ending on the date of hire, the indi-  
22 vidual shall attest, under penalty of perjury on a  
23 form designated by the Secretary, that the individual  
24 is authorized to be employed in the United States by  
25 providing on such form—

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1           “(A) the individual’s name and date of  
2           birth;

3           “(B) the individual’s social security ac-  
4           count number (unless the individual has applied  
5           for and not yet been issued such a number);

6           “(C) whether the individual is—

7                   “(i) a citizen or national of the United  
8                   States;

9                   “(ii) an alien lawfully admitted for  
10                  permanent residence; or

11                  “(iii) an alien who is otherwise au-  
12                  thorized by the Secretary to be hired, re-  
13                  cruited, or referred for employment in the  
14                  United States; and

15           “(D) if the individual does not attest to  
16           United States citizenship or nationality, such  
17           identification or other authorization number es-  
18           tablished by the Department of Homeland Se-  
19           curity for the alien as the Secretary may speci-  
20           fy.

21           “(2) EMPLOYER ATTESTATION AFTER EXAM-  
22           INATION OF DOCUMENTS.—Not later than 3 busi-  
23           ness days after the date of hire, the person or entity  
24           shall attest, under penalty of perjury on the form  
25           designated by the Secretary for purposes of para-

1 graph (1), that it has verified that the individual is  
2 not an unauthorized alien by—

3 “(A) obtaining from the individual the in-  
4 formation described in paragraph (1) and re-  
5 cording such information on the form;

6 “(B) examining—

7 “(i) a document described in para-  
8 graph (3)(A); or

9 “(ii) a document described in para-  
10 graph (3)(B) and a document described in  
11 paragraph (3)(C); and

12 “(C) attesting that the information re-  
13 corded on the form is consistent with the docu-  
14 ments examined.

15 “(3) ACCEPTABLE DOCUMENTS.—

16 “(A) DOCUMENTS ESTABLISHING EMPLOY-  
17 MENT AUTHORIZATION AND IDENTITY.—A doc-  
18 ument described in this subparagraph is an in-  
19 dividual’s—

20 “(i) United States passport or pass-  
21 port card;

22 “(ii) permanent resident card that  
23 contains a photograph;

24 “(iii) foreign passport containing tem-  
25 porary evidence of lawful permanent resi-

1           dence in the form of an official I-551 (or  
2           successor) stamp from the Department of  
3           Homeland Security or a printed notation  
4           on a machine-readable immigrant visa;

5           “(iv) unexpired employment author-  
6           ization card that contains a photograph;

7           “(v) in the case of a nonimmigrant  
8           alien authorized to engage in employment  
9           for a specific employer incident to status,  
10          a foreign passport with Form I-94, Form  
11          I-94A, or other documentation as des-  
12          ignated by the Secretary specifying the  
13          alien’s nonimmigrant status as long as  
14          such status has not yet expired and the  
15          proposed employment is not in conflict  
16          with any restrictions or limitations identi-  
17          fied in the documentation;

18          “(vi) passport from the Federated  
19          States of Micronesia or the Republic of the  
20          Marshall Islands with Form I-94, Form I-  
21          94A, or other documentation as designated  
22          by the Secretary, indicating nonimmigrant  
23          admission under the Compact of Free As-  
24          sociation Between the United States and

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1 the Federated States of Micronesia or the  
2 Republic of the Marshall Islands; or

3 “(vii) other document designated by  
4 the Secretary, by notice published in the  
5 Federal Register, if the document—

6 “(I) contains a photograph of the  
7 individual, biometric identification  
8 data, and other personal identifying  
9 information relating to the individual;

10 “(II) is evidence of authorization  
11 for employment in the United States;  
12 and

13 “(III) contains security features  
14 to make it resistant to tampering,  
15 counterfeiting, and fraudulent use.

16 “(B) DOCUMENTS ESTABLISHING EMPLOY-  
17 MENT AUTHORIZATION.—A document described  
18 in this subparagraph is—

19 “(i) an individual’s social security ac-  
20 count number card (other than such a card  
21 which specifies on the face that the  
22 issuance of the card does not authorize em-  
23 ployment in the United States); or

24 “(ii) a document establishing employ-  
25 ment authorization that the Secretary de-

1 termines, by notice published in the Fed-  
2 eral Register, to be acceptable for purposes  
3 of this subparagraph, provided that such  
4 documentation contains security features  
5 to make it resistant to tampering, counter-  
6 feiting, and fraudulent use.

7 “(C) DOCUMENTS ESTABLISHING IDEN-  
8 TITY.—A document described in this subpara-  
9 graph is—

10 “(i) an individual’s driver’s license or  
11 identification card if it was issued by a  
12 State or one of the outlying possessions of  
13 the United States and contains a photo-  
14 graph and personal identifying information  
15 relating to the individual;

16 “(ii) an individual’s unexpired United  
17 States military identification card;

18 “(iii) an individual’s unexpired Native  
19 American tribal identification document  
20 issued by a tribal entity recognized by the  
21 Bureau of Indian Affairs;

22 “(iv) in the case of an individual  
23 under 18 years of age, a parent or legal  
24 guardian’s attestation under penalty of law

1 as to the identity and age of the individual;  
2 or

3 “(v) a document establishing identity  
4 that the Secretary determines, by notice  
5 published in the Federal Register, to be ac-  
6 ceptable for purposes of this subparagraph,  
7 if such documentation contains a photo-  
8 graph of the individual, biometric identi-  
9 fication data, and other personal identi-  
10 fying information relating to the indi-  
11 vidual, and security features to make it re-  
12 sistant to tampering, counterfeiting, and  
13 fraudulent use.

14 “(D) AUTHORITY TO PROHIBIT USE OF  
15 CERTAIN DOCUMENTS.—If the Secretary finds  
16 that any document or class of documents de-  
17 scribed in subparagraph (A), (B), or (C) does  
18 not reliably establish identity or employment  
19 authorization or is being used fraudulently to  
20 an unacceptable degree, the Secretary may, by  
21 notice published in the Federal Register, pro-  
22 hibit or place conditions on the use of such doc-  
23 ument or class of documents for purposes of  
24 this section.

1           “(4) USE OF THE SYSTEM TO SCREEN IDEN-  
2           TITY AND EMPLOYMENT AUTHORIZATION.—

3           “(A) IN GENERAL.—In the case of a per-  
4           son or entity that uses the System for the hir-  
5           ing, recruiting, or referring for a fee an indi-  
6           vidual for employment in the United States,  
7           during the period described in subparagraph  
8           (B), the person or entity shall submit an in-  
9           quiry through the System described in sub-  
10          section (a) to seek verification of the identity  
11          and employment authorization of the individual.

12          “(B) VERIFICATION PERIOD.—

13               “(i) IN GENERAL.—Except as pro-  
14               vided in clause (ii), and subject to sub-  
15               section (d), the verification period shall  
16               begin on the date of hire and end on the  
17               date that is 3 business days after the date  
18               of hire, or such other reasonable period as  
19               the Secretary may prescribe.

20               “(ii) SPECIAL RULE.—In the case of  
21               an alien who is authorized to be employed  
22               in the United States and who provides evi-  
23               dence from the Social Security Administra-  
24               tion that the alien has applied for a social  
25               security account number, the verification

1 period shall end 3 business days after the  
2 alien receives the social security account  
3 number.

4 “(C) CONFIRMATION.—If a person or enti-  
5 ty receives confirmation of an individual’s iden-  
6 tity and employment authorization, the person  
7 or entity shall record such confirmation on the  
8 form designated by the Secretary for purposes  
9 of paragraph (1).

10 “(D) TENTATIVE NONCONFIRMATION.—

11 “(i) IN GENERAL.—In cases of ten-  
12 tative nonconfirmation, the Secretary shall  
13 provide, in consultation with the Commis-  
14 sioner, a process for—

15 “(I) an individual to contest the  
16 tentative nonconfirmation not later  
17 than 10 business days after the date  
18 of the receipt of the notice described  
19 in clause (ii); and

20 “(II) the Secretary to issue a  
21 confirmation or final nonconfirmation  
22 of an individual’s identity and employ-  
23 ment authorization not later than 30  
24 calendar days after the Secretary re-

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1 ceives notice from the individual con-  
2 testing a tentative nonconfirmation.

3 “(ii) NOTICE.—If a person or entity  
4 receives a tentative nonconfirmation of an  
5 individual’s identity or employment author-  
6 ization, the person or entity shall, not later  
7 than 3 business days after receipt, notify  
8 such individual in writing in a language  
9 understood by the individual and on a form  
10 designated by the Secretary, that shall in-  
11 clude a description of the individual’s right  
12 to contest the tentative nonconfirmation.  
13 The person or entity shall attest, under  
14 penalty of perjury, that the person or enti-  
15 ty provided (or attempted to provide) such  
16 notice to the individual, and the individual  
17 shall acknowledge receipt of such notice in  
18 a manner specified by the Secretary.

19 “(iii) NO CONTEST.—

20 “(I) IN GENERAL.—A tentative  
21 nonconfirmation shall become final if,  
22 upon receiving the notice described in  
23 clause (ii), the individual—

24 “(aa) refuses to acknowledge  
25 receipt of such notice;

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1           “(bb) acknowledges in writ-  
2           ing, in a manner specified by the  
3           Secretary, that the individual will  
4           not contest the tentative noncon-  
5           firmation; or

6           “(cc) fails to contest the  
7           tentative nonconfirmation within  
8           the 10-business-day period begin-  
9           ning on the date the individual  
10          received such notice.

11          “(II) RECORD OF NO CON-  
12          TEST.—The person or entity shall in-  
13          dicate in the System that the indi-  
14          vidual did not contest the tentative  
15          nonconfirmation and shall specify the  
16          reason the tentative nonconfirmation  
17          became final under subclause (I).

18          “(III) EFFECT OF FAILURE TO  
19          CONTEST.—An individual’s failure to  
20          contest a tentative nonconfirmation  
21          shall not be considered an admission  
22          of any fact with respect to any viola-  
23          tion of this Act or any other provision  
24          of law.

25          “(iv) CONTEST.—

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1           “(I) IN GENERAL.—An individual  
2           may contest a tentative nonconfirma-  
3           tion by using the tentative noncon-  
4           firmation review process under clause  
5           (i), not later than 10 business days  
6           after receiving the notice described in  
7           clause (ii). Except as provided in  
8           clause (iii), the nonconfirmation shall  
9           remain tentative until a confirmation  
10          or final nonconfirmation is provided  
11          by the System.

12          “(II) PROHIBITION ON TERMI-  
13          NATION.—In no case shall a person or  
14          entity terminate employment or take  
15          any adverse employment action  
16          against an individual for failure to ob-  
17          tain confirmation of the individual’s  
18          identity and employment authoriza-  
19          tion until the person or entity receives  
20          a notice of final nonconfirmation from  
21          the System. Nothing in this subclause  
22          shall prohibit an employer from termi-  
23          nating the employment of the indi-  
24          vidual for any other lawful reason.

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1                   “(III) CONFIRMATION OR FINAL  
2                   NONCONFIRMATION.—The Secretary,  
3                   in consultation with the Commis-  
4                   sioner, shall issue notice of a con-  
5                   firmation or final nonconfirmation of  
6                   the individual’s identity and employ-  
7                   ment authorization not later than 30  
8                   calendar days after the date the Sec-  
9                   retary receives notice from the indi-  
10                  vidual contesting the tentative non-  
11                  confirmation.

12                  “(E) FINAL NONCONFIRMATION.—

13                  “(i) NOTICE.—If a person or entity  
14                  receives a final nonconfirmation of an indi-  
15                  vidual’s identity or employment authoriza-  
16                  tion, the person or entity shall, not later  
17                  than 3 business days after receipt, notify  
18                  such individual of the final nonconfirma-  
19                  tion in writing, on a form designated by  
20                  the Secretary, which shall include informa-  
21                  tion regarding the individual’s right to ap-  
22                  peal the final nonconfirmation as provided  
23                  under subparagraph (F). The person or  
24                  entity shall attest, under penalty of per-  
25                  jury, that the person or entity provided (or

1 attempted to provide) the notice to the in-  
2 dividual, and the individual shall acknowl-  
3 edge receipt of such notice in a manner  
4 designated by the Secretary.

5 “(ii) TERMINATION OR NOTIFICATION  
6 OF CONTINUED EMPLOYMENT.—If a per-  
7 son or entity receives a final nonconfirma-  
8 tion regarding an individual, the person or  
9 entity may terminate employment of the  
10 individual. If the person or entity does not  
11 terminate such employment pending appeal  
12 of the final nonconfirmation, the person or  
13 entity shall notify the Secretary of such  
14 fact through the System. Failure to notify  
15 the Secretary in accordance with this  
16 clause shall be deemed a violation of sec-  
17 tion 274A(a)(1)(A).

18 “(iii) PRESUMPTION OF VIOLATION  
19 FOR CONTINUED EMPLOYMENT.—If a per-  
20 son or entity continues to employ an indi-  
21 vidual after receipt of a final nonconfirma-  
22 tion, there shall be a rebuttable presump-  
23 tion that the person or entity has violated  
24 paragraphs (1)(A) and (a)(2) of section  
25 274A(a).

1           “(F) APPEAL OF FINAL NONCONFIRMA-  
2           TION.—

3           “(i) ADMINISTRATIVE APPEAL.—The  
4           Secretary, in consultation with the Com-  
5           missioner, shall develop a process by which  
6           an individual may seek administrative re-  
7           view of a final nonconfirmation. Such proc-  
8           ess shall—

9                   “(I) permit the individual to sub-  
10                  mit additional evidence establishing  
11                  identity or employment authorization;

12                   “(II) ensure prompt resolution of  
13                  an appeal (but in no event shall there  
14                  be a failure to respond to an appeal  
15                  within 30 days); and

16                   “(III) permit the Secretary to  
17                  impose a civil money penalty (not to  
18                  exceed \$500) on an individual upon  
19                  finding that an appeal was frivolous  
20                  or filed for purposes of delay.

21           “(ii) COMPENSATION FOR LOST  
22           WAGES RESULTING FROM GOVERNMENT  
23           ERROR OR OMISSION.—

24                   “(I) IN GENERAL.—If, upon con-  
25                  sideration of an appeal of a final non-

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1 confirmation, the Secretary deter-  
2 mines that the final nonconfirmation  
3 was issued in error, the Secretary  
4 shall further determine whether the  
5 final nonconfirmation was the result  
6 of government error or omission. If  
7 the Secretary determines that the  
8 final nonconfirmation was solely the  
9 result of government error or omission  
10 and the individual was terminated  
11 from employment, the Secretary shall  
12 compensate the individual for lost  
13 wages.

14 “(II) CALCULATION OF LOST  
15 WAGES.—Lost wages shall be cal-  
16 culated based on the wage rate and  
17 work schedule that were in effect  
18 prior to the individual’s termination.  
19 The individual shall be compensated  
20 for lost wages beginning on the first  
21 scheduled work day after employment  
22 was terminated and ending 90 days  
23 after completion of the administrative  
24 review process described in this sub-  
25 paragraph or the day the individual is

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1 reinstated or obtains other employ-  
2 ment, whichever occurs first.

3 “(III) LIMITATION ON COM-  
4 PENSATION.—No compensation for  
5 lost wages shall be awarded for any  
6 period during which the individual  
7 was not authorized for employment in  
8 the United States.

9 “(IV) SOURCE OF FUNDS.—  
10 There is established in the general  
11 fund of the Treasury, a separate ac-  
12 count which shall be known as the  
13 ‘Electronic Verification Compensation  
14 Account’. Fees collected under sub-  
15 sections (f) and (g) shall be deposited  
16 in the Electronic Verification Com-  
17 pensation Account and shall remain  
18 available for purposes of providing  
19 compensation for lost wages under  
20 this subclause.

21 “(iii) JUDICIAL REVIEW.—Not later  
22 than 30 days after the dismissal of an ap-  
23 peal under this subparagraph, an indi-  
24 vidual may seek judicial review of such dis-  
25 missal in the United States District Court

1           in the jurisdiction in which the employer  
2           resides or conducts business.

3           “(5) RETENTION OF VERIFICATION RECORDS.—

4           “(A) IN GENERAL.—After completing the  
5           form designated by the Secretary in accordance  
6           with paragraphs (1) and (2), the person or enti-  
7           ty shall retain the form in paper, microfiche,  
8           microfilm, electronic, or other format deemed  
9           acceptable by the Secretary, and make it avail-  
10          able for inspection by officers of the Depart-  
11          ment of Homeland Security, the Department of  
12          Justice, or the Department of Labor during the  
13          period beginning on the date the verification is  
14          completed and ending on the later of—

15                 “(i) the date that is 3 years after the  
16                 date of hire; or

17                 “(ii) the date that is 1 year after the  
18                 date on which the individual’s employment  
19                 is terminated.

20           “(B) COPYING OF DOCUMENTATION PER-  
21          MITTED.—Notwithstanding any other provision  
22          of law, a person or entity may copy a document  
23          presented by an individual pursuant to this sec-  
24          tion and may retain the copy, but only for the

1           purpose of complying with the requirements of  
2           this section.

3           “(c) REVERIFICATION OF PREVIOUSLY HIRED INDI-  
4           VIDUALS.—

5           “(1) MANDATORY REVERIFICATION.—In the  
6           case of a person or entity that uses the System for  
7           the hiring, recruiting, or referring for a fee an indi-  
8           vidual for employment in the United States, the per-  
9           son or entity shall submit an inquiry using the Sys-  
10          tem to verify the identity and employment authoriza-  
11          tion of—

12                   “(A) an individual with a limited period of  
13                   employment authorization, within 3 business  
14                   days before the date on which such employment  
15                   authorization expires; and

16                   “(B) an individual, not later than 10 days  
17                   after receiving a notification from the Secretary  
18                   requiring the verification of such individual pur-  
19                   suant to subsection (a)(4)(C).

20           “(2) REVERIFICATION PROCEDURES.—The  
21           verification procedures under subsection (b) shall  
22           apply to reverifications under this subsection, except  
23           that employers shall—

24                   “(A) use a form designated by the Sec-  
25                   retary for purposes of this paragraph; and

1           “(B) retain the form in paper, microfiche,  
2           microfilm, electronic, or other format deemed  
3           acceptable by the Secretary, and make it avail-  
4           able for inspection by officers of the Depart-  
5           ment of Homeland Security, the Department of  
6           Justice, or the Department of Labor during the  
7           period beginning on the date the reverification  
8           commences and ending on the later of—

9                   “(i) the date that is 3 years after the  
10                   date of reverification; or

11                   “(ii) the date that is 1 year after the  
12                   date on which the individual’s employment  
13                   is terminated.

14           “(3) LIMITATION ON REVERIFICATION.—Except  
15           as provided in paragraph (1), a person or entity may  
16           not otherwise reverify the identity and employment  
17           authorization of a current employee, including an  
18           employee continuing in employment.

19           “(d) GOOD FAITH COMPLIANCE.—

20                   “(1) IN GENERAL.—Except as otherwise pro-  
21                   vided in this subsection, a person or entity that uses  
22                   the System is considered to have complied with the  
23                   requirements of this section notwithstanding a tech-  
24                   nical failure of the System, or other technical or pro-  
25                   cedural failure to meet such requirement if there

1 was a good faith attempt to comply with the require-  
2 ment.

3 “(2) EXCEPTION FOR FAILURE TO CORRECT  
4 AFTER NOTICE.—Paragraph (1) shall not apply if—

5 “(A) the failure is not de minimis;

6 “(B) the Secretary has provided notice to  
7 the person or entity of the failure, including an  
8 explanation as to why it is not de minimis;

9 “(C) the person or entity has been pro-  
10 vided a period of not less than 30 days (begin-  
11 ning after the date of the notice) to correct the  
12 failure; and

13 “(D) the person or entity has not corrected  
14 the failure voluntarily within such period.

15 “(3) EXCEPTION FOR PATTERN OR PRACTICE  
16 VIOLATORS.—Paragraph (1) shall not apply to a  
17 person or entity that has engaged or is engaging in  
18 a pattern or practice of violations of paragraph  
19 (1)(A) or (2) of section 274A(a).

20 “(4) DEFENSE.—In the case of a person or en-  
21 tity that uses the System for the hiring, recruiting,  
22 or referring for a fee an individual for employment  
23 in the United States, the person or entity shall not  
24 be liable to a job applicant, an employee, the Federal  
25 Government, or a State or local government, under

1 Federal, State, or local criminal or civil law, for any  
2 employment-related action taken with respect to an  
3 employee in good-faith reliance on information pro-  
4 vided by the System. Such person or entity shall be  
5 deemed to have established compliance with its obli-  
6 gations under this section, absent a showing by the  
7 Secretary, by clear and convincing evidence, that the  
8 employer had knowledge that an employee is an un-  
9 authorized alien.

10 “(e) LIMITATIONS.—

11 “(1) NO NATIONAL IDENTIFICATION CARD.—  
12 Nothing in this section shall be construed to author-  
13 ize, directly or indirectly, the issuance or use of na-  
14 tional identification cards or the establishment of a  
15 national identification card.

16 “(2) USE OF RECORDS.—Notwithstanding any  
17 other provision of law, nothing in this section shall  
18 be construed to permit or allow any department, bu-  
19 reau, or other agency of the United States Govern-  
20 ment to utilize any information, database, or other  
21 records assembled under this section for any purpose  
22 other than the verification of identity and employ-  
23 ment authorization of an individual or to ensure the  
24 secure, appropriate, and non-discriminatory use of  
25 the System.

1 “(f) PENALTIES.—

2 “(1) IN GENERAL.—Except as provided in this  
3 subsection, the provisions of subsections (e) through  
4 (g) of section 274A shall apply with respect to com-  
5 pliance with the provisions of this section and pen-  
6 alties for non-compliance for persons or entities that  
7 use the System.

8 “(2) CEASE AND DESIST ORDER WITH CIVIL  
9 MONEY PENALTIES FOR HIRING, RECRUITING, AND  
10 REFERRAL VIOLATIONS.—Notwithstanding the civil  
11 money penalties set forth in section 274A(e)(4), with  
12 respect to a violation of paragraph (1)(A) or (2) of  
13 section 274A(a) by a person or entity that has hired,  
14 recruited, or referred for a fee, an individual for em-  
15 ployment in the United States, a cease and desist  
16 order—

17 “(A) shall require the person or entity to  
18 pay a civil penalty in an amount, subject to  
19 subsection (d), of—

20 “(i) not less than \$2,500 and not  
21 more than \$5,000 for each unauthorized  
22 alien with respect to whom a violation of  
23 either such subsection occurred;

24 “(ii) not less than \$5,000 and not  
25 more than \$10,000 for each such alien in

1 the case of a person or entity previously  
2 subject to one order under this paragraph;  
3 or

4 “(iii) not less than \$10,000 and not  
5 more than \$25,000 for each such alien in  
6 the case of a person or entity previously  
7 subject to more than one order under this  
8 paragraph; and

9 “(B) may require the person or entity to  
10 take such other remedial action as appropriate.

11 “(3) ORDER FOR CIVIL MONEY PENALTY FOR  
12 VIOLATIONS.—With respect to a violation of section  
13 274A(a)(1)(B), the order under this paragraph shall  
14 require the person or entity to pay a civil penalty in  
15 an amount, subject to paragraphs (4), (5), and (6),  
16 of not less than \$1,000 and not more than \$25,000  
17 for each individual with respect to whom such viola-  
18 tion occurred. Failure by a person or entity to utilize  
19 the System as required by law or providing informa-  
20 tion to the System that the person or entity knows  
21 or reasonably believes to be false, shall be treated as  
22 a violation of section 274A(a)(1)(A).

23 “(4) EXEMPTION FROM PENALTY FOR GOOD  
24 FAITH VIOLATION.—

1           “(A) IN GENERAL.—A person or entity  
2           that uses the System is presumed to have acted  
3           with knowledge for purposes of paragraphs  
4           (1)(A) and (2) of section 274A(a) if the person  
5           or entity fails to make an inquiry to verify the  
6           identity and employment authorization of the  
7           individual through the System.

8           “(B) GOOD FAITH EXEMPTION.—In the  
9           case of imposition of a civil penalty under para-  
10          graph (2)(A) with respect to a violation of para-  
11          graph (1)(A) or (2) of section 274A(a) for hir-  
12          ing or continuation of employment or recruit-  
13          ment or referral by a person or entity, and in  
14          the case of imposition of a civil penalty under  
15          paragraph (3) for a violation of section  
16          274A(a)(1)(B) for hiring or recruitment or re-  
17          ferral by a person or entity, the penalty other-  
18          wise imposed may be waived or reduced if the  
19          person or entity establishes that the person or  
20          entity acted in good faith.

21          “(5) MITIGATION ELEMENTS.—For purposes of  
22          paragraphs (2)(A) and (3), when assessing the level  
23          of civil money penalties, in addition to the good faith  
24          of the person or entity being charged, due consider-  
25          ation shall be given to the size of the business, the

1 seriousness of the violation, whether or not the indi-  
2 vidual was an unauthorized alien, and the history of  
3 previous violations.

4 “(6) CRIMINAL PENALTY.—Notwithstanding  
5 section 274A(f)(1) and the provisions of any other  
6 Federal law relating to fine levels, any person or en-  
7 tity that is required to comply with the provisions of  
8 this section and that engages in a pattern or prac-  
9 tice of violations of paragraph (1) or (2) of section  
10 274A(a), shall be fined not more than \$5,000 for  
11 each unauthorized alien with respect to whom such  
12 a violation occurs, imprisoned for not more than 18  
13 months, or both.

14 “(7) ELECTRONIC VERIFICATION COMPENSA-  
15 TION ACCOUNT.—Civil money penalties collected  
16 under this subsection shall be deposited in the Elec-  
17 tronic Verification Compensation Account for the  
18 purpose of compensating individuals for lost wages  
19 as a result of a final nonconfirmation issued by the  
20 System that was based on government error or omis-  
21 sion, as set forth in subsection (b)(4)(F)(ii)(IV).

22 “(8) DEBARMENT.—

23 “(A) IN GENERAL.—If a person or entity  
24 is determined by the Secretary to be a repeat  
25 violator of paragraph (1)(A) or (2) of section

1           274A(a) or is convicted of a crime under sec-  
2           tion 274A, such person or entity may be consid-  
3           ered for debarment from the receipt of Federal  
4           contracts, grants, or cooperative agreements in  
5           accordance with the debarment standards and  
6           pursuant to the debarment procedures set forth  
7           in the Federal Acquisition Regulation.

8           “(B) NO CONTRACT, GRANT, AGREE-  
9           MENT.—If the Secretary or the Attorney Gen-  
10          eral wishes to have a person or entity consid-  
11          ered for debarment in accordance with this  
12          paragraph, and such a person or entity does not  
13          hold a Federal contract, grant or cooperative  
14          agreement, the Secretary or Attorney General  
15          shall refer the matter to the Administrator of  
16          General Services to determine whether to list  
17          the person or entity on the List of Parties Ex-  
18          cluded from Federal Procurement, and if so, for  
19          what duration and under what scope.

20          “(C) CONTRACT, GRANT, AGREEMENT.—If  
21          the Secretary or the Attorney General wishes to  
22          have a person or entity considered for debar-  
23          ment in accordance with this paragraph, and  
24          such person or entity holds a Federal contract,  
25          grant, or cooperative agreement, the Secretary

1 or Attorney General shall advise all agencies or  
2 departments holding a contract, grant, or coop-  
3 erative agreement with the person or entity of  
4 the Government's interest in having the person  
5 or entity considered for debarment, and after  
6 soliciting and considering the views of all such  
7 agencies and departments, the Secretary or At-  
8 torney General may refer the matter to the ap-  
9 propriate lead agency to determine whether to  
10 list the person or entity on the List of Parties  
11 Excluded from Federal Procurement, and if so,  
12 for what duration and under what scope.

13 “(D) REVIEW.—Any decision to debar a  
14 person or entity in accordance with this sub-  
15 section shall be reviewable pursuant to part 9.4  
16 of the Federal Acquisition Regulation.

17 “(9) PREEMPTION.—The provisions of this sec-  
18 tion preempt any State or local law, ordinance, pol-  
19 icy, or rule, including any criminal or civil fine or  
20 penalty structure, relating to the hiring, continued  
21 employment, or status verification for employment  
22 eligibility purposes, of unauthorized aliens, except  
23 that a State, locality, municipality, or political sub-  
24 division may exercise its authority over business li-

1 censing and similar laws as a penalty for failure to  
2 use the System as required under this section.

3 “(g) UNFAIR IMMIGRATION-RELATED EMPLOYMENT  
4 PRACTICES AND THE SYSTEM.—

5 “(1) IN GENERAL.—In addition to the prohibi-  
6 tions on discrimination set forth in section 274B, it  
7 is an unfair immigration-related employment prac-  
8 tice for a person or entity, in the course of utilizing  
9 the System—

10 “(A) to use the System for screening an  
11 applicant prior to the date of hire;

12 “(B) to terminate the employment of an  
13 individual or take any adverse employment ac-  
14 tion with respect to that individual due to a  
15 tentative nonconfirmation issued by the System;

16 “(C) to use the System to screen any indi-  
17 vidual for any purpose other than confirmation  
18 of identity and employment authorization as  
19 provided in this section;

20 “(D) to use the System to verify the iden-  
21 tity and employment authorization of a current  
22 employee, including an employee continuing in  
23 employment, other than reverification author-  
24 ized under subsection (e);

1           “(E) to use the System to discriminate  
2 based on national origin or citizenship status;

3           “(F) to willfully fail to provide an indi-  
4 vidual with any notice required under this title;

5           “(G) to require an individual to make an  
6 inquiry under the self-verification procedures  
7 described in subsection (a)(4)(B) or to provide  
8 the results of such an inquiry as a condition of  
9 employment, or hiring, recruiting, or referring;  
10 or

11           “(H) to terminate the employment of an  
12 individual or take any adverse employment ac-  
13 tion with respect to that individual based upon  
14 the need to verify the identity and employment  
15 authorization of the individual as required by  
16 subsection (b).

17           “(2) PREEMPLOYMENT SCREENING AND BACK-  
18 GROUND CHECK.—Nothing in paragraph (1)(A)  
19 shall be construed to preclude a preemployment  
20 screening or background check that is required or  
21 permitted under any other provision of law.

22           “(3) CIVIL MONEY PENALTIES FOR DISCRIMINA-  
23 TORY CONDUCT.—Notwithstanding section  
24 274B(g)(2)(B)(iv), the penalties that may be im-  
25 posed by an administrative law judge with respect to

1 a finding that a person or entity has engaged in an  
2 unfair immigration-related employment practice de-  
3 scribed in paragraph (1) are—

4 “(A) not less than \$1,000 and not more  
5 than \$4,000 for each individual discriminated  
6 against;

7 “(B) in the case of a person or entity pre-  
8 viously subject to a single order under this  
9 paragraph, not less than \$4,000 and not more  
10 than \$10,000 for each individual discriminated  
11 against; and

12 “(C) in the case of a person or entity pre-  
13 viously subject to more than one order under  
14 this paragraph, not less than \$6,000 and not  
15 more than \$20,000 for each individual discrimi-  
16 nated against.

17 “(4) ELECTRONIC VERIFICATION COMPENSA-  
18 TION ACCOUNT.—Civil money penalties collected  
19 under this subsection shall be deposited in the Elec-  
20 tronic Verification Compensation Account for the  
21 purpose of compensating individuals for lost wages  
22 as a result of a final nonconfirmation issued by the  
23 System that was based on government error or omis-  
24 sion, as set forth in subsection (b)(4)(F)(ii)(IV).

1       “(h) CLARIFICATION.—All rights and remedies pro-  
2 vided under any Federal, State, or local law relating to  
3 workplace rights, including but not limited to back pay,  
4 are available to an employee despite—

5             “(1) the employee’s status as an unauthorized  
6 alien during or after the period of employment; or

7             “(2) the employer’s or employee’s failure to  
8 comply with the requirements of this section.

9       “(i) DEFINITION.—In this section, the term ‘date of  
10 hire’ means the date on which employment for pay or  
11 other remuneration commences.”.

12       (b) CONFORMING AMENDMENT.—The table of con-  
13 tents for the Immigration and Nationality Act is amended  
14 by inserting after the item relating to section 274D the  
15 following:

“Sec. 274E. Requirements for the electronic verification of employment eligi-  
bility.”.

16 **SEC. 302. MANDATORY ELECTRONIC VERIFICATION FOR**  
17 **THE AGRICULTURAL INDUSTRY.**

18       (a) IN GENERAL.—The requirements for the elec-  
19 tronic verification of identity and employment authoriza-  
20 tion described in section 274E of the Immigration and Na-  
21 tionality Act, as inserted by section 301 of this Act, shall  
22 apply to a person or entity hiring, recruiting, or referring  
23 for a fee an individual for agricultural employment in the

1 United States in accordance with the effective dates set  
2 forth in subsection (b).

3 (b) EFFECTIVE DATES.—

4 (1) HIRING.—Subsection (a) shall apply to a  
5 person or entity hiring an individual for agricultural  
6 employment in the United States as follows:

7 (A) With respect to employers having 500  
8 or more employees in the United States on the  
9 date of the enactment of this Act, on the date  
10 that is 6 months after completion of the appli-  
11 cation period described in section 101(c).

12 (B) With respect to employers having 100  
13 or more employees in the United States (but  
14 less than 500 such employees) on the date of  
15 the enactment of this Act, on the date that is  
16 9 months after completion of the application pe-  
17 riod described in section 101(c).

18 (C) With respect to employers having 20  
19 or more employees in the United States (but  
20 less than 100 such employees) on the date of  
21 the enactment of this Act, on the date that is  
22 12 months after completion of the application  
23 period described in section 101(c).

24 (D) With respect to employers having one  
25 or more employees in the United States, (but

1 less than 20 such employees) on the date of the  
2 enactment of this Act, on the date that is 15  
3 months after completion of the application pe-  
4 riod described in section 101(c).

5 (2) RECRUITING AND REFERRING FOR A FEE.—  
6 Subsection (a) shall apply to a person or entity re-  
7 cruiting or referring for a fee an individual for agri-  
8 cultural employment in the United States on the  
9 date that is 12 months after completion of the appli-  
10 cation period described in section 101(c).

11 (3) TRANSITION RULE.—Except as required  
12 under subtitle A of title IV of the Illegal Immigra-  
13 tion Reform and Immigrant Responsibility Act of  
14 1996 (8 U.S.C. 1324a note) (as in effect on the day  
15 before the effective date described in section  
16 303(a)(4)), Executive Order No. 13465 (8 U.S.C.  
17 1324a note; relating to Government procurement),  
18 or any State law requiring persons or entities to use  
19 the E-Verify Program described in section 403(a) of  
20 the Illegal Immigration Reform and Immigrant Re-  
21 sponsibility Act of 1996 (8 U.S.C. 1324a note) (as  
22 in effect on the day before the effective date de-  
23 scribed in section 303(a)(4)), sections 274A and  
24 274B of the Immigration and Nationality Act (8  
25 U.S.C. 1324a and 1324b) shall apply to a person or

1 entity hiring, recruiting, or referring an individual  
2 for employment in the United States until the appli-  
3 cable effective date under this subsection.

4 (4) E-VERIFY VOLUNTARY USERS AND OTHERS  
5 DESIRING EARLY COMPLIANCE.—Nothing in this  
6 subsection shall be construed to prohibit persons or  
7 entities, including persons or entities that have vol-  
8 untarily elected to participate in the E-Verify Pro-  
9 gram described in section 403(a) of the Illegal Im-  
10 migration Reform and Immigrant Responsibility Act  
11 of 1996 (8 U.S.C. 1324a note) (as in effect on the  
12 day before the effective date described in section  
13 303(a)(4)), from seeking early compliance on a vol-  
14 untary basis.

15 (c) RURAL ACCESS TO ASSISTANCE FOR TENTATIVE  
16 NONCONFIRMATION REVIEW PROCESS.—

17 (1) IN GENERAL.—The Secretary of Homeland  
18 Security shall coordinate with the Secretary of Agri-  
19 culture, in consultation with the Commissioner of  
20 Social Security, to create a process for individuals to  
21 seek assistance in contesting a tentative noncon-  
22 firmation as described in section 274E(b)(4)(D) of  
23 the Immigration and Nationality Act, as inserted by  
24 section 301 of this Act, at local offices or service  
25 centers of the U.S. Department of Agriculture.

1           (2) STAFFING AND RESOURCES.—The Sec-  
2           retary of Homeland Security and Secretary of Agri-  
3           culture shall ensure that local offices and service  
4           centers of the U.S. Department of Agriculture are  
5           staffed appropriately and have the resources nec-  
6           essary to provide information and support to individ-  
7           uals seeking the assistance described in paragraph  
8           (1), including by facilitating communication between  
9           such individuals and the Department of Homeland  
10          Security or the Social Security Administration.

11          (3) CLARIFICATION.—Nothing in this sub-  
12          section shall be construed to delegate authority or  
13          transfer responsibility for reviewing and resolving  
14          tentative nonconfirmations from the Secretary of  
15          Homeland Security and the Commissioner of Social  
16          Security to the Secretary of Agriculture.

17          (d) DOCUMENT ESTABLISHING EMPLOYMENT AU-  
18          THORIZATION AND IDENTITY.—In accordance with section  
19          274E(b)(3)(A)(vii) of the Immigration and Nationality  
20          Act, as inserted by section 301 of this Act, and not later  
21          than 12 months after the completion of the application  
22          period described in section 101(c) of this Act, the Sec-  
23          retary of Homeland Security shall recognize documentary  
24          evidence of certified agricultural worker status described  
25          in section 102(a)(2) of this Act as valid proof of employ-

1 ment authorization and identity for purposes of section  
2 274E(b)(3)(A) of the Immigration and Nationality Act,  
3 as inserted by section 301 of this Act.

4 (e) AGRICULTURAL EMPLOYMENT.—For purposes of  
5 this section, the term “agricultural employment” means  
6 agricultural labor or services, as defined by section  
7 101(a)(15)(H)(ii) of the Immigration and Nationality Act  
8 (8 U.S.C. 1101(a)(15)(H)(ii)), as amended by this Act.

9 **SEC. 303. COORDINATION WITH E-VERIFY PROGRAM.**

10 (a) REPEAL.—

11 (1) IN GENERAL.—Subtitle A of title IV of the  
12 Illegal Immigration Reform and Immigrant Respon-  
13 sibility Act of 1996 (8 U.S.C. 1324a note) is re-  
14 pealed.

15 (2) CLERICAL AMENDMENT.—The table of sec-  
16 tions, in section 1(d) of the Illegal Immigration Re-  
17 form and Immigrant Responsibility Act of 1996, is  
18 amended by striking the items relating to subtitle A  
19 of title IV.

20 (3) REFERENCES.—Any reference in any Fed-  
21 eral, State, or local law, Executive order, rule, regu-  
22 lation, or delegation of authority, or any document  
23 of, or pertaining to, the Department of Homeland  
24 Security, Department of Justice, or the Social Secu-  
25 rity Administration, to the E-Verify Program de-

1 scribed in section 403(a) of the Illegal Immigration  
2 Reform and Immigrant Responsibility Act of 1996  
3 (8 U.S.C. 1324a note), or to the employment eligi-  
4 bility confirmation system established under section  
5 404 of the Illegal Immigration Reform and Immig-  
6 rant Responsibility Act of 1996 (8 U.S.C. 1324a  
7 note), is deemed to refer to the employment eligi-  
8 bility confirmation system established under section  
9 274E of the Immigration and Nationality Act, as in-  
10 serted by section 301 of this Act.

11 (4) EFFECTIVE DATE.—This subsection, and  
12 the amendments made by this subsection, shall take  
13 effect on the date that is 30 days after the date on  
14 which final rules are published under section 309(a).

15 (b) FORMER E-VERIFY MANDATORY USERS, IN-  
16 CLUDING FEDERAL CONTRACTORS.—Beginning on the ef-  
17 fective date in subsection (a)(4), the Secretary of Home-  
18 land Security shall require employers required to partici-  
19 pate in the E-Verify Program described in section 403(a)  
20 of the Illegal Immigration Reform and Immigrant Respon-  
21 sibility Act of 1996 (8 U.S.C. 1324a note) by reason of  
22 any Federal, State, or local law, Executive order, rule, reg-  
23 ulation, or delegation of authority, including employers re-  
24 quired to participate in such program by reason of Federal  
25 acquisition laws (and regulations promulgated under those

1 laws, including the Federal Acquisition Regulation), to  
2 comply with the requirements of section 274E of the Im-  
3 migration and Nationality Act, as inserted by section 301  
4 of this Act (and any additional requirements of such Fed-  
5 eral acquisition laws and regulation) in lieu of any require-  
6 ment to participate in the E-Verify Program.

7 (c) FORMER E-VERIFY VOLUNTARY USERS.—Begin-  
8 ning on the effective date in subsection (a)(4), the Sec-  
9 retary of Homeland Security shall provide for the vol-  
10 untary compliance with the requirements of section 274E  
11 of the Immigration and Nationality Act, as inserted by  
12 section 301 of this Act, by employers voluntarily electing  
13 to participate in the E-Verify Program described in sec-  
14 tion 403(a) of the Illegal Immigration Reform and Immi-  
15 grant Responsibility Act of 1996 (8 U.S.C. 1324a note)  
16 before such date.

17 **SEC. 304. FRAUD AND MISUSE OF DOCUMENTS.**

18 Section 1546(b) of title 18, United States Code, is  
19 amended—

20 (1) in paragraph (1), by striking “identification  
21 document,” and inserting “identification document  
22 or document meant to establish employment author-  
23 ization,”;

24 (2) in paragraph (2), by striking “identification  
25 document” and inserting “identification document or

1 document meant to establish employment authoriza-  
2 tion,”; and

3 (3) in the matter following paragraph (3) by in-  
4 serting “or section 274E(b)” after “section  
5 274A(b)”.

6 **SEC. 305. TECHNICAL AND CONFORMING AMENDMENTS.**

7 (a) UNLAWFUL EMPLOYMENT OF ALIENS.—Section  
8 274A of the Immigration and Nationality Act (8 U.S.C.  
9 1324a) is amended—

10 (1) in paragraph (1)(B)(ii) of subsection (a), by  
11 striking “subsection (b).” and inserting “section  
12 274B.”; and

13 (2) in the matter preceding paragraph (1) of  
14 subsection (b), by striking “The requirements re-  
15 ferred” and inserting “Except as provided in section  
16 274E, the requirements referred”.

17 (b) UNFAIR IMMIGRATION-RELATED EMPLOYMENT  
18 PRACTICES.—Section 274B(a)(1) of the Immigration and  
19 Nationality Act (8 U.S.C. 1324b(a)(1)) is amended in the  
20 matter preceding subparagraph (A), by inserting “includ-  
21 ing misuse of the verification system as described in sec-  
22 tion 274E(g)” after “referral for a fee,”.

