

## ORDINANCE NO. 7,741-N.S.

LEASE AGREEMENT: BERKELEY HOUSING AUTHORITY FOR OFFICE AND PROGRAM SPACE TO ADMINISTER SUBSIDIZED HOUSING PROGRAMS LOCATED AT 1947 CENTER STREET, FIFTH FLOOR, SOUTHWEST CORNER

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

Section 1. FINDINGS:

Berkeley Housing Authority (BHA) desires to relocate to the southwest corner offices on the fifth floor of 1947 Center Street, also known as the Civic Center Annex Office Building. The building is owned by the City of Berkeley and houses the administrative and programmatic office of several City Departments. The southwest corner offices on the fifth floor have been unoccupied for approximately three years. BHA wishes to lease the Premises for the purpose of operating offices and program spaces needed to administer various HUD-subsidized rental housing programs including the Section 8 Housing Choice Voucher Program, the Project-based Section 8 Program, the Moderate Rehabilitation Program, Mainstream Vouchers, VASH Vouchers, and other housing programs. The Tenant shall also use the leased Premises in conducting business for its non-profit affiliate.

Revenue will be deposited into the Building Purchases and Management Fund 636.

Section 2. AUTHORIZATION FOR CITY MANAGER TO ENTER INTO LEASE AT 1947 CENTER STREET, FIFTH FLOOR, SOUTHWEST CORNER.

The City Manager is hereby authorized to enter into a ten (10)-year lease agreement with the option for a two additional ten (10)-year extension with Berkeley Housing Authority for real property located at 1947 Center Street, fifth floor. Such lease shall be on substantially the terms set forth in Exhibit A.

Section 3. 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 December 1, 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.

## 1947 CENTER STREET LEASE

This lease is made on January 1, 2021, between the CITY OF BERKELEY ("Landlord"), a Charter City organized and existing under the laws of the State of California and BERKELEY HOUSING AUTHORITY ("Tenant"), who agree as follows:

*This lease is made with reference to the following facts and objectives:*

A. Landlord is the owner of the real property consisting of 2,213 square feet of office space plus 1,414 square feet of common area for a total of 3,627 square feet on the fifth (5<sup>th</sup>) floor of the Civic Center Annex Building located at 1947 Center Street, Berkeley, California, 94704 ("**Premises**"). Office space includes 13 private offices, a medium sized conference room, reception/mailroom, and a storage room. Common area includes nonexclusive use of one extra-large conference room (room 545 is 570 square feet), kitchenette (room 503), restrooms, hallways and the elevator lobby as depicted in Exhibit "A", attached hereto and made a part hereof. Tenant agrees to accept space in "as is" condition.

B. Tenant is willing to lease the Premises from Landlord pursuant to the provisions stated in this lease.

C. Tenant wishes to lease the Premises for the purpose of operating offices and program spaces needed to administer various HUD-subsidized rental housing programs including the Section 8 Housing Choice Voucher Program, the Project-based Section 8 Program, the Moderate Rehabilitation Program, Mainstream Vouchers, VASH Vouchers, and other housing programs. The Tenant shall also use the leased Premises in conducting business for its non-profit affiliate.

D. Tenant has examined the Premises and is fully informed of the condition thereof.

### 1. DESCRIPTION OF PREMISES

Landlord leases to Tenant and Tenant leases from Landlord the Premises described above.

### 2. TERM

The term of this lease shall be ten (10) years, with two (2) ten (10) year options to extend. The effective commencement date shall be on January 1, 2021, and expire at the end of one hundred and twenty (120) months. Landlord will grant limited access to Tenant beginning November 1, 2020 to facilitate improvements and other preparation of space prior to December 15, 2020 move in date. Landlord and Tenant agree to sign and date Exhibit B, attached hereto and acknowledge the Lease Commencement Date, Rent Commencement Date, and Expiration Date of the lease.

### 3. RENT

Tenant shall pay to Landlord \$3.00 per square foot per month rental rate, without deduction, setoff, prior notice, or demand, for Year 1 and 2 in advance on the first day of each month, commencing on the date the term commences, and continuing during the term. Beginning Year 3, the per square foot rate will increase 2.0% annually. Rent payments for Years 1 through 10 are depicted in Exhibit "C" attached hereto and made a part hereof. Monthly rent for any partial month shall be prorated at the rate of 1/30th of the monthly rent per day. All rent shall be paid to Landlord at the address to which notices to Landlord are given or other method as instructed by Landlord.

**4. PERIODIC RENT INCREASES**

The monthly rent shall be increased at the commencement of the third year of the term and each year thereafter ("the adjustment date") to the monthly rent in effect immediately preceding the adjustment date plus three percent (2%).

**5. SECURITY DEPOSIT**

a. As security for the full and faithful performance by Tenant of each and every term, provision, covenant, and condition of this lease, Tenant shall deposit with Landlord cash in an amount equal to two month's payment of rent representing first and last month's rent. Such security of \$21,762.00 shall be deposited on or before the effective date of the Ordinance authorizing this lease.

b. Tenant waives the provisions of California Civil Code section 1950.7, and all laws in force or that become in force after the date of execution of this Lease, that provide that Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by Tenant, or to clean the Premises.

c. If Tenant defaults in respect to any of the terms, provisions, covenants and conditions of this lease, including but not limited to the payment of rent, Landlord may use the security deposit or any portion of it to cure the default or compensate the Landlord for all damage sustained by Landlord resulting from Tenant's default. If Landlord so uses any portion of the security deposit, Tenant will restore the security deposit to its original amount within ten (10) days after written demand from Landlord.

d. Landlord will not be required to keep the security deposit separate from its own funds and Tenant shall not be entitled to interest on the security deposit. The security deposit will not be a limitation on Landlord's damages or other rights under this lease, or a payment of liquidated damages, or an advance payment of the rent. If Tenant pays the rent and performs all of its other obligations under this lease, Landlord shall return the unused portion of the security deposit to Tenant within sixty (60) days after the end of the term; however, if Landlord has evidence that the security deposit has been assigned to an assignee of the Tenant, Landlord shall return the security deposit to the assignee. Landlord may deliver the security deposit to a purchaser of the Premises and be discharged from further liability with respect to it.

Tenant waives the provisions of California Civil Code section 1950.7, and all laws in force or that become in force after the date of execution of this Lease, that provide that Landlord shall return the security deposit no later than thirty (30) days after the Landlord receives possession of the premises.

**6. LATE CHARGES**

Tenant acknowledges that late payment by Tenant to Landlord of rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this lease, the exact amount of which will be extremely difficult to ascertain. Therefore, if any installment of rent or any other sum due from Tenant is not received by Landlord within ten (10) days after such amount is due, then, without any requirement for notice to Tenant, Tenant shall pay to Landlord a late charge equal to ten percent (10%) of such overdue amount. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies available to it.

**7. USE OF PREMISES; OPERATION**

a. Tenant will use the Premises for the purpose of operating offices and program spaces needed to administer subsidized rental housing in the City of Berkeley. Tenant shall also use the Premises in conducting business for its non-profit affiliate. Tenant shall not use nor permit the use of the whole or any part of the Premises for any other purpose without the Landlord's prior written consent.

b. Business may be conducted with the public on the leased Premises at any time on any day, provided that, i) hours of operation are the same or within the same hours of operation of 1947 Center Street; ii) hours of operation have been approved by the Director of Public Work or his/her designee; and iii) Tenant shall have obtained any permit required by federal, state, County, or the City of Berkeley law in accordance with the Berkeley Municipal Code.

c. All Tenant employees must wear a company I.D. and be issued an access card approved by the Executive Director of Berkeley Housing Authority and by the City of Berkeley. The first badge for each employee is included in the cost of rent. Replacement badges may require a fee be paid by Berkeley Housing Authority.

d. Tenant agrees to abide by all "Rules and Regulations," the current version of which is attached hereto as Exhibit D, as they may be amended by the City from time to time.

**8. TAXES AND ASSESSMENTS**

a. Tenant recognizes and understands that this lease may create a possessory interest subject to property taxation and assessment and utility taxation, and that the Tenant will

be responsible for the payment of any property taxes and assessments, and utility taxes levied on such interest.

b. Tenant shall pay all taxes on its personal property, fixtures and on its leasehold or possessory interest in the leased Premises and any other assessment that may be lawfully levied.

**9. UTILITIES**

a. Tenants located on floors basement, one (1), two (2), three (3) and four (4) agree to pay any and all charges for electricity, gas, heat, cooling, sewer use, water, refuse collection and other utilities and common area maintenance (CAM) charges used in the premises proportionate to occupants' space occupation and use of common areas. For utilities paid directly to the Landlord, Landlord shall adjust that rate to reflect the actual costs during the preceding year.

b. Costs associated with staff and/or business related telephone and computers administered by City of Berkeley IT Department are the sole responsibility of the Tenant.

c. Tenants located on floors five (5) and six (6), all utility charges (security, janitorial service, electricity, gas, heat, cooling, sewer use, water, refuse collection and common area maintenance (CAM) charges) are included in the per square foot lease rate.

d. The City continually monitors utility use and reserves the right to investigate unprecedented increases in use and/or cost and may require an additional payment from one or all tenants if necessary.

**10. MAINTENANCE AND REPAIR**

a. Tenant is responsible for ensuring that the Premises meet all applicable City of Berkeley codes prior to occupancy under this lease.

b. Tenant shall keep and maintain in good order, condition and repair (except for reasonable wear and tear) all portions of the Premises including without limitation, all fixtures, interior walls, floors, ceilings, plumbing, glass, roof, heating, ventilating and sewage facilities serving the leased Premises, landscaping, and the sidewalk adjacent to the Premises.

c. Tenant shall make all required repairs upon demand by Landlord. Failure to make such repairs within thirty (30) days of the Landlord's demand shall constitute a default by Tenant.