1 **SEC. 306. PROTECTION OF SOCIAL SECURITY ADMINISTRA-**  
2 **TION PROGRAMS.**

3 (a) FUNDING UNDER AGREEMENT.—Effective for  
4 fiscal years beginning on or after October 1, 2019, the  
5 Commissioner and the Secretary shall ensure that an  
6 agreement is in place which shall—

7 (1) provide funds to the Commissioner for the  
8 full costs of the responsibilities of the Commissioner  
9 with respect to employment eligibility verification,  
10 including under this title and the amendments made  
11 by this title, and including—

12 (A) acquiring, installing, and maintaining  
13 technological equipment and systems necessary  
14 for the fulfillment of such responsibilities, but  
15 only that portion of such costs that are attrib-  
16 utable exclusively to such responsibilities; and

17 (B) responding to individuals who contest  
18 a tentative nonconfirmation or administratively  
19 appeal a final nonconfirmation provided with  
20 respect to employment eligibility verification;

21 (2) provide such funds annually in advance of  
22 the applicable quarter based on an estimating meth-  
23 odology agreed to by the Commissioner and the Sec-  
24 retary (except in such instances where the delayed  
25 enactment of an annual appropriation may preclude  
26 such quarterly payments); and

1           (3) require an annual accounting and reconcili-  
2           ation of the actual costs incurred and the funds pro-  
3           vided under the agreement, which shall be reviewed  
4           by the Inspectors General of the Social Security Ad-  
5           ministration and the Department of Homeland Secu-  
6           rity.

7           (b) CONTINUATION OF EMPLOYMENT VERIFICATION  
8           IN ABSENCE OF TIMELY AGREEMENT.—In any case in  
9           which the agreement required under subsection (a) for any  
10          fiscal year beginning on or after October 1, 2019, has not  
11          been reached as of October 1 of such fiscal year, the latest  
12          agreement described in such subsection shall be deemed  
13          in effect on an interim basis for such fiscal year until such  
14          time as an agreement required under subsection (a) is sub-  
15          sequently reached, except that the terms of such interim  
16          agreement shall be modified to adjust for inflation and any  
17          increase or decrease in the volume of requests under the  
18          employment eligibility verification system. In any case in  
19          which an interim agreement applies for any fiscal year  
20          under this subsection, the Commissioner and the Sec-  
21          retary shall, not later than October 1 of such fiscal year,  
22          notify the Committee on Ways and Means, the Committee  
23          on the Judiciary, and the Committee on Appropriations  
24          of the House of Representatives and the Committee on  
25          Finance, the Committee on the Judiciary, and the Com-

1 mittee on Appropriations of the Senate of the failure to  
2 reach the agreement required under subsection (a) for  
3 such fiscal year. Until such time as the agreement re-  
4 quired under subsection (a) has been reached for such fis-  
5 cal year, the Commissioner and the Secretary shall, not  
6 later than the end of each 90-day period after October  
7 1 of such fiscal year, notify such Committees of the status  
8 of negotiations between the Commissioner and the Sec-  
9 retary in order to reach such an agreement.

10 **SEC. 307. REPORT ON THE IMPLEMENTATION OF THE**  
11 **ELECTRONIC EMPLOYMENT VERIFICATION**  
12 **SYSTEM.**

13 Not later than 24 months after the date on which  
14 final rules are published under section 309(a), and annu-  
15 ally thereafter, the Secretary shall submit to Congress a  
16 report that includes the following:

17 (1) An assessment of the accuracy rates of the  
18 responses of the electronic employment verification  
19 system established under section 274E of the Immi-  
20 gration and Nationality Act, as inserted by section  
21 301 of this Act (referred to in this section as the  
22 “System”), including tentative and final noncon-  
23 firmation notices issued to employment-authorized  
24 individuals and confirmation notices issued to indi-  
25 viduals who are not employment-authorized.

1           (2) An assessment of any challenges faced by  
2 persons or entities (including small employers) in  
3 utilizing the System.

4           (3) An assessment of any challenges faced by  
5 employment-authorized individuals who are issued  
6 tentative or final nonconfirmation notices.

7           (4) An assessment of the incidence of unfair  
8 immigration-related employment practices, as de-  
9 scribed in section 274E(g) of the Immigration and  
10 Nationality Act, as inserted by section 301 of this  
11 Act, related to the use of the System.

12           (5) An assessment of the photo matching and  
13 other identity authentication tools, as described in  
14 section 274E(a)(4) of the Immigration and Nation-  
15 ality Act, as inserted by section 301 of this Act, in-  
16 cluding—

17                   (A) an assessment of the accuracy rates of  
18 such tools;

19                   (B) an assessment of the effectiveness of  
20 such tools at preventing identity fraud and  
21 other misuse of identifying information;

22                   (C) an assessment of any challenges faced  
23 by persons, entities, or individuals utilizing such  
24 tools; and

1 (D) an assessment of operation and main-  
2 tenance costs associated with such tools.

3 (6) A summary of the activities and findings of  
4 the U.S. Citizenship and Immigrations Services E-  
5 Verify Monitoring and Compliance Branch, or any  
6 successor office, including—

7 (A) the number, types and outcomes of au-  
8 dits, investigations, and other compliance activi-  
9 ties initiated by the Branch in the previous  
10 year;

11 (B) the capacity of the Branch to detect  
12 and prevent violations of section 274E(g) of the  
13 Immigration and Nationality Act, as inserted by  
14 this Act; and

15 (C) an assessment of the degree to which  
16 persons and entities misuse the System, includ-  
17 ing—

18 (i) use of the System before an indi-  
19 vidual's date of hire;

20 (ii) failure to provide required notifi-  
21 cations to individuals;

22 (iii) use of the System to interfere  
23 with or otherwise impede individuals' as-  
24 sertions of their rights under other laws;  
25 and

1 (iv) use of the System for unauthor-  
2 ized purposes; and

3 (7) An assessment of the impact of implementa-  
4 tion of the System in the agricultural industry and  
5 the use of the verification system in agricultural in-  
6 dustry hiring and business practices.

7 **SEC. 308. MODERNIZING AND STREAMLINING THE EMPLOY-**  
8 **MENT ELIGIBILITY VERIFICATION PROCESS.**

9 Not later than 12 months after the date of the enact-  
10 ment of this Act, the Secretary, in consultation with the  
11 Commissioner, shall submit to Congress a plan to mod-  
12 ernize and streamline the employment eligibility  
13 verification process that shall include—

14 (1) procedures to allow persons and entities to  
15 verify the identity and employment authorization of  
16 newly hired individuals where the in-person, physical  
17 examination of identity and employment authoriza-  
18 tion documents is not practicable;

19 (2) a proposal to create a simplified employ-  
20 ment verification process that allows employers that  
21 utilize the employment eligibility verification system  
22 established under section 274E of the Immigration  
23 and Nationality Act, as inserted by section 301 of  
24 this Act, to verify the identity and employment au-  
25 thorization of individuals without also having to

1 complete and retain Form I–9, Employment Eligi-  
2 bility Verification, or any subsequent replacement  
3 form; and

4 (3) any other proposal that the Secretary deter-  
5 mines would simplify the employment eligibility  
6 verification process without compromising the integ-  
7 rity or security of the system.

8 **SEC. 309. RULEMAKING AND PAPERWORK REDUCTION ACT.**

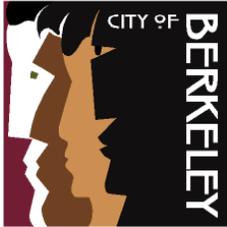
9 (a) IN GENERAL.—Not later than 180 days prior to  
10 the end of the application period defined in section 101(c)  
11 of this Act, the Secretary shall publish in the Federal Reg-  
12 ister proposed rules implementing this title and the  
13 amendments made by this title. The Secretary shall final-  
14 ize such rules not later than 180 days after the date of  
15 publication.

16 (b) PAPERWORK REDUCTION ACT.—

17 (1) IN GENERAL.—The requirements under  
18 chapter 35 of title 44, United States Code, (com-  
19 monly known as the “Paperwork Reduction Act”) shall  
20 apply to any action to implement this title or  
21 the amendments made by this title.

22 (2) ELECTRONIC FORMS.—All forms designated  
23 or established by the Secretary that are necessary to  
24 implement this title and the amendments made by  
25 this title shall be made available in paper and elec-





Office of the Mayor

CONSENT CALENDAR  
February 11, 2020

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín, Vice-Mayor Sophie Hahn, and Councilmembers Ben Bartlett and Kate Harrison

Subject: Support of HR 5609 - Homelessness Emergency Declaration Act

RECOMMENDATION

Adopt a Resolution supporting House Resolution (HR) 5609, the Homelessness Emergency Declaration Act. Send a copy of the Resolution to Representatives Josh Harder and Barbara Lee, Senators Dianne Feinstein and Kamala Harris, and President Trump.

BACKGROUND

Homelessness has increased across the nation with a significant proportion of this population unsheltered. Berkeley has seen a 14% increase in homelessness between 2017 and 2019. Alameda County saw a 43% increase during the same timeframe, while California saw a 16% increase between 2018 and 2019. Within California's homeless population 69% are unsheltered, including 79% in Alameda County and 73% in Berkeley.

Homelessness presents a multitude of problems and impacts many. It is estimated that homelessness can lead to a life expectancy that is 36 years lower than the national average. A survey of homeless individuals conducted by the University of California, San Francisco found that despite the group having a median age of 58, their health symptoms were typical of people in their 70-90s. In Berkeley, 42% of respondents in the 2019 point-in-time count reported having a psychiatric emotional condition and 41% reported having at least one disabling condition. Many people do not have access to adequate sanitation facilities, further perpetuating the risk of negative health and environmental impacts.

President Donald Trump has frequently raised the issue of homelessness, especially in California. Over the past three months, the President has made fourteen tweets relating to homelessness, with thirteen of them explicitly mentioning California or San Francisco. The President has stated that if governors ask for help from the federal government, he will provide the resources needed to address homelessness.

House Resolution (HR) 5609, introduced by U.S. Representative Josh Harder, allows Governors to request a federal emergency declaration in order to obtain federal resources, similar to the process for declaring an emergency after natural disasters.

Specifically, such a declaration would allow federal agencies to provide resources to state and local agencies relating to housing, food, transportation, mental health, and job training.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

Not applicable.

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

- 1: Resolution
- 2: Text of HR 5609

RESOLUTION NO. ##,###-N.S.

IN SUPPORT OF HR 5609 – THE HOMELESS EMERGENCY DECLARATION ACT

WHEREAS, rates of homelessness have increased across the nation over the past few years, including a 14% increase in Berkeley and 43% increase in Alameda County between 2017-2019 and a 16% increase in California between 2018-2019; and

WHEREAS, 69% of California's homeless population is unsheltered, including 79% in Alameda County and 73% in Berkeley; and

WHEREAS, people experiencing homelessness can see a life expectancy that is 36 years shorter than the national average; and

WHEREAS, mental health and disability is prevalent among those experiencing homelessness, with 42% of Berkeley's homeless population reporting having a mental health issue and 41% a disabling condition, according to the 2019 point-in-time count; and

WHEREAS, many people do not have access to adequate sanitation facilities, further perpetuating the risk of negative health and environmental impacts; and

WHEREAS, the issue of homelessness has become a national issue, with President Donald Trump having tweeted 14 times about homelessness between October 2019 and January 2020, with 13 of those tweets explicitly mentioning California or San Francisco; and

WHEREAS, the President has stated that he will be willing to provide federal assistance if governors ask the federal government for help; and

WHEREAS, House Resolution (HR) 5609, the Homeless Emergency Declaration Act, introduced by U.S. Representative Josh Harder, allows Governors to request a federal emergency declaration in order to obtain federal resources, similar to the process for declaring an emergency after natural disasters; and

WHEREAS, the bill would allow federal agencies to provide resources to state and local agencies relating to housing, food, transportation, mental health, and job training.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby supports HR 5609, the Homeless Emergency Declaration Act.

BE IT FURTHER RESOLVED that copies of this Resolution be sent to Representatives Josh Harder and Barbara Lee, Senators Diane Feinstein and Kamala Harris, and President Donald Trump.

116TH CONGRESS  
2D SESSION

# H. R. 5609

To authorize the President to declare a homelessness emergency, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 15, 2020

Mr. HARDER of California introduced the following bill; which was referred to the Committee on the Budget, and in addition to the Committees on Financial Services, and Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To authorize the President to declare a homelessness emergency, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Homelessness Emer-  
5 gency Declaration Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) Homelessness in the Central Valley and  
2 across the country is a threat to public health and  
3 safety.

4 (2) One-third of people in the United States ex-  
5 perience homelessness are families with children.

6 (3) 1.2 million children under age 6 experience  
7 homelessness.

8 (4) Sixty-nine percent of California's homeless  
9 population is unsheltered.

10 (5) There are 12,396 homeless children and  
11 11,000 homeless veterans in California.

12 (6) One in 5 California Community College stu-  
13 dents is homeless.

14 (7) The rate of increase in homelessness is  
15 cause for national concern and action.

16 (8) Incidences of homelessness grew 14 percent  
17 in California between 2014 and 2018.

18 (9) On a given day, 40,000 U.S. military vet-  
19 erans experience some form of homelessness.

20 (10) The experience of homelessness is dam-  
21 aging to a child's mental health and development, as  
22 evidenced by the fact that 40 percent of homeless  
23 children experience mental health challenges.

24 (11) Homelessness is a deadly condition, de-  
25 creasing life expectancy by up to 36 years.

1 **SEC. 3. ASSISTANCE FOR HOMELESSNESS EMERGENCY**  
2 **DECLARATION.**

3 (a) IN GENERAL.—Upon the request of a Governor,  
4 or other appropriate agency, of a State under subsection  
5 (b), the President may declare a homelessness emergency.

6 (b) REQUEST FROM GOVERNOR.—The Governor, or  
7 other appropriate agency, of a State that is or will be af-  
8 fected by a significant number of or increase in the num-  
9 ber of homeless individuals may request a declaration  
10 under subsection (a).

11 (c) ASSISTANCE.—If the President declares a home-  
12 lessness emergency under subsection (a), the President,  
13 acting through the Federal Emergency Management  
14 Agency and other appropriate Federal agencies, may pro-  
15 vide homelessness emergency assistance, including housing  
16 vouchers and increases in fair market rents under section  
17 8 of the United States Housing Assistance Act of 1937  
18 (42 U.S.C. 1437f), to States and local communities that  
19 are or will be affected by the homelessness emergency, in-  
20 cluding resources for establishing temporary or permanent  
21 homeless shelters, emergency food assistance, transpor-  
22 tation, access to physical and behavioral healthcare, and  
23 access to Federal employment and job training programs.

24 (d) AUTHORIZATION OF APPROPRIATIONS.—There  
25 are authorized to be appropriated such sums as may be  
26 necessary to carry out this Act.

1 **SEC. 4. BUDGET ADJUSTMENT FOR HOMELESS EMER-**  
2 **GENCY ASSISTANCE.**

3 Section 251(b)(2) of the Balanced Budget and Emer-  
4 gency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2))  
5 is amended by adding at the end the following:

6 “(H) HOMELESS EMERGENCY ASSIST-  
7 ANCE.—

8 “(i) If, for any fiscal year, appropria-  
9 tions for discretionary accounts are en-  
10 acted that Congress designates as being  
11 for homelessness emergency assistance in  
12 statute, the adjustment for a fiscal year  
13 shall be the total of such appropriations  
14 for the fiscal year in discretionary accounts  
15 designated as being for homelessness emer-  
16 gency assistance.

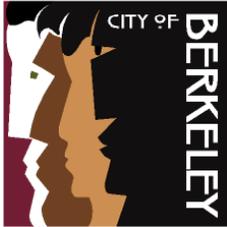
17 “(ii) For purposes of this subpara-  
18 graph, the term ‘homelessness emergency  
19 assistance’ means assistance provided  
20 under a determination under section 2 of  
21 the Homelessness Emergency Declaration  
22 Act.

23 “(iii) Appropriations considered home-  
24 lessness emergency assistance under this  
25 subparagraph in a fiscal year shall not be

5

1 eligible for adjustments under subpara-  
2 graph (A) for the fiscal year.”.

○



Office of the Mayor

CONSENT CALENDAR  
February 11, 2020

To: Members of the City Council  
From: Mayor Jesse Arreguin  
Subject: Excused Absence for Vice-Mayor Sophie Hahn

RECOMMENDATION

Excuse Vice-Mayor Sophie Hahn from the January 28, 2020 Council meeting due to illness.

FINANCIAL IMPLICATIONS

None

BACKGROUND

Pursuant to the City Charter, Article V, § 19, the City Council must approve an absence by a Councilmember from a meeting in order for that absence to be considered excused. Specifically, it states:

*If the Mayor or any member of the Council is absent from one or more regular meetings of the Council during any calendar month, unless excused by the Council in order to attend to official business of the City, or unless excused by the Council as a result of illness from attending no more than two regular meetings in any calendar year, he or she shall be paid for each regular meeting attended during such months in an amount equal to the monthly remuneration divided by the number of regular meetings held during such month.*

Vice-Mayor Hahn was unable to provide a 72 hour notice of her absence from the January 28, 2020 Council meeting due to an unforeseen illness. This item requests that her absence be excused.

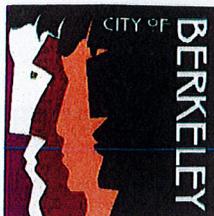
ENVIRONMENTAL SUSTAINABILITY

Not applicable

CONTACT PERSON

Mayor Jesse Arreguin 510-981-7100





Office of the Mayor

## REVISED AGENDA MATERIAL

**Meeting Date:** February 11, 2020

**Item Description:** Repealing and Reenacting BMC Chapter 13.104, Wage Theft Prevention

**Submitted by:** Mayor Jesse Arreguin

Since amendments to the Wage Theft Prevention Ordinance (BMC Chapter 13.104) were presented to Council for first reading, staff in the Planning Department, City Attorney's Office and HHCS have reviewed the language and have several identified legal and implementation issues. As a result of their review, they have recommended a number of changes.

Clean and redline copies of the proposed ordinance are attached. The revisions are as follows:

- **BMC 13.104.010-.020:** These changes are technical revisions to clarify the findings and definitions.
- **BMC 13.104.030:** Kept the substance of the Pay Transparency Acknowledgement provisions but attempted to simplify and clarify the trigger for compliance, which is now required prior to the issuance of any building permit.
- **BMC 13.104.040:** Changed the trigger date for submitting a post-project Pay Transparency Attestation to 10 days after the approval of the final inspection of a Project and made other clarifying revisions.
- **BMC 13.104.050:** These are minor clarifying revisions.
- **BMC 13.104.060-.070:** Removed a provision that would allow the City to withhold issuance of a Certificate of Occupancy based on a failure to comply with the ordinance, because the Building Official has a mandatory duty to issue a Certificate if the requirements of the Building Standards Code are met. We have added provisions making the requirements of the ordinance to be a condition of approval of any Use Permit or Zoning Certificate, and allowing enforcement of the ordinance via a private right of action. We have also deleted the earlier version of BMC 13.104.060, which requires the City to make findings of compliance with the ordinance. HHCS and Planning do not believe they have the ability to make such findings at current staffing levels.

ORDINANCE NO. 7,668-N.S.

REPEALING AND REENACTING BERKELEY MUNICIPAL CODE CHAPTER 13.104,  
WAGE THEFT PREVENTION

Section 1. That Berkeley Municipal Code Chapter 13.104 is hereby repealed and reenacted as follows:

**Chapter 13.104 WAGE THEFT PREVENTION**

**13.104.010 Findings.**

A. The City of Berkeley is committed to protecting the public health, safety and welfare. The construction industry involves unique labor standards compliance challenges. Construction workers who do not receive all of their wages and mandatory benefits are likely to discover that despite the best efforts of State enforcement officials, many employees continue to be victims of wage theft because they are unaware of their rights or the State lacks adequate resources to advocate on their behalf. General contractors and Developer/Owners who receive City-issued permits and licenses and who benefit from the construction workers' labor may disclaim responsibility for making underpaid workers whole.

B. Testimony presented to the State of California's "Little Hoover" Commission stated that existing studies suggest that "the underground economy" is at least a \$10 billion problem in California. Statewide, the construction industry is the industry with the second highest level of labor standards violations (as measured by State Labor Commissioner penalty assessments), surpassed only by the restaurant industry. Deputy Labor Commissioners conducted 985 inspections in the private construction industry in 2012-13, yielding 595 citations that assessed \$5.3 million in penalties. Enforcement actions, however, are dwarfed by the number of contractors and projects in California, including projects in Berkeley. Over 300,000 state-licensed contractors performed about \$48 billion worth of private construction work in the State in 2014. The mismatch between the resources of the State and the scope of the issue of fundamental wage projections through disclosure and transparency requires the involvement of local government police powers.

C. Assembly Bill 469, also known as the Wage Theft Protection Act of 2011, went into effect on January 1, 2012, adding section 2810.5 to the Labor Code. The act requires that all employers provide each employee with a written notice containing specified information at the time of hire.

D. This Chapter will ensure compliance with the Wage Theft Protection Act of 2011 by requiring confirmation by owners, contractors and subcontractors of the rate of pay and other legally required information ~~regarding mandatory and voluntary fringe benefits~~ pursuant to Labor Code section 2810.5.

**13.104.020 Definitions.**

Whenever used in this chapter, the following terms shall have the meanings set forth

below.

A. "City" ~~shall mean~~means the City of Berkeley.

~~B. "Completion of the project" means that construction is complete and the project is eligible for a Certificate of Occupancy or Temporary Certificate of Occupancy.~~

B. "Community Workforce Agreement" (CWA), Resolution No. 68,299-N.S., means an agreement in effect between a contractor and the City of Berkeley wherein capital improvement projects will be performed solely by union labor.

C. "Contractor" ~~shall mean~~means the prime contractor for the Project.

D. "Labor Commissioner" ~~shall mean~~means the Office of the Labor Commissioner within the State of California's Department of Industrial Regulations.

E. ~~"Permit Applicant" shall mean Owner, developer~~Permittee" means any property owner, property owner's authorized agent, or Contractor~~licensed contractor who applied for the~~obtains a building permit for ~~the~~a Project.

~~"Owner" shall mean the person or persons, firm, corporation or partnership exercising ownership of the Project.~~

F. ~~"Project" shall mean a new construction project~~"Project" means a newly constructed building of greater than 30,000 square feet that is not subject to local, state or federal prevailing wage requirements or does not have a valid Project Labor or Community Workforce Agreement.

~~G. "Project construction employees" shall mean employees of the Contractor or Subcontractor.~~

G. "Project Labor Agreement" (PLA) means an agreement in effect between a contractor and the building and construction trades wherein construction work performed on a specific project will be performed solely by union labor.

H. "Qualifying Subcontractor" ~~shall mean~~means a subcontractor of any tier whose portion of the work exceeds \$100,000 or one percent (1%) of the value of the construction cost of the Project.

I. "Responsible Representative" ~~shall mean~~means an officer (if a corporation), general partner (if a partnership or a limited partnership), managing member (if a limited liability company)), or ~~qualifying person~~Qualifying Person associated with ~~the Owner, contractor and/a Contractor or subcontractor. A qualifying person~~Qualifying Subcontractor. "Qualifying Person" is defined in Section 7068 of the California Business and Professions Code.

**13.104.030 Pay Transparency ~~Acknowledgments from Permit Applicant, Contractor, and Qualifying Subcontractor~~Acknowledgment.**

~~Within 30 days of~~Prior to the issuance of a building permit, ~~the Permit Applicant shall provide to the City a Permit Applicant Pay Transparency Acknowledgment on a form approved by the City for this purpose. The form shall include an attestation under penalty of perjury under the laws of the State of California by~~any Project subject to this Chapter:

A. ~~A Responsible Representative of the Permit Applicant/Permittee shall certify under penalty of perjury that: (i) the Permit Applicant/Permittee has reviewed Chapter 13.104 of the Berkeley Municipal Code; and (ii) following Project completion, if the City cannot make a finding of compliance with the provisions of this Chapter pursuant to section 13.104.060, the Permit Applicant/2) the Permittee will be responsible for demonstrating either (a) compliance with Labor Code sections 226 and 2810.5 or (b) the existence of a Labor Payment or a Lien Release Bond(s) pursuant to 13.104.070(B).compliance with this Chapter.~~

B. ~~Within 30 days of the issuance of a building permit if the Contractor(s) and Qualifying Subcontractors have been selected by that date, but in any event no later than the Contractor or Qualifying Subcontractor's first day of work on the Project, for each Contractor and Qualifying Subcontractor, the Permit Applicant/The Permittee shall provide to the City a Contractor Pay Transparency Acknowledgment on a form approved by the City for this purpose. On each Contractor Pay Transparency Acknowledgment, aA Responsible Representative of the Contractor or Qualifying Subcontractor must attest/Permittee shall certify under penalty of perjury under the laws of the State of California, that: (i) the Contractor orand all Qualifying Subcontractor has reviewedSubcontractors performing work on the Project will comply with Chapter 13.104 of the Berkeley Municipal Code; and (ii) either with Labor Code sections 226(a) and 2810.5 for each employee who works on the Project-construction employees will receive Labor Code Section 2810.5 compliant notices and Labor Code Section 226(a) compliant itemized wage statements, or (b) Project construction employees meet one or more of the criteria of Labor Code section 2810.5(c).~~

### **13.104.040 Pay Transparency Attestations Following Project Completion.**

Within 10 days of the ~~completion~~approved final inspection of theany Project, ~~subject to this Chapter, each Permittee shall provide to the City~~ for each Contractor and Qualifying Subcontractor, ~~Permit Applicant shall provide to the City~~ a Pay Transparency Attestation on a form approved by the City ~~for this purpose~~. On each Pay Transparency Attestation, a Responsible Representative of the Contractor or Qualifying Subcontractor ~~must~~shall attest under penalty of perjury ~~under the laws of the State of California~~ that the Contractor or Qualifying Subcontractor complied with Chapter 13.104 of the Berkeley Municipal Code ~~The City shall~~and Labor Code sections 226(a) and 2810.5 for each employee who performed work on the Project. The City will maintain Pay Transparency Attestation forms for period of at least three years after their date of receipt by the City.; ~~and (ii) either (a) Project construction employees received complete and accurate information pursuant to Labor Code Sections 226 and 2810.5, or (b) Project construction employees met one or more of the criteria of Labor Code section 2810.5(c).~~

### **13.104.050 Posting of Ordinance.**

Each day work is performed on the Project, ~~the Applicant~~each Permittee shall post, and keep posted in a conspicuous location where it may be easily read by ~~Project construction~~ employees during the hours of the workday, a notice that: (A) contains the text of Chapter 13.104 of the Berkeley Municipal Code; (B) explains that workers can report violations of Labor Code sections 226 and 2810.5 to the Labor Commissioner of the State of California; and (C) provides current contact information, including office address,

telephone number, and email address of the Labor Commissioner of the State of California.

**~~13.104.060 Determination of Construction Pay Transparency Compliance.~~**

~~Prior to approval of a Certificate of Occupancy for the Project, the City shall make a finding of compliance with the provisions of this Chapter. Such finding shall be issued if:~~

~~(i) — the City determines after review of the information provided pursuant to sections 13.104.030 and 13.104.040 that the Permit Applicant, Contractor and all Qualifying Subcontractor(s) have complied with the provisions of this Chapter; and~~

~~(ii) — the City has not received any information that a complaint is pending before the Labor Commissioner, or that the Labor Commissioner has issued a final order of enforcement, regarding violations of Labor Code Sections 226 or 2810.5 by any Contractor or Qualifying Subcontractor at the Project.~~

**~~13.104.070 Issuance of a Certificate of Occupancy.~~**

~~A. — The City shall issue a Certificate of Occupancy to the Permit Applicant if it makes a finding of Construction Pay Transparency Compliance pursuant to 13.104.060 and all requirements of the building code are met.~~

~~B. — If the City cannot make a finding of compliance with the provisions of this Chapter pursuant to section 13.104.060, the City will approve a Certificate of Occupancy only if:~~

~~(i) — the Permit Applicant demonstrates that the Permit Applicant, Contractor, and all Qualifying Subcontractors have complied with Labor Code sections 226 and 2810.5; or~~

~~(ii) — the Permit Applicant demonstrates the existence of a Labor Payment or a Lien Release Bond(s) for the Project. The bond shall be in an amount equal to 20 percent of the combined value of the contract(s) of all Contractor(s) and/or Qualifying Subcontractor(s) for which the City lacks Pay Transparency Acknowledgment or Attestations, or 125 percent of the amount of any Project-related, Labor Commissioner issued Civil Wage~~

**~~13.104.080 Private Right of Action.~~**

**13.104.060 Conditions of Approval.**

The requirements of Sections 13.104.030 through 13.104.050 shall be included as conditions of approval of any Use Permit or Zoning Certificate for any Project that is subject to this Chapter. Failure to comply with the requirements of any provision of this Chapter shall be grounds for issuance of an administrative citation under Chapter 1.28 and/or the revocation or modification of any Use Permit issued for the Project under Chapter 23B.60.

**13.104.070 Private Right of Action.**

A. Any person who suffers damages as a result of a violation of this Chapter shall have the right to file an action for injunctive relief and/or damages. Treble damages may be awarded for willful failure to comply with the requirements of this Chapter. In any action brought under this chapter, the court may award reasonable attorneys' fees to any prevailing party.

B. Nothing in this chapter shall be interpreted to authorize a right of action against the City.

**13.104.090080 City Manager Regulations.**

The City Manager may promulgate regulations for the administration and enforcement of this Chapter.

**13.104.100090 Severability.**

If any word, phrase, sentence, part, section, subsection, or other portion of this chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

ORDINANCE NO. 7,668-N.S.

REPEALING AND REENACTING BERKELEY MUNICIPAL CODE CHAPTER 13.104,  
WAGE THEFT PREVENTION

Section 1. That Berkeley Municipal Code Chapter 13.104 is hereby repealed and reenacted as follows:

**Chapter 13.104 WAGE THEFT PREVENTION**

**13.104.010 Findings.**

A. The City of Berkeley is committed to protecting the public health, safety and welfare. The construction industry involves unique labor standards compliance challenges. Construction workers who do not receive all of their wages and mandatory benefits are likely to discover that despite the best efforts of State enforcement officials, many employees continue to be victims of wage theft because they are unaware of their rights or the State lacks adequate resources to advocate on their behalf. General contractors and Developer/Owners who receive City-issued permits and licenses and who benefit from the construction workers' labor may disclaim responsibility for making underpaid workers whole.

B. Testimony presented to the State of California's "Little Hoover" Commission stated that existing studies suggest that "the underground economy" is at least a \$10 billion problem in California. Statewide, the construction industry is the industry with the second highest level of labor standards violations (as measured by State Labor Commissioner penalty assessments), surpassed only by the restaurant industry. Deputy Labor Commissioners conducted 985 inspections in the private construction industry in 2012-13, yielding 595 citations that assessed \$5.3 million in penalties. Enforcement actions, however, are dwarfed by the number of contractors and projects in California, including projects in Berkeley. Over 300,000 state-licensed contractors performed about \$48 billion worth of private construction work in the State in 2014. The mismatch between the resources of the State and the scope of the issue of fundamental wage projections through disclosure and transparency requires the involvement of local government police powers.

C. Assembly Bill 469, also known as the Wage Theft Protection Act of 2011, went into effect on January 1, 2012, adding section 2810.5 to the Labor Code. The act requires that all employers provide each employee with a written notice containing specified information at the time of hire.

D. This Chapter will ensure compliance with the Wage Theft Protection Act of 2011 by requiring confirmation by owners, contractors and subcontractors of the rate of pay and other legally required information pursuant to Labor Code section 2810.5.

**13.104.020 Definitions.**

Whenever used in this chapter, the following terms shall have the meanings set forth below.

- A. "City" means the City of Berkeley.
- B. "Community Workforce Agreement" (CWA), Resolution No. 68,299-N.S., means an agreement in effect between a contractor and the City of Berkeley wherein capital improvement projects will be performed solely by union labor.
- C. "Contractor" means the prime contractor for the Project.
- D. "Labor Commissioner" means the Office of the Labor Commissioner within the State of California's Department of Industrial Regulations.
- E. "Permittee" means any property owner, property owner's authorized agent, or licensed contractor who obtains a building permit for a Project.
- F. "Project" means a newly constructed building of greater than 30,000 square feet that is not subject to local, state or federal prevailing wage requirements or does not have a valid Project Labor or Community Workforce Agreement.
- G. "Project Labor Agreement" (PLA) means an agreement in effect between a contractor and the building and construction trades wherein construction work performed on a specific project will be performed solely by union labor.
- H. "Qualifying Subcontractor" means a subcontractor of any tier whose portion of the work exceeds \$100,000 or one percent (1%) of the value of the construction cost of the Project.
- I. "Responsible Representative" means an officer (if a corporation), general partner (if a partnership or a limited partnership), managing member (if a limited liability company), or a Qualifying Person associated with a Contractor or Qualifying Subcontractor. "Qualifying Person" is defined in Section 7068 of the California Business and Professions Code.

**13.104.030 Pay Transparency Acknowledgment.**

Prior to the issuance of a building permit for any Project subject to this Chapter:

- A. A Responsible Representative of the Permittee shall certify under penalty of perjury that: (1) the Permittee has reviewed Chapter 13.104 of the Berkeley Municipal Code; and (2) the Permittee will be responsible for demonstrating compliance with this Chapter.
- B. The Permittee shall provide to the City a Contractor Pay Transparency Acknowledgment on a form approved by the City for this purpose. A Responsible Representative of the Permittee shall certify under penalty of perjury that the Contractor and all Qualifying Subcontractors performing work on the Project will comply with Chapter 13.104 of the Berkeley Municipal Code and with Labor Code sections 226(a) and 2810.5 for each employee who works on the Project.

**13.104.040 Pay Transparency Attestations Following Project Completion.**

Within 10 days of the approved final inspection of any Project subject to this Chapter, each Permittee shall provide to the City for each Contractor and Qualifying Subcontractor a Pay Transparency Attestation on a form approved by the City. On each Pay

Transparency Attestation, a Responsible Representative of the Contractor or Qualifying Subcontractor shall attest under penalty of perjury that the Contractor or Qualifying Subcontractor complied with Chapter 13.104 of the Berkeley Municipal Code and Labor Code sections 226(a) and 2810.5 for each employee who performed work on the Project. The City will maintain Pay Transparency Attestation forms for period of at least three years after their date of receipt by the City.

**13.104.050 Posting of Ordinance.**

Each day work is performed on the Project, each Permittee shall post, and keep posted in a conspicuous location where it may be easily read by employees during the hours of the workday, a notice that: (A) contains the text of Chapter 13.104 of the Berkeley Municipal Code; (B) explains that workers can report violations of Labor Code sections 226 and 2810.5 to the Labor Commissioner of the State of California; and (C) provides current contact information, including office address, telephone number, and email address of the Labor Commissioner of the State of California.

**13.104.060 Conditions of Approval.**

The requirements of Sections 13.104.030 through 13.104.050 shall be included as conditions of approval of any Use Permit or Zoning Certificate for any Project that is subject to this Chapter. Failure to comply with the requirements of any provision of this Chapter shall be grounds for issuance of an administrative citation under Chapter 1.28 and/or the revocation or modification of any Use Permit issued for the Project under Chapter 23B.60.

**13.104.070 Private Right of Action.**

A. Any person who suffers damages as a result of a violation of this Chapter shall have the right to file an action for injunctive relief and/or damages. Treble damages may be awarded for willful failure to comply with the requirements of this Chapter. In any action brought under this chapter, the court may award reasonable attorneys' fees to any prevailing party.

B. Nothing in this chapter shall be interpreted to authorize a right of action against the City.

**13.104.080 City Manager Regulations.**

The City Manager may promulgate regulations for the administration and enforcement of this Chapter.

**13.104.090 Severability.**

If any word, phrase, sentence, part, section, subsection, or other portion of this chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or

invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

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WAGE THEFT PREVENTION

Section 1. That Berkeley Municipal Code Chapter 13.104 is hereby repealed and reenacted as follows:

**Chapter 13.104**  
**WAGE THEFT PREVENTION**

Sections:

- 13.104.010 Findings.
- 13.104.020 Definitions.
- 13.104.030 Pay Transparency Acknowledgments from Permit Applicant, Contractor, and Qualifying Subcontractor.
- 13.104.040 Pay Transparency Attestations Following Project Completion.
- 13.104.050 Posting of Ordinance.
- 13.104.060 Determination of Construction Pay Transparency Compliance.
- 13.104.070 Issuance of a Certificate of Occupancy.
- 13.104.080 Private Right of Action.
- 13.104.090 City Manager Regulations.
- 13.104.100 Severability.

**13.104.010 Findings.**

A. The City of Berkeley is committed to protecting the public health, safety and welfare. The construction industry involves unique labor standards compliance challenges. Construction workers who do not receive all of their wages and mandatory benefits are likely to discover that despite the best efforts of State enforcement officials, many employees continue to be victims of wage theft because they are unaware of their rights or the State lacks adequate resources to advocate on their behalf. General contractors and Developer/Owners who receive City-issued permits and licenses and who benefit from the construction workers' labor may disclaim responsibility for making underpaid workers whole.

B. Testimony presented to the State of California's "Little Hoover" Commission stated that existing studies suggest that "the underground economy" is at least a \$10 billion problem in California. Statewide, the construction industry is the industry with the second highest level of labor standards violations (as measured by State Labor Commissioner penalty assessments), surpassed only by the restaurant industry. Deputy Labor Commissioners conducted 985 inspections in the private construction industry in 2012-13, yielding 595 citations that assessed \$5.3 million in penalties. Enforcement actions, however, are dwarfed by the number of contractors and projects in California, including projects in Berkeley. Over 300,000 state-licensed contractors performed about \$48 billion worth of private construction work in the State in 2014. The mismatch between the resources of the State and the scope of the issue of fundamental wage projections through disclosure and transparency requires the involvement of local

government police powers.

C. Assembly Bill 469, also known as the Wage Theft Protection Act of 2011, went into effect on January 1, 2012, adding section 2810.5 to the Labor Code. The act requires that all employers provide each employee with a written notice containing specified information at the time of hire.

D. This Chapter will ensure compliance with the Wage Theft Protection Act of 2011 by requiring confirmation by owners, contractors and subcontractors of the rate of pay and other legally required information regarding mandatory and voluntary fringe benefits pursuant to Labor Code section 2810.5.

**13.104.020 Definitions.**

Whenever used in this chapter, the following terms shall have the meanings set forth below.

A. "City" shall mean the City of Berkeley.

B. "Completion of the project" means that construction is complete and the project is eligible for a Certificate of Occupancy or Temporary Certificate of Occupancy.

C. "Contractor" shall mean the prime contractor for the Project.

D. "Labor Commissioner" shall mean the Office of the Labor Commissioner within the State of California's Department of Industrial Regulations.

E. "Owner" shall mean the person or persons, firm, corporation or partnership exercising ownership of the Project.

F. "Permit Applicant" shall mean Owner, developer, or Contractor who applied for the building permit for the Project.

G. "Project" shall mean a new construction project of greater than 30,000 square feet that is not subject to local, state or federal prevailing wage requirements or does not have a valid Project Labor or Community Workforce Agreement.

H. "Project construction employees" shall mean employees of the Contractor or Subcontractor.

I. "Qualifying Subcontractor" shall mean a subcontractor of any tier whose portion of the work exceeds \$100,000 or one percent (1%) of the value of the construction cost of the Project.

J. "Responsible Representative" shall mean an officer (if a corporation), general partner (if a partnership or a limited partnership), managing member (if a limited liability company) or qualifying person associated with the Owner, contractor and/or subcontractor. A qualifying person is defined in Section 7068 of the California Business and Professions Code.

**13.104.030 Pay Transparency Acknowledgments from Permit Applicant, Contractor, and Qualifying Subcontractor.**

A. Within 30 days of issuance of a building permit, the Permit Applicant shall provide to the City a Permit Applicant Pay Transparency Acknowledgment on a form approved by the City for this purpose. The form shall include an attestation under penalty of perjury under the laws of the State of California by a Responsible Representative of the Permit Applicant that: (i) the Permit Applicant has reviewed Chapter 13.104 of the Berkeley

Municipal Code; and (ii) following Project completion, if the City cannot make a finding of compliance with the provisions of this Chapter pursuant to section 13.104.060, the Permit Applicant will be responsible for demonstrating either (a) compliance with Labor Code sections 226 and 2810.5 or (b) the existence of a Labor Payment or a Lien Release Bond(s) pursuant to 13.104.070(B).

B. Within 30 days of the issuance of a building permit if the Contractor(s) and Qualifying Subcontractors have been selected by that date, but in any event no later than the Contractor or Qualifying Subcontractor's first day of work on the Project, for each Contractor and Qualifying Subcontractor, the Permit Applicant shall provide to the City a Contractor Pay Transparency Acknowledgment on a form approved by the City for this purpose. On each Contractor Pay Transparency Acknowledgment, a Responsible Representative of the Contractor or Qualifying Subcontractor must attest under penalty of perjury under the laws of the State of California, that: (i) the Contractor or Qualifying Subcontractor has reviewed Chapter 13.104 of the Berkeley Municipal Code; and (ii) either (a) Project construction employees will receive Labor Code Section 2810.5 compliant notices and Labor Code Section 226(a) compliant itemized wage statements, or (b) Project construction employees meet one or more of the criteria of Labor Code section 2810.5(c).

**13.104.040 Pay Transparency Attestations Following Project Completion.**

Within 10 days of the completion of the Project, for each Contractor and Qualifying Subcontractor, Permit Applicant shall provide to the City a Pay Transparency Attestation on a form approved by the City for this purpose. On each Pay Transparency Attestation, a Responsible Representative of the Contractor or Qualifying Subcontractor must attest under penalty of perjury under the laws of the State of California that: (i) the Contractor or Qualifying Subcontractor complied with Chapter 13.104 of the Berkeley Municipal Code; and (ii) either (a) Project construction employees received complete and accurate information pursuant to Labor Code Sections 226 and 2810.5, or (b) Project construction employees met one or more of the criteria of Labor Code section 2810.5(c).

**13.104.050 Posting of Ordinance.**

Each day work is performed on the Project, the Permit Applicant shall post and keep posted in a conspicuous location frequented by Project construction employees, and where the notice may be easily read by Project construction employees during the hours of the workday, a notice that: (i) contains the text of Chapter 13.104 of the Berkeley Municipal Code; (ii) explains that workers can report violations of Labor Code sections 226 and 2810.5 to the Labor Commissioner of the State of California; and (iii) provides current contact information, including office address, telephone number, and email address of the Labor Commissioner of the State of California.