**11. IMPROVEMENTS**

a. Tenant shall not erect additions or structures nor make nor cause to be made

any alterations, improvements, additions, or fixtures that affect the exterior or interior of the Premises, nor shall Tenant mark, paint, drill or in any way deface any floors, walls, ceilings, or partitions of the Premises, without first providing thirty (30) days' written notice to Landlord. If Landlord raises no objections within thirty (30) days after receipt of such notice, Tenant may proceed.

b. Tenant shall require all contractors to provide a labor and materials bond for the full amount of the contract. Tenant shall pay, when due, all sums of money that may be due or become due for any labor, services, materials, supplies or equipment furnished to or for Tenant, in, at, upon or about the leased Premises and which may be secured by any mechanic's, materialmen's or other lien against the Premises or Landlord's interest therein.

c. All alterations, improvements or additions that are now or in the future attached permanently to the Premises shall be the property of Landlord and remain with the Premises at the termination of this lease, except that Landlord can elect within thirty (30) days of the termination of the lease to require Tenant, at its cost, to remove any alterations, improvements or additions Tenant has made to the Premises.

## **12. INDEMNIFICATION**

Tenant shall indemnify, defend and hold Landlord, its officers, agents, volunteers and employees harmless from: 1) all claims of liability for any damage to property or injury or death to any person occurring in, on, or about the Premises; 2) all claims of liability arising out of Tenant's failure to perform any provision of this lease, or any act or omission by Tenant, its agents, contractors, invitees or employees; and 3) all damages, liability, fines, penalties, and any other consequences arising from any noncompliance or violation of any laws, Ordinances, codes, or regulations, including but not limited to the Occupational Safety and Health Act of 1979 and the Americans with Disabilities Act of 1990. Except, however, that Landlord shall hold Tenant harmless from all claims of liability for damage resulting from the acts or omissions of Landlord or its authorized representatives.

## **13. INSURANCE**

a. Tenant at its cost shall maintain public liability and property damage insurance with a single combined liability limit of \$2,000,000, including glass insurance and property insurance against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision insuring against all liability of Tenant and its authorized representatives arising out of and in connection with Tenant's use or occupancy of the Premises. All such insurance shall insure performance by Tenant of the preceding indemnity provisions. All insurance shall name the City of Berkeley, its officers, agents, volunteers and employees as additional insureds and shall provide primary coverage with respect to the City.

b. If the insurance referred to above is written on a Claims Made Form, then following termination of this lease, coverage shall survive for a period of not less than five years.

Coverage shall also provide for a retroactive date of placement coinciding with the effective date of this lease.

c. Tenant at its cost shall maintain on all its personal property, tenant's improvements, and alterations, in on, or about the Premises, a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements. This coverage shall be considered primary, and the proceeds from any such policy shall be used by Tenant for the replacement of personal property or the restoration of tenant's improvements or alterations.

d. If Tenant employs any person, it shall carry workers' compensation and employer's liability insurance and shall provide a certificate of insurance to the Landlord. The workers' compensation insurance shall: provide that the insurance carrier shall not cancel, terminate, or otherwise modify the terms and conditions of said insurance except upon thirty (30) days prior written notice to the Landlord; provide for a waiver of any right of subrogation against Landlord to the extent permitted by law; and be approved as to form and sufficiency by the Landlord's Risk Manager.

e. Tenant shall forward all insurance documents to: Department of Public Works, Real Property Division, 1947 Center Street, Fifth Floor, Ste. 521, Berkeley, California, 94704.

#### **14. COMPLIANCE WITH LAW AND SAFETY**

a. Tenant shall observe and comply with all applicable laws, Ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the Tenant's activities, including all provisions of the Occupational Safety and Health Act of 1979 and all amendments thereto, and all applicable federal, state, municipal, and local safety regulations. All Tenant's activities must be in accordance with these laws, Ordinances, codes, and regulations.

b. If a death, serious personal injury, or substantial property damage occurs in, on, or about the Premises, Tenant shall immediately notify the Landlord's Risk Management Office by telephone. If any accident occurs on the Premises, Tenant shall promptly submit a written report to Landlord, in such form as Landlord may require. This report shall include the following information: 1) name and address of the injured or deceased person(s), (2) name and address of Tenant's contractor, if any, (3) name and address of Tenant's liability insurance carrier, and (4) a detailed description of the accident.

c. Tenant shall report all existing hazardous materials handled at the site and any hazardous wastes generated at the site to the Toxics Management Division (TMD) on an annual basis and abide by all requirements of the TMD and other state and local environmental agencies. Upon release of hazardous materials or hazardous waste at the property or adjacent to the property, Tenant shall immediately notify the City of Berkeley Toxics Management Division. If the release is significant, the Tenant must report it to the 911 and the Office of Emergency



Services. Tenant shall not store hazardous materials or hazardous waste on the Premises without a proper permit from the City.

d. To Landlord's actual knowledge, neither the common area of the Building nor the Premises have undergone inspection by a Certified Access Specialist (CASp). The foregoing disclosure does not affect Landlord's or Tenant's respective responsibilities for compliance of construction-related accessibility standards as provided under this lease. A CASp can inspect the Premises and determine whether the 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 Premises, Landlord may not prohibit Tenant from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of Tenant, if requested by 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.

15. **NON-DISCRIMINATION AGAINST PERSONS WITH DISABILITIES**

a. If Tenant provides any aid, service or benefit to others on the City'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 City.

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 Tenant's activities must be in accordance with these laws, Ordinances, codes, and regulations, and Tenant shall be solely responsible for complying therewith.

16. **CITY NON-DISCRIMINATION ORDINANCE**

Tenant agrees to comply with the provisions of Berkeley Municipal Code Chapter 13.26 as amended from time to time. In the performance of this lease, the Tenant agrees as follows:

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

**17. NUCLEAR FREE BERKELEY**

Tenant agrees to comply with Berkeley Municipal Code Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

**18. 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 Lease to forego contractual relations to provide personal services to or to purchase, sell, lease or distribute commodities in the conduct of business with, 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 its contract with the City), 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 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 lease and Landlord may terminate this lease pursuant to Section 28. In the event that the City terminates this lease due to a default under this provision, City may deem Tenant a non-responsible bidder for five (5) years from the date this lease is terminated.

**19. BERKELEY LIVING WAGE ORDINANCE**

a. Tenant agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance. If Tenant employs six (6) or more part-time, full-time or stipend 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 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 property, 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 City's request. The failure to produce these records upon demand shall be considered a default, subject to the provisions contained in sections 27 and 28 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 property.

d. If Tenant fails to comply with the requirements of this the LWO and this lease, the 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 lease, upon which City may terminate this lease pursuant to Section 28.

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.

## **20. BERKELEY EQUAL BENEFITS ORDINANCE**

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 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 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 Sections 27 and 28 of this lease.

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 lease, upon which City may terminate this lease pursuant to Section 28.

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.

## **21. SANCTUARY CITY CONTRACTING ORDINANCE**

Tenant hereby agrees to comply with the provisions of the Sanctuary City Contracting Ordinance, B.M.C. Chapter 13.105. In accordance with this Chapter, Tenant agrees not to provide the U.S. Immigration and Customs Enforcement Division of the United States Department of Homeland Security with any Data Broker or Extreme Vetting Services as defined herein:

- a. "Data Broker" means either of the following:  
The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector business and government agencies;  
The aggregation of data that was collected for another purpose from that for which it is ultimately used.
- b. "Extreme Vetting" means data mining, threat modeling, predictive risk analysis, or other similar services. Extreme Vetting does not include:  
The City's computer-network health and performance tools;  
Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, monitor for, prevent, and protect technology infrastructure and systems owned and operated by the City of Berkeley from potential cybersecurity events and cyber-forensic based investigations and prosecutions of illegal computer-based activity.

**22. 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 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.

**23. PESTICIDES**

All use of pesticides on the Premises shall be in compliance with the City of Berkeley's Pesticide Use Policy as it exists at the time of such use.

**24. SIGNS**

Tenant shall not install or letter any signs on the Premises without the prior written consent of the Director of Public Works or his/her designee. All signs on the Premises shall conform to the provisions of Berkeley Municipal Code Chapter 20.04 when applicable.

**25. DAMAGE OR DESTRUCTION**

If the Premises are totally or partially destroyed from any cause, rendering the Premises totally or partially inaccessible or unusable, Landlord may elect to terminate this lease or continue this lease in effect by giving notice to Tenant within thirty (30) days of the date of destruction. If Landlord elects to continue this lease in full force and effect, then Landlord shall restore the Premises and the rent shall be abated, from the date of destruction until the date restoration is completed, in an amount proportionate to the extent to which the destruction interferes with Tenant's use of the Premises. If Landlord fails to give notice of its decision to terminate or continue this lease within the period stated, Tenant may elect to terminate this lease.

Tenant waives the provisions of Civil Code sections 1932(2) and 1933(4) with respect to any destruction of the Premises.

**26. EMINENT DOMAIN**

If the whole or any portion of the Premises is taken by any paramount public authority under the power of eminent domain, then the rights and obligations of the parties shall be determined as follows: If the Premises are totally taken by condemnation, this lease shall terminate on the date of taking. If any portion of the Premises is taken by condemnation, Tenant shall have the right to either terminate this lease or to continue in possession of the remainder of the Premises under the terms of this lease. Such right to terminate must be exercised by notifying Landlord within thirty (30) days after possession of the part taken by eminent domain. If Tenant does not terminate this lease within the thirty (30) day period, this lease shall remain in full force and effect except that the fixed rent shall be reduced in the same proportion that the square footage of the Premises taken bears to the square footage of the Premises immediately before the taking. All damages awarded for such taking shall belong to and be the property of Landlord; provided, however, that Landlord shall not be entitled to any portion of the award made for loss of business and of business installations or improvements made by Tenant in accordance with this lease.