**13.1040.060 Determination of Construction Pay Transparency Compliance.**

Prior to approval of a Certificate of Occupancy for the Project, the City shall make a finding of compliance with the provisions of this Chapter. Such finding shall be issued if: (i) the City determines after review of the information provided pursuant to

sections 13.104.030 and 13.104.040 that the Permit Applicant, Contractor and all Qualifying Subcontractor(s) have complied with the provisions of this Chapter; and (ii) the City has not received any information that a complaint is pending before the Labor Commissioner, or that the Labor Commissioner has issued a final order of enforcement, regarding violations of Labor Code Sections 226 or 2810.5 by any Contractor or Qualifying Subcontractor at the Project.

**13.104.070 Issuance of a Certificate of Occupancy.**

A. The City shall issue a Certificate of Occupancy to the Permit Applicant if it makes a finding of Construction Pay Transparency Compliance pursuant to 13.104.060 and all requirements of the building code are met.

B. If the City cannot make a finding of compliance with the provisions of this Chapter pursuant to section 13.104.060 , the City will approve a Certificate of Occupancy only if:

- (i) the Permit Applicant demonstrates that the Permit Applicant, Contractor, and all Qualifying Subcontractors have complied with Labor Code sections 226 and 2810.5; or
- (ii) the Permit Applicant demonstrates the existence of a Labor Payment or a Lien Release Bond(s) for the Project. The bond shall be in an amount equal to 20 percent of the combined value of the contract(s) of all Contractor(s) and/or Qualifying Subcontractor(s) for which the City lacks Pay Transparency Acknowledgment or Attestations, or 125 percent of the amount of any Project-related, Labor Commissioner issued Civil Wage and Penalty Assessment(s) or mechanics lien(s), whichever is greater.

**13.104.080 Private Right of Action.**

Nothing in this chapter shall be interpreted to authorize a right of action against the City.

**13.104.090 City Manager Regulations.**

The City Manager may promulgate regulations for the administration and enforcement of this Chapter.

**13.104.100 Severability.**

If any word, phrase, sentence, part, section, subsection, or other portion of this chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on June 11, 2019, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.

Noes: None.

Absent: None.





Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
February 11, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Cheryl Davila and Ben Bartlett  
Subject: Installation of William Byron Rumford Plaque

RECOMMENDATION

Adopt a Resolution authorizing the installation of a plaque to honor William Byron Rumford in the public right of way.

FISCAL IMPACTS OF RECOMMENDATION

Estimated \$2,000 for costs of installation.

CURRENT SITUATION AND ITS EFFECTS

One of the City of Berkeley's Strategic Plan goals is to champion and demonstrate social and racial equity. Honoring one of our City's most important African American leaders by raising his visibility supports this goal.

More than a year ago the Berkeley City Council approved funding from the Mayor and Councilmembers' discretionary accounts to fund the plaque. Through the Together We Can Make It Happen Foundation a beautiful plaque honoring William Byron Rumford was made.

This item authorizes the placement of that plaque in the public right of way at the most favorable location for public viewing and safety on Sacramento Street near the intersection of Tyler Street walkway.

BACKGROUND

William Byron Rumford graduated from pharmacy school at the University of California, San Francisco, in 1931 and a short time later moved to Berkeley. He opened a pharmacy which quickly became a gathering place for Black people across the Bay Area, and where he often posted voting recommendations in the windows.

February 11, 2020

In 1942 Rumford was appointed by the Berkeley Mayor to the Emergency Housing Committee, which sought to find housing for wartime laborers. He also helped organize the Berkeley Interracial Committee that assisted new arrivals from the South. Additionally, Mr. Rumford actively opposed Japanese American internment and supported social justice causes.

In 1944, Governor Earl Warren appointed Rumford to the Rent Control Board, a state agency that was part of a federal wartime program to keep rents down. Building on his strong reputation and achievements, Mr. Rumford ran for and was elected to the California State Assembly in 1948.

Rumford was an impactful legislator, writing successful bills to reduce job discrimination in schools and racial bias in the California National Guard, as well as a law that made it illegal for insurance companies to refuse to cover Black motorists. Rumford's signature legislation that ultimately became the California Fair Housing Act of 1963, or the Rumford Act, that banned racial discrimination in the selling or renting of real estate.

#### ENVIRONMENTAL SUSTAINABILITY

No environmental implications.

#### RATIONALE FOR RECOMMENDATION

As the first black person to be elected to a Northern California Assembly office, Mr. Rumford made incredibly valuable contributions to our state and our community. Honoring him and raising his profile through placement of an educational plaque in the city helps inspire future generations.

#### CONTACT PERSON

Cheryl Davila  
Councilmember District 2  
510.981.7120  
[cdavila@cityofberkeley.info](mailto:cdavila@cityofberkeley.info)

ATTACHMENTS: Resolution: Adopt a Resolution authorizing the installation of a plaque to honor William Byron Rumford

February 11, 2020

RESOLUTION NO. ##,###-N.S.

AUTHORIZATION TO PLACE COMMEMORATIVE PLAQUE FOR WILLIAM BYRON RUMFORD IN PUBLIC RIGHT OF WAY

WHEREAS, The City of Berkeley strives to champion and demonstrate social and racial equity; and

WHEREAS, William Byron Rumford was a revolutionary figure from Berkeley, who served as the first Black Assembly Member elected to a Northern Californian office;

WHEREAS, William Byron Rumford authored the California Fair Housing Act of 1963 which banned racial discrimination in the selling or renting of real estate; and

WHEREAS, The City of Berkeley seeks to honor William Byron Rumford through installing descriptive and beautiful plaque; and

WHEREAS, The Council of the City of Berkeley previously authorized funds for the honorary plaque;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley previously authorized and created plaque honoring William Byron Rumford be placed in the public right of way on Sacramento Street near the intersection of Tyler Street.





CONSENT CALENDAR  
February 11, 2020

To: Honorable Mayor and Members of the City Council  
 From: Councilmembers Rigel Robinson, Ben Bartlett, and Kate Harrison  
 Subject: Referral: Electric Moped Ride-Share Permits

#### RECOMMENDATION

Refer to the City Manager to rename the existing One-Way Car Share Program as the One-Way Vehicle Share Program and to amend the Program to include administrative requirements and parking permit fees for motorized bicycles that are affixed with license plates and require a driver's license for individuals to operate them (mopeds), in coordination with the City of Oakland.

#### POLICY COMMITTEE RECOMMENDATION

On December 5, 2019, the Facilities, Infrastructure, Transportation, Environment, and Sustainability Committee adopted the following action:  
 M/S/C (Harrison/Robinson) to send the item, as revised, back to the City Council with a Positive Recommendation. Vote: All Ayes.

#### BACKGROUND

In the spirit of encouraging residents to choose alternative, sustainable modes of transportation, major cities across the United States are pioneering motorized bicycle sharing programs that allow users to reserve and unlock a moped for short-term use.

In 2018, a company called Revel launched a ride-share electric moped pilot program in New York City. Following initial success, Revel recently expanded the New York program from 68 to 1,000 vehicles and to an area of about 20 square miles, in addition to launching a new fleet in Washington, D.C.

Under California Vehicle Code Section 406, Revel mopeds are legally classified as motorized bicycles: two-wheeled or three-wheeled devices "having fully operative pedals for propulsion by human power, or having no pedals if powered solely by electrical energy, and an automatic transmission and a motor that produces less than 4 gross brake horsepower and is capable of propelling the device at a maximum speed of not more than 30 miles per hour on level ground."<sup>1</sup>

Section 12804.9 of the Vehicle Code provides that motorized bicycles or mopeds fall under the M2 vehicle classification, which typically requires an M2 endorsement in addition to a Class A, B, or C driver's license. The Vehicle Code makes an exemption

<sup>1</sup> [https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=406.&lawCode=VEH](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=406.&lawCode=VEH)

for short-term moped rentals of 48 hours or less, requiring only a valid driver's license for such rides.<sup>2</sup> However, short-term rental moped operators must still follow all other regulations that apply to non-rental operators, including wearing an approved safety helmet when riding on public roads.<sup>3</sup>

As an added safety precaution, Revel's Rental Agreement includes requirements that are more stringent than the Vehicle Code's provisions. In addition to holding a valid driver's license, Revel requires users to be 21 or older and pass a DMV background check to verify that they have a safe driving record. Each motorized bicycle has a DMV-issued license plate, comes with two USDOT certified helmets stored in the back compartment, and travels up to a maximum speed of 30 miles per hour. The mopeds are parked and driven on the street, not the sidewalk, and park compactly at a rate of seven motorized bicycles per one car-sized space. Revel also provides free training courses to registered users.

Electric mopeds present an alternative to lighter, smaller e-scooters, which have prompted accessibility concerns due to riders parking them on sidewalks. Unlike e-scooters, electric mopeds cannot be operated or parked on the sidewalk and come equipped with helmets. Additionally, the license plate requirement creates a greater degree of accountability, and allows for identification and sanction of users who violate traffic laws.

Revel mopeds are emissions-free, electrically powered, and noise-free. Maintenance staff move around the city to replace the batteries on-site, so the vehicles do not require EV charging infrastructure. In addition to providing a zero-emissions transit option, Revel is priced affordably, with rides costing a base price of \$1 plus 25 cents per minute. They offer an equitable access rider program with a 40 percent discount for underserved communities, and only employ full-time, benefited workers.

Offering an electric moped ride-share option in the City of Berkeley is consistent with the draft Electric Mobility Roadmap, which lays out a vision for a fossil-free transportation system in Berkeley.<sup>4</sup> The Roadmap's primary goals include increasing the accessibility of shared electric mobility options and promoting equity in electric mobility. Equity in Access Strategy 3b names membership and fee discounts, such as the one offered by Revel, as a key way to ensure financial access to shared mobility systems for historically underserved, low-income communities of color.

Issuing a One-Way Vehicle Share permit to Revel would not violate the terms of the City's exclusivity agreement with Bay Area Motivate for bicycle ride-share. Revel

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<sup>2</sup>

[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=12804.9.&lawCode=VEH](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=12804.9.&lawCode=VEH)

<sup>3</sup> <https://www.kctlegal.com/blog/2017/june/california-scooter-and-moped-driving-laws/>

<sup>4</sup> [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Commissions/Commission\\_for\\_Energy/2019-10-23\\_EC\\_Item%205\\_Berkeley%20Electric%20Mobility%20Roadmap%20Public%20Review%20Draft%2010.14.19.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Energy/2019-10-23_EC_Item%205_Berkeley%20Electric%20Mobility%20Roadmap%20Public%20Review%20Draft%2010.14.19.pdf)

mopeds classify as motorized bicycles under the Vehicle Code, which is separately defined from electric-assisted or human-powered bicycles. Section 1.13 of the Motivate agreement explicitly states that “‘Bicycle’ shall not include motorized vehicles, including scooters or mopeds. For the avoidance of doubt, electric assisted bicycles constitute Bicycles and do not constitute motorized vehicles.”<sup>5</sup>

In 2017, the City of Oakland and the City of Berkeley worked together to establish a One-Way Car Share permit program and issue parking permits to Gig Car Share, the country’s first multi-jurisdictional car sharing program. A similar multi-jurisdictional moped sharing program could further expand accessibility and transit options for residents.

Currently, Revel is working with the Oakland Department of Transportation and has submitted an application to the Berkeley Transportation Division seeking approval as a Qualified Car-Share Organization as a means of operating a moped sharing program. However, the City of Berkeley has not yet established parking permit fees scaled to mopeds, which this referral seeks to address. Following the model of the Gig Car Share program, staff should work with their counterparts in Oakland to implement consistent regulations across the two jurisdictions. Both Revel’s application and the proposed revision to Oakland’s Free Floating Zone Permit and Master Residential Parking Permit Terms and Conditions to accommodate electric mopeds are attached.

In developing the permit requirements, staff should evaluate and address any safety and logistical concerns that come with motorcycle parking in dead space. Staff should work with Revel in determining appropriate rebalancing criteria. Staff should also establish a process by which other electric moped rideshare providers may apply for parking permits.

#### FINANCIAL IMPLICATIONS

Staff time to amend the existing One-Way Car Share Program and revise the Free-Floating Parking Permit to accommodate ride-share motorized bicycle parking.

#### ENVIRONMENTAL SUSTAINABILITY

Transportation is the biggest source of carbon emissions in California and makes up 60 percent of emissions in the City of Berkeley.<sup>6</sup> In order to meet our statewide and citywide climate goals, governments must find a way to actively seek out and encourage the use of greener transportation options.

Smaller vehicle ride-sharing services, such as Revel, can be part of the solution by providing more sustainable micro-mobility options. Around 35 percent of car rides in the United States are trips of 2 miles or less, and this percentage is even higher for urban areas.<sup>7</sup> According to Revel’s 2018 Brooklyn Pilot Rider Feedback, 50 percent of riders report using Revel to replace taxis, Ubers, Lyfts, and personal vehicle trips. By providing

<sup>5</sup> [https://sanjose.granicus.com/MetaViewer.php?view\\_id=&event\\_id=1475&meta\\_id=544265](https://sanjose.granicus.com/MetaViewer.php?view_id=&event_id=1475&meta_id=544265)

<sup>6</sup> <https://www.cityofberkeley.info/recordsonline/api/Document/AS1qYEO88qcY6lps8nwbGgL4jGxxlSquza3ESIDOTS6DL2nWl1jPxxzLJVhyvQgYDIIKPuJDdT3oigVB31dHEfM%3D/>

<sup>7</sup> <https://slate.com/business/2019/08/revel-moped-scooters-nyc-washington.html>

zero-emission electric mopeds as an alternative to cars, the City of Berkeley can reduce transportation sector carbon emissions and reliance on gas-powered vehicles.

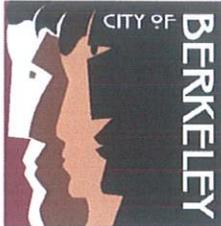
CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

Rachel Alper, Intern

Attachments:

- 1: Application by Revel to the Transportation Division
- 2: Draft City of Oakland Free Floating Zone Permit and Master Residential Parking Permit Terms and Conditions Revisions
- 3: Revel Informational Packet



Department of Public Works  
Transportation Division

# Application for Qualification One-Way Car Share Program

Please read the *Qualified Car Share Organization Terms and Conditions* for the One-Way Car Share Program before completing and submitting this application

|                                                    |
|----------------------------------------------------|
| Company Name:Revel Transit, Inc.                   |
| Street Address: 68 3rd. Street                     |
| City, State, Zip:Brooklyn, NY, 11231               |
| Contact Name:Daniella Henry                        |
| Contact Email:Daniella.henry@gorevel.com           |
| Contact Phone:860-212-8088                         |
| Company Website:www.gorevel.com                    |
| Berkeley Business License # (if already obtained): |

Please answer the following below.

|                                                                                                               |
|---------------------------------------------------------------------------------------------------------------|
| Describe your company's organizational structure and names/ positions of the executive team.<br>See Attached. |
| Does your organization currently operate membership-based car sharing and, if so, where?<br>See Attached.     |
| Does your organization currently operate one-way car sharing and, if so, where?<br>See Attached.              |

Application for Qualification – One-way Car Share Program

|                                                                                                                                                                                                                                                                                                    |                            |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|
| <p>Describe your organization’s planned one-way car share operations in Berkeley as well as regionally.<br/>See Attached.</p>                                                                                                                                                                      | <p>For office use only</p> |
| <p>What are or will be your membership requirements?<br/>See Attached.</p>                                                                                                                                                                                                                         | <p>For office use only</p> |
| <p>Describe the company’s insurance coverage for each shared vehicle and for each member operating the vehicle during the period of use, including liability coverage, personal injury protection, uninsured/ underinsured motorist and collision/ comprehensive deductible.<br/>See Attached.</p> | <p>For office use only</p> |
| <p>Quantify your company’s initial fleet size and how the vehicles will be geographically distributed to serve the City of Berkeley.<br/>See Attached.</p>                                                                                                                                         | <p>For office use only</p> |
| <p>Describe how members use the company’s reservation system and the devices (phone, computer, smart phone, etc.) that can be used to make or change a reservation.<br/>See Attached.</p>                                                                                                          | <p>For office use only</p> |

Application for Qualification – One-way Car Share Program

|                                                                                                                                                                                                            |                            |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|
| <p>Describe all of the ways that members can find one-way car share vehicles (phone, computer, smart phone, etc.).<br/>See Attached.</p>                                                                   | <p>For office use only</p> |
| <p>Describe all of the methods by which members can access the company's rental vehicles (fobs, credit cards, smart phones, etc.) and the hours and days that vehicles are available<br/>See Attached.</p> | <p>For office use only</p> |
| <p>Describe how members pay for vehicle use and the rates you plan to charge.<br/>See Attached.</p>                                                                                                        | <p>For office use only</p> |
| <p>Describe how your company's rental vehicles are tracked in real time.<br/>See Attached.</p>                                                                                                             | <p>For office use only</p> |
| <p>Indicate when your company would be ready to launch one-way car share in Berkeley.<br/>See Attached.</p>                                                                                                | <p>For office use only</p> |
| <p>Submit photos or renderings of your company's branded vehicles with this application.</p>                                                                                                               | <p>For office use only</p> |

Application for Qualification – One-way Car Share Program

By signing this form, I attest that the above statements are true and that I have the authority to sign on behalf of the company Revel Transit, Inc.

Furthermore, I attest that I have read and agree to the *Qualified Car Share Organization Terms and Conditions* for the One-Way Car Share Program.

Signature and Date

*For office use only*

*Qualified*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Conditionally qualified:*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*More information required:*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Denied*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signed by: \_\_\_\_\_ Date: \_\_\_\_\_

Print name: \_\_\_\_\_ Position: \_\_\_\_\_



## REVEL APPLICATION FOR ONE-WAR CAR SHARE PROGRAM

September 17, 2019

### **Describe your company’s organizational structure and names/positions of the executive team.**

Founded in March 2018 in New York City, Revel is an all-electric member-based shared mopeded company. Revel provides and maintains a fleet of vehicles available to the public for point-to-point rides. All riders must be at least 21 years of age and hold a valid driver’s license, Revel provides standard insurance coverage.

Revel fits into cities’ transportation networks, as they exist today. Vehicles operate and park in the street and are equipped with license plates to ensure rider accountability. The system thrives in neighborhoods with limited transit options, lower rates of car ownership and those historically underserved by companies offering innovative mobility solutions. As cities are looking for ways to make transportation more accessible to residents, Revel provides a unique transportation option built to make getting around convenient, affordable and fun.

### **Revel’s Vehicle**



Revels are 100% emissions-free all electric vehicles.<sup>1</sup> Powered by a Lithium ion battery, Revel’s innovative design features a side

kickstand and auto turn off blinkers. The vehicle’s weight is well distributed giving the rider better balance and command than is typical for comparable vehicle models. Each Revel is manufactured for one or two riders and comes with two USDOT-certified helmets stored in a helmet case on the vehicle at all times.



*Two “dead space” locations*

*Brooklyn, New York 2019*

Each Revel is “street legal”, that is it has received a USDOT-issued Vehicle Identification Number and is registered and issued a license-plate through the applicable state Department of Motor Vehicles. Every Revel is covered by liability

insurance for each vehicle and for each member operating the vehicle during the period of use. Because the vehicle's motor does not have a displacement over 50 cubic centimeters, and does not exceed a maximum speed of 30mph, a motorcycle license is not required.

Additionally, as cities grapple with shrinking parking availability in the midst of rapid population growth, Revels are space efficient. Requiring no more than three feet of the curb they easily fit in "dead space" where other vehicles are too large to park. A curbside parking spot for one car could fit up to five Revels.

**Revel Organization:** See attached for Revel's executive team organizational chart.

- Key Contact to the City of Berkeley: Haley Rubinson, Director of Business Development
  - Revel's Director of Business Development develops and executes the company's expansion strategy to enter into new city markets. She manages stakeholder engagement, regulatory affairs, external affairs and partnerships across all Revel's partner cities.
- Project Manager for the City of Berkeley: Jonathan Brims, Director of New Markets
  - Revel's Director of New Markets spearheads our efforts to plan and execute the deployment of Revel solutions in new cities. He is accountable for all aspects of launching new markets, including recruiting and hiring the local management and operations teams; identifying local office/warehouse space; and procuring the tools and equipment necessary to support local operations.

**Does your organization currently operate membership-based car sharing and, if so, where?**

Founded in March 2018, Revel is a membership based all-electric moped sharing company. Potential members must be at least 21 years of age and hold a valid driver's license. Potential members must upload a photo of their driver's license, take a selfie and upload their debit or credit card information. Revel then screens every potential user's driving history for incidents such as excessive speeding violations and DUIs. Once a potential member successfully passes the screening process, they can access vehicles on the Revel app. Revel currently operates 1000 vehicles in New York City and 400 vehicles in Washington D.C.

**Does your organization currently operate one-way car sharing and, if so, where?**

Revel provides and maintains a fleet of vehicles available to members for point-to-point rides, including one-way trips. As mentioned above, Revel currently operates in New York City and Washington, D.C.

**Describe your organization's planned one-way car share operations in Berkeley as well as regionally.**

Revel will establish a physical presence within the City of Berkeley, hiring locally-based employees on the ground so we remain responsive to our customers, government and our communities. We plan to hire a Berkeley-based team to manage both day-to day operations as well as long-term planning in coordination with the management team reflected in the attached personnel chart. Regionally, if amenable to all relevant government stakeholders, we look forward to launching a similar operation in the City of

Oakland at the same time as Berkeley. Hiring a local team will be top priority and we are committed to hiring a Head of Operations and a Head of Public Affairs as well as a fleet management team in advance of the launch.

a) Responsibility of Management Team performing the work

- Head of Public Affairs, Berkeley - Oakland
  - **Experience required:** \*10+ years of professional work experience in transportation, management consulting, political campaigns or similar fast-paced work setting \* At least 5 years experience leading large teams \*Experience working closely and communicating effectively with internal and external stakeholders in an ever-changing, rapid \*growth environment with tight deadlines \* Comfortable representing Revel in front of community boards and other stakeholder groups \* Are capable of taking on responsibilities outside of your core role \* Bring high energy and motivational leadership \* Experience navigating city and state regulatory structures \* You take your work seriously but not yourself.
  - **Responsible for:** \*Be accountable for all aspects of public affairs, including community engagement, in the Berkeley area. Salary commensurate with experience.
- Head of Operations, Berkeley - Oakland
  - **Experience Required:** \*10+ years of professional work experience in transportation, operations, logistics or similar fast-paced work setting \* 5+ years experience managing large teams of varying experience levels \* Quickly identify, troubleshoot and resolve problems \* Excellent verbal and written communication skills, with experience reporting to senior company management \* High energy and able to motivate and manage any personality type \* Can articulate clearly and persuasively in positive or negative situations \* Experience maintaining vehicles and/or a strong mechanical aptitude \* Adaptable, decisive, and able to juggle competing priorities \* Ability to work weekends and evenings \* Relevant OSHA accreditation preferred \* Experience working with Lithium Ion batteries preferred \* You take your work seriously but not yourself.
  - **Responsible for:** \*Lead team of warehouse and field Operations Managers whose teams are tasked with maintaining, cleaning and charging our Berkeley moped fleet \* Oversee recruitment, hiring and training of Operations Managers and Associates \* Coordinate with Launch team for pre-launch warehouse build out and fleet scale up \* Accountable for the safety, quality, and availability of our vehicles \* Accountable for lithium ion battery inventory, including storage and charging for entire Berkeley fleet \* Ensure operations team continually analyzes, improves, and sets best practices for maintaining our fleet \* Prioritize issues reported to our customer service team.
- Fleet Management Team:
  - Revel does not do gig economy. The company hires full-time employees and offers commensurate benefits. We are staffed 24/7, with operations

employees working shifts throughout the day and with live customer service representatives available at all times our vehicles are in service.

- Fleet positions will include warehouse and fleet operations staff, including mechanics, battery swappers and safety leads.

b) Policies and Procedures that will be utilized to ensure safety and prompt service

- Safety is the number one priority at Revel. We have incorporated the following features, policies and procedures into our vehicle and operations. Further, we take a high touch approach to our business with operations, customer service, data/analytics and other functions performed in-house by Revel employees. This level of accountability allows us to stay attuned to our customers, as well as everyone else who interacts with our service so we can be immediately responsive should new safety or service issues arise.
  - Drivers must be at least 21 years old with a valid license and safe driving record; before registration is complete Revel performs DMV background checks to verify riders' information. Users must also submit a selfie to verify they are the license-holders.
  - Available in-app and on our website, riders are given information (through text, video, infographics) on how to safely and responsibly operate and park. Additionally, each vehicle has prominently placed stickers with printed information on how to ride and park; use the throttle; reminders on fastening helmets; and key 'Rules of the 'Road'.
  - As part of our Rental agreement, users must accept the terms of our 'Rules of the Ride' (attached) which are aimed at safe operation of our vehicle and obeying applicable traffic and parking laws. Failure to do so may result in fines and suspension or termination of a rider's Membership.
  - Two USDOT certified helmets equipped with eye protection shields are stored in each Revel at all times. Riders must wear helmets, per Revel's Rental Agreement.
  - As motor vehicles, Revel's travel in traffic lanes, park curbside and have safety equipment consistent with or exceeding state DMV and insurance board standards.
  - Speed throttled at 30mph to keep up with traffic, license plates ensure accountability.
  - Revel offers free in-person lessons to existing and potential riders 7 days a week.
  - Immediate multi-lingual (currently English and Spanish) customer support from Revel employees is available during operating hours.
  - Revel has field technicians and mechanics working 24/7 so there is always an employee ready to respond to any issue at any time. It is also Revel's policy to engage with regulators, law enforcement and other key city officials in any city we operate. All will have a direct cell phone number and email address for a locally-based senior management employee to contact at any time, day or night if needed.

c) Plan of how Revel will provide services

- Revel will provide an initial fleet of 500 electric motor scooters (Revels) titled

and registered with the California Department of Motor Vehicles by December 1, 2019. All Revels in the Berkeley fleet will be:

- Zero-emission
- Powered by a Lithium ion battery
- Equipped with a kickstand
- Equipped with automatic shut-off turning signals
- Equipped with a helmet case containing two USDOT certified helmets
- Equipped with a speed governor that ensures the vehicle will not travel in excess of 30 mph on level ground
- Equipped with geo-fencing technology
- Like in New York and Washington D.C., Revel will maintain operating hours of 5am to midnight to start but will consider extending operating hours once the city is used to the service and demand permits. Revel will provide all signage, supplies and equipment necessary to operate in the program areas. Revel will secure an adequate facility within the City of Berkeley for the purpose of Revel operations.
- Revel will hire a Head of Operations and Head of Public Affairs as well as a fleet operations team tasked with maintaining the vehicles at maximum capacity, including maintenance and charging. Customer support and data needs will be managed by our New York-based team, who will be in constant contact with the Berkeley-based operations team. We will secure a location in the Berkeley area which will house all our operations in advance of the launch date.
- Like our other programs, Berkeley riders will download the Revel app to sign up for the vehicle sharing service. After uploading a license and a 'selfie', Revel will ensure that the potential user has a responsible driving record, e.g. no prior DUI violations or excessive speeding tickets. After determining that the potential user meets the Revel safety standard, the user can unlock any vehicle, unlock and access either of two USDOT-certified helmets (a Revel is manufactured to accommodate two riders) that are stored in the Revel helmet case at all times. In short, riders use the Revel app to find a nearby Revel, reserve it, ride where they need to go, and park it in a legal parking spot when done. The cost per ride will be \$1 to unlock, .25/minute to ride, .10/minute to park. We are also committed to equitable riding that is accessible to all residents and will offer the Revel Access program, which gives a 40 percent discount for riders on any form of government assistance, to qualifying Berkeley riders. This is consistent with the current pricing of our existing fleet.
- Revels are licensed vehicles and therefore travel in traffic lanes, adhere to all rules of the road, including parking regulations, and have DMV safety equipment. While Revels are "street-legal", their speed is throttled at 30mph and no motorcycle license is required. Each Revel has an alarm system that is activated if the Revel is moved when locked, along with a rocking back wheel mechanism.

d) Regional Plan

**What are or will be your membership requirements**

- Revel members must:
  - be 21 years of age or older

- have a valid driver's license
- upload a "selfie" for the driving record screening
- have a responsible driving record, e.g. no prior DUI violations or excessive speeding tickets
- agree and adhere to our user agreement including
  - adhere to all rules of the road
  - follow parking regulations
  - wear a helmet at all times
  - passenger must be 18 years of age or older

**Describe the company's insurance coverage for each shared vehicle and for each member operating the vehicle during the period of use, including liability coverage, personal injury protection, uninsured/underinsured motorist and collision/comprehensive deductible.**

Every Revel is covered by liability insurance for each vehicle and for each member operating the vehicle during the period of use. Every Revel is covered by general liability insurance up to a million and up to \$50,000 for each member operating a Revel. Every Revel is covered by liability insurance for each vehicle and for each member operating the vehicle during the period of use.

Commercial General Liability:

- Each occurrence \$1,000,000
- Damage to rented premises \$50,000
- Medical expenses \$5,000
- Personal & adv injury 1,000,000
- General aggregate \$2,000,000
- Products \$2,000,000

Company: Y-Risk

- Address: 29 Mill St, Unionville, CT 06085
- Phone Number: 860-559-4099 (cell)
- Point of Contact: Bernie Horovitz
- Email Address: [bernieh@yrisk.com](mailto:bernieh@yrisk.com)
- Services Provided: Partner & CEO of Y-Risk (insurance provider)

**Quantify you company's initial fleet size and how the vehicles will be geographically distributed to serve the City of Berkeley**

Revel would initially deploy 500 mopeds in geographically distributed locations throughout Berkeley that would demonstratively serve Berkeley residents. As in other cities that we operate in, we would work together with the City of Berkeley to ensure that our operating area covered neighborhoods that have historically lacked transit access.

**Describe how members use the company's reservation system and the devices (phone, computer, smart phone, etc.) that can be used to make or change a reservation.**

During the sign-up process to use Revel, members are required to upload a photo of their driver's license and take a selfie to confirm the rider is the actual license holder. Then the system does a DMV record check to confirm the driver's license is not suspended; the holder is at least 21 years of age and that they have a safe driving history. A record of recent DUI's, speeding or multiple recent moving violations would trigger a flag to review or reject the registration. Once a rider's account is approved, accessing a Revel is as follows:

1. Open the Revel app on a smart phone to find a nearby vehicle.
2. Click to reserve (up to 15 minutes), once at vehicle click to start and unlock helmet case.
3. Take a free "safety minute" to fasten helmet, check mirrors, get comfortable.
4. Begin ride and park in a legal parking spot when you reach your destination.
5. Close out the ride with one click.

**Describe all of the ways that members can find one-way car share vehicles (phone, computer, smart phone, etc.).**

Members can access Revels through any phone that can access a phone app and that has a camera that can take a selfie. Members must put a debit or credit card on file to use the service. Revels are available to members every day between the hours of 5 a.m. and midnight.

**Describe how members pay for vehicle use and the rates you plan to charge**

Members pay through a debit or credit card registered to their Revel account. Revel has a flat \$19 fee to run a background check on every rider's driving history. If approved, Revel users pay a \$1 unlock fee and each additional minute is \$0.25. Further, as another example of our commitment to the communities we serve, we are proud to offer our Revel Access program, providing a 40% discount for Revel users that qualify for affordable assistance programs, including SNAP benefits and affordable housing. Revel members that qualify for the Access program also receive a credit to their account to offset the \$19 fee to run the background check.

**Describe how your company's rental vehicles are tracked in real time**

All of our vehicles contain a telematics device that communicates vehicle data to us, including but not limited to, vehicle location. Information is collected every second, and stored in our database.

**Indicate when your company would be ready to launch one-way car share in Berkeley.**

We would be ready to launch December 1.

**Photos and renderings of your company's branded vehicles with this application.**



Our team has the ability to execute.



**Frank Reig**  
Co-Founder & CEO  
VP, Energy & Industrials, GLG

**Paul Suhey**  
Co-Founder & COO  
Advanced Design Engineer,  
Exxon



**Haley Rubinson**  
Director of Business Development  
Managing Director, Tusk Ventures



**Michael Pellegrino**  
Director of Operations  
Director of Launch, Motivate



**Joseph Nowicki**  
Director of Data Science & Analytics  
VP, Data Science, Hugu



**Kristy Zoshak**  
Director of Community  
Trade Commissioner Tech,  
Canadian Embassy



**Lauren Vriens**  
NYC GM



**Theresa Magliano**  
NYC Senior Operations Manager  
Head of Ops, Marley Spoon



**Kaitlin Day**  
Customer Experience  
Manager  
The Body Shop



**Alexandria Borlabi**  
Finance Manager  
Manager, Financial Planning  
at Flocabulary



**Mikaela Jordan**  
Senior Data Analyst  
Data Analyst at RAPP



**Daniella Henry**  
Policy and Gov't Affairs Manager  
Senior Policy Advisor, NYC Mayor



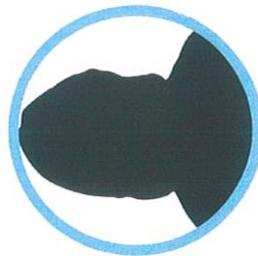
**Helen Stackhouse**  
Marketing & Design Manager  
Creative Services Manager, Lytt



**Jonathan Brims**  
New Market Launch Manager  
Chief Strategy Officer,  
Immersive Robotics

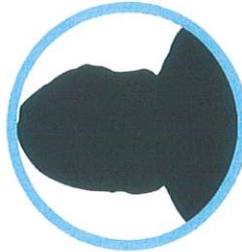
By December 1, 2019

*Berkeley Head of Operations*



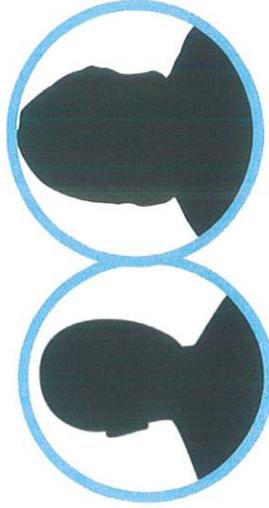
CEO of our critical markets

*Berkeley Head of Public Affairs*



Manage day-to day operations

*Berkeley Fleet Operations Staff*



Warehouse and field operations









City of Oakland

**FREE-FLOATING ZONE PARKING PERMIT (FFZPP) AND MASTER  
RESIDENTIAL PARKING PERMIT (MRPP) TERMS AND CONDITIONS**

Department of Transportation | Parking & Mobility

6/13/2019

FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL PARKING PERMIT (MRPP) TERMS AND CONDITIONS

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**FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL  
PARKING PERMIT (MRPP) TERMS AND CONDITIONS**

**Car Sharing Staff Contact:**

Michael Ford, Ph.D., C.P.P.

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(510) 238-7670

FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL PARKING PERMIT (MRPP) TERMS AND CONDITIONS

**DEFINITIONS**

"Car sharing" is defined as a membership-based service, available to all qualified drivers in a community, which allows members to make motor vehicle trips with the use of a rented motor vehicle without a separate written requirement for each trip. (Oakland Municipal Code 10.44.030)

"Car sharing organization" is an organization that provides members with access to a minimum of 20 shared-use motor vehicles at geographically distributed locations with hourly, daily, and/or weekly rates (or fractions thereof) that include insurance. The Department of Transportation will maintain a list of the criteria necessary to become a "qualified" car sharing organization as well as a list of qualified car sharing organizations entitled to apply for car sharing-related permits. (Oakland Municipal Code 10.44.030)

"Car sharing vehicle" is a motor vehicle made accessible by a car sharing organization for use by its members. Each car sharing organization shall display its identifying emblem on any car sharing vehicle using on-street spaces. (Oakland Municipal Code 10.44.030)

"Master Residential Parking Permit" (MRPP) refers to the permit that entitles car sharing vehicles with master residential parking permits to park in any residential permit parking area. (Oakland Municipal Code 10.44.030)

"Motor vehicle" means and includes automobile, truck, motorcycle or other motor driven form of transportation not in excess of 10,000 pounds in gross vehicle weight rating. (Oakland Municipal Code 10.44.030)

"Free-floating Zone Parking Permit" (FFZPP) is a permit that entitles members of a permitted car sharing organization to lawfully park car sharing vehicles in metered and unmetered spaces with duration limits of two hours or longer for up to 72 hours within a designated zone. (Oakland Municipal Code 10.71.030)

"Free-floating zone area" is the area agreed upon by the car sharing organization permit holder and the Department of Transportation, which bounds the permitted parking area for permit holder's car sharing vehicles within Oakland. (Oakland Municipal Code 10.71.030)

"Qualified Car Share Organization" (QCSO) is a car sharing organization that has been approved by the Department of Transportation for a Free-floating zone parking permit and/or Master residential parking permit.

"Parking permit" means a permit issued under this chapter which, when displayed upon a motor vehicle, as described herein, shall exempt said motor vehicle from parking time restrictions established pursuant to this chapter. (Oakland Municipal Code 10.44.030)

**AUTHORITY**

In ordinance 13301 C.M.S. and a companion resolution, 85459 C.M.S., the City Council delegated the authority to the Director of Transportation or a designee to approve the criteria and

## FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL PARKING PERMIT (MRPP) TERMS AND CONDITIONS

administrative rules to issue the Free-Floating Zone Parking Permit (FFZPP) and the Master Residential Parking Permit (MRPP).

### INTENT

The intent of the FFZPP is to facilitate car sharing within Oakland by establishing a permit that entitles a permitted car sharing vehicle to lawfully park in metered and unmetered spaces with duration limits of two hours or longer for up to 72 hours within a designated free-floating zone area. The concept for the FFZPP is based on the idea that Qualified Car Sharing Organizations should be able to pre-pay an estimate of meter fees for parking activity of point-to-point car sharing vehicles within a designated free-floating zone area. The estimate will be reconciled with actual parking activity after the term of the FFZPP.

The intent of the MRPP is to facilitate car sharing within Oakland by establishing a permit that entitles a permitted car sharing vehicle to lawfully park in all residential permit parking areas (RPP) areas for up to seventy-two (72) hours. The concept for the MRPP is based on the idea that car sharing vehicles should be entitled to the same on-street parking privileges of private automobiles. Because car sharing vehicles will rotate throughout the City, the vehicles will require access to all RPP areas.

### FLEET DEPLOYMENT AND REBALANCING

In order to evenly distribute vehicles during initial deployment and ongoing operations, no more than two vehicles shall be parked by applicant as part of fleet "rebalancing" per block face or per 500 linear feet of curb, whichever is shorter. In addition, no more than one vehicle should be "rebalanced" to block faces where one or more of applicant's vehicles have already been parked by a customer. All rebalancing vehicle trips shall be clearly noted as such in vehicle trip and/or parking records provided to the City.

### PRIVILEGES OF THE FREE-FLOATING ZONE PARKING PERMIT

The following privileges will be extended to the Permittee:

1. **Waiver of parking duration time limits for two hours or longer within an approved free-floating zone area:** The FFZPP allows Permitted car sharing vehicles to be parked up to 72 hours without the direct payment of a meter on the public right-of-way, in legal and not otherwise restricted parking spaces within an approved free-floating zone area. Restricted parking spaces include those with one or more regulating signs (such as Vanpool spaces), which cannot be used by Permittee during the specified restricted times shown on the sign(s), as well as meters with time limits of less than two hours. The Permittee should consult *Title 10 – Vehicles and Traffic, Oakland Municipal Code*, for a list of City parking restrictions.
2. **Ability of the Permittee to pre-pay estimated parking fees accrued by its car sharing vehicles in the approved free-floating zone area over the calendar year:** The FFZPP fee estimates the average parking meter fees that a single car sharing vehicle will accrue

## FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL PARKING PERMIT (MRPP) TERMS AND CONDITIONS

over the course of one year (12 calendar months). With this Permit, the Permittee agrees to pay the fee published in the Master Fee Schedule at the beginning of the permit term as in lieu fee for its members' estimated parking meter usage. Members of the Permitted Qualified Car Sharing Organization should not pay meters with time limits of two hours or longer while parking FFZPP Permitted vehicles in an approved zone. It is expected that the Permittee will track actual parking events of members within the approved free-floating zone area and report parking activity to the City of Oakland on a monthly or quarterly basis. At the end of the Permit term, the City will invoice the Permittee for any parking fee shortfall, which will need to be paid within 30 days. If the Permittee has overpaid at the start of the Permit term, then either credit will be applied towards a renewal of permits or a reimbursement check will be sent to the Permittee.

*Mopeds and motorcycles:* Members parking mopeds or motorcycles in a metered zone but parked between metered spaces (at the parking "T" if one exists and/or in front of the parking meter if one exists), perpendicular to the curb in such a way as to not obstruct other vehicles from parking on either side, will not be required to reimburse the City for meter revenue. Members parking permitted mopeds or motorcycles in such a way that prevents another vehicle from parking in either adjacent space, or in a designated motorcycle parking area will be required to reimburse the City through the meter deposit. Permittee will educate its members about proper parking procedures.

3. **Ability to request signage:** The intention of the FFZPP is to designate an area within which it's possible to park without dedicating specific locations in the right of way for parking for car sharing vehicles. However, there are circumstances in which signage might be necessary to signify the right of Permitted car sharing vehicles to park in an approved area. In such circumstances, the Permittee can request that the City approve, install, and remove signage and sidewalk and/or street markings designating an approved home zone. The Permittee shall not install, paint, mark, or remove any signs, markings, or other demarcations on City property including on the street or the sidewalk. The City is not responsible for any damage caused to Permittee installed signage and/or markings.
4. **Option to request up to four (4) changes to the approved free-floating zone area during the term of the Permit:** The City of Oakland authorizes the Permittee to change the approved initial free-floating zone area up to four times during the term of the Permit. As long as the Permittee demonstrates to the City that changes to the free-floating zone area continue to meet the City's eligibility criteria (see Establishment of A Free-Floating Zone on page 8), the City will automatically approve the change to the free-floating zone area. If the changed free-floating zone area deviates from the criteria, the Permittee will need to submit the changes to the free-floating zone area for the City's approval before the Permittee can shift operations. Upon receipt of the changed free-floating zone area, the City will have ten (10) business days to respond to the changed boundary.

FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL PARKING PERMIT (MRPP) TERMS AND CONDITIONS

5. **Ability to park a moped or motorcycle within designated moped or motorcycle parking areas:** In addition to the privileges described above, FFZP permits obtained for mopeds or motorcycles grant members the ability to park them in designated motorcycle parking areas without direct payment of the meter fee when displaying their FFZP permits. Meter fees will be deducted from the FFZP deposit at the end of the permit year.