**27. DEFAULT BY TENANT**

a. The occurrence of any of the following shall constitute a default by Tenant:

1. Failure to pay rent when due, if the failure continues for 10 days after notice has been given to Tenant.
2. Abandonment and vacation of the Premises (failure to occupy and operate the Premises for 14 consecutive days shall be deemed an abandonment and vacation).
3. Failure to perform any other provision of this lease if the failure to perform is not cured within 30 days after notice has been given to Tenant. If the default cannot reasonably be cured within 30 days, Tenant shall not be in default of this lease if Tenant commences to cure the default within the 30-day period and diligently and in good faith continues to cure the default.

b. Notices given under this paragraph shall specify the alleged default and the applicable lease provisions, and shall demand that Tenant perform the provisions of this lease or pay the rent that is in arrears, as the case may be, within the applicable period of time, or quit the Premises. No such notice shall be deemed a forfeiture or a termination of this lease unless Landlord so elects in the notice. The purpose of the notice requirements set forth in this section is to extend the notice requirements of the unlawful detainer statutes of California.

**28. LANDLORD'S REMEDIES**

Landlord shall have the following remedies if Tenant commits a default. These remedies are not exclusive; they are cumulative in addition to any remedies now or later allowed by law.

a. Tenant's Right to Possession Not Terminated. Landlord can continue this lease in full force and effect, and the lease will continue in effect as long as Landlord does not terminate Tenant's right to possession, and Landlord shall have the right to collect rent when due. During the period Tenant is in default, Landlord can enter the Premises and relet them, or any part of them, to third parties for Tenant's account. Tenant shall be liable immediately to Landlord for all costs Landlord incurs in reletting the Premises. Reletting can be for a period shorter or longer than the remaining term of this lease. Tenant shall pay to Landlord the rent due under this lease on the dates the rent is due, less the rent Landlord receives from any reletting. No act by Landlord allowed by this paragraph shall terminate this lease unless Landlord notifies Tenant that Landlord elects to terminate this lease. After Tenant's default and for as long as Landlord does not terminate Tenant's right to possession of the Premises, Tenant shall have the right to assign or sublet its interest in this lease if Tenant obtains Landlord's consent, but Tenant shall not be released from liability.

If Landlord elects to relet the Premises as provided in this paragraph, rent that Landlord receives from reletting shall be applied to the payment of: first, any indebtedness from Tenant to Landlord other than rent due from Tenant; second, all costs, including for maintenance, incurred by Landlord in reletting; third, rent due and unpaid under this lease. After deducting the payments referred to in this paragraph, any sum remaining from the rent Landlord receives from reletting shall be held by Landlord and applied in payment of future rent as rent becomes due under this lease. In no event shall Tenant be entitled to any excess rent received by Landlord. If, on the date rent is due under this lease, the rent received from the reletting is less than the rent due on that date, Tenant shall pay to Landlord, in addition to the remaining rent due, all costs, including for maintenance, Landlord incurred in reletting that remain after applying the rent received from the reletting as provided in this paragraph.

b. Termination of Tenant's Right to Possession. Landlord can terminate Tenant's right to possession of the Premises at any time. No act by Landlord other than giving notice to Tenant shall terminate this lease. Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on Landlord's initiative to protect Landlord's interest under this lease shall not constitute a termination of Tenant's right to possession. On termination, Landlord has the right to recover from Tenant:

i. The worth, at the time of award, of the unpaid rent that had been earned at the time of termination of this lease;

ii. The worth, at the time of award, of the amount by which the unpaid rent that would have been earned after the date of termination of this lease until the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably

avoided;

iii. The worth, at the time of award, of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided; and

iv. Any other amount, and court costs, necessary to compensate Landlord for all detriment proximately caused by Tenant's default.

"The worth, at the time of award," as used in i and ii of this section, is to be computed by allowing interest at the maximum rate an individual is permitted by law to charge. "The worth, at the time of award," as referred to in iii of this section, is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus 1%.

c. Appointment of Receiver. If Tenant is in default of this lease Landlord shall have the right to have a receiver appointed to collect rent and conduct Tenant's business. Neither the filing of a petition for the appointment of a receiver nor the appointment itself shall constitute an election by Landlord to terminate this lease.

d. Landlord's Right to Cure. Landlord, at any time after Tenant commits a default, can cure the default at Tenant's cost. If Landlord at any time, by reason of Tenant's default, pays any sum or does any act that requires the payment of 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 maximum rate an individual is permitted by law to charge from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. The sum, together with interest on it, shall be additional rent.

## **29. ASSIGNMENT AND SUBLETTING**

Provided Tenant is current in Rent payments and is not in default of this lease, Tenant shall not voluntarily assign or encumber its interest in this lease or in the Premises, or sublease all or any part of the Premises, or allow any other person or entity (except Tenant's authorized representative) to occupy or use all or any part of the Premises, without first obtaining Landlord's consent. Any assignments, encumbrance, or sublease without Landlord's consent shall be voidable and, at Landlord's election, shall constitute a default. No consent to any assignment, encumbrance, or sublease shall constitute a further waiver of the provisions of this paragraph.

## **30. ENTRY**

Landlord and its authorized representatives shall have the right to enter the Premises at all reasonable times, provided Landlord gives a 24-hour prior notice to Tenant, for any of the following purposes: to determine whether the Premises are in good condition and



whether Tenant is complying with its obligations under the lease; to do any acts that may be necessary to protect Landlord's interest in the Premises; or to perform Landlord's duties under this lease. 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 as provided in this section, except damage resulting from the acts or omissions of Landlord or its authorized representatives.