**PRIVILEGES OF THE MASTER RESIDENTIAL PARKING PERMIT**

The following privileges will be extended to the Permittee:

1. **Ability to park a permitted car sharing vehicle for longer than two (2) hours but no longer than seventy-two (72) hours in a residential permit parking area:** The Master Residential Parking Permit (MRPP) allows Permitted car sharing vehicles to be parked up to 72 hours in legal and not otherwise restricted parking spaces within an RPP area. Restricted parking spaces include those with one or more regulating signs (such as blue curb or disabled spaces), which cannot be used by Permittee during the specified restricted times shown on the sign(s). Permitted motorcycles or mopeds must park perpendicular to the curb, with one wheel touching the curb.

The Permittee should consult *Title 10 – Vehicles and Traffic - Chapter 10.44 – Residential Permit Parking Program* of the Oakland Municipal Code, for a list of City parking restrictions in RPP areas.

2. **Ability to park a permitted car sharing vehicle in any residential permit parking areas in Oakland:** The MRPP allows Permitted car sharing vehicles to park in any RPP area regardless of the residential address of the car sharing member operating the vehicle. Please see attached map of RPP areas.
3. **Ability to request signage:** The intention of the MRPP is to allow car sharing vehicles to rotate within and among RPP areas without dedicating specific locations in the right of way for parking for car sharing vehicles. However, there are circumstances in which signage might be necessary to signify the right of Permitted car sharing vehicles to park in an approved area. In such circumstances, the Permittee can request that the City approve, install, and remove signage and sidewalk and/or street markings in RPP areas. The Permittee shall not install, paint, mark, or remove any signs, markings, or other demarcations on City property including on the street or the sidewalk. The City is not responsible for any damage caused to Permittee installed signage and/or markings.

**ELIGIBLE PERMITTEES**

An eligible applicant for a FFZPP and/or a MRPP must have obtained a certificate, which acknowledges that the buyer is a Qualified Car Sharing Organization in Oakland, or a letter that indicates that the buyer is a Conditionally Qualified Car Sharing Organization. The Qualified Car Share Organization must also possess a business license to operate in the City of Oakland.

FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL PARKING PERMIT (MRPP) TERMS AND CONDITIONS

**PERMIT STRUCTURE**

The FFZPP and MRPP shall have two components: a Fleet Permit granted to a Qualified Car Sharing Organization (Qualified CSO) and an individual Permit, which is granted to a specific vehicle. To purchase individual FFZPP and/or MRPP Permits, an applicant must file an application for a fleet permit with the City. A Qualified CSO is only entitled to receive one FFZPP Fleet Permit, one MRPP Fleet Permit, or one combined FFZPP/MRPP permit per year.

Permits are issued to individual Qualified Car Sharing Organizations, and they may not be traded or resold.

**PERMIT TERM**

The FFZPP shall last for one year on a fiscal year schedule. For instance, the 2018 Permit will be in effect from July 1, 2018, to June 30, 2019. A Qualified Car Sharing Organization who receives an FFZPP Fleet Permit after July in the calendar year will have the option to pro-rate individual Permit fees to the month purchased. The option to renew permits to Permittees in good standing will be presented in June of the Permit year.

The Fleet Master Residential Parking Permit (Fleet MRPP) shall last for one year on a fiscal year schedule. For instance, the 2018 Permit will be in effect from July 1, 2018, to June 30, 2019. Qualified Car Sharing Organizations (Qualified CSOs) who receive a Fleet MRPP after July in the calendar year will have the option to pro-rate individual Permit fees at the discount schedule extended to Residential Parking Permits. For instance, a Qualified CSO that purchases MRPPs in the first half of the calendar year will have to pay the full Permit fee, but will only pay 70% of the Permit fee if purchased in the second half of the calendar year. Please see the FY 16-17 Master Fee Schedule for more information about proration: <http://www2.oaklandnet.com/Government/o/CityAdministration/d/BudgetOffice/OAK056277>.

The option to renew permits to Permittees in good standing will be presented in June of the Permit year.

**PERMIT CAP AND FLEET SIZE**

Each Qualified Car Sharing Organization (Qualified CSO) applying for FFZPPs can be issued no more than one Fleet Permit, which entitles a fleet of car sharing vehicles owned by a Qualified Car Sharing Organization to purchase individual FFZPPs. This Fleet Permit will allow the City to batch process renewals, vehicle registrations, parking citations, etc., with Permittees. The City has not adopted a cap on the number of car sharing vehicles a QCSO can include in a Permitted Fleet, but in the Car Sharing Principles (85459 C.M.S.), the City limited the number of individual FFZPPs to 400 per year during the pilot program (the first two years that the FFZPP is available for sale). If this cap presents a hindrance to operators and the realization of the City's car sharing principles, the City will make adjustments to the cap.

An FFZPP Fleet Permit applicant, however, cannot purchase more individual FFZPPs than with which it can initiate service during that Permit term. For instance, if an applicant has 30 vehicles

FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL PARKING PERMIT (MRPP) TERMS AND CONDITIONS

ready to be used in a Free-Floating model, but it requests to purchase 40 individual FFZPPs, the additional 10 permits will be denied or revoked upon discovery that they are not in use.

A Fleet MRPP applicant cannot purchase more individual MRPPs than with which it can initiate service during that Permit term. For instance, if an applicant has 30 vehicles ready to be used in a Free-Floating model, but requests to purchase 40 individual MRPPs, the additional 10 permits will be denied or revoked upon discovery that they are not in use.

**EVIDENCE OF PERMIT**

A separate, individual, revocable FFZPP will be issued to each vehicle and/or license plate registered by the Permittee. As evidence of the Permit, the City of Oakland will issue 1) a paper Permit, and 2) a sticker to be affixed to the lower left corner of the rear bumper. The sticker will take the following form:

1. A mini-sticker that features the City’s logo and the serial number of the Permit to be affixed to a larger bumper sticker provided by the Qualified Car Sharing Organization (Qualified CSO) of a similar size to the Residential Parking Permit sticker. The larger bumper sticker provided by the Qualified CSO must display the following information:
  - a. A title indicating that the Permitted vehicle has special parking privileges
  - b. The license plate number of the Permitted vehicle
  - c. The date the Permit expires in that Permitted year
  - d. Sufficient space for the City’s mini sticker
  - e. The zone designation of the Qualified CSO’s approved Free-Floating Parking Zone.

If the FFZPP Permittee also purchases Master Residential Parking Permits (MRPPs) for its car sharing vehicles and chooses to affix City-issued mini-stickers to bumper stickers, the City will have opportunity to combine the mini-sticker for the FFZPP and the mini-sticker for the MRPP into one combined sticker.

Alternative arrangements for the sticker can be made at the request of the Qualified CSO. To inquire, please contact the car share contact.

**ESTABLISHMENT OF A FREE-FLOATING ZONE AREA**

It is the obligation of the Qualified Car Sharing Organization (Qualified CSO) to propose a Free-Floating Parking Zone (“free-floating zone area”) in which to establish car sharing services as permitted by the FFZPP Fleet Permit. In the form of a map (file type to be specified by the City), the boundaries of the free-floating zone area will be submitted to the Department of Transportation as the initial step in the FFZPP Fleet Permit application process. Once the boundaries of the FFZPP have been approved (criteria outlined below), the Qualified CSO will submit information about its fleet of car sharing vehicles to the Parking Permits Supervisor in the Revenue Department.

FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL PARKING PERMIT (MRPP) TERMS AND CONDITIONS

As specified in the Municipal Code (*Title 10 – Vehicles and Traffic*), the Permittee is allowed up to four (4) changes of the free-floating zone area during the term of the Permit. Any proposed changes to the boundaries within the Permit term must be submitted to the Department of Transportation. As long as the Permittee demonstrates to the City that changes to the free-floating zone area continue to meet the City’s eligibility criteria of the free-floating zone area boundary and that there are no outstanding claims by neighborhood associations and/or business groups, the City will automatically approve the change to the free-floating zone area. If the Permittee requires an exception from the eligibility criteria, then the Permittee will need to receive the City’s approval of the changes before the Permittee can adjust operations or inform members of the new free-floating zone area.

The Permittee must notify its members about changes to the free-floating zone area at least three (3) days before the Permittee adjusts the zone.

If changes to the operating area proposed by Permittee will significantly restrict access of neighborhoods or neighborhood commercial districts to car sharing services, the Permittee must contact any City-recognized neighborhood organizations and/or business associations that are impacted and provide an opportunity for neighborhood input.

The City may provide a list and/or map of any and all parts of the free-floating zone area that the Permittee’s permits will not be honored. The Permittee’s permits will not be valid when the vehicle is parked in these areas and therefore must follow the same rules and regulations as any other motor vehicle.

***Eligibility Criteria of Free-Floating Zone Area:***

1. The free-floating zone area must be situated in part or completely within the City of Oakland’s boundaries.
2. The free-floating zone area must be representative of Oakland’s geographic and socioeconomic diversity. Within 3 (three) months of FFZP approval or renewal, at least 50 percent (50%) of the free-floating zone area must encompass all or parts of census tracts that have been designated Communities of Concern by the Metropolitan Transportation Commission (MTC). Details about the Communities of Concern designation can be found on the MTC’s data portal: <http://opendata.mtc.ca.gov/datasets?q=Policy> . This criterion has been recommended to ensure that the City’s programs are accessible to all residents.
3. If a street or block face would like to be included in a free-floating zone area, and the Permittee has denied the request of the appropriate neighborhood association and/or business group, the City reserves the right to withhold approval of subsequent changes to the free-floating zone area or renewal of the FFZPPs until the complaints with said groups have been resolved. The neighborhood association and/or business group must file notice of the request to be included in a given free-floating zone area with the City at least ten (10) business days before a specific date of a requested action. The City must

FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL PARKING PERMIT (MRPP) TERMS AND CONDITIONS

notify the affected Permittee within ten (10) business days that the City has received such a request from a neighborhood association and/or business group.

4. If, after six (6) months of inclusion in a free-floating zone area, neighborhood organizations and/or business groups within the zone protest the inclusion of a street or block face in a free-floating zone area, said groups can petition the City to have its street included on the black out list of streets with overriding parking restrictions. At least two-thirds (2/3) of residents on a given street or block face must sign a petition to remove said street and/or block face from a free-floating zone area. The City requires that the petitioning neighborhood and/or business group make an effort to negotiate the parking behavior directly with the Permittee operating in the free-floating zone area before bringing a petition to the Shared Mobility Coordinator or designee of the City Traffic Engineer.
5. The free-floating zone area is only valid and operational so long as the Permittee holds active FFZPPs granted by the City.
6. If the applicant's free-floating zone area does not include Communities of Concern (as designated by MTC) located in East Oakland (defined as areas to the east of 14<sup>th</sup> Avenue), then an Expansion Plan must be submitted to the Department of Transportation within three (3) months of the receipt or renewal of applicant's FZPP's. The Expansion Plan must include an expected timeline for expanding service to Communities of Concern in East Oakland, a map or maps depicting the proposed service area changes over time, and any actions that the applicant requests from the City in order to expand service.

**OUTREACH TO NEIGHBORHOOD ASSOCIATIONS AND BUSINESS GROUPS**

After the City grants the applicant an FFZPP, MRPP, or combined FFZPP-MRPP permit, the Permittee must request at least one (1) meeting with each neighborhood associations and/or business group located within the approved Free-Floating Parking Zone ("free-floating zone area") and/or Master Residential Parking Area Zone. When a free-floating zone area expands, the City expects the Permittee to request at least one (1) meeting with each neighborhood associations and/or business group located in the expanded free-floating zone area. Prior to designating or expanding a free-floating zone, the applicant must provide the City with a proposed list of neighborhood associations and business groups which it intends to meet with. The Department of Transportation must then approve the proposed list of meetings. After those meetings are completed, the applicant must provide the City with evidence of attendance (such as a sign-in sheet or meeting agenda) and meeting notes.

The Permittee shall not advertise or publish the City's participation in this Permit program prior to receiving the FFZPP, MRPP, or combined FFZPP-MRPP permit.

**PERMIT FEES AND PAYMENT RECONCILIATION**

The Permittee agrees to pay all permit and other appropriate fees to the City.

FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL PARKING PERMIT (MRPP) TERMS AND CONDITIONS

***Free-Floating Parking Zone***

The Free-Floating Parking Zone (FFZPP or “free-floating zone area”) Permit fees are published in the Master Fee Schedule. For Fiscal Year 19-20, the cost of an FFZPP is \$220 per car sharing vehicle per year. The intent of this fee is to create an upfront estimate of the expected meter usage of a car sharing vehicle within the approved free-floating zone area. Over the course of the term of the Permit, the Permittee will track actual parking meter usage per vehicle, report that usage to the City, and within 30 days after the last day of the permit term, i.e. July 31 of the following year, reconcile the actual dollar value of parking meter usage estimated pre-payment.

For motorcycles and mopeds, the FFZP is one-fifth the cost of the standard FFZP fee, to account for the smaller size of these vehicles and the small number of designated motorcycle parking areas. For fiscal Year 19-20, the motorcycle and moped FFZP is \$44

In the case of overpayment, the City will credit the surcharge towards a Permit renewal or the Permittee will invoice the City for the balance by the last business day of the subsequent month. In the case of underpayment, the City will invoice the Permittee for the balance by the last business day of the subsequent month.

The Permit fees are based on the anticipated average number of vehicles in the Permittee’s fleet in Oakland. For an FFZPP Permittee with a free-floating zone area that spans multiple municipalities including Oakland, the Permittee will calculate an estimate of the average number of vehicles which will park overnight, based on the share of parking meters, the share of parking spaces, or the share of the area within Oakland of the multi-jurisdiction free-floating zone area. Documentation of the estimate of the average number of vehicles should be included with the Permit application. These fees are to be assessed at the beginning of each Permit term and when additional vehicles are added to the fleet (no fees will be assessed for substitute vehicles).

Meter recovery fees are based on the actual time car sharing vehicles parked at meters. These fees are to be assessed for the fleet at the end of each quarter or Permit term and will reflect the total meter usage for that quarter.

If a Permittee increases its fleet size during the Permit term, the Permittee must report to the City the number of new vehicles to be added to their fleet Permit. These vehicles must be added to the Permit and the FFZPP fee must be paid for these vehicles. The City may charge a pro-rated Permit fee for each vehicle added (see the Permit Term section).

***Master Residential Parking Permit***

The Master Residential Parking Permit (MRPP) fees are published in the Master Fee Schedule. For Fiscal Year 19-20, the cost of an MRPP is \$105 per car sharing vehicle per year.

The intent of this fee is to allow car sharing vehicles equivalent curbside parking privileges to private vehicles in residential areas. Because car share vehicles are expected to rotate in an unpredictable fashion within and among residential parking areas, the City deems it necessary to open all residential parking areas to car sharing vehicles; the City has valued this privilege at approximately three (3) times the value of a standard Residential Parking Permit (RPP). The cost

FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL PARKING PERMIT (MRPP) TERMS AND CONDITIONS

of a new RPP was \$35 at program inception, but has since risen to \$84. Thus the City derived the \$105 Permit fee from three (3) times the cost of the \$35 fee. In FY 19-20, the fee for the MRPP is likely to increase with the updated cost of the RPP (see the **Error! Reference source not found.** on page **Error! Bookmark not defined.**)

**INSURANCE REQUIREMENTS**

The Permittee shall maintain in force at its own expense, each type of insurance noted below:

1. Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that is satisfactory to the City. This insurance shall include personal and advertising injury liability, products and completed operations. Coverage shall be written on an occurrence basis. The limit per occurrence shall not be less than \$2,000,000 or as may be required by subsequent amendment and shall provide that the City of Oakland, and its agents, officers, and employees are Additional Insured.
2. Automobile Liability insurance with a combined single limit of not less than \$2,000,000 per occurrence for Bodily Injury and Property Damage, including coverage for owned, hired, or non-owned vehicles, as applicable.
3. On all types of insurance. There shall be no cancellation, material change, reduction of limits, or intent not to renew the insurance coverage(s) without 30-days written notice from the Permittee or its insurer(s) to the City.
4. Certificates of insurance. As evidence of the insurance coverages required by this permit, the Permittee shall furnish acceptable insurance certificates to the City at the time Permittee returns signed permits. This certificate will specify all of the parties who are Additional Insured and will include the 30-day cancellation clause that provides that the insurance shall not terminate or be cancelled without 30-days written notice first being given to the City Auditor. Insuring companies or entities are subject to City acceptance. If requested, complete policy copies shall be provided to the City. The Permittee shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.
5. The Department of Transportation will automatically revoke this permit without further action if this insurance is permitted to lapse, is canceled, or for any other reason becomes inoperative.

**PERMIT APPLICATION AND SERVICE INITIATION**

To apply for and receive a FFZPP or MRPP, as well as initiate the car sharing service, the applicant will follow the following steps:

1. Apply for and obtain a Qualified Car Sharing Organization Certificate.

FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL PARKING PERMIT (MRPP) TERMS AND CONDITIONS

2. Submit to the Department of Transportation a proposed free-floating zone area map.
3. Submit an FFZPP Fleet Permit and/or MRPP application with 1) the Qualified Car Sharing Organization Certificate, 2) the City-approved free-floating zone area map 3) the applicable information about the car sharing vehicles in the fleet, 4) the payment for Permit fees, and 5) other supporting documentation, as needed.
4. Conduct outreach meetings, as appropriate.
5. Receive Permits and apply sticker decals to car sharing vehicles.

Documentation of these steps, an estimated timeline of the application process, and other updates will be posted to the City's website: <https://www.oaklandca.gov/services/dot/car-share-program>

The City expects Permittees to initiate the car sharing services during the Permit term in which the Permits were purchased. If the Permittee does not initiate car sharing services during the Permit term in which the Permits were purchased, the unused Permits will be revoked and ineligible to renew in a subsequent Permit term.

Because the City recognizes the first two years of sales of these permits as the Pilot Program, the period within which to initiate service is the entire Permit term. For instance, a Permittee that receives Permits on April 1, 2016 will have until December 31, 2016 to initiate car sharing services. In subsequent years, the time period between when the Permits are issued and when car sharing services are initiated may be shortened.

**DATA REPORTING AND RECORD KEEPING**

***Reporting to the City***

The Permittee agrees to survey members at least once (1 time) per Permit term, consult with the City on questions included in the survey, and provide results of the annual survey to the Car Share Contact in the Department of Transportation.

The Permittee is also required to report, on a monthly or quarterly basis, information regarding the fleet and membership. The goal of these reports is to better understand how the entire car share system is being utilized and to better inform future policy changes. The Permittee will work with the City to provide the following information on their company's operations, such as:

1. Number of vehicles in fleet
2. Parking locations of vehicles
3. Fleet usage
4. Total number of members
5. Member Survey and General Demographics

FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL PARKING PERMIT (MRPP) TERMS AND CONDITIONS

Information submitted to the City is subject to the City of Oakland's Sunshine Ordinance (Oakland Municipal Code Chapter 2.20 – Public Meetings and Public Records) and the California Public Records Act (Government Code Section 6250 et seq.). If the Permittee believes that any material it submits constitutes trade secrets, privileged information, or confidential commercial or financial data, then the Permittee should mark those items as confidential or proprietary. The City is not bound by the Permittee's determination as to whether materials are subject to disclosure under CPRA and reserves the right to independently determine whether the materials are required to be made available for inspection or otherwise produced under CPRA. If the City receives a request for such information marked as confidential, it will notify the Permittee. If a suit is filed to compel disclosure of such information, the City will notify the Permittee, and the Permittee shall be responsible for taking appropriate action to defend against disclosure of its confidential information, and will hold the City harmless from any costs or liability resulting from any CPRA litigation.

The Permittee shall furnish to the City a report each month, quarter or Permit term (as determined by the Permittee and the City), due within 30 days from end of that quarter or term, containing monthly summary data related to parking events in the Free-Floating Parking Zone for the prior quarter. This data should detail the time parked in the meter zones as well as sum up the meter usage costs in relation to FFPP deposits. Should the Permittee's FFZPP and/or MRPP include the Montclair Flexible Parking Rate District or any future flexible parking rate districts, the Permittee must track the parking meter rate changes and apply them to the parking events, which can change as often as every sixty days. This data will be used to evaluate quarterly or term charges related to metered parking fees. If the City Council approves any changes to metered parking rates or meter districts during the Permit term, the Permit fee will be adjusted to reflect the changes. Changes to meter rates will be published within the City's Master Fee Schedule.

The Permittee will agree to work with and provide access to members to independent researchers, who will study to the environmental, social, and economic impacts of the two- year expansion of car sharing in Oakland as a part of the car sharing grant awarded to the City of Oakland from the Metropolitan Transportation Commission (85459 C.M.S.). The City will provide details about the evaluation to Permittees during the Permit application process.

***Records***

The Permittee shall retain and maintain all records and documents relating to the Permit for five (5) years after the date in which this Permit terminates, and shall make them available for inspection and audit by authorized representatives of the City. Permittee shall make available all requested data and records at reasonable locations within the City of Oakland at any time during normal business hours, and as often as the City deems necessary. If records are not made available within the City of Oakland, the Permittee shall pay the city's travel costs to the location where the records are maintained. Failure to make requested records available for audit by the date requested may result in termination of the permit.

FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL PARKING PERMIT (MRPP) TERMS AND CONDITIONS

**ENFORCEMENT**

***Parking Enforcement***

The City will train its parking enforcement technicians in the new privileges associated with the FFZPP and MRPP, and equip technicians with approved area maps. The Department of Transportation will be responsible for keeping the parking enforcement staff apprised of changes to a Permittee's approved free-floating zone area and new sales of MRPPs.

With the exceptions of the aforementioned privileges bestowed to car sharing vehicles and Permittees (see Privileges of the Free-Floating Zone Parking Permit on page 4), car sharing vehicles are subject to all other traffic and parking regulations outlined in *Title 10 – Vehicles and Traffic* of the Oakland Municipal Code. Parking enforcement technicians will issue citations to car sharing vehicles for violations as they would private automobiles. Permittees with outstanding parking citations will not be allowed to renew FFZPPs or MRPPs until citations have been resolved with the Parking Operations Division.

***Financial and Field Audits***

The City reserves the right to conduct a financial review and/or audit of the Permittee. If the City commences an audit of a Permittee, the Permittee will be notified of the forthcoming audit at least thirty (30) days in advance of the audit by mail and by email. Details of the financial information to be provided to the City will be included in the notification.

The Permittee shall establish and maintain a reasonable accounting system that enables the City to readily identify the Permittee's assets, expenses, costs of goods, and use of funds. The City and its authorized representatives shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to the Terms and Conditions of the permit, including, but not limited to those kept by the Permittee, its employees, agents, assigns, successors, and subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files; all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; backcharge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence. The City shall have the right to conduct an audit or examination no more than two (2) times per calendar year.

The City reserves the right to conduct field audits of car sharing vehicles in which parking enforcement officers record locations of parked car sharing vehicles and cross-check them against reports of parking activity provided to the City by the Permittee. The Permittee shall, at all times during the term of the permit and for a period of five (5) years after the permit term, maintain such records, together with such supporting or underlying documents and materials. The Permittee shall at any time requested by the City, whether during or after the permit term, make such records available for inspection and audit by the City. Such records shall be made available to the City during normal business hours and subject to a thirty (30) day written notice by electronic mail and first-class U.S. Postal Service delivery. In the event that no such location

**FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL  
PARKING PERMIT (MRPP) TERMS AND CONDITIONS**

is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for the City. The Permittee shall ensure the City has these rights with the Permittee's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the Permittee and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Permittee's obligations to the City. Costs of any audits and examinations conducted under the authority of this right to audit and not addressed elsewhere in this contract will be borne by the City. The City will issue a warning to the Permittee if it fails either a financial or field audit. The Permittee risks revocation of some or all individual FFZPPs or MRPPs, if the Permittee fails to take measures to address the audit failure or repeats a failure in a subsequent audit.

FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL PARKING PERMIT (MRPP) TERMS AND CONDITIONS

**REVOCAATION**

The City of Oakland reserves the right to revoke a FFZPP or MRPP at any time upon written notice of revocation sent to both the Permittee's mailing and email addresses listed on the Permittee's Application submitted to the City.

The Permittee agrees to surrender such permit in accordance with the instructions in the notice of revocation. In the event that the City revokes a FFZPP or MRPP, Permittee shall cease operations in the public right of way within ten (10) business days from the date the notice of revocation was mailed and emailed by the City to the Permittee.

If the Permittee wishes to contest the revocation of a permit, the Permittee may contact, within ten (10) days of the date of revocation, the Supervisor of the Shared Mobility Coordinator, appropriate transportation manager within the City of Oakland or the Supervisor of the Parking Permits and Citations Office within the Department of Finance and Management to explain any basis for why the Permit should not be revoked.

In circumstances that pose a serious threat to public health or safety, the City reserves the right to immediately revoke an FFZPP and/or MRPP effective on the date the notice of revocation is mailed and emailed to the Permittee. The City shall state the public health or safety reasons that require immediate revocation in the notice of revocation. In such circumstances, the Permittee shall be required to immediately remove the car sharing vehicle from the public right of way.

This permit is revocable by the City Traffic Engineer at any time in the event the public's need requires it, or the Permittee fails to comply with the conditions of this Permit. No expenditure of money hereunder, lapse of time, or other act or thing shall operate as an estoppel against the City of Oakland, or be held to give the Permittee any vested or other right. Upon the expiration of this permit, or upon its sooner revocation by the City Traffic Engineer, the City shall no longer provide said right of this Permit.

**INDEMNIFICATION**

Permittee shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Permittee or loss of or damage to property, arising directly or indirectly from Permittee's performance of this Permit, including, but not limited to, Permittee's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Permittee, its subpermittees or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL PARKING PERMIT (MRPP) TERMS AND CONDITIONS

In addition to Permittee's obligation to indemnify City, Permittee specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Permittee by City and continues at all times thereafter. Permittee shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Permit.

Permittee shall indemnify, defend and hold harmless the City of Oakland, its officers, agents and employees from and against all claims, demands, suits, actions, damages, liabilities, costs and expenses of whatsoever nature, including all attorney fees and costs, relating to, resulting from or arising out of the permitted activities. This Permit is personal to the Permittee and may not be transferred, assigned or otherwise conveyed. Identification of vehicle as belonging to this car sharing organization must be clearly visible on the vehicle, in contrasting colors with letters two inches high or larger.

**COMPLIANCE WITH ADDITIONAL TERMS AND CONDITIONS**

Permittee agrees to comply with any and all additional written terms and conditions required by the City of Oakland for participation in the Car Sharing Program. Permittee acknowledges that these written terms and conditions may be changed, amended, or revised at any time by the City upon written notification to the Permittee. By acceptance of a FFZPP and/or MRPP, Permittee agrees to comply with any changed, amended or revised written terms and conditions within thirty (30) days of written notification by the City. Failure to comply with any or all terms and conditions required by the City in the FFZPP and/or the MRPP can result in the revocation of any or all FFZPPs and/or MRPPs issued to the Permittee upon written notice of revocation by the City.

**COMPLIANCE WITH APPLICABLE LAW**

The Permittee represents and certifies, under penalty of perjury, that the Car Share Organization and the car sharing vehicles on whose behalf the Permittee is seeking this Permit is in compliance with all California Vehicle Code requirements, FFZPP requirements, and Qualified Car Sharing Organization criteria set forth here and in the City's Municipal Code.

**RESPONSIBILITIES OF PERMITTEE**

It is responsibility of the Permittee to:

1. Operate a legitimate car sharing service that benefits the residents of Oakland.
2. Maintain its Qualified Car Sharing Organization status during the term of the FFZPP and/or MRPP.

FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL PARKING PERMIT (MRPP) TERMS AND CONDITIONS

3. Maintain adequate and sufficient insurance coverage.
4. Conduct outreach to Oakland residents and businesses, as appropriate.
5. Ensure that car sharing vehicles display evidence of the FFZPP and/or MRPP.
6. For FFZPP Only: Maintain an approved Free-Floating Parking Zone.
7. For FFZPP Only: Submit documentation of changes of the free-floating zone area no more than four (4) times within the Permit term.
8. Track and report to the City parking activity of car sharing vehicles within the free-floating zone area or within residential permit parking areas.
9. Pay upfront Permit fees as specified in the Master Fee Schedule, and reconcile balance differences at the end of the Permit term with respect to the amount of actual parking activity.
10. Pay the City all citations and towing fees incurred by the Permittee's car sharing vehicles, however the pass-through of fees to the member is justified wherein the member is the responsible party, according to the California Vehicle Code and/or the Oakland Municipal Code.
11. Report changes in license plate numbers, vehicle registrations, and other required vehicle information to the Parking Operations Supervisor, as changes to the Permitted fleet occur during the term of the permit.
12. Facilitate the City's financial and/or field audits and take steps to address the City's recommendations from the audits.
13. Meet all the requirements of the FFZPP and MRPP.

**RESPONSIBILITIES OF THE CITY**

It is the responsibility of the City to:

1. Fulfill the objectives of the Car Sharing Policy (85459 C.M.S.).
2. Administer a fair, timely, and efficient FFZPP process.
3. Coordinate internally to communicate changes to maps, Permits, Permit fees, etc. between divisions and departments.
4. Keep records of Qualified Car Sharing Organization certifications and Permits granted.
5. Approve the list of outreach activities proposed by the applicant prior to establishing or expanding a free-floating zone area.

FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL PARKING PERMIT (MRPP) TERMS AND CONDITIONS

6. Conduct outreach to Oakland residents and businesses, as appropriate.
7. Respond to concerns and petitions of Oakland residents and businesses, as appropriate.
8. Assess Permit fees as defined in the Master Fee Schedule.
9. Enforce the Traffic and Vehicle Code.
10. Conduct audits of Permittees to ensure that car sharing services follow regulations and accurately report parking activity, as needed.
11. Receive and analyze reports of parking activity.
12. Respond to requests from Permittees, as defined in the FFZPP Terms and Conditions, in a timely and efficient manner
13. Keep Permittees apprised of changes to Permit terms and conditions, parking and curb designations, and parking meter rates and permit fees.
14. Keep Permittees apprised of changes to key City personnel and provide a staff contact to car sharing organizations.

# Revel

Fall 2019



## REVEL

# Meet Revel. Seamless integration into the existing transportation network.

### Street Legal

Every vehicle has a DMV-issued license plate and requires a drivers license to operate. No motorcycle license required.

### Space Efficient

Parks in curb dead space. An average parking spot fits 7 mopeds

### Affordable

Cheaper than UberX, Lyft, UberPool

### Sustainable

100% of the fleet is 100% emissions-free. Electrically powered, they're also noise-free

### Multiple uses

Great for short trips, middle mile and complete trips. Replace car trips, relieve/supplement congested transit lines



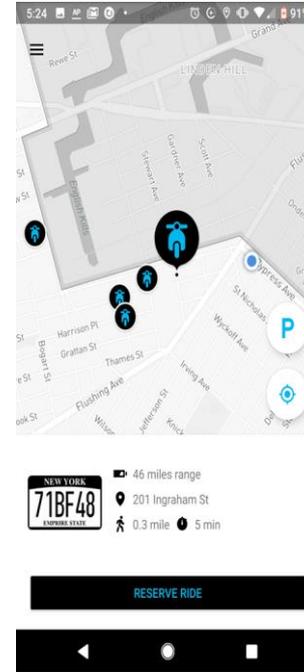
## REVEL

### How it works.

1. Open the Revel app to find a nearby vehicle.
2. Click to reserve (up to 15 min), at vehicle click to start and unlock helmet case.
3. Begin ride and park in a legal parking spot when you reach your destination. Close ride.



Open the App



Locate nearest Revel



Reserve and ride wherever you need to go!

## REVEL

### Safety is paramount.

- Drivers must be at least **21 years old** with a **valid license** and safe driving record.
  - ✓ Before registration is complete Revel performs background checks to verify riders' information.
  - ✓ Users must also submit a selfie to verify they are the license-holders.
- **2 USDOT certified helmets** equipped with eye protection shields are stored in each Revel at all times.
- As motor vehicles, Revel's **travel in traffic lanes, park curbside** and have safety equipment consistent with or exceeding state DMV and insurance board standards.
- Speed **throttled at 30mph** to keep up with traffic, license plates ensure accountability.



## REVEL

# We're committed to free safety education for all.

- Revel offers free in-person lessons to existing and potential riders 7 days a week
- Each trip begins with a safety checklist
- Ride ends with reminders to ensure proper parking
- Our team is available to provide immediate customer support during operating hours



## REVEL

Our pilot has been a success.

July 2018 – April 2019: 68 e-mopeds in  
Bushwick, Greenpoint & Williamsburg

27,000+ rides

2.5 mi avg ride

3,500+ users

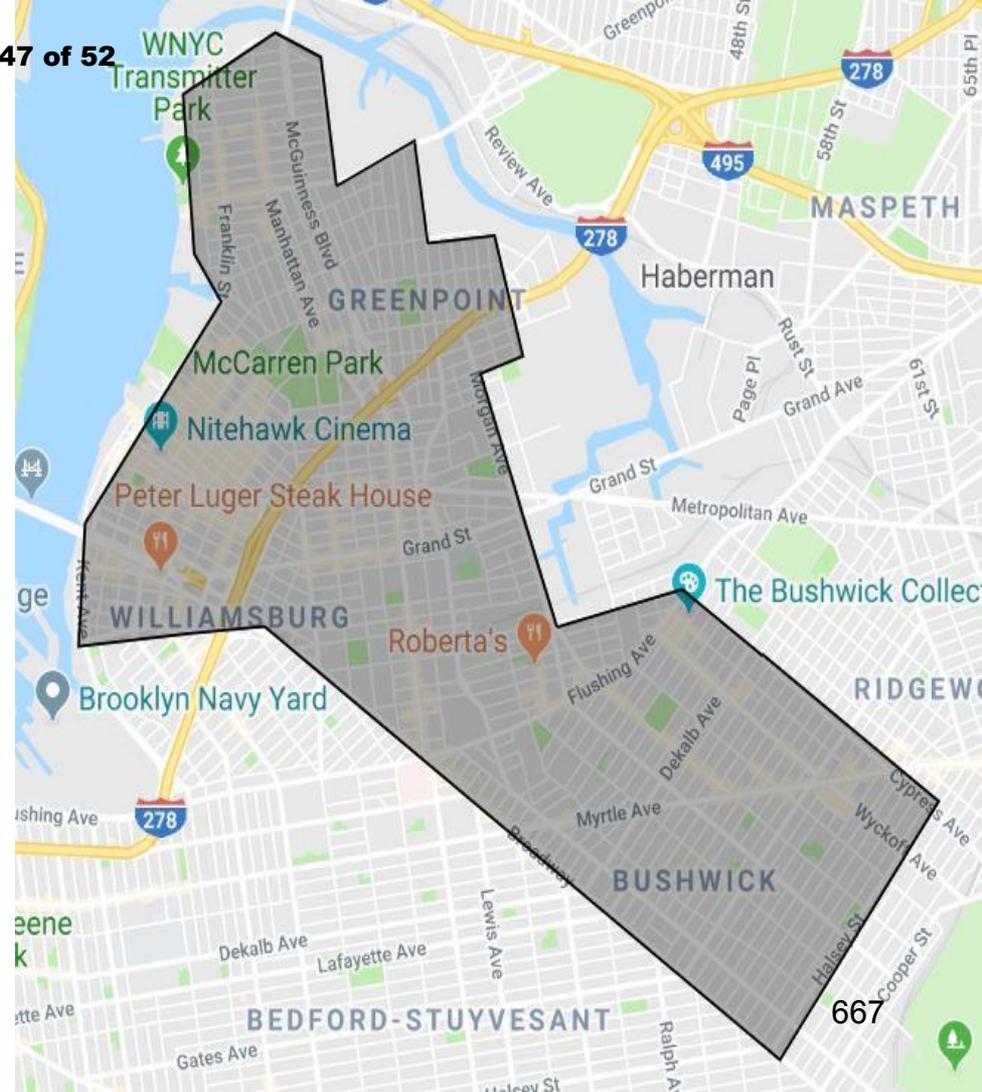
>200 lessons

### Customer Reviews

“Shockingly easy to use, incredible customer service, and neighborhood-to-neighborhood no-brainer. So glad it’s here, it better be to stay.”

“Best customer service I’ve ever experienced, ever.”

“I never knew how much fun and exciting it would be until I got on it and I love it, I can see this company going far.”



REVEL

## 2018 Brooklyn Pilot: Rider Feedback

90%

Would take fewer car trips if Revel were available throughout all of Brooklyn and Queens

50%

Report using Revel to replace taxi/Uber/Lyft/personal vehicle trips

70%

Would use Revel at least once a week if it were available throughout all of Brooklyn and Queens

90%

Would recommend Revel to their friends

REVEL

Data and rider feedback have helped us make Revel even better.

2018



\$4 for 20 minutes, \$0.25 each additional minute

Center kickstand, common for mopeds, motorcycles

Manual turn-off blinkers, common for mopeds

200lbs of weight centralized

Safety / education material on our website

Seat ~32" from the ground

2019



\$1 unlock fee, \$0.25 each additional minute

Side kickstand, common for bicycles

Auto turn-off blinkers, common for typical passenger vehicles

200lbs of weight distributed for improved balance and command over the vehicle

Safety / education material on both our website and app

Seat ~29" from the ground

## REVEL NYC Expansion 2019

As a result of such a successful pilot, with support from local leaders, on May 28th we expanded our fleet of 68 vehicles in three neighborhoods to a fleet of **1000** across approximately **20**.

In just the first month **tens of thousands of new users** signed up, with vehicles averaging **7+ trips per day**.



## REVEL

### Moving forward in 2019.

- We have **expanded our footprint in NYC**, in August we **launched a fleet in Washington DC** and plan to launch in additional cities across the United States.
- We will engage early and often with cities. Our approach is to **listen, deploy, learn and refine**.
- Our goal is to fit seamlessly into cities' existing transportation networks, offering a new option for all residents. Particularly in neighborhoods with **limited transit options, lower rates of car ownership**, and those **historically underserved** by companies offering innovative mobility solutions.
- We are also committed to **equitable riding** that is **accessible to all residents**. We will continue to offer an **equitable access rider program** with a **40 percent discount** off our standard pricing. We will also invest in marketing to traditionally underserved communities.
- **Revel doesn't do gig economy**. We staff full-time employees with benefits including health insurance and 401k. We will also establish a physical presence in every city we operate, with locally-based employees on the ground so we remain responsive to our customers, city government and our community.

REVEL

We're here to help.

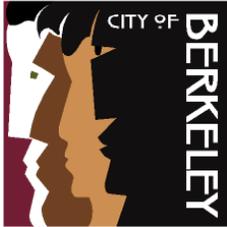
Our approach is to listen, deploy, learn and refine.

Call (or text) us anytime with questions, concerns or if you want to take a test ride!

Daniella Henry, Associate Director, Policy  
860-212-8088/[Daniella.Henry@gorevel.com](mailto:Daniella.Henry@gorevel.com)

Haley Rubinson, Director of Business Development  
917-572-5122/[haley.rubinson@gorevel.com](mailto:haley.rubinson@gorevel.com)





Health, Life Enrichment, Equity,  
and Community Committee

## ACTION CALENDAR

February 11, 2020

*(Continued from January 21, 2020)*

To: Honorable Mayor and Members of the City Council  
 From: Health, Life Enrichment, Equity, and Community Committee  
 Subject: Recommendations Related to Code Enforcement and Receivership Actions

### RECOMMENDATION

On November 25, 2019, the Health, Life Enrichment, Equity & Community Committee took action to send an item to Council with a positive recommendation that for purposes of understanding the issues and identifying potential changes to the City's codes, policies, and procedures the committee recommends the following:

- a. That the City Manager provide an information session to the City Council regarding the various ways in which code enforcement issues have been brought to the attention of the City over the last 5 years;
- b. How various code enforcement issues at residential properties are currently handled;
- c. Timeframe and mechanisms for achieving code compliance at residential properties;
- d. Any existing assistance programs available to support property owners found to have code violations;
- e. Specific learnings/changes in City practices resulting from the Leonard Powell receivership case;
- f. Other information deemed relevant and appropriate to understand the City's current code enforcement practices for residential properties

Additionally, the Policy Committee requests that the Mayor call a special meeting of the City Council for purposes of a forum based on the recommendations provided by Councilmember Bartlett as the draft plan for a public meeting on receivership.

And third, the Committee requests from the City Manager a specific reply on creating a mechanism to provide legal and technical assistance by an independent third party for individuals who are facing City of Berkeley initiated receivership, and that the reply also include a process for the individual to pick legal and technical representatives of their choice. This response should also include a recommendation from the City Manager and a budget referral.

### POLICY COMMITTEE RECOMMENDATION

On June 11, 2019, the City Council referred to the Health, Life Enrichment, Equity & Community Committee to create a policy that receivership should only be used when the property is a danger to the public, and as a last resort, and only upon approval of the Council.

On November 25, 2019, the Health, Life Enrichment, Equity & Community Committee adopted the following action:

M/S/C (Hahn/Kesarwani) to send the item to Council with a positive recommendation that for purposes of understanding the issues and identifying potential changes to the City's codes, policies, and procedures the committee recommends the following:

- a. That the City Manager provide an information session to the City Council regarding the various ways in which code enforcement issues have been brought to the attention of the City over the last 5 years;
- b. How various code enforcement issues at residential properties are currently handled;
- c. Timeframe and mechanisms for achieving code compliance at residential properties;
- d. Any existing assistance programs available to support property owners found to have code violations;
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Vote: All Ayes.

CONTACT PERSON

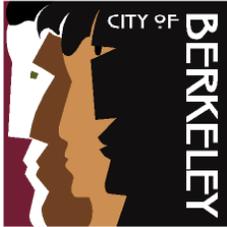
Sophie Hahn, Councilmember, District 5, (510) 981-7150

Rashi Kesarwani, Councilmember, District 1, (510) 981-7110

Cheryl Davila, Councilmember, District 2, (510) 981-7120

Attachments:

- 1: Recommendations Related to Code Enforcement Actions and Leonard Powell Fact Finding (Housing Advisory Commission)
- 2: Recommendation to Bring Justice to Mr. Leonard Powell and to Change Certain Policies to Ensure Housing Stability for Homeowners and Tenants (Peace and Justice Commission)
- 3: Draft Plan for Public Meeting on Receivership (Councilmember Ben Bartlett)



Housing Advisory Commission

## ACTION CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council

From: Housing Advisory Commission

Submitted by: Xavier Johnson, Chairperson, Housing Advisory Commission

Subject: Recommendations Related to Code Enforcement Actions and Leonard Powell Fact Finding

### RECOMMENDATION

Establish policies that will provide housing stability for homeowners and tenants. The City Council should set in place clear, objective, and equitable standards for conducting code enforcement actions and ensure that due process rights of affected homeowners and/or tenants are preserved.