**31. NOTICES**

A written notice is deemed served when a party sends the notice in an envelope addressed to the other party to this lease and either: i) deposits it with the U.S. Postal Service, registered mail, postage prepaid; or ii) emails it to the other party followed, no later than the next business day, by depositing it with the U.S. Postal Service for delivery by regular mail. For purposes of this lease, notices shall be addressed as follows, as appropriate:

To the Landlord: City of Berkeley  
Department of Public Works,  
2180 Milvia Street, Third Floor  
Berkeley, CA 94704

With a copy to: City of Berkeley  
Real Property Division  
1947 Center Street, Fifth Floor, Suite 521  
Berkeley, CA 94704  
Email Address: [real\\_property@cityofberkeley.info](mailto:real_property@cityofberkeley.info)

To the Tenant: Berkeley Housing Authority  
Executive Director: (Acting) Rachel Gonzales-Levine  
1947 Center Street, 5<sup>th</sup> Floor  
Berkeley, CA 94704  
Telephone: 510-981-5485  
Email Address: [rgonzales-levine@cityofberkeley.info](mailto:rgonzales-levine@cityofberkeley.info)

**32. WAIVER**

No delay or omission in the exercise of any right or remedy of Landlord on any default by Tenant shall impair such a right or remedy or be construed as a waiver. The receipt and acceptance by Landlord of delinquent rent shall not constitute a waiver of any other default; it shall constitute only a waiver of timely payment for the particular rent payment involved. Any waiver by Landlord of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of the lease.

No act or conduct of Landlord, including, without limitation, the acceptance of the keys to the Premises, shall constitute an acceptance of the surrender of the Premises by

Tenant before the expiration of the term. Only a notice from Landlord to Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of the lease.

Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent act by Tenant.

**33. EXCUSABLE DELAYS**

If the performance of any act required of Landlord or Tenant is prevented or delayed by reason of strikes, lockouts, labor disputes, act of God, acts of the public enemy, fire, floods, epidemics, freight embargoes or other cause beyond the control of the party required to perform an act, the performance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for one hundred and eighty (180) days and if the performance of such act is further delayed, Landlord or Tenant may terminate this lease by giving a thirty (30) day written notice to the other party. Prior to the Lease Commencement Date, and during any delay in performance as described above, Tenant shall be excused from the payment of any rent due under this Lease.

**34. OPTION TO RENEW**

a. Option Period. So long as Tenant is not in default under this lease, either at the time of exercise or at the time the extended term commences, Tenant will have the option to extend the initial term of this lease for up to two (2) additional ten year options to extend (the "option period") on the same terms, covenants, and conditions of this lease, except that the initial monthly rent and yearly rent increases during the option period will be determined as described below. In order to exercise this option, Tenant must give written notice of its election to do so to Landlord at least 180 days, but not more than one year, prior to the expiration date of the initial lease term. Tenant shall have no other right to extend the term beyond the option period.

b. Option Period Monthly Rent. The Monthly Rent at the commencement of the first year of each of the Option Periods and each year thereafter will be the monthly rent in effect at the end of the initial Term of this Lease plus two percent (2%).

**35. HOLDING OVER**

If Tenant remains in possession of the Premises with Landlord's consent after the expiration of the term of this lease without having exercised any option to renew this lease, or after the termination of any such option period, such possession by Tenant shall be construed to be a tenancy from month-to-month, terminable on thirty (30) days' notice given at any time by either party. All provisions of this lease, except those pertaining to term, shall apply to the month-to-month tenancy.

**36. SURRENDER OF PREMISES, REMOVAL OF PERSONAL PROPERTY**

At the termination of this lease, Tenant shall: 1) give up and surrender the Premises, in as good state and condition as reasonable use and wear and tear thereof will permit, damage by fire and the elements excepted; and 2) remove all property which is not a fixture of or permanent attachment to the Premises and which is owned and was installed by Tenant during the term of this lease.

**37. ESTOPPEL CERTIFICATE**

Upon not less than ten days prior written notice from Landlord, Tenant shall execute and deliver to Landlord, or Landlord's designee, a written statement certifying (a) that this Lease is unmodified and in full force and effect (or, if modified, stating the modifications and certifying that this Lease as modified is in full force and effect); (b) the amount of the minimum monthly rent then in effect, the current Operating Expense which Tenant is paying, and the date to which rent and Operating Expense have been paid in advance; (c) the amount of any security deposited with Landlord; (d) the Commencement Date, the Expiration Date of the Term, and the number and duration of option periods, if any; (e) whether or not there are then existing any defenses against the enforcement of any of the obligations of Tenant under this Lease (and, if so, specifying same); (f) whether or not Landlord is in default hereunder (and, if so, specifying same); and (g) such other matters as may be reasonably requested by Landlord. Any prospective purchaser, ground lessor, lender, or other interested party shall be entitled to rely on the truth of all of the matters contained in Tenant's statement. Failure to comply with the Section shall be a material breach of this Lease by Tenant; and in addition to all of Landlord's other rights and remedies hereunder, Landlord shall have the right to collect from Tenant all damages caused by the loss of a loan, sale, or other transaction which may result from Tenant's failure to comply with this Section 37.