Commission a formal fact-finding process to ascertain what occurred in the matter of Mr. Leonard Powell. It should also refer this matter to the City Auditor. The fact finding should, among other things, focus on any actions taken by the Receiver in the case of Mr. Powell and any communications that the City has had with the Receiver. The HAC recognizes that additional steps may be necessary in regard to this matter, and may forward additional recommendations to the City Council at a later date.

### POLICY COMMITTEE RECOMMENDATION

On June 11, 2019, the City Council referred this item to the Health, Life Enrichment, Equity & Community Committee to create a policy that receivership should only be used when the property is a danger to the public, and as a last resort, and only upon approval of the Council.

On November 25, 2019, the Health, Life Enrichment, Equity & Community Committee adopted the following action:

M/S/C (Hahn/Kesarwani) to send the item to Council with a positive recommendation that for purposes of understanding the issues and identifying potential changes to the City's codes, policies, and procedures the committee recommends the following:

- a. That the City Manager provide an information session to the City Council regarding the various ways in which code enforcement issues have been brought to the attention of the City over the last 5 years;
- b. How various code enforcement issues at residential properties are currently handled;
- c. Timeframe and mechanisms for achieving code compliance at residential properties;

- d. Any existing assistance programs available to support property owners found to have code violations;
- e. Specific learnings/changes in City practices resulting from the Leonard Powell receivership case;
- f. Other information deemed relevant and appropriate to understand the City's current code enforcement practices for residential properties

Additionally, the Policy Committee requests that the Mayor call a special meeting of the City Council for purposes of a forum based on the recommendations provided by Councilmember Bartlett as the draft plan for a public meeting on receivership.

And third, the Committee requests from the City Manager a specific reply on creating a mechanism to provide legal and technical assistance by an independent third party for individuals who are facing City of Berkeley initiated receivership, and that the reply also include a process for the individual to pick legal and technical representatives of their choice. This response should also include a recommendation from the City Manager and a budget referral.

Vote: All Ayes.

#### FISCAL IMPACTS OF RECOMMENDATION

Staff time.

#### CURRENT SITUATION AND ITS EFFECTS

Several years ago, the City of Berkeley's code enforcement department was alerted to possible code violations at 1911 Harmon St. owned by Leonard Powell. The City requested that Mr. Powell address these violations. Although Mr. Powell arranged for some work to be done (and received a \$100,000 loan from the City's Senior and Disabled Home Rehabilitation Program) to do this work, not all of the violations cited by the City were addressed. Since Mr. Powell did not correct all the violations, the City petitioned the court to appoint a receiver to bring the house into code compliance. However, many more repairs were made, bringing the total costs to over \$600,000.

The house is now certified by the City for occupancy. However, Mr. Powell faces additional costs which exceed the amount that was provided to him through public loans.

#### BACKGROUND

Mr. Powell, a veteran and retired U.S. Postal worker had purchased the house at 1911 Harmon Street over forty years ago as a home for himself and family. Since purchasing the duplex house, which Mr. Powell converted to a single family home, there had been no major repairs made by him. The conversion from a duplex to a single family home was done without permits and inspections.

Mr. Powell's situation has triggered public concern that he has not been treated fairly, and concerns of inequitable treatment of a Berkeley resident have been raised. The HAC believes that more fact finding will be very beneficial for the Berkeley community for three main reasons. (1) What triggered the code enforcement actions specifically against Mr. Powell, when in fact, there are many single family homes in various neighborhoods throughout the City (including the hills) that lack code compliance? (2) How did costs increase so quickly, so that the costs of repair are almost equivalent to the costs of new construction (excluding land)? (3) How can lower- and moderate-income households be protected from displacement if similar code enforcement actions are taken by the City and if these owners do not have access to financing to address these violations?

The Housing Advisory Action adopted the following motion at its March 7, 2019 meeting:

Action: M/S/C (Tregub/Wolfe) to recommend to City Council that it set in place the policies that would provide housing stability for homeowners and tenants. The City Council should set in place clear, objective, and equitable standards for conducting code enforcement actions and ensure that due process rights of affected homeowners and/or tenants are preserved. In addition, the HAC recommends that the City Council commission a formal fact-finding process to ascertain what occurred in the matter of Mr. Powell. It should also refer this matter to the City Auditor. The fact finding should, among other things, focus on any actions taken by the Receiver in the case of Mr. Powell and any communications that the City has had with the Receiver. The HAC recognizes that additional steps may be necessary in regard to this matter, and may forward additional recommendations to the City Council at a later date.

Vote: Ayes: Abdeshahian, Johnson, Sharenko, Simon-Weisberg, Tregub, Wolfe and Wright. Noes: None. Abstain: Lord. Absent: Owens (excused) and Sargent (excused).

#### ENVIRONMENTAL SUSTAINABILITY

This recommendation to undertake fact finding into what happened at 1911 Harmon Street does not impact the environment directly. However, if this recommendation ultimately reduces displacement, then this could contribute to reductions in vehicle miles traveled and greenhouse gas emission reductions.

#### RATIONALE FOR RECOMMENDATION

This recommendation is an important complement to ongoing local, regional, and state efforts to prevent displacement due to code violations that exceed households' abilities to pay. Both renters and homeowners can be negatively impacted by these code violations. Therefore efforts to address them in a constructive and expeditious manner would be consistent with the HAC's and City of Berkeley's other ongoing priorities.

ALTERNATIVE ACTIONS CONSIDERED

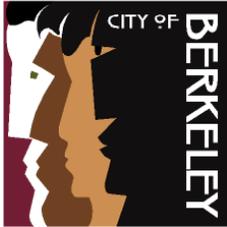
The Housing Advisory Commission will be examining ways to assist lower- and moderate-income homeowners in the future whose homes have code violations, but who lack the financing to abate all the violations in a timely manner.

CITY MANAGER

See June 11, 2019 companion report.

CONTACT PERSON

Mike Uberti, Acting Commission Secretary, HHCS, (510) 981-5114



Peace and Justice Commission

ACTION CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council

From: Peace and Justice Commission

Submitted by: Igor Tregub, Chairperson, Housing Advisory Commission

Subject: Recommendation to Bring Justice to Mr. Leonard Powell and to Change Certain Policies to Ensure Housing Stability for Homeowners and Tenants

RECOMMENDATION

The Peace and Justice (PJC) recommends that the Berkeley City Council take the following actions:

The Peace and Justice Commission (PJC) recommends that the City Council send a letter to the Superior Court Judge overseeing Mr. Leonard Powell's receivership case thanking him for the fairness and justice of his decision to deny the Bay Area Receivership Group's ongoing requests to sell Mr. Powell's home, and allowing Mr. Powell and his friends and family time to make the necessary financial arrangements.

PJC also recommends to the Berkeley City Council that it set in place the following policies that would provide housing stability for homeowners. In particular, when legal action is being attempted by the City as a result of code enforcement violations, the following practices should be put into place:

1. Punitive actions such as eviction, substantial fines, or placing an individual into legal guardianship, or receivership that are likely to result in the permanent displacement of a homeowner or their low-income tenants presently occupying or renting their home is the very last resort that city staff should take. It should only be conducted if all other attempts to resolve the situation have been unsuccessful; and should only be a response to severe code enforcement violations that cause immediate danger to life safety or have been determined by a quasi-judicial body (e.g., Zoning Adjustments Board, City Council) to endanger the health and safety of the immediate neighbors.
2. The Mayor, and Councilmember representing the district of the address in question, and Housing Advisory Commission are notified of their constituent's name (if allowed by applicable privacy laws), address, the nature of the alleged

code violations, and a report detailing the status of the matter and any past, ongoing, and anticipated future attempts to resolve the matter; and

3. The City shall explore the use of anti-displacement funds to assist *low-income* homeowners and/or tenants residing on the premises with legal matters of *forced* relocation, expenses, and/or other needs as applicable and appropriate.
4. Establish a policy that code enforcement should aim to improve the safety and security of the property for its current residents and their neighbors.
5. "Reimburse" Mr. Powell, Friends of Adeline and NAACP by placing an amount not to exceed \$68,000 raised privately to pay for Receivers legal and administrative fees. These parties may collectively determine how to best use these funds.

#### POLICY COMMITTEE RECOMMENDATION

On June 11, 2019, the City Council referred this item to the Health, Life Enrichment, Equity & Community Committee to create a policy that receivership should only be used when the property is a danger to the public, and as a last resort, and only upon approval of the Council.

On November 25, 2019, the Health, Life Enrichment, Equity & Community Committee adopted the following action:

M/S/C (Hahn/Kesarwani) to send the item to Council with a positive recommendation that for purposes of understanding the issues and identifying potential changes to the City's codes, policies, and procedures the committee recommends the following:

- a. That the City Manager provide an information session to the City Council regarding the various ways in which code enforcement issues have been brought to the attention of the City over the last 5 years;
- b. How various code enforcement issues at residential properties are currently handled;
- c. Timeframe and mechanisms for achieving code compliance at residential properties;
- d. Any existing assistance programs available to support property owners found to have code violations;
- e. Specific learnings/changes in City practices resulting from the Leonard Powell receivership case;
- f. Other information deemed relevant and appropriate to understand the City's current code enforcement practices for residential properties

Additionally, the Policy Committee requests that the Mayor call a special meeting of the City Council for purposes of a forum based on the recommendations provided by Councilmember Bartlett as the draft plan for a public meeting on receivership.

And third, the Committee requests from the City Manager a specific reply on creating a mechanism to provide legal and technical assistance by an independent third party for individuals who are facing City of Berkeley initiated receivership, and that the reply also include a process for the individual to pick legal and technical representatives of their choice. This response should also include a recommendation from the City Manager and a budget referral.

Vote: All Ayes.

#### FISCAL IMPACTS OF RECOMMENDATION

Staff time and up to \$68,000 if recommendation (5) above is adopted.

#### CURRENT SITUATION AND ITS EFFECTS

Several years ago, the City of Berkeley's code enforcement department was alerted to possible code violations at 1911 Harmon St. owned by Leonard Powell. The City requested that Mr. Powell address these violations. Although Mr. Powell arranged for some work to be done (and received a \$100,000 loan from the City's Senior and Disabled Home Rehabilitation Program) to do this work, not all of the violations cited by the City were addressed. Since Mr. Powell did not correct all the violations, the City petitioned the court to appoint a receiver to bring the house into code compliance. However, many more repairs were made, bringing the total costs to over \$600,000.

The house is now certified by the City for occupancy. However, Mr. Powell faces additional costs which exceed the amount that was provided to him through public loans.

#### BACKGROUND

At its regularly scheduled March 4, 2019 meeting, the PJC took the following action:

**Action:** To authorize the Chair to draft proposed letter from the Council to the judge and adopt recommendations to council as amended

**Motion** by: Lippman

**Seconded** by: Bohn

**Ayes:** al-Bazian, Bohn, Chen, Gussmann, Lippman, Maran, Meola, Morizawa, Pierce, Rodriguez, Tregub

**Noes:** None

**Abstain:** None

**Absent:** Han, Pancoast

Mr. Powell, a veteran and retired U.S. Postal worker had purchased the house at 1911 Harmon Street over forty years ago as a home for himself and family. Since purchasing the duplex house, which Mr. Powell converted to a single family home, there had been no major repairs made by him. The conversion from a duplex to a single family home was done without permits and inspections.

Mr. Powell's situation has triggered public concern that he has not been treated fairly, and concerns of inequitable treatment of a Berkeley resident have been raised. The PJC believes that more fact finding will be very beneficial for the Berkeley community for three main reasons. (1) What triggered the code enforcement actions specifically against Mr. Powell, when in fact, there are many single family homes in various neighborhoods throughout the City (including the hills) that lack code compliance? (2) How did costs increase so quickly, so that the costs of repair are almost equivalent to the costs of new construction (excluding land)? (3) How can lower- and moderate-income households be protected from displacement if similar code enforcement actions are taken by the City and if these owners do not have access to financing to address these violations? Further, the PJC feels that adoption of these recommendations would ensure that the City take steps to make Mr. Powell whole and allow him to recover possession of his property upon the abatement of any remaining code violations.

#### ENVIRONMENTAL SUSTAINABILITY

These recommendations do not impact the environment directly. However, if the application of these recommendations ultimately reduces displacement, then this could contribute to reductions in vehicle miles traveled and greenhouse gas emission reductions.

#### RATIONALE FOR RECOMMENDATION

These recommendations are an important complement to ongoing local, regional, and state efforts to prevent displacement due to code violations that exceed households' abilities to pay. They are also consistent with the Peace and Justice Commission's charter and goals.

#### ALTERNATIVE ACTIONS CONSIDERED

Several additional recommendations were also suggested to the PJC by community members. The PJC elected to focus only on those recommendations that it deemed to be most constructive toward the achievement of the goals enumerated above and resulting in interests that further equity and justice for Berkeley homeowners and tenants.

#### CITY MANAGER

See June 11, 2019 companion report.

#### CONTACT PERSON

Nina Goldman, Commission Secretary, 981-7000

#### Attachments:

1. Letter to Judge Brand

**RESOLUTION  
IN SUPPORT OF BRINGING JUSTICE TO MR. LEONARD POWELL AND TO  
CHANGE CERTAIN POLICIES TO ENSURE HOUSING STABILITY FOR  
HOMEOWNERS AND TENANTS**

**Whereas** Mr. Powell, a veteran and retired U.S. Postal worker had purchased the house at 1911 Harmon Street over forty years ago as a home for himself and family; and

**Whereas** since purchasing the duplex house, which Mr. Powell converted to a single family home, there had been no major repairs made by him; and

**Whereas** the conversion from a duplex to a single family home was done without permits and inspections; and

**Whereas** several years ago, the City of Berkeley's code enforcement department was alerted to possible code violations at 1911 Harmon St. owned by Leonard Powell; and

**Whereas** although Mr. Powell arranged for some work to be done (and received a \$100,000 loan from the City's Senior and Disabled Home Rehabilitation Program) to do this work, not all of the violations cited by the City were addressed; and

**Whereas** since Mr. Powell did not correct all the violations, the City petitioned the court to appoint a receiver to bring the house into code compliance; and

**Whereas** many more repairs were made than were requested, bringing the total costs to over \$600,000; and

**Whereas** the house is now certified by the City for occupancy; and

**Whereas** Mr. Powell faces additional costs which exceed the amount that was provided to him through public loans; and

**Whereas** Mr. Powell's situation has triggered public concern that he has not been treated fairly, and concerns of inequitable treatment of a Berkeley resident have been raised; and

**Whereas** at its regularly scheduled March 4, 2019 meeting, the Berkeley Peace and Justice Commission (PJC) took the following action:

**Action:** To authorize the Chair to draft proposed letter from the Council to the judge and adopt recommendations to council as amended

**Motion** by: Lippman

**Seconded** by: Bohn

**Ayes:** al-Bazian, Bohn, Chen, Gussmann, Lippman, Maran, Meola, Morizawa, Pierce, Rodriguez, Tregub

**Noes:** None

**Abstain:** None

**Absent:** Han, Pancoast; and  
; and

**Whereas** the Peace and Justice Commission (PJC) recommends that the City Council send a letter to the Superior Court Judge overseeing Mr. Leonard Powell's receivership case thanking him for the fairness and justice of his decision to deny the Bay Area Receivership Group's ongoing requests to sell Mr. Powell's home, and allowing Mr. Powell and his friends and family time to make the necessary financial arrangements; and

**Whereas** PJC also recommends to the Berkeley City Council that it set in place the following policies that would provide housing stability for homeowners. In particular, when legal action is being attempted by the City as a result of code enforcement violations, the following practices should be put into place:

1. Punitive actions such as eviction, substantial fines, or placing an individual into legal guardianship, or receivership that are likely to result in the permanent displacement of a homeowner or their low-income tenants presently occupying or renting their home is the very last resort that city staff should take. It should only be conducted if all other attempts to resolve the situation have been unsuccessful; and should only be a response to severe code enforcement violations that cause immediate danger to life safety or have been determined by a quasi-judicial body (e.g., Zoning Adjustments Board, City Council) to endanger the health and safety of the immediate neighbors.
2. The Mayor, and Councilmember representing the district of the address in question, and Housing Advisory Commission are notified of their constituent's name (if allowed by applicable privacy laws), address, the nature of the alleged code violations, and a report detailing the status of the matter and any past, ongoing, and anticipated future attempts to resolve the matter; and
3. The City shall explore the use of anti-displacement funds to assist *low-income* homeowners and/or tenants residing on the premises with legal matters of *forced* relocation, expenses, and/or other needs as applicable and appropriate.
4. Establish a policy that code enforcement should aim to improve the safety and security of the property for its current residents and their neighbors.
5. "Reimburse" Mr. Powell, Friends of Adeline and NAACP by placing an amount not to exceed \$68,000 raised privately to pay for Receivers legal and administrative fees. These parties may collectively determine how to best use these funds; and

**Now, Therefore, Be it Resolved** that the Berkeley City Council adopt the actions recommended by the PJC.

[Month] [Day], 2019

The Honorable Jeffrey Brand  
Judge, Alameda County Superior Court  
24405 Amador Street, Department 511  
Hayward, California 94544

Fax: (510) 690-2824  
Email: [dept511@alameda.courts.ca.gov](mailto:dept511@alameda.courts.ca.gov)

Re: **Mr. Leonard Powell - Alameda County Case No. RG1576267**  
**1911 Harmon Street**  
**Berkeley, California**

Dear Judge Brand:

The Berkeley City Council writes to express concern over the case of Mr. Leonard Powell, a longtime resident, homeowner and valued member of our community. We write to thank you for the fairness and justice of your recent decision to deny the Bay Area Receivership Group's ongoing requests to sell Mr. Powell's home, and for allowing Mr. Powell and his friends and family time to make the necessary financial arrangements. We hope to see a speedy and just resolution to this longtime case.

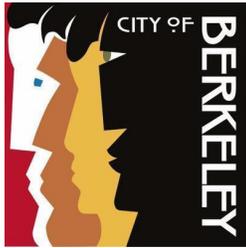
This case began when police accompanied by Berkeley Code Enforcement entered Mr. Powell's home during the investigation of an alleged drug crime by a family member. No criminal charges were levied. However, code violations originally estimated at between \$200,000 and \$300,000 have now ballooned to more than \$700,000, threatening Mr. Powell and his family with the loss of their home, loss of the inheritance, loss of their equity and security.

While we understand that the court appointed a receiver to correct the outstanding code violations, the work appears to have exceeded the original purpose and now the outstanding fines are too much for Mr. Powell to pay. Certainly Mr. Powell should not have let conditions deteriorate to the point of requiring such drastic action. However, given his age and limited income, we hope that you continue to exercise your discretion toward an outcome that is in the interest of justice.

Thank you for your time and consideration.

Sincerely,

Jesse Arreguin  
Mayor, City of Berkeley  
On behalf of the Berkeley City Council



Councilmember Ben Bartlett

Attachment 3

City of Berkeley, District  
2180 Milvia Street, 5<sup>th</sup> Floor  
Berkeley, CA 94704  
PHONE: 510-981-7130  
EMAIL: [bbartlett@cityofberkeley.info](mailto:bbartlett@cityofberkeley.info)

September 23rd, 2019

Draft Plan for Public Meeting on Receivership

Format of the Public Meeting:

1. Community Panel discussing their experience
2. Take Public Comments
3. Presentation from City Staff/ Departments
4. Councilmembers make comments
5. Take questions from Public
  - a. 5-10 questions at a time
6. City/Panel answers questions
7. Councilmembers make comments
8. A second round of questions if time permits

Goals for the meeting and what's to be presented:

- Understand how receivership works
- City of Berkeley's role in receivership
- Who ends up under receivership
  - Circumstances leading to receivership
- Opportunities/Challenges
  - Listening session: Hear from the community

**Potential invites**

**Departments:**

Planning/ Code-Enforcement Department  
City Manager/ City Attorney Office  
City Finance Department

**City Staff (from Community Input):**

Greg Daniel – Director of Code Enforcement  
Mark Adams – Berkeley City Inspector  
Alex Roshal – Official in Berkeley Housing Dept.  
Raquel Molina – Official in Berkeley Housing Dept.  
Shallon Allen – Official in Berkeley Finance Dept.  
Brent Nelson – Housing Dept. Inspector  
Zach Cowan – Berkeley City Attorney  
Savith Iyengar – Deputy City Attorney  
Laura McKinney – Deputy City Attorney  
Dee Williams-Ridley – Berkeley City Manager  
Farimah Brown – City Attorney

**Community members (from Community Input):**

Leonard Powell – Owner of the house  
Roland Powell – Mr. Powell's son  
Audrey Shields – Current Attorney for Mr. Powell  
Gerard Keena – Court-appointed receiver  
Nathaniel Marston – Attorney for Mr. Keena  
Steve Martinot – Writer, reporter on the affair, member of Friends of Adeline  
Willie Phillips – Community Organizer, Member of Friends of Adeline  
Eugene Turitz – Writer on the affair, Member of Friends of Adeline  
Mr. Willis and members of the Probate Court protest group  
Manuel Juarez – Attorney for Mr. Powell

POLICY COMMITTEE RECOMMENDATION

On November 25, 2019, the Health, Life Enrichment, Equity & Community Committee adopted the following action:

M/S/C (Hahn/Kesarwani) to send the item to Council with a positive recommendation that for purposes of understanding the issues and identifying potential changes to the City's codes, policies, and procedures the committee recommends the following:

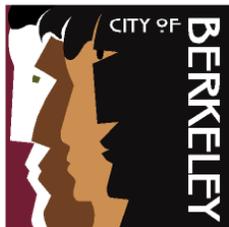
- a. That the City Manager provide an information session to the City Council regarding the various ways in which code enforcement issues have been brought to the attention of the City over the last 5 years;
- b. How various code enforcement issues at residential properties are currently handled;
- c. Timeframe and mechanisms for achieving code compliance at residential properties;
- d. Any existing assistance programs available to support property owners found to have code violations;
- e. Specific learnings/changes in City practices resulting from the Leonard Powell receivership case;
- f. Other information deemed relevant and appropriate to understand the City's current code enforcement practices for residential properties

Additionally, the Policy Committee requests that the Mayor call a special meeting of the City Council for purposes of a forum based on the recommendations provided by Councilmember Bartlett as the draft plan for a public meeting on receivership.

And third, the Committee requests from the City Manager a specific reply on creating a mechanism to provide legal and technical assistance by an independent third party for individuals who are facing City of Berkeley initiated receivership, and that the reply also include a process for the individual to pick legal and technical representatives of their choice. This response should also include a recommendation from the City Manager and a budget referral.

Vote: All Ayes.





Office of the City Manager

ACTION CALENDAR

February 11, 2020

*(Continued from January 28, 2020)*

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Kelly Wallace, Interim Director, Health, Housing & Community Services

Subject: Disposition of City-Owned, Former Redevelopment Agency Property at 1631 Fifth Street

RECOMMENDATION

Adopt a resolution authorizing the sale of the City-owned, former Redevelopment Agency property at 1631 Fifth Street at market rate and authorizing the City Manager to contract with a real estate broker to manage the sale.

POLICY COMMITTEE RECOMMENDATION

On November 21, 2019, the Land Use, Housing & Economic Development Committee adopted the following action: M/S/C (Hahn/Droste) to move the item with a positive recommendation authorizing the sale of 1631 Fifth Street. Vote: All Ayes.

SUMMARY

The City received 1631 Fifth Street from the Berkeley Redevelopment Agency (BRA) at its dissolution. BRA planned to sell prior to the statewide dissolution of redevelopment. The City Council previously approved the market rate sale of these properties as part of the state-mandated Long Range Development Management Plan adoption in 2014.

The site at 1631 Fifth Street is not large enough or zoned densely enough to support the cost-effective construction and operation of affordable housing. Developing this vacant lot would require investment of additional City funds before it could be used as housing. Selling the properties will yield a return on the City's Community Development Block Grant (CDBG) investment that will be applied to the City's priorities for permanent affordable housing via the Housing Trust Fund (HTF).

To maximize the number of interested buyers, staff are requesting Council authorization to select a real estate broker to manage the sale as staff do not typically manage market sales of single family home sites. City land disposition procedures require that the resulting contract for sale be approved by Council via ordinance.

FISCAL IMPACTS OF RECOMMENDATION

Staff estimate the sale may yield \$300,000 to \$500,000, and that a broker's fee for selling them may be 3% of the sale price, or \$9,000 to \$15,000. The properties have not yet been appraised but will be during the sale process.

The property was acquired with CDBG funds, which restricts revenue from their sales to CDBG-eligible uses. Staff recommend depositing the proceeds in the HTF so they can be used for CDBG-eligible housing activities including acquisition and rehabilitation. Staff will provide an information report following the sales to confirm the total contribution to the HTF.

CURRENT SITUATION AND ITS EFFECTS

The City owns two properties it received as the Successor Agency to Redevelopment: a 5,000 square foot vacant lot at 1631 Fifth Street and a vacant single family home at 1654 Fifth Street. The former Redevelopment Agency intended to sell both properties, but the process was halted due to redevelopment's dissolution statewide. Neither property has sufficient size or appropriate zoning to develop affordable housing efficiently, and any proposed affordable housing would be small scale and require additional City subsidies. The City also is incurring ongoing maintenance costs and liabilities while it holds the properties.

City staff consulted with legal counsel at Goldfarb & Lipman, LLP and the City Attorney's Office to review the applicability of the Surplus Lands Act to these former redevelopment agency properties. They concluded that process was not required and the properties could be sold at market rate. Staff confirmed the recent revisions to the Surplus Lands Act (AB 1486) do not apply.

Staff are recommending the City contract with a local real estate broker with experience selling small parcels. A private broker will have the expertise to manage sales (including marketing) and reach the broadest pool of Bay Area buyers.

At its July 11, 2018 meeting, the Housing Advisory Commission voted to support the staff recommendation:

Action: M/S/C (Owens/Amezcuca) to recommend to Council to approve the sale of two Successor Agency to Redevelopment properties at 1631 Fifth Street and 1654 Fifth Street at market value and deposit the proceeds in the Housing Trust Fund.

Vote: Ayes: Amezcua, Holman, Johnson, Kesarwani, Lewis, Owens, and Winters.  
Noes: Lord. Abstain: None. Absent: Tregub (excused), Wolfe (excused), and Wright (excused).

The possibility of using either of these properties in the Small Sites program was discussed at the July HAC meeting. An NCLT representative provided input on NCLT's past attempt to develop 1631 Fifth Street and the inability to identify a feasible project, and, considering the additional investment of City funds that would be required for

rehabilitation and development, it was determined that neither site is appropriate for this program.

Staff issued a Request for Proposals to sell the single family home at 1654 Fifth Street to operate as homeless housing, per Council direction on June 11, 2019. Staff is currently working with the Housing Advisory Commission to make a recommendation to Council regarding the proposals received.

1631 Fifth Street was not considered for an RFP as new construction of affordable housing would require significant investments and may not be feasible due to the size of the lot.

On November 21, 2019, the Land Use, Housing & Economic Development Committee recommended the City Council authorize the sale of 1631 Fifth Street.

**BACKGROUND**

Following the dissolution of all California redevelopment agencies, the Berkeley Redevelopment Agency prepared a state-mandated Long Range Development Management Plan (LRDMP) which the City Council, acting as the Successor Agency, adopted in 2014. The LRDMP included the recommendation to sell both sites at market rate. In 2015, for reasons related to redevelopment law and the dissolution process, and acting at the direction of the State Department of Finance, the Redevelopment Agency's Oversight Board removed these two properties from the LRDMP and listed them as housing assets to facilitate their disposition on the market.

**1631 Fifth Street**

The former Redevelopment Agency acquired this site with other acquisitions in this neighborhood between 1969 and 1971 as part of a larger "Neighborhood Development Program". The characteristics of the property are provided in *Figure 1*.

**Figure 1. Property Characteristics**

|                 | <b>1631 Fifth Street</b> |
|-----------------|--------------------------|
| <b>Land Use</b> | Vacant Lot               |
| <b>Lot Area</b> | 5,525 sq ft              |
| <b>Acres</b>    | 0.13                     |
| <b>Zoning</b>   | MU-R                     |

In 1983, the Redevelopment Agency demolished a residential building at 1631 Fifth Street to build new affordable housing, but abandoned the plans after discovering high levels of lead contamination. The lot has remained vacant since this time. In 1997, the Redevelopment Agency approved the remediation and development of the site, but the

selected developer was unable to execute an agreement and the sale was never completed.

The Redevelopment Agency conducted an RFP for housing at the site in 2008, but the only response was Northern California Land Trust's (NCLT) proposal to move the Kenney Cottage (now at 1281 University Avenue) to the site. This proposal did not come to fruition due to NCLT's bankruptcy, but NCLT did manage a small community garden at the site from 2009 to 2011. Staff confirmed the use of 1631 as a community garden does not make it subject to the limitations of Measure L related to parks and open space.

### **1654 Fifth Street**

In late 2019, staff issued a Request for Proposals to sell the single family home at 1654 Fifth Street to operate as homeless housing, per Council direction on June 11, 2019. Staff is currently working with the Housing Advisory Commission to make a recommendation to Council regarding the proposals received.

### **Administration**

When the Redevelopment Agency dissolved, the Department of Health, Housing and Community Services took over managing its housing assets and other remaining responsibilities on behalf of the Successor Agency, although no staffing was added to handle these responsibilities. Former Redevelopment Agency assets assumed include 13 homebuyer loans, two properties under long-term leases and the two sites designated for sale. HHCS pays the Public Works Department to provide periodic landscaping services for this property. The City will retain these ongoing costs and liabilities as long as it owns the site.

### **ENVIRONMENTAL SUSTAINABILITY**

There are no sustainability effects associated with the recommendation of this report.

### **RATIONALE FOR RECOMMENDATION**

This site has been intended for sale since it was first acquired by the Redevelopment Agency in the late 1960s and early 1970s as part of a neighborhood development initiative. The City Council previously approved the market rate sale of 1631 Fifth Street as part of the LRDMP adoption in 2015.

This site is not large enough or zoned densely enough to support the cost-effective development and operation of affordable housing. Developing the site would require an investment of additional City funds. Selling the property will yield a return on the City's CDBG investment that will be applied to the City's affordable housing priorities via the Housing Trust Fund. In addition to the Berkeley Way development commitment, the HTF recently provided two other proposed developments predevelopment loans — Satellite Affordable Housing Associates' Oxford Apartments and Bay Area Community Land Trust's Stuart Street rehabilitation. The HTF program is also supporting three additional sites via Measure O bond funding: Staff also received HTF inquiries related to other development activities.

A small vacant lot is not a typical government real estate asset, and is better suited for sale by a real estate broker familiar with these types of properties and the local market. Private brokers have the resources and knowledge needed (including marketing) and are likely to reach the broadest pool of Bay Area buyers. The City opted to select a local real estate broker, Korman & Ng, for its most recent small asset sale of 2931 Shasta Road (a former Fire Department house) in 2012.

#### ALTERNATIVE ACTIONS CONSIDERED

The City could consider:

- Retaining the property for a future determination on its usefulness. Staff are not recommending this option due to the small size and location of 1631 Fifth Street as well as the costs and liabilities associated with holding vacant properties.
- Selling or leasing 1631 Fifth Street to a housing organization for development and operation as affordable housing. Staff are not recommending this option because it would require additional investment of City funds which are needed for developments currently in the pipeline. New construction and operating housing at this scale is not efficient and cannot leverage much (if any) non-City funds. The Redevelopment Agency did not receive viable proposals for previous attempts to develop affordable housing. HHCS received inquiries related to leasing the vacant site for the placement of tiny homes for the homeless or other populations but is recommending the market rate sale with proceeds going in to the Housing Trust Fund in order to expand permanent affordable housing opportunities.

#### CONTACT PERSON

Amy Davidson, Senior Community Development Project Coordinator, Health, Housing & Community Services, (510) 981-5406

Mike Uberti, Community Development Project Coordinator, HHCS, (510) 981-5114

Attachments:

1: Resolution

RESOLUTION NO. ##,###-N.S.

DISPOSITION OF CITY-OWNED, FORMER REDEVELOPMENT AGENCY  
PROPERTY AT 1631 FIFTH STREET

WHEREAS, the City acquired the property at 1631 Fifth Street via its role as the Successor Agency to the Redevelopment Agency of the City of Berkeley; and

WHEREAS, the Redevelopment Agency planned to sell the site prior to the redevelopment dissolution legislation; and

WHEREAS, The Successor Agency Oversight Board, acting at the direction of the State Department of Finance, designated 1631 Fifth Street as a housing asset to facilitate their market rate sale; and

WHEREAS, the site's status as a former Redevelopment property enables the City to follow redevelopment law's disposition requirements for market rate returns and exempts the City from the Surplus Land Act (AB 2135 & AB 1486); and

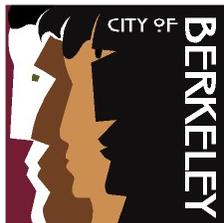
WHEREAS, the property was acquired with Community Development Block Grant (CDBG) funds, which restricts revenue from its sale to CDBG-eligible uses, including the Housing Trust Fund; and

WHEREAS, the General Plan's Housing Element Policy H-2 states the City should aggressively search out, advocate for, and develop additional sources of funds for permanently affordable housing, including housing for people with extremely low incomes and special needs; and

WHEREAS, selling the property at market rate will maximize Housing Trust Fund contributions and provide leverage for permanent affordable housing projects.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the property at 1631 Fifth Street be sold for a purchase price that shall be equal to or greater than the appraised market value of the property.

BE IT FURTHER RESOLVED that the City Manager contract with appropriate real estate professionals to market and sell the property.



Rashi Kesarwani  
Councilmember District 1

## **REVISED AGENDA MATERIAL for Supplemental Packet 1**

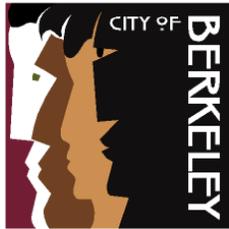
**Meeting Date:** January 28, 2020

**Item Number:** 15

**Item Description:** Resolution for Safe Recreational Vehicle (RV) Parking at Designated City-Owned Parking Lots During Overnight Non-Business Hours

**Submitted by:** Rashi Kesarwani

This supplemental and revised material includes a correction to the California Vehicle Code that was incorrectly cited in the originally submitted Council item. It also includes a list of possible locations for overnight safe RV parking in City-owned lots, as well as the reasons for their selection.



Rashi Kesarwani  
Councilmember District 1

CONSENT CALENDAR  
January 28, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Rashi Kesarwani, Mayor Jesse Arreguin and Councilmember Kate Harrison

Subject: Resolution for Safe Recreational Vehicle (RV) Parking at Designated City-Owned Parking Lots During Overnight Non-Business Hours

RECOMMENDATION

Adopt a resolution to allow recipients of a three-month “Grace Period” permit for safe RV parking to park overnight during non-business hours in designated City-owned parking lots pursuant to California Vehicle Code Section 2251921107.8(a)(1). Section 22519 states: “Local authorities may by ordinance or resolution prohibit, restrict or regulate the parking, stopping or standing of vehicles on any offstreet parking facility which it owns or operates. No such ordinance or resolution shall apply until signs giving notice thereof have been erected.”

This resolution authorizes the City Manager to determine identifies appropriate City-owned parking lots for overnight safe RV parking – selected in consultation with the City Manager and relevant City staff --, with consideration for safe ingress and egress, accessibility of restroom facilities, and other health and safety considerations.

FINANCIAL IMPLICATIONS

Staff time to determine appropriate City-owned parking lots for safe RV parking, prepare parking lots for use, and to allocate an initial 25 permits for safe RV parking under the pilot three-month “Grace Period” Permit Program with a possibility of renewal. Minimal costs associated with creating the necessary signage and providing portable restroom facilities and trash pick-up at each location.

CURRENT SITUATION AND ITS EFFECTS

The number of people residing in RVs on the public right-of-way for extended periods of time has grown, according to the 2019 Homelessness Point-in-Time Count for Alameda County. In Berkeley, there is a high concentration of RVs located west of San Pablo Avenue, particularly in the commercial Gilman District and adjacent residential neighborhoods. The existence of RVs on the public right-of-way for extended periods of time without sewer, water, and electrical connections presents health and safety concerns for RV dwellers and other members of the community.

The City has received a wide range of health and safety complaints related to the high concentration of RVs, including, for example, improper disposal of human waste into storm drains, blocked sight lines on streets, and reduced availability of employee parking within a reasonable proximity to businesses during early morning and late-night hours creating concerns about personal safety. Further, the high concentration of RVs in the Gilman District for extended periods of time has prevented our Public Works Department from doing street sweeping in the area. At the same time, there is a recognition that the proliferation of RVs reflects the regional shortage of affordable homes and related homelessness crisis.

City of Berkeley staff have spent considerable time and energy over the better part of 2019 investigating options for a 24-hour off-street safe RV parking site for specified priority populations. Staff investigated numerous public and private options and enlisted the services of a real property specialist with a goal of identifying a suitable parking lot. To date, no viable site has been identified within city limits for 24-hour use due to a variety of issues such as expense, limited size, or being legally infeasible. In light of these challenges as well as the need to ensure the health and safety of our community in a manner that is sensitive to priority populations, this resolution is put forward as a means of addressing the urgent need for a viable solution. In addition, outreach by the homeless services provider Bay Area Community Services has so far identified about 20 RV households that meet Council-established criteria as a priority population eligible for a three-month Grace Period parking permit.

The resolution —required pursuant to California Vehicle Code Section 22519, 21107.8(a)(1)— would authorize the City Manager to (1) designate specified termine appropriate City-owned parking lots for the three-month Grace Period Permit for safe RV parking, with consideration for safe ingress and egress, accessibility of restroom facilities, and other health and safety considerations; and (2) to determine appropriate hours of availability during overnight non-business hours; and (3) to develop a set of rules and regulations to promote neighborly conduct in the designated lots.

In the interest of proper notice and full transparency, the City-owned parking lots to be selected are listed below. Several factors were considered in selecting these City-owned parking lots, including: outright ownership by the City, proximity to resources such as public restrooms, ease of ingress and egress (including height clearance), geographical dispersal within City limits, and cost effectiveness. The sites listed below were chosen based on the overall benefits in meeting the above-named factors; not all of the sites were selected for the same reasons.

City-owned parking lots to be selected for safe RV parking during overnight non-business hours include the following:

1. The Harrison Street parking lot at the northeast corner of Harrison Street and the railroad tracks, which is 3<sup>rd</sup> Street.
2. The West Berkeley Senior Center parking lot at 1900 6<sup>th</sup> Street.
3. The parking lot behind City Hall at 2180 Milvia Street (entry on Allston Way).

4. The Corporation Yard at 1326 Allston Way in an area to be designated.
5. The South Berkeley Senior Center parking lot at 2939 Ellis Street.
6. Berkeley Animal Shelter parking lot at 1 Bolivar Drive.

In cases in which the City-owned parking lot selected is small in size, fewer RVs will be assigned to the lot in order to ensure safe ingress and egress.

Other locations were considered but were not selected for a variety of reasons. For instance, the municipal lots on Berkeley Way in downtown and on Russell Street in the Elmwood commercial district are both currently regulated pursuant to Berkeley Municipal Code (BMC) Section 6.24.170, which prohibits vehicles in excess of 5,999 pounds, and Section 6.24.180, which prohibits vehicles in excess of 21 feet in length. Many RVs exceed these specifications. To allow RVs to park overnight in the Berkeley Way or Elmwood lots BMC Section 6.24.170 limiting weight and BMC Section 6.24.180 limiting length must be amended to create an exception for certain permitted RVs parking overnight during non-business hours. Due to the time delay associated with adopting a first and second reading of a revised ordinance for use of the Elmwood parking lot and in light of the upcoming ground-breaking for the affordable housing project at Berkeley Way, these two City lots were removed from the selected list at this time. As noted in the annotated agenda for the March 26, 2019 Council meeting for Item #21, Referral Responses: Managing Recreational Vehicle (RV) Parking, staff has been directed to “quickly identify, secure and prepare temporary locations for priority permit holders to stay.” To date, it has been nearly 10 months since the City began its efforts to establish this pilot program, and there is an urgency to addressing this issue.

Other City-owned sites, such as the City’s three municipal parking garages (Center Street, Oxford, and Telegraph and Channing) and the parking lot behind the Veteran’s Building were eliminated for other reasons. The maximum height limits for vehicle clearance in the garages preclude RV access. The Oxford and Telegraph Channing garages specify a vehicle clearance of 6 feet, 8 inches, while the Center Street garage specifies a clearance of 7 feet, all below the height of many RVs. Further, these garages are also regulated by BMC Sections 6.24.170 and 6.24.180, prohibiting vehicles over a certain length and weight. Similarly, due to the oversize nature the RVs, the ingress and egress to access the lot behind the Veteran’s Building is insufficient to accommodate oversize vehicles.

It should be reiterated here that this Council Resolution addresses the City’s requirements to establish a pilot safe RV parking program for permitted RVs for three months, with a possibility for renewal. And, as noted, the City has been unable to find a more suitable location to accommodate up to 25 RVs in a designated off-street location. The Resolution attached herein enables up to 25 RV households in receipt of a three-month Grace Period parking permit the opportunity to have a safe place to park overnight with access to public restroom facilities and trash pick-up. Additional efforts will continue to find a suitable 24-7 safe RV parking site, possibly in a regional location given Governor Newsom’s recent Executive Order making state properties available for homeless services.

Allowing overnight parking in City-owned parking lots during overnight non-business hours aligns with our Strategic Plan Priority Project of advancing our goal to create housing support services for our most vulnerable community members. It also helps us maintain our infrastructure and facilities by helping to keep our streets and storm drains clean and clear of hazardous material.

### BACKGROUND

Homelessness in the Bay Area continues to rise with an increase in Alameda County of 43% from 2017 to 2019. As a result of this increase in homelessness, there has been an increase in the number of RVs parking for extended periods of time within the City of Berkeley without access to sewer, water, and electrical connections, creating a health and safety risk. In December 2018, City staff had identified 193 RVs and oversized vehicles parked on the public right-of-way, with 100 oversized vehicles concentrated in West Berkeley. Additionally, City staff had been contacted more than 1,500 times in calendar year 2018 with requests by community members to address the health and safety impact of RVs in residential and commercial areas, according to the February 26, 2019 referral response staff report.

The City has sought to balance the preservation of health and safety for all with our obligation to do as much as we can to help our most vulnerable. On February 28, 2019, the City Council approved the first reading of Ordinance No. 7,643- N.S. amending Berkeley Municipal Code Chapter 14.40.120 to add oversized RVs and campers to the list of vehicles not allowed to park overnight on the public right-of-way between the hours of 2 a.m. to 5 a.m. for more than one hour. The Council's motion specified that the enforcement of the ordinance would be preceded by notice, outreach, providing flexible funding and service referrals.

On March 26, 2019, the City Council adopted a second reading of Ordinance No. 7,643- N.S. with additional recommendations and guidelines to ensure that enforcement would not commence until outreach is conducted and a permit system is developed. Council also allocated \$50,000 in state Homeless Emergency Aid Program dollars for flexible funding to assist RV dwellers, and authorized targeted outreach to RV dwellers in order to identify needs and determine if they meet the criteria for priority populations eligible for the three-month "Grace Period" Permit Program (with the possibility of renewal). The Council specified priority populations to include families with children, people who work or study in Berkeley, and persons who had a Berkeley home address within the past 10 years as well as consideration of health status, disability and self-care needs, age and household size (including the presence of children).

Further, on December 3, 2019, the City Council allocated \$100,000 for the current fiscal year (FY19-20) and \$100,000 for the next fiscal year (FY20-21) for funding such services as portable bathrooms and trash pick-up related to a safe RV parking program. We note that safe parking for individuals sheltering in vehicles is a model being used in other communities, including Santa Barbara, Los Angeles, East Palo Alto, Oakland, and San Francisco.

ENVIRONMENTAL SUSTAINABILITY

Providing access to designated City-owned parking lots for overnight use during non-business hours helps to address improper disposal of human waste and debris as the parking areas have been ~~will be~~ chosen with consideration for restroom facilities and trash service.

CONTACT PERSON

Councilmember Rashi Kesarwani, Council District 1  
510-981-7110

Attachments:

1: Resolution

Exhibit A: Resolution for Safe Recreational Vehicle (RV) Parking at Designated City-Owned Parking Lots During Overnight Non-Business Hours

RESOLUTION NO. ##,###-N.S.

Safe Recreational Vehicle (RV) Parking at Designated City-Owned Parking Lots During Overnight Non-Business Hours

WHEREAS, the Berkeley City Council adopted Ordinance No. 7,643- N.S. on March 26, 2019 amending Berkeley Municipal Code section 14.40.120 to add oversized RVs and campers to the list of vehicles not allowed to park overnight on the public right-of-way between the hours of two a.m. and five a.m. for a greater length of time than one hour; and

WHEREAS, the City Council also adopted “Implementation Guidelines for Managing RV Parking” on March 26, 2019 in order to ensure that enforcement of Ordinance No. 7,643-N.S. would not commence until outreach is conducted and a program is developed to enable specified priority populations to receive a three-month “Grace Period” Permit to park in a designated safe location with a possibility of renewal; and

WHEREAS, the population of individuals and families living in RVs and campers on the public right-of-way for extended periods of time is diverse, with some vehicles housing populations that the City Council has deemed priority populations due to their vulnerability and their historical ties with the City, which are including homeless persons with significant chronic health conditions, physical limitations, and similar vulnerabilities, homeless families with minor children, homeless persons who work or study in Berkeley, and homeless persons who previously had a Berkeley home address within the last 10 years; families with children, people who work or study in Berkeley, and persons who previously had a Berkeley home address within the last 10 years; and

WHEREAS, the City has an interest in providing temporary safe parking locations for RV dwellers; and

WHEREAS, the City also adopted and extended Resolution No. 68.206, declaring a homeless Shelter Crisis until January 2022; and

WHEREAS, the proliferation of RV dwellers reflects the regional shortage of affordable homes and related homelessness crisis, with a need to prioritize supportive services based on consideration of health status, disability and self-care needs, age and household size (including the presence of children); and

WHEREAS, the City of Berkeley has contracted with a homeless services provider to conduct outreach to people living in RVs; and

WHEREAS, the City of Berkeley has conducted an exhaustive search for a 24-hour safe RV parking location within city limits, including discussions with numerous public and private entities, with no locations to date found to be viable due to a variety of issues such as expense, limited size, or being legally infeasible; and-

WHEREAS, the California Vehicle Code Section ~~22519 21107.8(a)(1)~~ establishes that a ~~City may by resolution regulate parking in any off-street parking facility which it owns or operates with signage; and city may, by resolution, find and declare that there are off-street parking facilities that are available for a public vehicular parking use; and~~

WHEREAS, the City of Berkeley seeks to implement all laws and ordinances in a fair and humane manner.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that ~~the City Manager is hereby authorized to select any of the following City-owned lots to accommodate up to 25 permits for designated City-owned parking lots with appropriate ingress and egress shall be made available~~ overnight RV parking during non-business hours for individuals in receipt of a three-month Grace Period Permit; ~~for safe RV parking.~~

1. The Harrison Street parking lot at the northeast corner of Harrison Street and the railroad tracks, which is 3<sup>rd</sup> Street.
2. The West Berkeley Senior Center parking lot at 1900 6<sup>th</sup> Street.
3. The parking lot behind City Hall at 2180 Milvia Street (entry on Allston Way).
4. The Corporation Yard at 1326 Allston Way in an area to be designated.
5. The South Berkeley Senior Center parking lot at 2939 Ellis Street.
6. Berkeley Animal Shelter parking lot at 1 Bolivar Drive.

BE IT FURTHER RESOLVED that the City Manager is authorized to determine which of the above-listed lots are the most appropriate City-owned ~~parking~~ lots for the three-month Grace Period Permit for safe RV parking, with consideration for safe ingress and egress, potential accessibility of restroom facilities, and other health and safety considerations and to determine appropriate hours of availability during overnight non-business hours.

~~BE IT FURTHER RESOLVED that the City Manager is authorized to change which lots are originally selected by substituting one of the other above-listed six lots in place of an originally selected lot, and/or change the amount of space allocated in each lot for RV parking.~~

~~BE IT FURTHER RESOLVED that the City Manager is authorized to implement a parking permit system for the lots selected for overnight RV parking by developing a parking permit application and prioritizing the issuance of permits to homeless persons with significant chronic health conditions, physical limitations, and similar vulnerabilities, homeless families with minor children, homeless persons who work or study in Berkeley, and homeless persons who previously had a Berkeley home address within the last 10 years.~~

~~BE IT FURTHER RESOLVED that the City Manager should try to issue a total of 25 RV overnight parking permits or as close to 25 as is practical.~~

BE IT FURTHER RESOLVED that the City Manager is authorized to implement rules and regulations to promote neighborly conduct for RV overnight parking permit holders and can rescind a parking permit, if the rules are broken by the permit holder or persons associated with the permit holder.

BE IT FURTHER RESOLVED that the City is authorized to remove any RV or other vehicle that is parked in any of the above-listed lots without a permit or in violation of the rules governing use of the lot, if signage governing the allowed use of the lot and warning that vehicles may be towed is posted.



Rashi Kesarwani  
Councilmember District 1

ACTION CALENDAR

February 11, 2020

*(Continued from January 28, 2020)*

To: Honorable Mayor and Members of the City Council

From: Councilmember Rashi Kesarwani, Mayor Jesse Arreguin, and Councilmembers Kate Harrison and Sophie Hahn

Subject: Resolution for Safe Recreational Vehicle (RV) Parking at Designated City-Owned Parking Lots During Overnight Non-Business Hours

RECOMMENDATION

Adopt a resolution to allow recipients of a three-month “Grace Period” permit for safe RV parking to park overnight during non-business hours in designated City-owned parking lots pursuant to California Vehicle Code Section 21107.8(a)(1).

The resolution authorizes the City Manager to determine appropriate City-owned parking lots, with consideration for safe ingress and egress, accessibility of restroom facilities, and other health and safety considerations.

FINANCIAL IMPLICATIONS

Staff time to determine appropriate City-owned parking lots for safe RV parking, prepare parking lots for use, and to allocate an initial 25 permits for safe RV parking under the three-month Grace Period Permit Program.

CURRENT SITUATION AND ITS EFFECTS

The number of people residing in RVs on the public right-of-way for extended periods of time has grown, according to the 2019 Homelessness Point-in-Time Count for Alameda County. In Berkeley, there is a high concentration of RVs located west of San Pablo Avenue, particularly in the commercial Gilman District and adjacent residential neighborhoods. The existence of RVs on the public right-of-way for extended periods of time without sewer, water, and electrical connections presents health and safety concerns for RV dwellers and other members of the community.

The City has received a wide range of health and safety complaints related to the high concentration of RVs, including, for example, improper disposal of human waste into storm drains, blocked sight lines on streets, and reduced availability of employee parking within a reasonable proximity to businesses during early morning and late-night hours creating concerns about personal safety. Further, the high concentration of RVs in the Gilman District for extended periods of time has prevented our Public Works Department from doing street sweeping in the area.

City of Berkeley staff have spent considerable time and energy over the better part of 2019 investigating options for a 24-hour off-street safe RV parking site for specified priority populations. Staff investigated numerous public and private options and enlisted the services of a real property specialist with a goal of identifying a suitable parking lot. To date, no viable site has been identified within city limits for 24-hour use due to a variety of issues such as expense, limited size, or being legally infeasible. In light of these challenges as well as the need to ensure the health and safety of our community in a manner that is sensitive to priority populations, this resolution is put forward as a means of addressing the urgent need for a viable solution. The resolution—required pursuant to California Vehicle Code Section 21107.8(a)(1)—would authorize the City Manager to (1) determine appropriate City-owned parking lots for the three-month Grace Period Permit for safe RV parking, with consideration for safe ingress and egress, accessibility of restroom facilities, and other health and safety considerations and (2) to determine appropriate hours of availability during overnight non-business hours.

Allowing overnight parking in City-owned parking lots during overnight non-business hours aligns with our Strategic Plan Priority Project of advancing our goal to create housing support services for our most vulnerable community members. It also helps us maintain our infrastructure and facilities by helping to keep our streets and storm drains clean and clear of hazardous material.

#### BACKGROUND

Homelessness in the Bay Area continues to rise with an increase in Alameda County of 43% from 2017 to 2019. As a result of this increase in homelessness, there has been an increase in the number of RVs parking for extended periods of time within the City of Berkeley without access to sewer, water, and electrical connections, creating a health and safety risk. In December 2018, City staff had identified 193 RVs and oversized vehicles parked on the public right-of-way, with 100 oversized vehicles concentrated in West Berkeley. Additionally, City staff had been contacted more than 1,500 times in calendar year 2018 with requests by community members to address the health and safety impact of RVs in residential and commercial areas, according to the February 26, 2019 referral response staff report.

The City has sought to balance the preservation of health and safety for all with our obligation to do as much as we can to help our most vulnerable. On February 28, 2019, the City Council approved the first reading of Ordinance No. 7,643- N.S. amending Berkeley Municipal Code Chapter 14.40.120 to add oversized RVs and campers to the list of vehicles not allowed to park overnight on the public right-of-way between the hours of 2 a.m. to 5 a.m. for more than one hour. The Council's motion specified that the enforcement of the ordinance would be preceded by notice, outreach, providing flexible funding and service referrals.

On March 26, 2019, the City Council adopted a second reading of Ordinance No. 7,643- N.S. with additional recommendations and guidelines to ensure that enforcement would not commence until outreach is conducted and a permit system is developed. Council also

allocated \$50,000 in state Homeless Emergency Aid Program dollars for flexible funding to assist RV dwellers, and authorized targeted outreach to RV dwellers in order to identify needs and determine if they meet the criteria for priority populations eligible for the three-month “Grace Period” Permit Program (with the possibility of renewal). The Council specified priority populations to include families with children, people who work or study in Berkeley, and persons who had a Berkeley home address within the past 10 years as well as consideration of health status, disability and self-care needs, age and household size (including the presence of children).

Further, on December 3, 2019, the City Council allocated \$100,000 for the current fiscal year (FY19-20) and \$100,000 for the next fiscal year (FY20-21) for funding such services as portable bathrooms and trash pick-up related to a safe RV parking program. We note that safe parking for individuals sheltering in vehicles is a model being used in other communities, including Santa Barbara, Los Angeles, East Palo Alto, Oakland, and San Francisco.

ENVIRONMENTAL SUSTAINABILITY

Providing access to designated City-owned parking lots for overnight use during non-business hours helps to address improper disposal of human waste and debris as the parking areas will be chosen with consideration for restroom facilities and trash service.

CONTACT PERSON

Councilmember Rashi Kesarwani, Council District 1  
510-981-7110

Attachments:

1: Resolution

Exhibit A: Resolution for Safe Recreational Vehicle (RV) Parking at Designated City-Owned Parking Lots During Overnight Non-Business Hours

RESOLUTION NO. ##,###-N.S.

Safe Recreational Vehicle (RV) Parking at Designated City-Owned Parking Lots During Overnight Non-Business Hours

WHEREAS, the Berkeley City Council adopted Ordinance No. 7,643- N.S. on March 26, 2019 amending Berkeley Municipal Code section 14.40.120 to add oversized RVs and campers to the list of vehicles not allowed to park overnight on the public right-of-way between the hours of two a.m. and five a.m. for a greater length of time than one hour; and

WHEREAS, the City Council also adopted “Implementation Guidelines for Managing RV Parking” on March 26, 2019 in order to ensure that enforcement of Ordinance No. 7,643-N.S. would not commence until outreach is conducted and a program is developed to enable specified priority populations to receive a three-month “Grace Period” Permit to park in a designated safe location with a possibility of renewal; and

WHEREAS, the population of individuals and families living in RVs and campers on the public right-of-way for extended periods of time is diverse, with some vehicles housing populations that the City Council has deemed priority populations including families with children, people who work or study in Berkeley, and persons who previously had a Berkeley home address within the last 10 years; and

WHEREAS, the proliferation of RV dwellers reflects the regional shortage of affordable homes and related homelessness crisis, with a need to prioritize supportive services based on consideration of health status, disability and self-care needs, age and household size (including the presence of children); and

WHEREAS, the City of Berkeley has contracted with a homeless services provider to conduct outreach to people living in RVs; and

WHEREAS, the City of Berkeley has conducted an exhaustive search for a 24-hour safe RV parking location within city limits, including discussions with numerous public and private entities, with no locations to date found to be viable due to a variety of issues such as expense, limited size, or being legally infeasible.

WHEREAS, the California Vehicle Code Section 21107.8(a)(1) establishes that a city may, by resolution, find and declare that there are off-street parking facilities that are available for a public vehicular parking use; and

WHEREAS, the City of Berkeley seeks to implement all laws and ordinances in a fair and humane manner.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that designated City-owned parking lots with appropriate ingress and egress shall be made

available overnight during non-business hours for individuals in receipt of a three-month Grace Period Permit for safe RV parking.

BE IT FURTHER RESOLVED that the City Manager is authorized to determine appropriate City-owned parking lots for the three-month Grace Period Permit for safe RV parking, with consideration for safe ingress and egress, accessibility of restroom facilities, and other health and safety considerations and to determine appropriate hours of availability during overnight non-business hours.



Office of the City Manager

## ACTION CALENDAR

February 11, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Matthai Chakko, Assistant to the City Manager

Subject: Discussion and Direction Regarding Potential Ballot Measures for the November 3, 2020 General Municipal Election

### RECOMMENDATION

Discuss possible ballot measures for November 2020, and provide direction to the City Manager about which issues to include in a community survey.

### SUMMARY

The purpose of this report is to discuss services the Council may wish to consider funding through a revenue measure – or measures – on the November 2020 ballot. In addition, the report will provide information about a community survey to provide additional information about the community's interests. The Council's discussion and direction at this meeting will inform the development of the community survey should the Council wish to undertake one.

### FISCAL IMPACTS OF RECOMMENDATION

The cost of the two community surveys is expected to not exceed \$75,000.

### CURRENT SITUATION AND ITS EFFECTS

#### **Ballot Measure Development**

In order to prepare for a possible community survey, the City Manager's Office conducted a competitive process to select an opinion research firm, Lake Research Partners, to conduct voter surveys.

At tonight's meeting, Council has a forum to discuss the programs and/or services that could be included in a community survey. For example, should the focus be on a single area, such as an increase in the Emergency Medical Services Tax, or should the council choose a broader approach that includes multiple areas.

Should the Council choose to move forward, the next steps in the community survey process are as follows:

- The survey would take place two weeks after the March 3 primary and at least 500 Berkeley voters would be surveyed.

- Staff and the vendor would present the results of the survey to Council in April.
- Based on those results, Council would be able to discuss whether to narrow the focus of any measures and could direct staff to develop specific measures for the community's consideration. A second survey would then be conducted in April to assess the more focused approach.
- Following a second survey, the council would then decide upon a specific ballot measure or measures, if any, and direct the City Manager to develop ballot measure language for Council consideration in June and July.

**Ballot Measure Considerations**

As part of this discussion, staff has provided a comparison of the City's property-based taxes and assessments with other neighboring jurisdictions; and information about other likely items on the November 2020 ballot.

Property Tax Bill Comparison: When comparing the property tax bills between Berkeley, Oakland, and Albany, the primary differences relate to taxes based on the General Obligation (GO) Bond debt and the jurisdiction's special taxes, assessments and fees.

GO Bond debt is voter-approved and can be issued by the City or a school district. Special taxes can be used to meet a broad variety of needs, and can be based on different formulas. Berkeley's special taxes are generally based on a tax rate multiplied by the building square footage, while Oakland and Albany's special taxes are usually a flat amount per parcel with some land-use variations. The table below illustrates tax differences between Berkeley, Oakland and Albany by comparing a single-family residence with an assessed value of \$485,000<sup>1</sup>, a \$7,000 homeowner's exemption and 1,900 square feet.

**Summary of FY 2020 Property-Based Taxes and Assessments Comparison\***

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<sup>1</sup> Represents the median assessed value in the City of Berkeley.

Discussion and Direction Regarding Potential Ballot Measures  
for the November 3, 2020 General Municipal Election

ACTION CALENDAR  
February 11, 2020

| AGENCY                                            | Berkeley FY2020 |                | Oakland FY2020 |                | Albany FY2020 |                |
|---------------------------------------------------|-----------------|----------------|----------------|----------------|---------------|----------------|
|                                                   | Rate            | Amount         | Rate           | Amount         | Rate          | Amount         |
| Countywide Ad Valorem Tax                         | 1.000%          | \$4,780        | 1.000%         | \$4,780        | 1.000%        | \$4,780        |
| Voter-Approved Ad Valorem Debt Service (Combined) | 0.218%          | \$1,045        | 0.369%         | \$1,763        | 0.395%        | \$1,887        |
| Total All Ad Valorem Taxes                        | 1.218%          | \$5,824        | 1.369%         | \$6,543        | 1.395%        | \$6,667        |
| Total City Special Taxes                          | \$0.526         | \$1,001        |                | \$431          |               | \$321          |
| Total City Special Assessments                    |                 | \$112          |                | \$16           |               | \$712          |
| Total Unified School District Special Taxes       | \$0.468         | \$890          |                | \$435          |               | \$909          |
| Total County Assessments/Charges                  |                 | \$351          |                | \$352          |               | \$405          |
| <b>TOTAL CURRENT ANNUAL TAXES</b>                 |                 | <b>\$8,178</b> |                | <b>\$7,777</b> |               | <b>\$9,014</b> |
| <b>Tax/Assessment Rate</b>                        | <b>1.711%</b>   |                | <b>1.627%</b>  |                | <b>1.886%</b> |                |

\*For the full table, see Attachment 1

**Funding Mechanisms:** For purposes of this discussion, staff have provided information about various funding mechanisms.

#### General Obligation (GO) Bonds

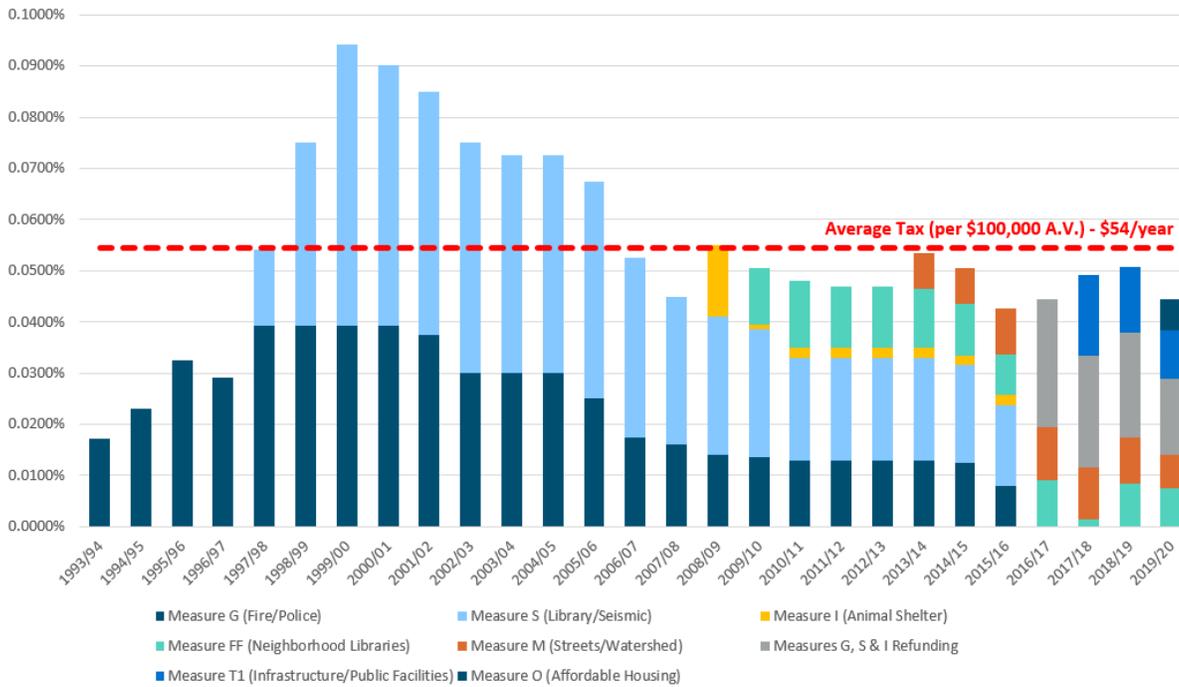
A General Obligation (GO) Bond is a form of long-term borrowing to finance capital improvements to real property such as buildings, roads and school facilities. Under a GO Bond structure, all tax requirements are shared proportionally based on taxable assessed value.

Key features of a GO Bond are:

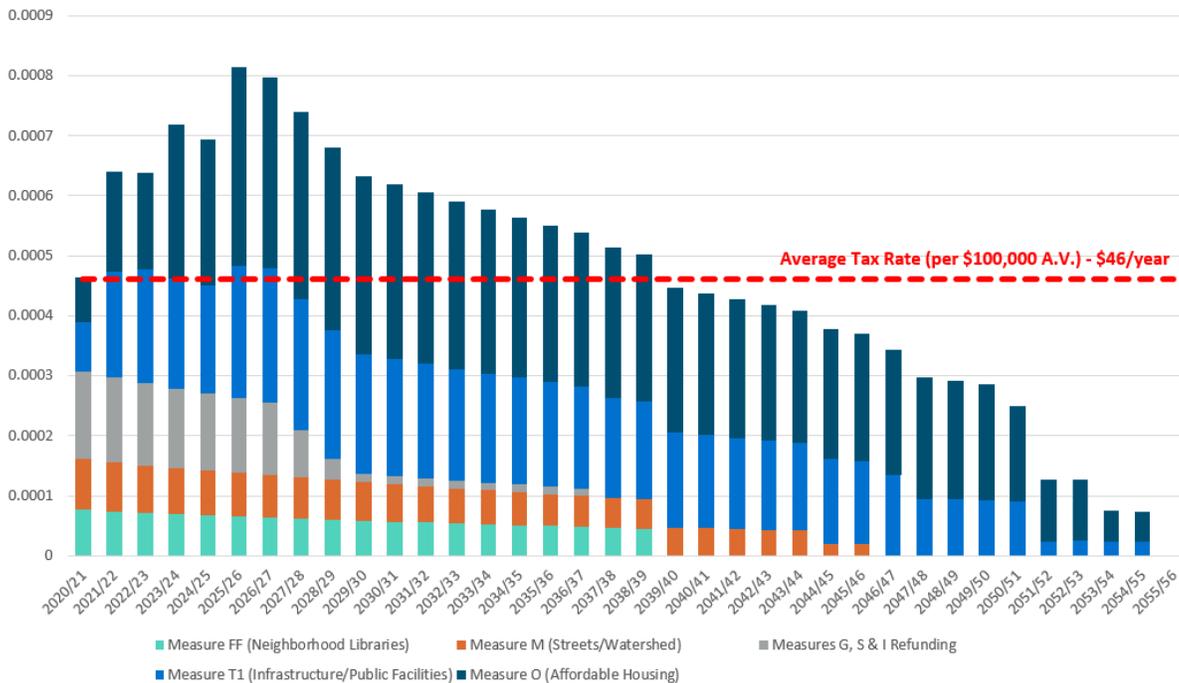
- May be used only for capital improvements, not for ongoing operational costs;
- Requires 66.7% voter approval to pass;
- The principal and interest are paid with the proceeds of tax levies made upon taxable property;
- Bonds are repaid by taxpayers based on their property's assessed value; and
- Bonds are generally repaid over 30 years.

Berkeley voters have passed several bonds since 2012, including Measure M, Measure T1 and Measure O. The charts below show historical and projected tax rates.

# Historical Tax Rates



# Projected Tax Rate – All Authorizations



## The 2020 Ballot Measure Schedule

In order to meet the deadlines set by the Alameda County Registrar of Voters to place items on the November 2020 ballot, the following timeline has been developed for the Council’s consideration. To

get the most accurate feedback, the first survey will be conducted two weeks after the March 3 primary:

|                           |                                                                                                                                                                                                                  |
|---------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Feb. 4: Worksession       | City Council to discuss possible revenue measures and questions to be included                                                                                                                                   |
| Feb. 11: Action Calendar  | Council decides which possible measures should be on first Community Survey                                                                                                                                      |
| March                     | Conduct Survey                                                                                                                                                                                                   |
| April 14: Action Calendar | <ul style="list-style-type: none"> <li>• Presentation and Discussion of first Community Survey Results</li> <li>• Council refines which issues deserve additional testing with more focused language.</li> </ul> |
| April                     | Possible second survey                                                                                                                                                                                           |
| May 26: Action Calendar   | Presentation and Discussion of Second Community Survey Results and Direction About Next Steps                                                                                                                    |
| June 16: Action Calendar  | Draft Ballot Language to Council (from May 26 direction)                                                                                                                                                         |
| July 14: Action Calendar  | Draft Ballot Language to Council (from June 16 direction)                                                                                                                                                        |
| July 28: Action Calendar  | Last Council meeting before recess; Adopt Final Ballot Language and Resolutions placing measures on the ballot                                                                                                   |
| August 7:                 | Last Day to Place a Measure on the Ballot                                                                                                                                                                        |

**BACKGROUND**

Voters, in recent years, have approved the following items to address community need and priorities:

- A \$30 million infrastructure bond in 2012 (Measure M) funded street paving and related green infrastructure throughout the City. In 2014, Berkeley voters also approved an increase in the Parks Tax (Measure F) to ensure well maintained parks.
- A \$100 million infrastructure bond in 2016 (Measure T1). In the first phase, the project funded critical improvements to the North Berkeley Senior Center, the Adult Mental Health Services Center, Frances Albrier Community Center, Live Oak Community Center, improvements to numerous parks, paving of numerous streets and work on 11 different green infrastructure projects. The Parks, Recreation and Waterfront Department has launched an inclusive outreach effort to develop a list for the second phase of Measure T1.
- In 2018, a \$135 million affordable housing bond (Measure O) as well as an increase in property transfer tax on the top 1/3 of properties (Measure P) to increase the supply of affordable housing and services for people who are homeless. The City will be allocated approximately \$37 million to various developers in 2020 that will enable the construction of more than 450 units of affordable housing.

On January 28, staff delivered a presentation to Council on fire and emergency services and various operational and system enhancements as well as funding options that included ballot measures, fees, and special studies.

Berkeley Unified School District is proposing three different revenue measures on the March 3 primary:

| Name                                           | Type       | Cost            | Impact*      |
|------------------------------------------------|------------|-----------------|--------------|
| <b>Measure E</b> Recruitment & Retention       | Parcel Tax | \$0.12/sq foot  | \$236        |
| <b>Measure G</b> Facilities Bond               | Bond       | \$0.0445/\$100  | \$213        |
| <b>Measure H</b> Maintenance                   | Parcel Tax | \$0.091/sq foot | \$173        |
| <b>Total Annual Impact:</b>                    |            |                 | <b>\$449</b> |
| * based on a 1,900 square foot, \$485,000 home |            |                 |              |

Several non-revenue generating measures are also being considered for the ballot. These include Charter amendments regarding:

- Revising language throughout the Charter to ensure that gender neutral terminology is used throughout;
- New article regarding the Police Review Commission; and
- Eliminating certain language regarding sworn firefighter residency requirements (Article VII, Section 37a).

A number of state propositions have qualified for the ballot and a high number have been cleared for circulation as voter initiatives. See Attachment 3 for details. The Council may wish to consider the number of measures appearing on the ballot all together when considering placing local measures on the ballot.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the action requested in this report.

RATIONALE FOR RECOMMENDATION

One tool for considering placement of local measures is to conduct a community survey to evaluate the public’s interest in funding various projects and programs.

ALTERNATIVE ACTIONS CONSIDERED

Continue discussions of funding needs, but do not conduct a survey at this time.

CONTACT PERSON

Matthai Chakko, Assistant to the City Manager, 981-7008

Attachments:

- 1: November 2020 Election Calendar
- 2: Comparison of Berkeley, Oakland and Albany Property-Based Taxes & Assessments
3. Statewide Ballot Measures for November 2020 Election

Discussion and Direction Regarding Potential Ballot Measures  
for the November 3, 2020 General Municipal Election

ACTION CALENDAR  
February 11, 2020

**4. Overview of Revenue Measures**

5. Institute for Local Government Report, "Understanding the Basics of Municipal Revenues in California: Cities, Counties, and Special Districts"

## CITY OF BERKELEY - GENERAL ELECTION CALENDAR

Attachment 1

November 3, 2020

Offices to be Elected: Mayor; City Council Districts 2, 3, 5, 6; Rent Board (4 seats); School Board (2 seats)

Note: Public Finance submission deadlines will be added to this calendar in 2020

| DAYS PRIOR TO ELECTION | DATE                                      | ACTION TAKEN                                                                                                                                                                                                                                                     |
|------------------------|-------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 180                    | May 7, 2020                               | Suggested Last Day to file initiative petitions. Qualified petitions received after this date will be accepted, but may not be on the November ballot.                                                                                                           |
| 158<br>103             | May 29, 2020<br>July 23, 2020             | Signature In-Lieu of Filing Fee - Candidates may collect signatures during this period to offset the \$150 filing fee. Valid signatures are worth \$1 each. Charter Art. III, Sec. 6.1, BMC §2.16.020                                                            |
| 113                    | July 13, 2020                             | <b>FILING PERIOD OPENS - CANDIDATE NOMINATION PAPERS</b>                                                                                                                                                                                                         |
| 103                    | July 23, 2020                             | Deadline to file Signature In-Lieu petitions with City Clerk.                                                                                                                                                                                                    |
| -                      | July 31                                   | Semi-Annual Campaign Statements due. (1/1/20 - 6/30/20)                                                                                                                                                                                                          |
| 90                     | August 5, 2020                            | Independent Expenditure Disclosure Period Begins. (\$1000+)                                                                                                                                                                                                      |
| 90                     | August 5, 2020                            | Late Contribution Disclosure Period Begins. (\$1000+)                                                                                                                                                                                                            |
| 88                     | August 7, 2020                            | Deadline to deliver resolution calling ballot measure election to Registrar and request election consolidation.                                                                                                                                                  |
| <b>88</b>              | <b>August 7, 2020</b>                     | <b>FILING PERIOD CLOSES - CANDIDATE NOMINATION PAPERS</b>                                                                                                                                                                                                        |
| 87<br>83               | August 8, 2020<br>August 12, 2020         | <b>Extended candidate filing period.</b> Candidate filing is extended if an incumbent eligible for re-election does not file nomination documents prior to 5:00 p.m. on August 7, 2020. Incumbents are not eligible to file during the extended period. EC 10225 |
| 82                     | August 13, 2020                           | Secretary of State to conduct Random Alpha Draw for candidate name order on ballot. EC §13111                                                                                                                                                                    |
| 81                     | August 14, 2020                           | Last day to file primary ballot measure arguments - deadline is 12:00 p.m.                                                                                                                                                                                       |
| 74                     | August 21, 2020                           | Last day to file ballot measure rebuttal arguments. Impartial Analysis also due. Deadline is 12:00 p.m.                                                                                                                                                          |
| 57<br>14               | September 7, 2020<br>October 20, 2020     | Filing Period - Candidate Nomination Papers for Write-in Candidates.                                                                                                                                                                                             |
| 40<br>21               | September 24,<br>2020<br>October 13, 2020 | Voter Information Guide mailing period.                                                                                                                                                                                                                          |
|                        | September 24                              | First Pre-Election Campaign Statement due.                                                                                                                                                                                                                       |
| 29<br>7                | October 5, 2020<br>October 27, 2020       | Vote-by-Mail Ballot may be obtained by mail between these dates. After October 27, VBM ballots may be obtained at the office of the Registrar.                                                                                                                   |
| 16                     | October 18, 2020                          | 48-Hour Late Contribution Reporting Period begins. (\$100 - \$999)                                                                                                                                                                                               |

Discussion and Direction Regarding Potential Ballot Measures  
for the November 3, 2020 General Municipal Election

ACTION CALENDAR  
February 11, 2020

|                                        |                         |                                                                                                                                |
|----------------------------------------|-------------------------|--------------------------------------------------------------------------------------------------------------------------------|
| 15                                     | October 19, 2020        | Last Day to Register to Vote.                                                                                                  |
| <u>DAYS PRIOR<br/>TO<br/>ELECTION</u>  | <u>DATE</u>             | <u>ACTION TAKEN</u>                                                                                                            |
| 14                                     | October 20, 2020        | Close of write-in candidate filing period at 5:00 p.m.                                                                         |
|                                        | October 22              | Second Pre-Election Campaign Statement due.                                                                                    |
| 7                                      | October 27, 2020        | City Clerk must publish list of campaign contributions of \$50 or more online and at designated locations. BMC §2.12.065       |
| <b>Election<br/>Day</b>                | <b>November 3, 2020</b> | <b>Election Day - EC §1000; Charter Art. III, Section 4.</b>                                                                   |
| <u>DAYS AFTER<br/>THE<br/>ELECTION</u> | <u>DATE</u>             | <u>ACTION TAKEN</u>                                                                                                            |
|                                        | December 1, 2020        | Taking office date for newly elected officials (actual swearing in at later date). Charter Art. V , Sections 14, 14.1, 15, 16. |
| 30                                     | December 3, 2020        | Last day for County to certify election results to city. EC §15372                                                             |
| 35                                     | December 8, 2020        | Council to certify election results. EC §§9217, 10262, 10263; Charter Art. III, Sec. 10                                        |
|                                        | January 31, 2021        | Semi-Annual Campaign Statement due.                                                                                            |
|                                        |                         | Updated 01/15/19                                                                                                               |

**Comparison of Berkeley, Oakland, and Albany Property-Based Taxes & Assessments, FY 2020**

Ad Valorem Taxes: Berkeley, Oakland, and Albany properties are all equally subject to the 1% countywide ad valorem tax based on assessed value, as well as the ad valorem debt service imposed by the Peralta Community College, Bay Area Rapid Transit, East Bay Regional Park and East Bay Municipal Utility districts. In FY 2020 these combined taxes represent \$6,437 for an average homeowner (\$485,000 A.V.) of total ad valorem tax in each city.

Berkeley, Oakland, and Albany have each approved City GO bond debt, which is based upon the assessed value. In FY 2020, Berkeley's cumulative GO bond tax at \$208 is significantly lower than Oakland's cumulative GO bond tax at \$944 and Albany's GO bond tax at \$550.

Special Taxes: Each of these cities has its own set of voter-approved special taxes and other assessments; however, Oakland and Albany do not use the same taxation method as the City of Berkeley. For instance, while most of Berkeley's special taxes are based on a tax rate multiplied by the building square footage, those in Oakland and Albany are usually a standard flat rate amount per parcel with some variation in the flat rate based upon land use. In all three cities, most of the voter approved special taxes allow for an annual cost of living adjustment based either on the annual Bay Area Consumer Price Index (CPI) or the Statewide Personal Income Growth (PIG) rate. Berkeley's Emergency Services for the Severely Disabled tax, Library Tax, Fire Protection/Emergency Response Tax, and Parks/Landscape Maintenance Tax use the higher of the two.

There are several significant differences in the special taxes imposed by Berkeley, Oakland, and Albany. For example, Berkeley's Library Tax at \$431 is significantly higher than Oakland's library tax at \$187<sup>2</sup> or Albany's library and library supplemental tax at \$97 annually.

Another significant difference is in school taxes. Each city has approved School GO bond debt and special school taxes. Berkeley Unified School District's combined GO bond and special school taxes total \$1,466, Albany Unified School District's GO and special school tax is slightly higher than Berkeley's at \$1,985, but Oakland Unified School District's GO and special school tax is significantly lower at \$993.

County and other agency assessments (such as County Service Area (CSA) Vector Control, AC Transit, East Bay Municipal Utility District (EBMUD), East Bay Trail LLD and East Bay Regional Parks (EBRP)) are parcel-based, flat rate assessments based on land use. And, with some limited exceptions<sup>3</sup>, apply equally to all property in these three cities. There are a few other variations billed on property tax statements.

Table 3 summarizes the comparison of total FY 2020 annual parcel-based taxes and assessments for Berkeley, Oakland, and Albany using an 'average' single family property that is 1,900 square feet with an assessed value of \$485,000 and a homeowner's exemption of \$7,000.

<sup>2</sup> Parcels located in the Rockridge Community Facility District (CFD) 1 pay an additional tax of \$25 annually.

<sup>3</sup> Albany is not subject to the additional Mosquito Abatement fee and is not included in the CSA Lead Abatement program. Oakland properties pay higher CSA Vector Control assessments than Berkeley or Albany.