**38. SALE OF PREMISES**

In the event of any sale of the Site, Landlord shall be and hereby is entirely freed and relieved of all further liability under any and all of its covenants and obligations contained in or derived from this Lease and the purchaser, at such sale or any subsequent sale of the Site, shall be deemed, without any further agreement between the parties or their successors in interest or between the parties and any such purchaser, to have assumed and agreed to carry out any and all of the covenants and obligations of Landlord under this Lease. If any Security Deposit or prepaid Rent has been paid by Tenant, Landlord will transfer the Security Deposit and prepaid Rent to Landlord's successor and upon such transfer, Landlord shall be relieved of any and all further liability with respect thereto.

**39. SUBORDINATION, ATTORNMENT**

This Lease is and shall be subordinate to any encumbrance now of record or recorded after the date of this Lease affecting the Building, Site, other improvements, and land of

which the Premises are a part. Such subordination is effective without any further act of Tenant. If any mortgagee, trustee, or ground lessor shall elect to have this Lease and any options granted hereby prior to the lien of its mortgage, deed of trust, or ground lease, and shall give written notice thereof to Tenant, this Lease and such options shall be deemed prior to such mortgage, deed of trust, or ground lease, whether this Lease or such options are dated prior or subsequent to the date of said mortgage, deed of trust, or ground lease, or the date of recording thereof. In the event any proceedings are brought for foreclosure, or in the event of a sale or exchange of the real property on which the Building is located, or in the event of the exercise of the power of sale under any mortgage or deed of trust made by Landlord covering the Premises, Tenant shall attorn to the purchaser upon any such foreclosure and sale and recognize such purchaser as the Landlord under this Lease.

Tenant agrees to execute any documents reasonably required to effectuate an attornment or to make this Lease or any options granted herein subordinate or prior to the lien of any mortgage, deed of trust, or ground lease, as the case may be, provided the rights of Tenant are not diminished or adversely affected as a result thereof.

Landlord agrees that Tenant's obligations to subordinate under this Section 39 to any existing and future ground lease, mortgage, or deed of trust shall be conditioned upon Tenant's receipt of a non-disturbance agreement from the party requiring such subordination (which party is referred to for the purposes of this Section 39 as the "**Superior Lienor**"). Such non-disturbance agreement shall provide that Tenant's possession of the Premises shall not be interfered with following a foreclosure, provided Tenant is not in default beyond any applicable cure periods. Landlord's obligation with respect to such a non-disturbance agreement shall be limited to making a good faith effort to obtain the non-disturbance agreement in such form as the Superior Lienor generally provides in connection with its standard commercial loans, however, Tenant shall have the right to negotiate, and Landlord shall use its good faith efforts and due diligence in assisting Tenant in the negotiation of, revisions to that non-disturbance directly with the Superior Lienor. Tenant agrees to use its good faith efforts to reach agreement with the Superior Lienor upon acceptable terms and conditions of a non-disturbance agreement.

#### **40. AUTHORITY**

If Tenant is a corporation, limited liability company, trust, or other entity, each person executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of such entity, and that such person's execution of this Lease binds Tenant to its terms and conditions. If Tenant is a corporation, limited liability company, trust or other entity, Tenant shall, upon the execution of this Lease, deliver to Landlord evidence of such authority satisfactory to Landlord. Each individual or entity executing this Lease on behalf of Tenant represents and warrants that he or she or it is duly authorized to execute and deliver this Lease on behalf of Tenant and that such execution is binding upon Tenant. Landlord's authority to execute and deliver this Lease is subject to adoption by the Berkeley City Council of an enabling ordinance authorizing the City Manager to execute this Lease on the City's behalf.

**41. TERMS BINDING ON SUCCESSORS**

All the terms, covenants and conditions of this lease shall inure to the benefit of and be binding upon the successors and assigns of the parties to this lease. The provisions of this section shall not be deemed as a waiver of any of the conditions against assignment set forth above.

**42. TIME OF ESSENCE**

Time shall be of the essence of each provision of this lease.

**43. COVENANTS AND CONDITIONS**

Each term and each provision of this lease performable by Tenant shall be construed to be both a covenant and condition.

**44. GOVERNING LAW**

The laws of the State of California shall govern this lease.

**45. ENTIRE AGREEMENT, AMENDMENTS**

This lease and all exhibits attached and any documents expressly incorporated by reference contain the entire agreement between the parties regarding the lease of the Premises described herein and shall supersede any and all prior agreements, oral or written, between the parties regarding the lease of these Premises. This lease cannot be altered or otherwise modified except by a written amendment.

**46. CONSENT OF PARTIES**

Whenever consent or approval of either party is required, that party shall not unreasonably withhold such consent or approval.

**47. BUSINESS LICENSE**

Tenant certifies that it has obtained or applied for a City of Berkeley business license number as required by Berkeley Municipal Code Chapter 9.04; or Tenant claims that it is exempt from the provisions of B.M.C. Ch. 9.04 and has written below the specific B.M.C. section under which it is exempt.