Discussion and Direction Regarding Potential Ballot Measures  
for the November 3, 2020 General Municipal Election

ACTION CALENDAR  
February 11, 2020

### Table 3 – FY 2020 Property-based Taxes and Assessments Comparison

Single Family Home: \$485,000 Median Assessed Value (AV) and 1,900 Square Feet

| AGENCY                                                   | Berkeley FY2020   |                 | Oakland FY2020 |                 | Albany FY2020  |                 |
|----------------------------------------------------------|-------------------|-----------------|----------------|-----------------|----------------|-----------------|
|                                                          |                   |                 | Rate           | Amount          |                |                 |
| <b>COUNTYWIDE AD VALOREM TAX</b>                         | <b>1.00%</b>      | <b>\$ 4,780</b> | <b>1.00%</b>   | <b>\$ 4,780</b> | <b>1.00%</b>   | <b>\$ 4,780</b> |
| <b>Voter-Approved Ad Valorem Debt Service</b>            |                   |                 |                |                 |                |                 |
| County Wide GO Bond                                      | 0.0108%           | \$ 52           | 0.0108%        | \$ 52           | 0.0108%        | \$ 52           |
| City GO Bond                                             | 0.0435%           | \$ 208          | 0.1975%        | \$ 944          | 0.1150%        | \$ 550          |
| Unified School District GO Bonds                         | 0.1204%           | \$ 576          | 0.1168%        | \$ 558          | 0.2250%        | \$ 1,076        |
| Peralta Community College                                | 0.0257%           | \$ 123          | 0.0257%        | \$ 123          | 0.0257%        | \$ 123          |
| Bay Area Rapid Transit                                   | 0.0120%           | \$ 57           | 0.0120%        | \$ 57           | 0.0120%        | \$ 57           |
| East Bay Regional Park                                   | 0.0060%           | \$ 29           | 0.0060%        | \$ 29           | 0.0060%        | \$ 29           |
| <b>Voter-Approved Ad Valorem Debt Service (Combined)</b> | <b>0.2184%</b>    | <b>\$ 1,045</b> | <b>0.3688%</b> | <b>\$ 1,763</b> | <b>0.3945%</b> | <b>\$ 1,887</b> |
| <b>TOTAL ALL AD VALOREM TAXES</b>                        | <b>1.2184%</b>    | <b>\$ 5,824</b> | <b>1.3688%</b> | <b>\$ 6,543</b> | <b>1.3945%</b> | <b>\$ 6,667</b> |
| <b>City Voter-Approved Special Taxes</b>                 | <b>Rate X BSF</b> | <b>1,900</b>    |                | <b>1,900</b>    |                | <b>1,900</b>    |
| Landscape/Park                                           |                   |                 |                |                 |                |                 |
| Oakland: City Landscape                                  | \$0.17290         | \$ 329          | parcel/unit    | \$ 103          | parcel/unit    | \$ 76           |
| Albany: City Landscape 88-1                              |                   |                 |                |                 |                |                 |
| Albany Sidewalk Tax                                      |                   |                 |                |                 | parcel/unit    | \$ 40           |
| Library Tax/Services                                     |                   |                 |                |                 |                |                 |
| Oakland: City Library                                    | \$0.22700         | \$ 431          | parcel/unit    | \$ 187          | parcel/unit    | \$ 97           |
| Albany: Serv & Supplemental                              |                   |                 |                |                 |                |                 |
| Paramedic Supplemental                                   |                   |                 |                |                 |                |                 |
| Oakland: Emg Med/Param                                   | \$0.03930         | \$ 75           | parcel/unit    | \$ 28           | parcel/unit    | \$ 108          |
| Albany: ALS (Measure N) & Paramedic Supplement           |                   |                 |                |                 |                |                 |
| Physically Disabled                                      | \$0.01638         | \$ 31           |                |                 |                |                 |
| Fire/Emergency Response (Measure GG)                     | \$0.05818         | \$ 111          |                |                 |                |                 |
| CFD1 Disaster Fire/Mello Roos                            | \$0.01250         | \$ 24           |                |                 |                |                 |
| Oakland Violence Prevention (BB)                         |                   |                 | parcel/unit    | \$ 113          |                |                 |
| <b>Total City Special Taxes</b>                          | <b>\$0.52626</b>  | <b>\$ 1,001</b> |                | <b>\$ 431</b>   |                | <b>\$ 321</b>   |
| <b>City Assessments</b>                                  |                   |                 |                |                 |                |                 |
| Street Lighting                                          | \$0.01080         | \$ 21           |                |                 |                |                 |
| 2018 Street Light                                        |                   | parcel/unit     | \$ 12          |                 |                |                 |
| Clean Storm Water (3,740 sqft lot area)                  |                   |                 |                |                 |                |                 |
| Oakland Flood Benefit12                                  | Formula           | \$ 34           | parcel/unit    | \$ 16           |                |                 |
| Albany Street/Storm Drains & CSW                         |                   |                 |                |                 | parcel/unit    | \$ 177          |
| 2018 Storm Water                                         | Formula           | \$ 45           |                |                 |                |                 |
| Albany City Sewer Service                                |                   |                 |                |                 | parcel/unit    | \$ 535          |
| <b>Total City Special Assessments</b>                    |                   | <b>\$ 112</b>   |                | <b>\$ 16</b>    |                | <b>\$ 712</b>   |
| BUSD Special Taxes: Measure H of 2010                    |                   |                 |                |                 |                |                 |
| Oakland Measure N                                        | \$0.07032         | \$ 134          | parcel/unit    | \$ 120          | parcel/unit    | \$ 318          |
| Albany Facility Maintenance Measure LL                   |                   |                 |                |                 |                |                 |
| BUSD : Measure E1 of 2016                                |                   |                 |                |                 |                |                 |
| Oakland Measures G & G1                                  | \$0.39800         | \$ 756          | parcel/unit    | \$ 315          | parcel/unit    | \$ 591          |
| Albany Measure J                                         |                   |                 |                |                 |                |                 |
| <b>Total Unified School District Special Taxes</b>       | <b>\$0.46832</b>  | <b>\$ 890</b>   |                | <b>\$ 435</b>   |                | <b>\$ 909</b>   |
| <b>County/Agency Assessments &amp; Fixed Charges</b>     |                   |                 |                |                 |                |                 |
| Mosquito Abatement                                       | parcel/unit       | \$ 2            | parcel/unit    | \$ 2            |                |                 |
| Mosquito Assess 2                                        | parcel/unit       | \$ 3            | parcel/unit    | \$ 3            |                |                 |
| CSA Paramedic                                            | parcel/unit       | \$ 34           | parcel/unit    | \$ 34           | parcel/unit    | \$ 34           |
| CSA Vector Control                                       | parcel/unit       | \$ 6            | parcel/unit    | \$ 7            | parcel/unit    | \$ 6            |
| CSA Vector Control B                                     | parcel/unit       | \$ 5            | parcel/unit    | \$ 5            | parcel/unit    | \$ 5            |
| CSA Lead Abatement                                       | parcel/unit       | \$ 10           | parcel/unit    | \$ 10           |                |                 |
| AC Transit (Measure VV)                                  | parcel/unit       | \$ 96           | parcel/unit    | \$ 96           | parcel/unit    | \$ 96           |
| EBMUD Wet weather                                        | parcel/unit       | \$ 111          | parcel/unit    | \$ 111          | parcel/unit    | \$ 111          |
| East Bay Trail LLD                                       | parcel/unit       | \$ 5            | parcel/unit    | \$ 5            | parcel/unit    | \$ 5            |
| SFBRA Measure AA                                         | parcel/unit       | \$ 12           | parcel/unit    | \$ 12           | parcel/unit    | \$ 12           |
| Hazardous Waste Program                                  | parcel/unit       | \$ 7            | parcel/unit    | \$ 7            | parcel/unit    | \$ 7            |
| EBRP Park Safety/M                                       | parcel/unit       | \$ 12           | parcel/unit    | \$ 12           | parcel/unit    | \$ 12           |
| Peralta CCD Measure B                                    | parcel/unit       | \$ 48           | parcel/unit    | \$ 48           | parcel/unit    | \$ 48           |
| Albany Open Space Tax                                    |                   |                 |                |                 | parcel/unit    | \$ 69           |
| <b>Total County Assessments/Charges</b>                  |                   | <b>\$ 351</b>   |                | <b>\$ 352</b>   |                | <b>\$ 405</b>   |
| <b>TOTAL CURRENT ANNUAL TAXES</b>                        |                   | <b>\$ 8,178</b> |                | <b>\$ 7,777</b> |                | <b>\$ 9,014</b> |
| <b>Tax/Assessment Rate</b>                               |                   | <b>1.7109%</b>  |                | <b>1.6270%</b>  |                | <b>1.8858%</b>  |

**November 2020 Ballot Information****Attachment 3**

In addition to the national, state and local candidates on the November 2020 ballot, there will also be a number of state propositions and initiatives. The “Cleared for Circulation” list has been abridged to the account for multiple submissions of measures with the same title. The full list can be found at <http://www.sos.ca.gov/elections>

| <b>Ballot Measure</b>                                                                                                                                                                                             |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>State of California: Qualified or Eligible for Ballot</b>                                                                                                                                                      |
| Referendum to overturn a 2018 law that replaced money bail system with a system based on public safety risk.                                                                                                      |
| Restricts Parole for Non-Violent Offenders. Authorizes Felony Sentences for Certain Offenses Currently Treated Only as Misdemeanors. Initiative Statute.)                                                         |
| Requires Certain Commercial and Industrial Real Property to be Taxed Based on Fair-Market Value. Dedicates Portion of Any Increased Revenue to Education and Local Services. Initiative Constitutional Amendment. |
| <b>State of California: Pending Signature Verification or Cleared for Circulation</b>                                                                                                                             |
| Expands local governments' authority to enact rent control on residential property. Initiative statute.                                                                                                           |
| Changes requirements for transferring property tax base to replacement property. Expands business property reassessment. Initiative constitutional amendment.                                                     |
| Increases funding for public schools, community colleges, and local government services by changing tax assessment of commercial and industrial property. Initiative constitutional amendment.                    |
| Adjusts limitations in medical negligence cases. Initiative statute.                                                                                                                                              |
| Limits duration of spousal support after divorce or legal separation to no more than five years. Initiative statute.                                                                                              |
| Changes requirements for transferring property tax base to replacement property. Expands business property reassessment. Initiative constitutional amendment.                                                     |
| Changes requirements for transferring property tax base to replacement property. Initiative constitutional amendment.                                                                                             |
| Authorizes bonds to fund projects for wildfire prevention, safe drinking water, and protecting wildlife and lands from climate risks. Initiative statute.                                                         |
| Requires monetary bail. Initiative constitutional amendment.                                                                                                                                                      |
| Increases funding for public schools, community colleges, and local government services by changing tax assessment of commercial and industrial property. Initiative constitutional amendment.                    |
| Authorizes electronic signature gathering for initiative, referendum, and recall petitions. Initiative statute.                                                                                                   |
| Expands legalization of cannabis and hemp. Initiative statute.                                                                                                                                                    |
| Replaces state senate and assembly with single-house legislature; increases number of legislators. Initiative constitutional amendment.                                                                           |
| Requires ranked-choice voting system for federal and state elections. Restructures state senate to multi-member districts. Initiative constitutional amendment.                                                   |

|                                                                                                                                                              |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Decriminalizes psilocybin mushrooms. Initiative statute.                                                                                                     |
| Adjusts limitations in medical negligence cases. Initiative statute.                                                                                         |
| Requires enactment of measures to reduce the use of non-organic fungicides, herbicides, insecticides, and fumigants. Initiative statute.                     |
| Amends consumer privacy laws. Initiative statute.                                                                                                            |
| Authorizes bonds to continue funding stem cell and other medical research. Initiative statute.                                                               |
| Requires arrest for specified offenses and, if convicted, detention or intervention programs. Initiative statute.                                            |
| Authorizes state regulation of kidney dialysis clinics. Establishes minimum staffing and other requirements. Initiative statute.                             |
| Changes employment classification rules for app-based transportation and delivery drivers. Initiative statute.                                               |
| Decriminalizes psilocybin mushrooms. Authorizes dismissal of prior psilocybin-related convictions. Initiative statute.                                       |
| Requires state regulations to reduce plastic waste, tax producers of single-use plastics, and fund recycling and environmental programs. Initiative statute. |
| Authorizes new types of gambling. Initiative constitutional and statutory amendment.                                                                         |
| Authorizes state regulation of kidney dialysis clinics. Initiative statute.                                                                                  |

Revenue Measure Options

|                                             | Sales Tax (Transaction & Use Tax)                | Utility User's Tax (UUT)                                                                                                                                                                                         | Transient Occupancy Tax (TOT)             | Parcel Tax (Mello-Roos CFD)                                                                                                                                                         | Parcel Tax (Assessment District)                                                                                                                     | General Obligation Bond                          | Property Transfer Tax                                                                                                                                   |
|---------------------------------------------|--------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>General Tax (GT) or Special Tax (ST)</b> | Either                                           | Either                                                                                                                                                                                                           | Either                                    | Special                                                                                                                                                                             | Special                                                                                                                                              | Either                                           | General                                                                                                                                                 |
| <b>Voter Approval</b>                       | GT = 50% + 1<br>ST = 2/3                         | GT = 50% + 1<br>ST = 2/3                                                                                                                                                                                         | GT = 50% + 1<br>ST = 2/3                  | 2/3 (in District)<br>Citywide has to go on ballot                                                                                                                                   | ST = 2/3 (in District)<br>Citywide has to go on ballot                                                                                               | ST = 2/3                                         | GT = 50% + 1                                                                                                                                            |
| <b>Advantages</b>                           | Generated within City, may include non-residents | Referenda to reduce or repeal rarely succeed                                                                                                                                                                     | Paid by visitors                          | * Not subject to benefit assessment<br>* Can be formed with non-contiguous boundaries<br>* No allocation to public property required<br>* Pay-as-you-go financing of infrastructure |                                                                                                                                                      | No volatility                                    |                                                                                                                                                         |
| <b>Disadvantages</b>                        | High volatility                                  | Paid solely by City residents                                                                                                                                                                                    | High volatility                           | Paid solely by CFD property owners                                                                                                                                                  | Subject to benefit allocation                                                                                                                        | Paid solely by City property owners/residents    |                                                                                                                                                         |
| <b>Restrictions</b>                         |                                                  | * State and Federal Governments are exempt<br>* Gas and water used by utility companies to generate electricity are exempt<br>* Further limits the application to charges that are subject to federal excise tax | Applied to stays for nights up to 30 days | * Used to pay for public improvements and certain public services (safety, library, maintenance of parks, parkways, streets, roads, etc.)                                           | * Used to pay for public improvements with direct benefit to parcels within AD<br>* Can fund operations and maintenance of facilities financed by AD | Acquisition or improvement of real property only | * Exemptions: Government-owned property, non-profits, bankruptcy reorg., foreclosure, and dissolution of marriage<br>* General Law cities cannot impose |
| <b>Fund Capital Projects?</b>               | Yes                                              | Yes                                                                                                                                                                                                              | Yes                                       | Yes                                                                                                                                                                                 | Yes                                                                                                                                                  | Yes                                              | Yes                                                                                                                                                     |
| <b>Fund Services?</b>                       | Yes                                              | Yes                                                                                                                                                                                                              | Yes                                       | Yes                                                                                                                                                                                 | Yes                                                                                                                                                  | No                                               | Yes                                                                                                                                                     |

# Understanding the Basics of Municipal Revenues in California: Cities, Counties and Special Districts

2016 Update



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## OVERVIEW

Each one of California's 39 million residents lives within the boundaries of one of the state's 58 counties. Nearly 33 million people also live in one of California's 482 cities.<sup>i</sup> Californians are also served by 2,156 independent special districts.

Counties, cities and special districts provide a vast array of municipal services to residents and businesses. These services include public safety (police, fire and emergency services), parks and recreation, roads, flood protection, sewers, water, electricity, refuse disposal, recycling and other utilities. Counties have an additional role as a provider for many state-mandated services, such as foster care, public health care, jails, criminal justice and elections.<sup>ii</sup>

These municipal local governments rely on a variety of revenues to pay for the services and facilities they provide. The amount and composition of revenues:

- Differ between cities, counties and special districts largely because of differences in responsibilities; and
- Vary among cities, among counties and among special districts depending in part on differences in governance responsibilities.

There is a complex web of legal rules for collecting and using the variety of revenues available to municipal governments in California. These rules derive from the state constitution, state statute and court cases further interpreting those laws.

This guide provides an overview of the sources of county, city and special district revenues in California. It is an introduction to a complex topic. You can find further information in the resources listed on the last page.

### How To Use This Information

These materials are not technical or legal advice. You should consult technical experts, attorneys and/or relevant regulatory authorities for up-to-date information and advice on specific situations.

## CITY REVENUES IN CALIFORNIA

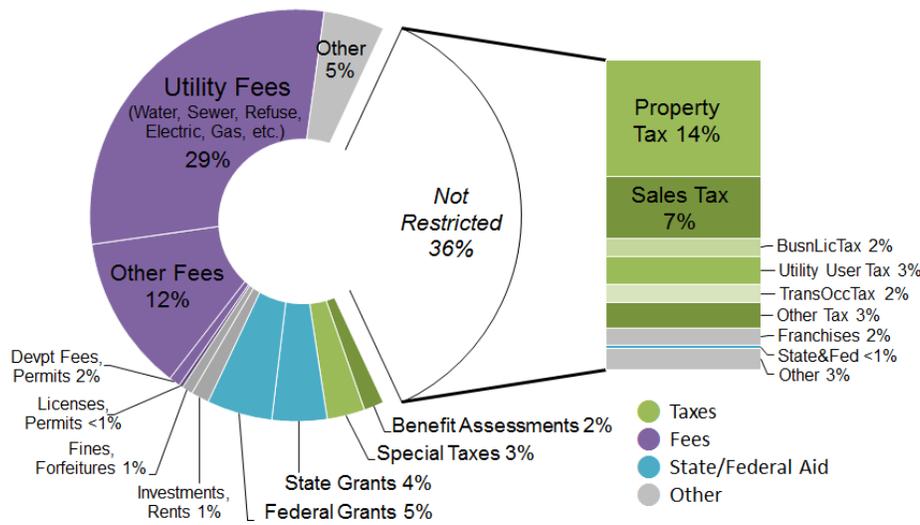
Incorporated cities (including those that refer to themselves as “towns”) are responsible for a broad array of essential frontline services tailored to the needs of their communities. These include:

- Law enforcement and crime prevention,
- Fire suppression and prevention, natural disaster planning and response, emergency medical response and transport,
- Land use planning and zoning, building safety,
- Local parks and open spaces, recreation,
- Water supply, treatment and delivery,
- Sewage collection, treatment and disposal,
- Storm water collection and drainage,
- Solid waste collection, recycling and disposal,
- Local streets, sidewalks, bikeways, street lighting and traffic controls, and
- Public transit.

Cities that are responsible for providing all or most of these functions are called “full service” - the services can be provided in-house or contracted through a private entity or another public agency. In other cities, some of these functions are the financial responsibility of other local agencies such as the county or special districts. For example, in about thirty percent of California cities, a special district provides and funds fire services. In sixty percent, library services are provided and funded by another public agency such as the county or a special district.

The mix of service responsibilities and local choice regarding service levels affects the amount and composition of revenues of each city.

California City Revenues



This is a statewide mash-up of city revenues. Individual cities vary.  
 Source: Author's computations from data from California State Controller 2014-15.  
 Does not include the City/County of San Francisco.

# COUNTY REVENUES IN CALIFORNIA

California counties are responsible for three general areas of municipal services: 1) delegated state and federal programs, 2) countywide public services and 3) essential frontline services for residents not receiving those services from a city or special district, often in unincorporated areas (outside city boundaries).

In unincorporated areas, counties provide the essential frontline services that cities provide that are not provided by a special district. These can include police protection (through a county sheriff), roads, planning and building safety.

Counties also provide public services to all county residents, whether they live in or outside of cities. These countywide functions include:

- Public assistance (notably welfare programs and aid to the indigent),
- Public health services (including mental health and drug/alcohol services),
- Local elections,
- Local corrections, detention and probation facilities and programs (including juvenile detention), and
- Property tax collection and allocation for all local agencies, including school districts.

Funding from the federal and state government, primarily for health and human services, is the largest source of county revenues. Property taxes and sales and use taxes are the primary funding sources for many county services that do not have a dedicated state or federal funding source.

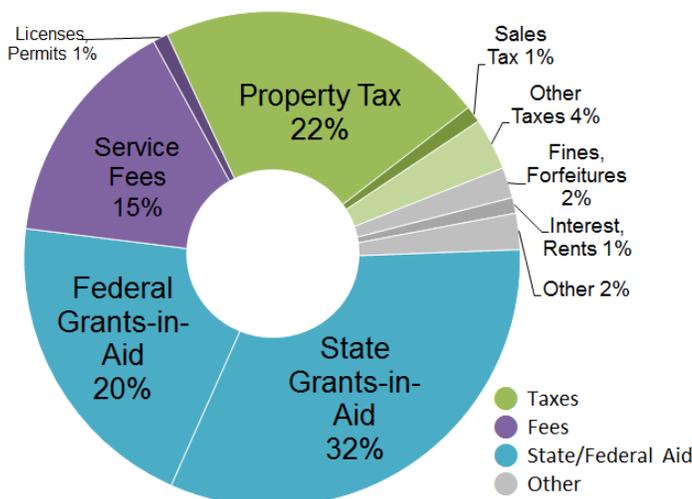
## General and Functional Revenues

Municipal revenues may be viewed as falling into two broad categories: general revenues and functional revenues.

**General revenues** can be used for any legitimate public purpose. General purpose taxes, especially property and sales taxes, account for most general city revenues statewide.

**Functional revenues** are restricted by law to a particular use. These include funds derived from fees or rates that the local agency charges for public services, including municipal utilities such as water, sewer, and garbage collection, airports, marinas, harbors and water ports. Functional revenues also include most state or federal grants as they are usually restricted for particular programs.

California County Revenues



Source: Author's computations from data from California State Controller 2014-15. Includes the County/City of San Francisco.

# SPECIAL DISTRICT REVENUES IN CALIFORNIA

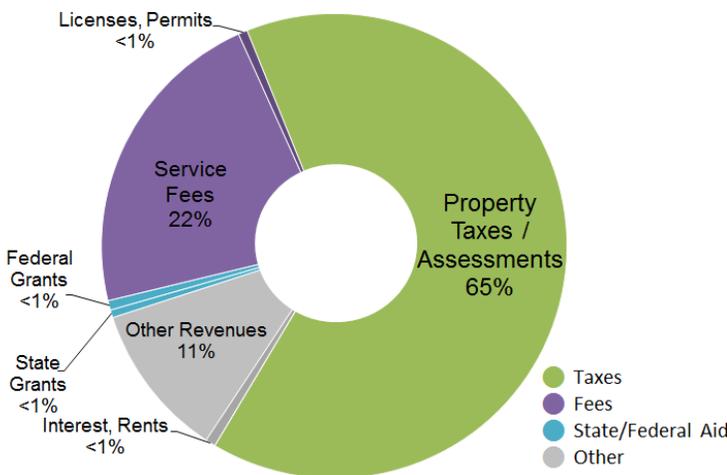
Most special districts provide one or a few municipal services to a particular geographic area. These include both enterprise and non-enterprise services. Enterprise services are funded primarily through charging a fee for service. For example, water and irrigation districts charge utility rates and fees from consumers of those services. Non-enterprise services generally do not lend themselves to fees and are primarily funded by property taxes, with relatively small amounts of fee and state and federal grant revenue. Library and fire protection services are examples of non-enterprise services.

Other districts are multifunction, providing a number of municipal services. Community services districts (CSDs) can provide as many as 32 different types of services, approximating the scope of some cities. Multifunction districts have both enterprise and non-enterprise elements and may, like cities or counties, use an array of different revenue sources.

## Types of Special Districts

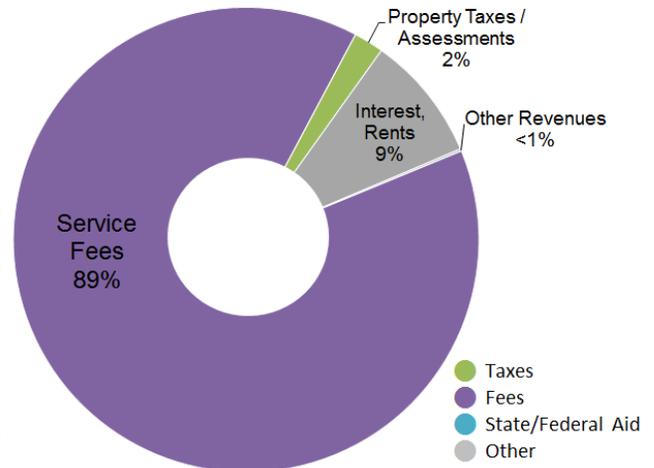
- Air Quality Management / Air Pollution Districts
- Airport Districts
- Cemetery Districts
- Community Services Districts
- Flood/Drainage Districts
- Fire Districts
- Harbor Districts
- Healthcare Districts
- Irrigation Districts
- Library Districts
- Memorial Districts
- Municipal / Resort Improvement Districts
- Open Space Districts
- Parks and Recreation Districts
- Police Protection / Ambulance Districts
- Public Utility Districts
- Reclamation Districts
- Resource Conservation Districts
- Sanitary Districts
- Waste Management Districts
- Water Districts

California Special District Revenues  
Typical District (fire) Providing Non-Enterprise Services



Source: Author's computations from data from California State Controller 2014-15.

California Special District Revenues  
Typical District (water) Providing Enterprise Services



Source: Author's computations from data from California State Controller 2014-15.

## THE STATE LEGISLATURE, LOCAL GOVERNMENTS AND THE VOTERS

The options available to local officials in governing, managing their finances and raising revenues to provide services needed by their communities are limited. Voters have placed restrictions as well as protections in the state constitution. The state's voters and the California Legislature have acted in various ways, to support and provide, and to limit and withdraw financial powers and resources from cities, counties and special districts.

Some of the most significant limitations on the local revenue-raising include:

- Property taxes may not be increased except with a two-thirds vote to fund a general obligation bond.
- The allocation of local property tax among a county, and cities, special districts and school districts within each county is controlled by the Legislature.
- Voter approval is required prior to enacting, increasing or extending any type of local tax.
- Assessments to pay for public facilities that benefit real property require property owner approval.
- Fees for the use of local agency facilities and for services may not exceed the reasonable cost of providing those facilities and services.
- Fees for services such as water, sewer and trash collection are subject to property owner majority protest.

The Legislature has enacted many complicated changes in state and local revenues over the past 30 years. Voters have approved state constitutional protections limiting many of these actions at times followed by even more complicated maneuvers by the Legislature in efforts to solve the financial troubles and interests of the state budget.

Reacting to actions of the Legislature and the deterioration of local control of fiscal matters, local government interests placed on the ballot, and voters approved, Proposition 1A in 2004 and Proposition 22 in 2010. Together, these measures prohibit the state from:

- Enacting most local government mandates without fully funding their costs. The definition of state mandate includes a transfer of responsibility or funding of a program for which the state previously had full or partial responsibility.
- Reducing the local portion of the sales and use tax rate or altering its method of allocation, except to comply with federal law or an interstate compact.
- Reducing the combined share of property tax revenues going to the county as well as cities and special districts in a county.
- Borrowing, delaying or taking motor vehicle fuel tax allocations, gasoline sales tax allocations, or public transportation account funds.

## TAXES

According to the California Constitution, every local agency charge is a “tax,” unless it falls into a list of specified exceptions:<sup>iii</sup>

- User fees for a specific benefit, privilege, service or product provided to the payor. Items include: fees for parks and recreation classes, some utilities, public records copying fees, DUI emergency response fees, emergency medical and ambulance transport service fees.
- Regulatory fees for reasonable regulatory costs of issuing licenses and permits, and performing inspections and enforcement such as health and safety permits, building permits, police background checks, pet licenses, bicycle licenses and permits for regulated commercial activities.
- Rental fees imposed for entrance to or use of government property. These include: facility room rentals, equipment rentals, park, museum and zoo entrance fees, golf greens fees, on and off-street parking and tolls.
- Fines or penalties such as parking fines, code enforcement fees and penalties, late payment fees, interest charges and other charges for violation of the law.
- A charge imposed as a condition of property development such as building permit fees, construction and grading permits, development impact fees and fees for California Environmental Quality Act requirements.
- Benefit assessments and property related fees imposed in accordance with the provisions of Article XIII D (Proposition 218) such as a lighting and landscape assessment and fees for property related services such as many retail water and sewer fees.<sup>iv</sup>

In contrast to an assessment or a fee, a tax need not be levied in proportion to specific benefit to a person or property. Tax revenues are an important source of funding for both county and city services and for many special districts. In addition to local taxes, counties rely significantly on tax dollars allocated from the state and federal governments.

|                                                                                                                                              | TAX- General                                                                                                                                         | TAX- Parcel or Special (earmarked)     | G.O. BOND (w/tax)                 | Fee / fine / rent                |
|----------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|-----------------------------------|----------------------------------|
| City / County                                                                                                                                | Majority voter approval                                                                                                                              | Two-thirds voter approval              | Two-thirds voter approval         | Majority of the governing board* |
| Special District                                                                                                                             | n/a                                                                                                                                                  | Two-thirds voter approval              | Two-thirds voter approval         | Majority of the governing board* |
| K-14 School                                                                                                                                  | n/a                                                                                                                                                  | Two-thirds voter approval (parcel tax) | 55% voter approval**              | Majority of the governing board* |
| State                                                                                                                                        | For any law that will increase the taxes of any taxpayer, two-thirds of each house of the Legislature - or approval of majority of statewide voters. |                                        | Statewide majority voter approval | Majority of each house           |
| * Additional procedures apply for property related fees.                                                                                     |                                                                                                                                                      |                                        |                                   |                                  |
| ** Per Proposition 39 (2000), maximum tax rate limits and other conditions apply for a 55% threshold school bond or threshold is two-thirds. |                                                                                                                                                      |                                        |                                   |                                  |

Counties and cities may impose a variety of taxes. Taxes fall into one of two categories: general or special.

A general tax is imposed to raise general-purpose revenues. Counties and cities may use revenues from a general tax for any lawful public purpose. A majority of voters must approve the decision to impose, increase or extend a general tax. A general tax may only be submitted for voter approval at an election for city council or board of supervisors unless a unanimous vote of the governing board declares an emergency.

A special tax is a tax imposed for a specific purpose. For example, a city may increase the sales and use tax by adding a special use tax for public safety, the acquisition of open space or transportation projects. All taxes imposed by special districts are considered special taxes. Since the tax is for a specific purpose, the revenues may only be used for that purpose. Two-thirds of voters must agree to enact, increase or extend a special tax.

## County Property Tax Administration

### County Assessor.

The assessor sets values on property and produces an annual property tax assessment roll.

### County Auditor-Controller.

The auditor-controller receives the assessed values from the assessor and calculates the amount of property tax due.

**County Treasurer-Tax Collector.** The treasurer-tax collector administers the billing, collection, and reporting of property tax revenues levied annually throughout California for not only the county, but also cities, schools and special districts.

|                         | General Tax                                                                                                                                                                                                                             | Special Tax                                                                                                                                                                                                                                           |
|-------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Use of Revenues         | Unrestricted                                                                                                                                                                                                                            | Specific purpose                                                                                                                                                                                                                                      |
| Governing Body Approval | <ul style="list-style-type: none"> <li>Counties and general law cities: two-thirds</li> <li>Charter cities: majority</li> <li>Transactions and use taxes: two-thirds</li> <li>Special districts may not adopt general taxes.</li> </ul> | Majority                                                                                                                                                                                                                                              |
| Voter Approval          | Majority                                                                                                                                                                                                                                | Two-thirds                                                                                                                                                                                                                                            |
| Other Rules             | A general tax election must be consolidated with a regularly scheduled general election of members of the governing body, unless an emergency is declared by unanimous vote (among those present) of the governing body.                | Special tax funds must be deposited in a separate account. The taxing agency must publish an annual report including: 1) the tax rate; 2) the amounts of revenues collected and expended; and 3) the status of any project funded by the special tax. |

## PROPERTY TAXES

All counties and cities in California receive property tax revenues. Many special districts do too. For all counties and most cities and non-enterprise special districts, property taxes are the largest source of discretionary revenues.

### How Property Taxes Are Calculated in California

The property tax is imposed on “real property” (land and permanently attached improvements such as buildings) and tangible personal property (movable property such as boats, aircraft and business equipment).

The maximum tax rate permitted on real property for general purposes is one percent of the property's assessed value plus voter approved rates to fund indebtedness (general obligation bonds, requiring two-thirds voter approval).

The tax rate is applied to the assessed value (AV) of the property. The assessed value of real property is the “full cash value” of the property in 1975-76 or at change of ownership, whichever is more recent, adjusted annually by the change in the Consumer Price Index (CPI), not to exceed an annual increase of two percent. The value of new construction is additional. If a property changes hands, then the assessed value becomes the full cash value upon change in ownership.

If a property's market value falls below its factored base year value, it may be temporarily reassessed to its lower actual value but in future years may be reassessed at the lesser of its actual value or its factored base year value. This can result in increases of more than two percent as a property's actual value returns to its earlier value, as when the housing market rebounds from a slump.

### Property Tax Revenue Distribution

Counties allocate property taxes to the county as well as cities, special districts and school districts within the county according to state law. Allocations among local agencies vary from place to place due to differences in the service responsibilities among agencies serving different areas and differences in the tax rates enacted by those agencies prior to Proposition 13 in 1978. Full-service cities generally receive higher shares than those that do not provide the complete range of municipal services. For example, in a city where fire services are provided by a special district, the city will get a lower share, with a portion of the property tax revenues going instead to the special district.

Property tax revenues among local governments are, of course, also dramatically affected by differences in the assessed value of properties among jurisdictions. A ten percent share in a community of average property values will result in less revenue than in a similar size wealthy bedroom community, or a community that also has a sizable business/industrial area.

### Property Tax in Lieu of Vehicle License Fee

In addition to their regular apportionment of property taxes, cities and counties receive property tax revenues in lieu of Vehicle License Fees (VLF). In 2004, the Legislature permanently reduced the VLF rate from two percent to 0.65 percent and compensated cities and counties for their revenue loss with a like amount of property taxes, dollar-for-dollar. Each agency's property tax in lieu of VLF allocation increases annually in proportion to the growth in gross assessed valuation in that city or county.

### What is "ERAF?"

The property tax revenues received by school districts in each county include amounts from the county "Educational Revenue Augmentation Fund" (ERAF) created by the California Legislature in 1991 as a way to reduce state general fund spending on schools. These funds receive some property tax that was previously allocated to counties, cities and special districts.

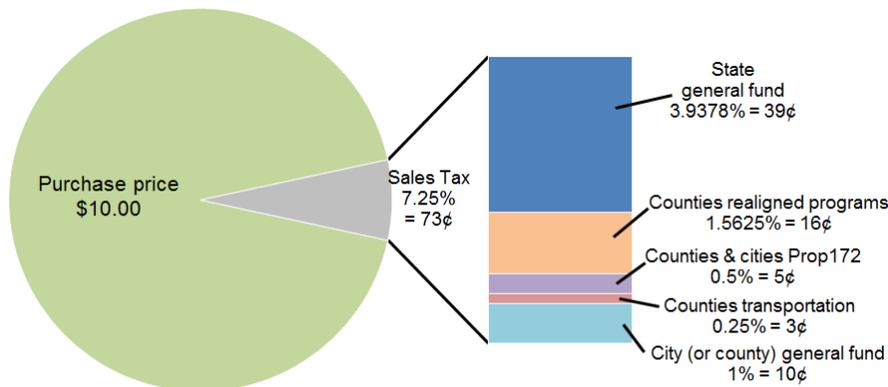
Since 2004, California's Constitution has prohibited the Legislature from increasing the amount of property tax shifted from counties, cities and special districts to ERAF or similar schemes. The state Constitution requires a two-thirds vote of the Legislature to change the allocation of property tax among the county, cities and special districts within a county.

## SALES AND USE TAXES

Consumers are familiar with the experience of going to a store, buying something and having an amount added for sales tax. Services are generally exempt from the sales tax as well as certain items, like most groceries and medicine. The sales tax is assessed as a percentage of the amount purchased.

The “base” statewide sales tax rate of 7.25 percent includes amounts to:

- The state general fund (3.9375 percent),<sup>v</sup>
- County realignment programs (state health/ welfare and corrections / law enforcement programs shifted from the state, 1.5625 percent),
- Supplemental local law enforcement grants (0.50 percent),<sup>vi</sup>
- Transportation programs in the county where the transaction occurs (0.25 percent), and
- The city where the transaction occurs (1.00 percent).<sup>vii</sup> If the transaction occurs in an unincorporated area, the 1.00 percent amount goes to the county.



*Rates effective January 1, 2017 after the expiration of the 0.25% Proposition 30 temporary rate.*

*In addition to the base, statewide rate of 7.25 percent, local voters may authorize additional “transactions and use tax” rates. These additional rates raise the total effective rate to as much as 9.75% in some locations.*

Cities, counties and countywide transportation agencies may impose sales tax rates to be added on to the “base” statewide sales and use tax rate. The add-on rates are actually “transactions and use taxes” and are allocated to the jurisdiction where the taxed product is received or registered (as in the case of a motor vehicle purchase). Over 120 cities have enacted transaction and use taxes of up to one percent, most commonly with majority voter approval for general purposes. Many counties and county transportation agencies have enacted rates, most commonly with two-thirds vote for specific purposes. Under current state law, the maximum combination of transactions and use tax rates in any location may not exceed two percent.<sup>viii</sup>

### State Sales and Use Tax Administration

The State Board of Equalization collects local sales and use tax revenues from the retailer and sends revenue from local rates and allocations back to cities and counties. In addition to administering the sales and use tax system, the State Board of Equalization collects and allocates other state taxes including fuel, tobacco and alcohol taxes.

### The “Use Tax” Part of the Sales and Use Tax

California’s sales tax has a relative called the “use tax.” While the sales tax is imposed on the seller, the use tax is imposed on the purchaser and at the same rate as the sales tax. The most common example of use tax is for the purchase of goods from an out-of-state retailer for use in California.

Out-of-state retailers doing business in California are required to report to the State Board of Equalization the jurisdiction to which sold items are delivered. If the retailer has a physical presence (nexus) in California, they must collect use tax when goods are delivered to purchasers in this state. If the seller does not collect and remit the use tax, the purchaser is legally obligated to report and pay.

### **Business License Tax (BLT)**

Most cities and a few counties have enacted business license taxes. Business license tax rates are set individually by each city and county most commonly based on gross receipts (overall business revenue) or levied at a flat rate, but may be based on the quantity of goods produced, number of employees, number of vehicles, square footage of the business or some combination of factors.

If a business operates in more than one city, a city may only tax that portion of the business's activities conducted within the city. In most cases, business license taxes are not imposed for regulatory purposes (as the term "license" might imply) but to raise revenues for general municipal purposes (i.e. a tax). If imposed as a fee to pay for the cost of regulating the business, the fee may not exceed the reasonable cost of regulating the business. (See "regulatory fees.")

### **Transient Occupancy Tax (TOT) or Hotel Bed Tax**

Most cities and some counties impose a transient occupancy tax or hotel bed tax on persons staying thirty days or less in hotels, motels and similar lodgings, including mobile homes. A county may impose a transient occupancy taxes only in the county area outside city limits. Typically, the lodging provider collects the tax from guests and turns the funds over to the county or city.

Transient occupancy taxes are imposed by most cities and counties and range from three and a half percent to 15 percent. For cities with a transient occupancy tax, it provides seven percent of general revenues on average, and as much as 17 percent in some cities. Any increase or extension of a local tax requires voter approval.

### **Utility User Tax (UUT)**

Many cities impose utility user taxes on the consumption of utility services, including (but not limited to) electricity, gas, water, sewer, telephone (including mobile phone and long distance), sanitation and cable television. Counties may levy utility user taxes in county area outside city limits. Any increase or extension of a local tax requires voter approval.

Utility companies usually collect utility user's taxes from their customers as part of their regular billing procedures and remit the funds collected to the city or county which imposed the tax.

Over 150 cities and a few counties levy utility user rates varying from one to 11 percent. For those jurisdictions with utility user taxes, it provides an average of 15 percent of general revenue and often as much as 22 percent.

### **Parcel Tax**

A parcel tax is a special tax on a parcel – or unit – of real property. Unlike the property tax, a parcel tax may not be based on the value of property. Instead, parcel taxes are generally based on a flat per-parcel rate.

A parcel tax may be enacted, increased or extended by a city, county, special district or school district only with two-thirds voter approval, even for general purposes.

### **Documentary Transfer Taxes and Property Transfer Taxes**

A documentary transfer tax is a tax imposed on the transfer of interests in real estate. Counties tax at a rate of 55 cents per \$500 of the property's value. Cities may impose the tax at up to one half of that amount, which is credited to the payment of the county tax. The Constitution allows charter cities<sup>ix</sup> to

enact a property transfer tax, with voter approval, on the value of real estate that is sold. In these cases, the entire county documentary transfer tax rate goes to the county. All cities and counties in California have documentary transfer taxes or property transfer taxes.

### Other Taxes

A city or county may impose other types of taxes within the limitations of and if not prohibited by state law. These include: admissions taxes, parking taxes, construction/development taxes, local vehicle registration taxes.

## SERVICE CHARGES, ASSESSMENTS AND FEES

### Utility Rates

Utility rates are fees for utility services charged to users who pay for special district, county or city provided water, sewer, electric or other utility services. Utility rates cover some or all of the cost of providing the service, which may include operations, maintenance, overhead, capital improvements and debt service.

Utility rates for water, sewer services and certain other utilities belong to a special category of fees called a “property-related fees.” A local government must follow certain specific procedures to impose, extend or increase a property-related fee.

To impose a property-related fee, the agency must first hold a public hearing. At the hearing, a majority of affected property owners can prevent the fee’s adoption by filing written protests. If a majority of affected property owners do not protest the fee and the fees pays for sewer, water or refuse collection, then an election is not required and the governing body may approve the fee. Other property-related fees require approval, either of two-thirds of the electorate residing in the affected area or of a majority of the owners of the property who would pay the fee.

### Benefit Assessments

Assessments are charges by cities, counties or special districts on real property to pay for public facilities or services within an area which benefit either real property or businesses. A common type of assessment is one used to pay for landscaping and lighting in a neighborhood. The amount of the assessment must reflect the special benefit to the property that results from the improvements. Assessments on property are typically collected through the owner’s annual property tax bill.

A local government must follow certain specific procedures to impose benefit assessments. When a local agency considers an assessment, a majority of property owners may defeat the assessment in a public hearing procedure. If the proposed assessment is not defeated in a public hearing procedure, then a majority of the property owners subject to the charge must approve the assessment by a mailed ballot. The property owners’ votes are weighted according to how much their property will be charged.

### User Fees

A city, county or special district may impose fees, charges and rates for services and facilities it provides. Examples include fees for checking plans for new construction or for recreation classes. The amount of a fee may not exceed the cost of providing the service or granting a benefit or privilege. This cost may include overhead, capital improvements and debt service.

### Regulatory Fees

Regulatory fees pay for the cost of issuing licenses and permits, performing investigations, inspections and audits and the administrative enforcement of these activities. Examples include a fee to pay for the cost of processing pesticide license applications or a fee to inspect restaurants for health and safety compliance.

## Development Impact Fees

Development impact fees are imposed on new construction (like new houses, apartments, shopping centers or industrial plants). They pay for improvements and facilities required to serve new development and to reduce the impacts of new development on a community.

Development impact fees (also known as “AB 1600 fees” after legislation adopted that governs such fees) pay for community amenities such as streets, sewers, parks and schools. They may not be used for day-to-day operating expenses.

The ordinance or resolution establishing the fee must explain the connection between the development project and fee. For example, a library impact fee must be connected to the demand for library services created by the construction of the development project.

The amount of the fee must not exceed the cost of providing the service or improvement that the fee pays for.

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## Local Debt Financing Tools

Local governments borrow money to pay for land, facilities and equipment that may require more funding than current revenues provide. Not a revenue source, but a way to leverage the timing of revenues, debt financing methods are important tools in government finance. Local governments may issue bonds and other debt instruments to finance improvements and services. These loans are paid off through taxes, assessments or fees. A variety of debt financing tools are available:

- **General Obligation Bonds.** General obligation bonds are essentially IOUs issued by public entities to finance large projects. General obligation bonds are backed by property tax revenue, which is used to repay the bond over a twenty- to thirty-year period. Increasing the property tax to repay the debt requires two-thirds voter approval and may only be done to acquire or improve real property.
- **Lease-Purchase Agreements.** In a lease-purchase agreement, sometimes called “certificates of participation,” the agency leases an asset for a period of years with the option to purchase the land or improvement at the end of the lease. The amount of the lease is equivalent to the principal and interest that would be paid if the transaction were financed as a loan.
- **Benefit Assessment and Special Tax Financing.** Benefit assessment financing is supported by benefit assessments on the property to fund acquisition of property and improvement of infrastructure and additional facilities of benefit to the property that is charged. Similarly special taxes, such as Mello-Roos taxes, may be financed with bonds to provide public improvements.
- **Revenue Bonds.** Revenue bonds are issued to acquire, construct or expand public projects for which fees, charges or admissions are charged. Because the debt service is paid from income generated by the facility or related service, such debt is considered self-liquidating and generally does not constitute debt of the issuer, subject to constitutional debt limitations.
- **Tax Allocation (Tax Increment).** Tax allocation bonds (sometimes referred to as tax-increment financing) are issued by Enhanced Infrastructure Financing Districts or Community Revitalization and Investment Authorities and repaid from the growth in property tax revenue (i.e., tax increment) and other designated revenues over a certain period, largely as a result of the funded projects in the area.

## REVENUES FROM OTHER GOVERNMENT AGENCIES

Counties, cities and many special districts also receive revenues from the state and federal government. For example, over half of county revenues statewide come from state and federal sources. This reflects the role of counties in implementing state policy and programs for health and human services.

### Gas Tax or Highway Users Tax

The state imposes per gallon tax on gasoline of 27.8 cents as of July 1, 2016. These funds are apportioned to cities and counties, primarily on the basis of their populations. Local gas tax revenues must be spent on research, planning, construction, improvement and maintenance of public streets, highways and mass transit. The federal government's 18.4 cents per gallon rate pays primarily for federal highways with some local grants.

### Motor Vehicle License Fee (VLF)

The Motor Vehicle License Fee is a state imposed and collected tax on ownership of a registered vehicle. Counties receive vehicle license fee revenues to fund certain health, social service and public safety programs that were realigned to counties in 1991 and 2011.

### State Public Safety Sales Tax

Proposition 172, a ballot measure approved in 1993, imposed a one-half percent state sales tax to be used for local public safety activities. The state distributes Proposition 172 revenues to each county based on its proportionate share of statewide taxable sales. Many cities receive a share of those funds based on losses to the state's ERAF property tax diversions.

### State Mandate Reimbursement

The state constitution requires the Legislature to reimburse local governments for their costs to implement a state-mandated new program or higher level of service in an existing program. The Constitution requires the Legislature to suspend most state mandates in any year in which full funding is not provided for that mandate. The Commission on State Mandates determines the level of reimbursement in response to a claim for reimbursement filed by a local agency. The process typically takes several years during which time, local governments must spend money to comply with the mandate.

### Federal and State Grants and Aid

The federal and state governments provide a wide variety of funds to counties, and a more limited set to cities and special districts. Federal and state grants comprise a large proportion of county revenues because of the many programs and responsibilities counties carry out on behalf of the federal and state governments. These funds are almost entirely restricted to specified uses. Examples include certain health, mental health, social and child welfare services.

Categorical grants support a defined program area. Categorical grants typically go to local agencies that either meet predetermined funding criteria or compete for project funding through an application process.

Block grants provide funding to a broad functional area. For example, federal Community Development Block Grant (CDBG) funds support local housing and economic development activities.

## RENT FOR USE OF PUBLIC PROPERTY

### Rents, Royalties and Concessions

Another way cities and counties and some special districts pay for public services is to charge rent for use of the public's property. An example is royalties from natural resources taken from land the public owns. Others include selling advertisements in publications or on buses, as well as, receiving a percentage of net profits from concessionaires operating on public property.

### Franchise Fees

Franchise fees are a form of rent for use of public streets and roadways. Examples of businesses that pay franchise fees include trash collectors, cable television companies, electric utilities and oil and natural gas pipeline companies. Federal and state law limits the amount of some franchise fees (for example, video and cable television franchise fees). Franchise fees for provision of video services (like television programming) are limited and administered by the state.

## FINES, FORFEITURES AND PENALTIES

Violations of the law often result in a fine of some kind. Fines, forfeitures and penalties may be imposed for many reasons. Typical examples include traffic violations, court fines, penalties and interest on late or unpaid taxes.

- State law determines the distribution of fines and bail forfeitures imposed by the state.
- State law apportions revenues for parking violations and surcharges between issuing agencies and the counties.
- A city or county may impose fines, forfeitures and penalties for civil violation of local ordinances.
- Bail for local code violations charged criminally is established by the local courts with input from the city or county.

### Maintenance of Effort Requirements (MOE)

When cities and counties receive funding for programs from the state or federal government, such funding may come with strings attached. A common condition is that the city or county commit to a certain level of funding. This commitment is called "maintenance of effort."

Local agencies also receive reimbursement for revenue lost as a result of some tax exemptions and reductions. An example includes the homeowners' property tax exemption, which eliminates the property tax on a small portion of the assessed valuation of owner-occupied residential property.

## OTHER REVENUES

There are other local government revenues, comparatively minor in amounts. These include interest earned on investments, sales of surplus property and gifts.

## ACKNOWLEDGEMENTS

Special thanks to Michael Coleman whose expertise contributed to the 2016 update of this publication. Michael Coleman is a leading expert on California local government revenues, spending and financing. He is the creator of CaliforniaCityFinance.com, the California Local Government Finance Almanac, an online resource of data, analyses and articles on California municipal finance and budgeting.

The Institute also appreciates the contributions from the staff of the California Special Districts Association, the California State Association of Counties and the League of California Cities for their contributions and suggestions to this revised document.

## ENDNOTES

<sup>i</sup> California Department of Finance, Demographic Research Unit [www.dof.ca.gov/Forecasting/Demographics/Estimates/](http://www.dof.ca.gov/Forecasting/Demographics/Estimates/)

<sup>ii</sup> Cal. Const. art. XI, § 1(a). *See also* Cal. Gov't Code § 23002 ("The several existing counties of the State and such other counties as are hereafter organized are legal subdivisions of the State."). *People ex rel. Younger v. County of El Dorado*, 5 Cal. 3d 480, 491, 96 Cal. Rptr. 557 (1971)

<sup>iii</sup> Cal. Const. art XIII, section 1(e)

<sup>iv</sup> A complete discussion of this list of seven exceptions can be found in the *Proposition 26 Implementation Guide* published by the League of California Cities.

<sup>v</sup> Proposition 30 imposed an additional state general fund sales tax of 0.25 percent from 2013 through 2016, for a total base rate of 7.5% during that time.

<sup>vi</sup> See "State Public Safety Sales Tax" under "Revenues From Other Government Agencies."

<sup>vii</sup> In some cities, by historic agreement, the city collects less than 1.00 percent, with the difference allocated to the county. For example, in San Mateo county each city receives 0.95% of transaction within its jurisdiction and 0.05% goes to the county general fund. For a full list of local sales tax rates see Table 23A of the California State Board of Equalization Annual Report.

<http://www.boe.ca.gov/annual/table23a.htm>

<sup>viii</sup> Except in the counties of Los Angeles, Alameda and Contra Costa where the maximum is 2.5 percent. Revenue and Tax Code §7251 et seq.

<sup>ix</sup> For more information on Charter Cities see [www.cacities.org/chartercities](http://www.cacities.org/chartercities)

## Resources for Further Information

Coleman, Michael. *California Municipal Revenue Sources Handbook*, League of California Cities 2014.

Multari, Michael, Michael Coleman, Kenneth Hampian, Bill Statler. *Guide to Local Government Finance in California*, Solano Press Books, 2012.

California Legislative Analyst's Office. [www.lao.ca.gov](http://www.lao.ca.gov)

"California Local Government Finance Almanac: Data, Statistics, Analyses on California City, County and Special District Finance." [www.californiacityfinance.com](http://www.californiacityfinance.com)

"Financial Management for Elected Officials." Institute for Local Government. [www.ca-ilg.org/post/financialmanagement](http://www.ca-ilg.org/post/financialmanagement)

"Learn About Cities." League of California Cities. [www.cacities.org/Resources/Learn-About-Cities](http://www.cacities.org/Resources/Learn-About-Cities)

"What Do Counties Do?" California State Association of Counties. [www.csac.counties.org/californias-counties](http://www.csac.counties.org/californias-counties)

"What are Special Districts and What Do They do?" California Special Districts Association. [www.cstda.net/special-districts/](http://www.cstda.net/special-districts/)



## ABOUT THE INSTITUTE FOR LOCAL GOVERNMENT

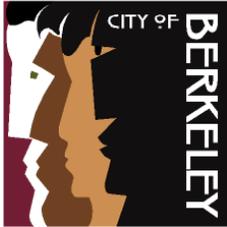
The Institute for Local Government (ILG) is the nonprofit 501(c)(3) research and education affiliate of the League of California Cities, the California State Association of Counties and the California Special Districts Association. Its mission is to promote good government at the local level with practical, impartial and easy-to-use resources for California communities.

For more information and to access the Institute's resources,  
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1400 K Street, Suite 205  
Sacramento, CA 95814



Office of the City Manager

ACTION CALENDAR

February 11, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Phillip L. Harrington, Director, Department of Public Works

Subject: Electric Bike Share Program Franchise Amendment

RECOMMENDATION

Adopt a Resolution declaring the Council's intention to set a public hearing for March 10, 2020, at 6:00 p.m., to consider whether to grant a Franchise Agreement Amendment to Bay Area Motivate, LLC, a subsidiary of Lyft Incorporated, to provide shared electric bicycles to the Berkeley public.

FISCAL IMPACTS OF RECOMMENDATION

The proposed Franchise Agreement Amendment requires Bay Area Motivate LLC (Motivate) to pay a fee of \$75 per electric bicycle (E-Bike) to the City to spend on bicycle parking racks. The 850 E-Bikes to be provided in the City of Berkeley by the end of calendar year 2020 would result in a total revenue amount of \$63,750 for bicycle parking racks, paid in quarterly installments to be deposited in revenue account code 137-54-622-668-0000-000-000-425910-.

CURRENT SITUATION AND ITS EFFECTS

The shared E-Bike program ("E-Bike Share Program") would provide 850 E-Bikes in total in the City of Berkeley by the end of calendar 2020. The service area would cover eight square miles mainly west of the Berkeley Hills, as shown on the map in Attachment 1, where the population density is high enough to support the service. Motivate would be required to make a minimum number of E-Bikes consistently available in historically underserved communities identified in the proposed Franchise Agreement Amendment. In addition, the proposed Franchise Agreement Amendment would extend the existing station-based Bike Share low-income pricing program to the E-Bike Share Program.

The E-Bikes would not be parked in the City's existing Bike Share stations, but would be equipped with a kickstand and tether in order to attach them to bicycle racks or park them in an upright position in the furnishings zone of the sidewalk, which is the zone of the sidewalk between the walkway zone and the curb where signage, parking meters, and benches are typically located. Motivate will be held responsible for ensuring that the E-Bikes are parked properly and not attached to benches, parking meters, trees, bus-stop signs or shelters, or adjacent to or within disabled parking zones or any other

accessible routes that would otherwise create a barrier to accessibility. Motivate will be required to address legitimate reports of improper or unsafe parking submitted through the City's 311 system within 3 hours during business hours (Monday-Friday, 9am-6pm) and within 12 hours during non-business hours and on weekends. Motivate will also be required to notify the City via email when a complaint has been addressed and to attach a photograph as evidence that the complaint has been addressed. Motivate will be held responsible for educating and ensuring that their users comply with all applicable federal, state, and local ordinances governing electric bicycles, lest they face a citation resulting in a fine or revocation of the Franchise.

### BACKGROUND

In January 2016, City Council adopted an Ordinance granting a franchise agreement with Motivate to operate a Bike Share program in the City of Berkeley under the terms set out in the Bay Area Bike Share Coordination Agreement ("Coordination Agreement") adopted by Council in December 2015. The Coordination Agreement is between the Metropolitan Transportation Commission ("MTC"), Motivate, the City of Berkeley and the other Participating Cities (San Francisco, Oakland, Emeryville and San Jose). Section 32.3 of the Coordination Agreement stipulates that Motivate has Right of First Offer to operate a Bike Share program with E-Bikes. In accordance with that Right of First Offer, City of Berkeley staff has concluded negotiations with Motivate on the terms of the E-Bike Share Program, which are incorporated into the proposed Franchise Agreement Amendment, and would provide a consistent E-Bike service in Berkeley, Oakland, and Emeryville.

The Coordination Agreement and original Franchise Agreement laid out the terms for the existing Bike Share system consisting of 37 stations and 400 bikes within the City of Berkeley. The Coordination Agreement requires Motivate to engage in daily rebalancing of bikes, which involves moving bikes from stations that are full to stations that are empty. This is to ensure that all stations are available to users who are either wanting to start a ride or finish a ride. The Coordination Agreement also mandates that Motivate provide a minimum number of Bike Share stations in Communities of Concern as determined by MTC. The proposed Franchise Agreement Amendment extends this mandate to E-Bikes by requiring that minimum numbers of E-Bikes be made consistently available in historically underserved communities, as identified in the Franchise Agreement Amendment.

### ENVIRONMENTAL SUSTAINABILITY

Increasing the number of Berkeley residents and visitors who are able to utilize shared mobility choices, as an alternative to single-occupant automobile travel, will decrease greenhouse gas emissions. This will help the City achieve the Berkeley Climate Action Plan greenhouse gas emission reduction targets of 33% below year 2000 levels by the year 2020, and 80% below year 2000 levels by 2050.

RATIONALE FOR RECOMMENDATION

The E-Bike Share Program would provide a mobility alternative for Berkeley residents. The station-less (free-floating) nature of the proposed program would allow these shared mobility devices to reach neighborhoods not currently serviced by the City's station-based Bike Share network. Not all Berkeley residents are physically able to ride a manually powered bicycle, so the electric assist motor of the E-Bikes could provide a viable transportation alternative for some residents.

ALTERNATIVE ACTIONS CONSIDERED

The City of Berkeley could opt not to expand the existing station-based Bike Share program, which would potentially position the City behind the region in terms of offering alternative modes of transportation to its residents and in terms of meeting the City's Climate Action Plan targets.

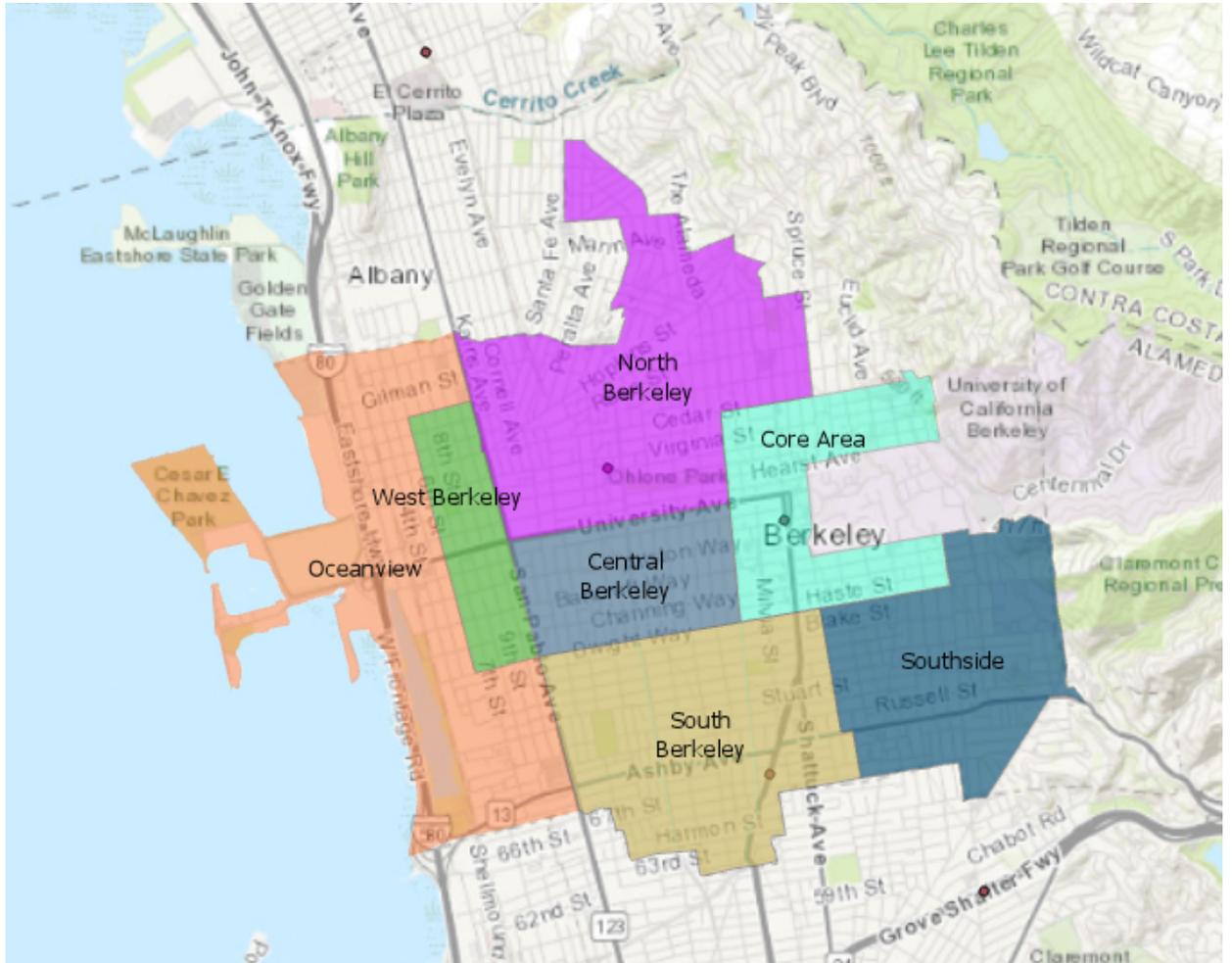
CONTACT PERSON

Farid Javandel, Transportation Manager, Public Works, (510) 981-7061  
Beth Thomas, Principal Planner, Public Works, (510) 981-7068

Attachments:

- 1: Service Area Map
- 1: Resolution
- 2: Public Hearing Notice

### Service Area Map



RESOLUTION NO. –N.S.

SETTING A PUBLIC HEARING DATE TO CONSIDER GRANTING A FRANCHISE AMENDMENT TO BAY AREA MOTIVATE, LLC, A SUBSIDIARY OF LYFT INCORPORATED

WHEREAS, pursuant to Chapter 9.60 of the Berkeley Municipal Code (BMC), the City of Berkeley and Bay Area Motivate, LLC (“Motivate”) have entered into a Franchise Agreement (“Franchise Agreement”) dated April 7, 2016, for operation of a bicycle sharing program (“Bike Share”) using manually operated bicycles parked in docks at stations, which Agreement was authorized by the Berkeley City Council by Resolution No. 67,326-N.S.; and

WHEREAS, the Franchise Agreement incorporates by reference the terms in the Bay Area Bike Share Program Coordination Agreement (“Coordination Agreement”), with Contract No. 10165, which Agreement was authorized by the Berkeley City Council by Resolution No. 67,326- N.S. and entered into as of December 31, 2015 by and between the Metropolitan Transportation Commission (“MTC”), Motivate, the City of Berkeley and the other Participating Cities (Oakland, Emeryville, San Francisco, and San Jose); and

WHEREAS, Section 32.3 of the Coordination Agreement stipulates that Motivate has Right of First Offer to operate a Bike Share program with electric-assist or electric bikes (“E-Bike Share Program”) in Berkeley; and

WHEREAS, pursuant to Section 32.3 of the Coordination Agreement, City of Berkeley staff has negotiated with Motivate to develop proposed terms for an E-Bike Share Program; and

WHEREAS, the E-Bike Share Program is to last four (4) years, with the opportunity, but no guarantee, to renew; and

WHEREAS, Motivate will launch the E-Bike Share Program with a minimum of 200 electric bicycles, with the minimum number of electric bicycles rising to 850 by the end of calendar year 2020; and

WHEREAS, Motivate will pay a fee of \$75 per electric bicycle (E-Bike) to the City to spend on bicycle parking racks. The fee would result in a total revenue amount of \$63,750 for bicycle parking racks, paid in quarterly installments to be deposited in revenue account code 137-54-622-668-0000-000-000-425910-; and

WHEREAS, Motivate will be held responsible for educating and ensuring that their users comply with all applicable federal, state, and local ordinances governing electric bicycles, lest they face a citation resulting in a fine or revocation of the Franchise; and

WHEREAS, Motivate will be required extend their existing Bike Share low-income pricing program to the E-Bike Share Program.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that, pursuant to Article XII, Section 76 of the Charter and Berkeley Municipal Code Chapter 9.60, it is the Council's intention to consider the application from Bay Area Motivate, LLC, a subsidiary of Lyft, Inc., for a franchise amendment to provide shared electric bicycles to the Berkeley public;

BE IT FURTHER RESOLVED that a public hearing shall be held before the City Council at 6:00 p.m. on the 10<sup>th</sup> day of March 2020 in the Berkeley Unified School District Board Room, 1231 Addison Street, Berkeley California. Following the hearing, the Council will consider the award of a franchise amendment to Bay Area Motivate, LLC.

BE IT FURTHER RESOLVED by the Council of the City of Berkeley that the City Clerk is directed to publish said notice in the official newspaper at least once within ten days after the passage of this resolution and make available copies of the proposed franchise amendment in the office of the City Clerk.

**NOTICE OF PUBLIC HEARING  
BERKELEY CITY COUNCIL**

**SHARED ELECTRIC BICYCLE FRANCHISE AGREEMENT  
AMENDMENT HEARING**

The City Council is proposing to grant an amendment to the existing franchise agreement with Bay Area Motivate, LLC (“Motivate”), a subsidiary of Lyft Incorporated, in order to provide shared electric bicycles to the Berkeley public for a duration of no less than four years. Motivate would provide 850 shared electric bicycles within Berkeley by the end of calendar year 2020.

The hearing will be held on March 10, 2020 at 6:00 p.m. in the Berkeley Unified School District Board Room, 1231 Addison Street, Berkeley.

A copy of the agenda material for this hearing will be available on the City’s website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of February 27, 2020.

For further information, please contact Beth Thomas, Principal Planner, Department of Public Works at 510-981-7068.

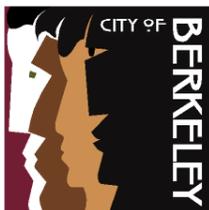
Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) for further information.

**Published:** February 21, 2020 – The Berkeley Voice  
Published pursuant to Berkeley Municipal Code Section 9.60.050

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City’s website, on February 27, 2020.

Mark Numainville, City Clerk



Cheryl Davila
Councilmember
District 2

REVISED AGENDA MATERIAL

Meeting Date: February 11, 2020

Item Description: Prohibiting the Use of Cell Phones, Email, Texting, Instant Messaging, and Social Media by City Councilmembers during Official City Meetings

Submitted by: Councilmember Cheryl Davila

Amended the title of the Resolution to replace the word "Prohibit" with "Discourage".

Edited necessary text to reflect the change in sentiment from 'banning' to 'limiting' the use of cell phones.

Included a RESOLVED Clause to explicitly prohibit the use of cell phones and technological devices during Closed Session meetings.

Corrected small grammatical errors.



Cheryl Davila
Councilmember
District 2

ACTION CALENDAR
February 11, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Discourage the Use of Cell Phones, Email, Texting, Instant Messaging, and Social Media by City Councilmembers during Official City Meetings

RECOMMENDATION

Adopt a Resolution Discouraging the Use of Cell Phones, Email, Texting, Instant Messaging, and Social Media by City Councilmembers during Official City Meetings. The Brown Act prohibits a majority of members of a legislative body from communicating outside of a public meeting on a matter on the agenda for their consideration.

In order to ensure the full attention of the Council to the public and each other, the use of cell phones with access to email, text-messaging, instant messaging, and social media should be limited as much as possible during City Council meetings. The use of digital technologies outside of the City-provided equipment, upon which Agenda Items and notes can be stored, is distracting and disrespectful to the democratic process.

The use of cellphones and telecommunications should explicitly be prohibited during City Council Closed Sessions meetings, as they are confidential. All council meetings require the full and utmost attention of attendees.

The City Manager is recommended to submit an item to the Council to amend the Council Rules of Procedure and Order to include a moratorium on the use of cell phones by Councilmembers on the dais during council meetings.

POLICY COMMITTEE RECOMMENDATION

On January 13, 2020, the Agenda and Rules Committee adopted the following action: M/S/C (Arreguin/Harrison) to approve the item with a Qualified Positive Recommendation, revised to recommend that the Rules of Procedure be amended to state that the use of digital communication such as e-mail and texting is discouraged by members of the Council during regular and special meetings. In addition, the Rules will be amended to prohibit the use of any digital devices during closed session meetings except for the use of City-issued digital devices for the sole purpose of reviewing notes and agendas. Vote: All Ayes.

FISCAL IMPACTS OF RECOMMENDATION

Limiting the use of communication technologies would be a fiscally responsible decision in order to ensure greater time efficiency and productivity in City-funded meetings.

ENVIRONMENTAL SUSTAINABILITY

The public will benefit by having an undistracted Council with their undivided attention.

BACKGROUND

After serving three consecutive years on Berkeley City Council, it has become clear that cell phones are being overused in City Council meetings, including in Closed Sessions. As elected officials and public servants, Berkeley City Councilmembers should be fully attentive in meetings, focused on the issues being raised by constituents, staff, and fellow Councilmembers. Especially when residents are giving public comment and only allowed to speak for 2 minutes, it is imperative that City Councilmembers utilize active listening strategies and show utmost respect to those we represent. Recently, members of the public have expressed feeling ignored or neglected by Berkeley City Council members who appear to be preoccupied with their technology and personal communication devices during Public Comment sessions.

In addition to being rude, texting during the meetings creates additional channels for lobbyists to influence Councilmembers votes, and may result in a lack of transparency. Additionally, if 3 or more Councilmembers are speaking to each other on text threads about a legislative topic, this is in violation of the Brown Act. Thus, the use of cellular telephones on the dais communicates disregard for the general public, the deprioritization of our constituency's concerns, disengagement from ethical democracy, and ought to be minimized.

CONTACT PERSON

Cheryl Davila
Councilmember District 2
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cdavila@cityofberkeley.info

ATTACHMENT: 1: Resolution

REFERENCES:

1. <https://www.pe.com/2014/04/13/city-councils-officials8217-texting-during-meetings-sparks-debate/>
2. http://local.anaheim.net/docs_agend/questys_pub/6575/6605/6606/6897/6913/Resolution6913.pdf

RESOLUTION NO. ##,###-N.S.

RESOLUTION OF THE COUNCIL OF THE CITY OF BERKELEY DISCOURAGING THE USE OF CELL PHONES, EMAIL, TEXTING, INSTANT MESSAGING AND SOCIAL MEDIA BY ELECTED CITY COUNCILMEMBERS DURING OFFICIAL CITY MEETINGS

WHEREAS, the City of Berkeley Council Rules of Procedure and Orders *Section I.D.* page 4, specifies the Duties of Councilmembers and code of Decorum, stating “While the Council is in session, the City Council will practice civility and decorum in their discussions and debate. Councilmembers will value each other’s time and will preserve order and decorum. A member shall neither, by conversation or otherwise, delay or interrupt the proceedings of the Council... nor disturb any other member while that member is speaking...”; and

WHEREAS, the use of cellular telephones and digital communications including text-messaging, emailing, perusing social media, or non-pertinent websites is distracting, and a threat to decorum; and

WHEREAS, members of the public have expressed feeling ignored or neglected by Berkeley City Council members who appear to be preoccupied with their technology and personal communication devices during Public Comment sessions; and

WHEREAS, the use of cell phones during the council meeting opens additional channels to influence Councilmembers immediately during a vote, leading to a lack of transparency; and

WHEREAS, the Brown Act, California Government Code section 6200 *et seq.*, prohibits a majority of members of a legislative body from communicating outside of a public meeting on a matter on the agenda for their consideration; and

WHEREAS, a text message thread could include participation of many Berkeley City Councilmembers addressing topics of legislation, in violation of the Brown Act; and

WHEREAS, other City Councils in the State of California, including, Palm Springs, Santa Rosa, and Anaheim, have banned the use of text-messaging, instant messaging, and/or emailing during their Council meetings;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the use of cell phones during City Council meetings be discouraged for Berkeley City Councilmember; and

BE IT FURTHER RESOLVED that the use cell phones during Closed Session Meetings be explicitly prohibited for Berkeley City Councilmembers; and

BE IT FURTHER RESOLVED that while communications regarding Council items should be minimized, personal communications between family members and/or care-givers can be taken outside in the case of emergencies; and

BE IT RESOLVED in order to acknowledge differences in learning styles and our of support tactile learners, note-taking can continue to be facilitated both with a pen and paper and/or on the tablets provided by the City; and

THEREFORE BE IT FINALLY RESOLVED that the Council Rules of Procedure and Order be

amended to include a moratorium on the use of cell phones by Councilmembers on the dais during council meetings.



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ACTION CALENDAR

February 11th, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Ben Bartlett

Subject: 2-Lane Option on Adeline St. between MLK Way and Ward St.

RECOMMENDATION:

Refer to the City Manager to analyze the potential for a major redesign of the section of Adeline St. between MLK Way and Ward St., to improve the public space to increase safety for pedestrians, cyclists, and people living with disabilities, while also meeting the needs of public transit and emergency vehicles. The analysis should prioritize a 2-lane option that reduces the width of the street and creates many benefits for our community. Refer \$250,000 to the budget process to fund this important project.

BACKGROUND:

The purpose of this referral is to advance safety, economic vitality, and environmental sustainability by redesigning a key section of Adeline St. – an area with a high concentration of destinations that serve many people in our community. This referral is consistent with the City’s Vision Zero efforts as well as the City’s Pedestrian and Bicycle Plans and Climate Action Plan.

The analysis should prioritize analyzing the implementation of a “road diet” on Adeline St. between MLK Way and Ward St., and should consider many factors, including:

- Enhanced safety for all users
- Assessment of on-street parking demand and curbside activities, such as commercial deliveries, bus stops, and space for mobility services to pick up and drop off riders
- Coordination with AC Transit regarding stop locations and amenities
- Consideration of emergency vehicles
- Detailed assessment of load-bearing capacity of the BART tunnel, and resulting constraints on potential public space, landscaping, facilities, or structures on top of the tunnel
- Detailed balancing of public space programming needs and street redesign
- Detailed balancing of streetscape maintenance needs and available funding

Historically, Adeline carried streetcars that connected downtown Berkeley with urban centers and freight facilities in Oakland and Emeryville to the south and west. The area originally developed as part of a string of streetcar suburbs and was known historically as the Lorin District. Eventually, the automobile replaced the streetcar as the dominant mode of transportation and Berkeley continued to develop, then the city and the California Department of Transportation, completely reconfigured streets in the area to accommodate cars. Many of the challenges that the street currently poses, stream from this period, such as Adeline's wide 180 feet right-of-way and the sharp angle of the Ashby– Adeline intersection, which resulted from the widening of Ashby and a resulting misalignment at Adeline.¹

In 1970, several blocks of residential and commercial buildings were demolished to build the Ashby BART station and parking lots in the triangular area between Adeline, Ashby, and Grove Street [now Martin Luther King Jr. Way (MLK)]. Recently, the Ed Roberts Campus, a center for disability advocacy nonprofits, was constructed on Adeline across from the Ashby BART station, which could greatly increase pedestrian activity in the area, to and from the BART station. In more recent years, there has been the construction of bike lanes and implementation of Rectangular Rapid Flashing Beacons System, which slightly increased the safety of traffic for pedestrians, but the street is still the subject of speeding and multiple collisions.

According to a collision analysis conducted by the California Statewide Integrated Traffic Records System, Adeline Street and Alcatraz Avenue is one of the three Berkeley intersections tied for the highest number of collisions among Martin Luther King Jr Way and University Avenue, Hearst Avenue and Oxford Street, and Adeline Street and Alcatraz Avenue. Twenty-two collisions have occurred at just this intersection alone between 2001 and 2012.²

Road Diets have had success in other locations such as Oakland and San Francisco. In 2016, Oakland got a road diet on Telegraph Avenue, between 20th and 29th street. This road diet resulted in collisions dropping by 40%, and there were no pedestrian crosswalk collisions for the first time in five years. The amount of people walking and riding bikes increased; in fact, more than 60% of bikers and pedestrians reported feeling safer on the streets. Also, speeding decreased and retail sales in the area increased 9

¹ Griswold, Julia B., et al. *Old Road, New Directions Plan for Adeline Street in Berkeley, California*. Berkeley: University of California Transportation Center, 2012. PDF.
<<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.359.6459&rep=rep1&type=pdf>>

² Vogel, Cassandra. "City of Berkeley unveils updates to bicycle plan." 1 Sept. 2016. *The Daily California*. Web. 16 Oct. 2019. <<https://www.dailycal.org/2016/09/01/city-berkeley-unveils-updates-bicycle-plan/>>

percent.³ San Francisco tested a road diet on Valencia Street for a one-year period. If it was unsuccessful, the street would be returned to its original condition. The project was successful, and studies saw a 20 percent decrease in total collisions, including a 36 percent reduction in collisions involving pedestrians. While the number of bicycle collisions increased, the amount of bicyclists increased by 140%, far surpassing the total bicycle collisions.⁴ Due to the reduction in the number of lanes, people have had concerns of increased traffic with both cities, but this was not an issue. Because of the safety of the road, more people walked and rode bikes, resulting in less cars on the road. In occasions where there was an increase in traffic on other road diets, commute time increased by seconds, not minutes. In general, with both cities, the road diets delivered the results expected.

Current Situation:

South Berkeley Now! and many community members have put forth a vision for a road diet along Adeline St. Among many other benefits, advancing a road diet could create a permanent space for the Flea Market, which must be permanently preserved and strengthened. A road diet could also enable more linear park space along Adeline St.

Fiscal Impact:

This item refers \$250,000 to the budget process to enable the referred analysis.

Environmental Sustainability:

A road diet would enable a range of low-carbon transportation modes.

Rationale for Recommendation:

The 2-lane option for Adeline Street from MLK Way to Ward St., which signifies a road diet, would create a safer environment for the Adeline Corridor that would pave the way for more space on this road utilized for a variety of purposes. A road diet is defined by the “conversion of a four-lane undivided road to a three-lane undivided road made up of two through lanes and a center two-way left-turn lane.”⁵ According to the U.S.

³ Blair, Steve, Steve Goldenberg and Tom Willging |. "My Word: There are safe, successful road diets in Oakland." 7 Mar. 2018. *East Bay Times*. web. 25 Oct. 2019. <<https://www.eastbaytimes.com/2018/03/07/my-word-there-are-safe-successful-road-diets-in-oakland/>>

⁴ Browne, Karalee and Melissa Kuehne. "Road Diets Make Streets Leaner, Safer and More Efficient." 1 Feb. 2015. *Western City*. web. 25 Oct. 2019. <<http://www.westerncity.com/article/road-diets-make-streets-leaner-safer-and-more-efficient>>

⁵ “Road Diet Informational Guide - Safety: Federal Highway Administration.” U.S. Department of Transportation Federal Highway Administration, https://safety.fhwa.dot.gov/road_diets/guidance/info_guide/es.cfm.

Department of Transportation Federal Highway Administration, a road diet leads to a decrease in the number and severity of crashes, namely a 47 to 19 percent reduction in crashes⁶.

Other benefits of a road include⁷:

- Improved safety by reducing the speed differential
- Pedestrian islands that can reduce pedestrian-related crashes by up to 46 percent
- Creation of bicycle lanes, transportation drop-off zones, parking spaces, buffers, etc.
- Fewer travel lanes that make pedestrian crossings less complex and allow for wider travel lanes
- Two-way left turn lane that provides a dedicated left turn lane

The road diet would allow for more access to transportation lanes and thus, foster more opportunities for jobs, affordable housing, quality schools, safer streets, etc. However, these various benefits of the road diet can only be fully achieved with proper implementation that accounts for safety, operational, and livability impacts. Therefore, this item recommends for a road diet study on the Adeline Corridor to determine how to create the best road diet for a safer neighborhood on this street.

ALTERNATIVES CONSIDERED

Although hiring police to monitor speed on this street is another viable option, the city of Berkeley lacks the adequate funding for constant 24/7 monitoring from the patrol cars. Furthermore, patrol cars would not create pedestrian islands nor bicycle lanes, both of which would increase the safety of civilians and bicyclists by allowing more space on the road and reducing the speed differential. In contrast to the police cars, the road diet would grant more space on the road for more important and useful options, such as housing and a public plaza for the Flea Market. The road diet, in the long term, would lead to a safer and more prosperous environment on the Adeline Corridor.

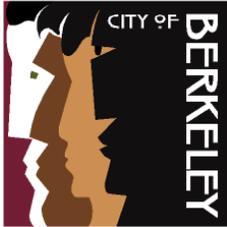
CONTACT PERSON

⁶ Ibid.

⁷ "Road Diet Informational Guide - Safety: Federal Highway Administration." U.S. Department of Transportation Federal Highway Administration, https://safety.fhwa.dot.gov/road_diets/guidance/info_guide/ch2.cfm#s21.

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Commission on Disability

INFORMATION CALENDAR

February 11, 2020

To: Honorable Mayor and Members of the City Council
 From: Commission on Disability
 Submitted by: Alexis Ghenis, Chairperson, Commission on Disability
 Subject: Commission on Disability FY 2019-20 Annual Workplan

INTRODUCTION

Commissions were asked to submit an updated Workplan that aligns with the fiscal year. Motion: Singer, Second: Walsh, Ghenis: Aye, Leeder: Aye, Ramirez: Aye

CURRENT SITUATION AND ITS EFFECTS

The Commission on Disability Fiscal Year 2019-20 Annual Workplan is a Strategic Plan Priority Project, advancing our goal to champion and demonstrate social and racial equity.

Commission on Disability ▪ FY 2019-20 Annual Workplan

1. Improved Transportation and Mobility

Pursue “Navigable Cities” for all pathways used by people with disabilities (sidewalks, ramps, curb cuts, crosswalks, bike lanes, etc.), addressing topics including smooth construction and eliminating barriers (e.g. business signs, parked vehicles and scooters/bicycles). Research safety concerns, especially at intersections and other crosswalks, and propose relevant adjustments to City policies and infrastructure. Pursue policies to guarantee equal access to all transportation options and/or appropriate alternatives, including but not limited to paratransit, transportation network companies (TNCs), bicycle and scooter rentals (e.g. Ford GoBike, Lime, etc.), and taxis. Keep up-to-date on roadway/neighborhood redesigns that may affect pathways and/or parking; provide input to ensure full access for people with disabilities. Explore parking options and access, especially in city-owned or regulated garages and parking lots.

2. Public Input and Public Outreach for COD

Implement communication channels with other city Commissions; pursue “cross-membership” with other commissions, where COD members request to be appointed to other commissions with vacancies; prioritize commissions whose coverage affects people with disabilities (e.g. peace & justice, zero waste, planning, homelessness, etc.). Raise awareness of COD within the disability community and relevant stakeholders (e.g. neighborhood and business associations) and invite community members and stakeholders to attend COD meetings.

3. Disability Access in all Berkeley Policies and Processes

Ensure that City of Berkeley processes fully serve people with disabilities and that accessibility is considered in all policies. Develop templates for full City Council consent and action items to include impacts on accessibility and community members with disabilities. Improve accessibility of city websites, meeting spaces, and buildings (including directions/signage to accessible entrances).

4. Accessible and Affordable Housing

Explore the expansion and improved availability of accessible housing for people with disabilities, including going beyond baseline ADA access requirements in new construction (e.g. adding automatic door openers, units with roll-in showers and other universal access features, etc.). Also consider retrofits of existing buildings, whether single-family homes or multi-unit apartments/condominiums. Address affordability as a key factor for housing.

5. Homeless people with Disabilities

Support Berkeley's population of homeless residents with disabilities. Collaborate with local service providers to address disability-related needs, such as access to healthcare or repairs of medical equipment (wheelchairs, scooters, walkers, etc.). Improve quality and range of housing alternatives; provide input on recreational vehicle (RV) ordinances and availability of permanent or semi-permanent RV parking areas.

6. Emergency/Disaster Preparedness

Receive information and ongoing updates, participate and make recommendations as appropriate about Berkeley's BEACON and CERT programs.

7. Student Life and Disability Awareness

Improve communication and collaboration with Berkeley's many students with disabilities, providing community engagement and leadership opportunities and supports for independent living. Address all populations including students with disabilities in elementary through high school, Berkeley City College, UC Berkeley, and private entities.

ENVIRONMENTAL SUSTAINABILITY:

None.

POSSIBLE FUTURE ACTION:

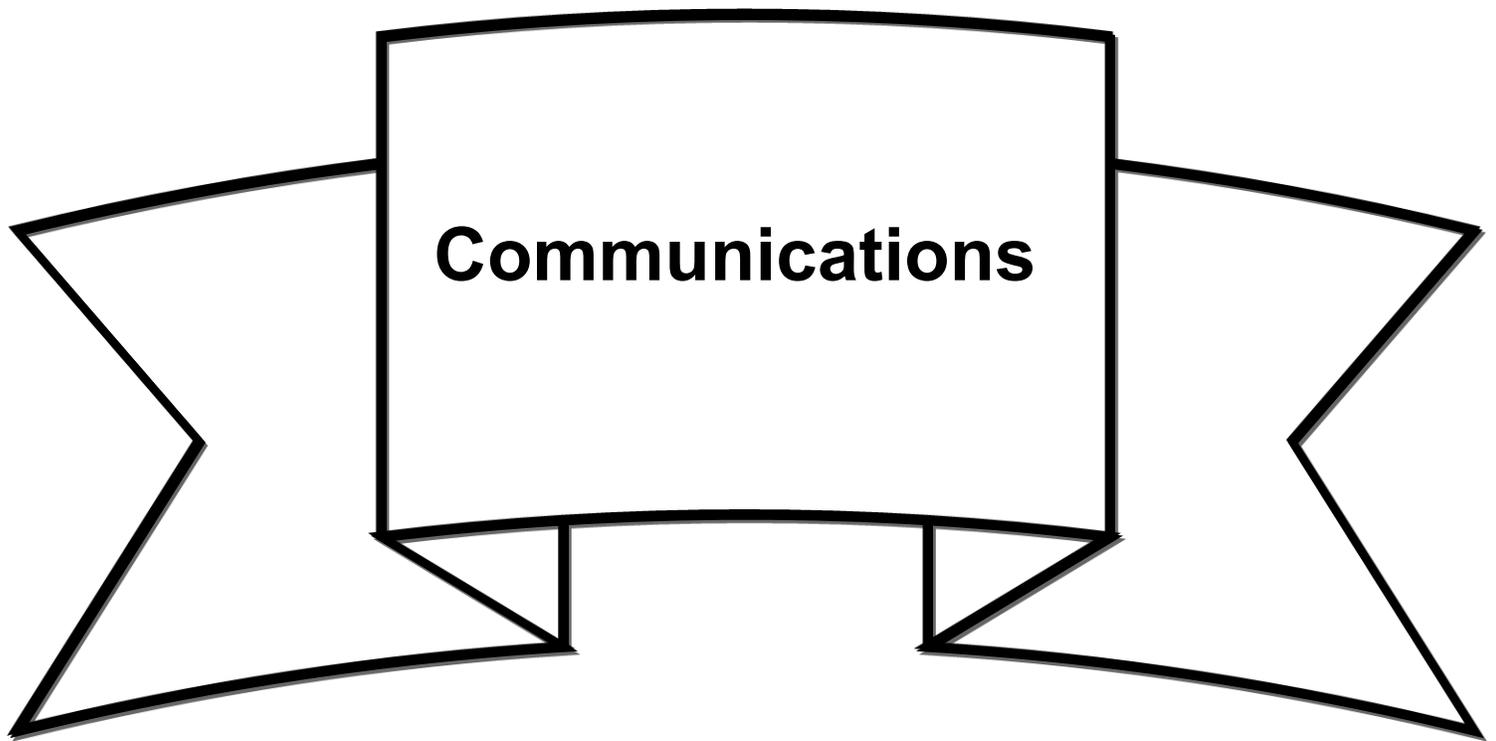
None.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

None.

CONTACT PERSON

Dominika Bednarska, Disability Services Specialist, Public Works, (510) 981 6418.



All communications submitted to the City Council are public record. Communications are not published directly to the City's website. Copies of individual communications are available for viewing at the City Clerk Department and through Records Online.

City Clerk Department

2180 Milvia Street
Berkeley, CA 94704
(510) 981-6900

Records Online

<http://www.cityofberkeley.info/recordsonline>

To search for communications associated with a particular City Council meeting using Records Online:

1. Select Search Type = “Public – Communication Query (Keywords)”
2. From Date: Enter the date of the Council meeting
3. To Date: Enter the date of the Council meeting (this may match the From Date field)
4. Click the “Search” button
5. Communication packets matching the entered criteria will be returned
6. Click the desired file in the Results column to view the document as a PDF