IN WITNESS WHEREOF, Landlord and Tenant have executed this lease as of the date written on the first paragraph of this lease.

LANDLORD  
CITY OF BERKELEY

By:  
City Manager

THIS LEASE HAS BEEN  
APPROVED AS TO FORM  
BY THE CITY ATTORNEY  
OF THE CITY OF BERKELEY

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

REGISTERED BY:

City Auditor

ATTEST:

Deputy City Clerk

TENANT  
Berkeley Housing Authority

Signature  
Title: Berkeley Housing Authority, Exec. Dir

Signature  
Title: Berkeley Housing Authority, Finance Mngr

City of Berkeley Business License No. \_\_\_\_\_

### EXHIBIT A PREMISES



**EXHIBIT B**

**AGREEMENT SPECIFYING TERM OF LEASE**

Attached to and made part of the Lease dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the CITY OF BERKELEY, a municipal corporation, as Landlord, and BERKELEY HOUSING AUTHORITY, as Tenant ("**Lease**").

Landlord and Tenant do hereby confirm and acknowledge the following dates:

Lease Commencement Date is \_\_\_\_\_  
Rent Commencement Date is \_\_\_\_\_  
Expiration Date is \_\_\_\_\_, subject to extension as provided in the Lease.

This Agreement shall be binding on the parties hereto, their successor and assigns and all subtenants of Tenant and any other party claiming under or through Tenant. The Lease is in full force and effect as of the date hereof in accordance with its terms, and Tenant is in possession of the Premises. Landlord has fulfilled all of its obligations under the Lease that were required to be fulfilled by Landlord on or prior to the Rent Commencement Date and Tenant has no claim or right of set-off against any Rent (as defined in the Lease) under the Lease.

This Agreement was entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**ATTEST/WITNESS:**

**LANDLORD:**

CITY OF BERKELEY, a municipal corporation

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

Its: City Manager

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

Its: City Attorney

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

Its: City Auditor

**ATTEST/WITNESS:**

**TENANT:**

**BERKELEY HOUSING AUTHORITY**

By: \_\_\_\_\_  
Berkeley Housing Authority Exec Director

By: \_\_\_\_\_  
Berkeley Housing Authority Finance Manager



**Tenant:** BERKELEY HOUSING AUTHORITY  
**Premises:** 1947 Center Street, 5th (partial)  
**Lease Term:** January 1, 2021 terminates after 120 months; Two 10 year options to extend.

1ST TEN YEAR TERM	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	ANNUAL
2021	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 130,572.96
2022	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 130,572.96
2023	\$ 11,098.70	\$ 11,098.70	\$ 11,098.70	\$ 11,098.70	\$ 11,098.70	\$ 11,098.70	\$ 11,098.70	\$ 11,098.70	\$ 11,098.70	\$ 11,098.70	\$ 11,098.70	\$ 11,098.70	\$ 133,184.40
2024	\$ 11,320.67	\$ 11,320.67	\$ 11,320.67	\$ 11,320.67	\$ 11,320.67	\$ 11,320.67	\$ 11,320.67	\$ 11,320.67	\$ 11,320.67	\$ 11,320.67	\$ 11,320.67	\$ 11,320.67	\$ 135,848.04
2025	\$ 11,547.09	\$ 11,547.09	\$ 11,547.09	\$ 11,547.09	\$ 11,547.09	\$ 11,547.09	\$ 11,547.09	\$ 11,547.09	\$ 11,547.09	\$ 11,547.09	\$ 11,547.09	\$ 11,547.09	\$ 138,565.08
2026	\$ 11,778.03	\$ 11,778.03	\$ 11,778.03	\$ 11,778.03	\$ 11,778.03	\$ 11,778.03	\$ 11,778.03	\$ 11,778.03	\$ 11,778.03	\$ 11,778.03	\$ 11,778.03	\$ 11,778.03	\$ 141,336.36
2027	\$ 12,013.59	\$ 12,013.59	\$ 12,013.59	\$ 12,013.59	\$ 12,013.59	\$ 12,013.59	\$ 12,013.59	\$ 12,013.59	\$ 12,013.59	\$ 12,013.59	\$ 12,013.59	\$ 12,013.59	\$ 144,163.08
2028	\$ 12,253.86	\$ 12,253.86	\$ 12,253.86	\$ 12,253.86	\$ 12,253.86	\$ 12,253.86	\$ 12,253.86	\$ 12,253.86	\$ 12,253.86	\$ 12,253.86	\$ 12,253.86	\$ 12,253.86	\$ 147,046.32
2029	\$ 12,498.94	\$ 12,498.94	\$ 12,498.94	\$ 12,498.94	\$ 12,498.94	\$ 12,498.94	\$ 12,498.94	\$ 12,498.94	\$ 12,498.94	\$ 12,498.94	\$ 12,498.94	\$ 12,498.94	\$ 149,987.28
2030	\$ 12,748.92	\$ 12,748.92	\$ 12,748.92	\$ 12,748.92	\$ 12,748.92	\$ 12,748.92	\$ 12,748.92	\$ 12,748.92	\$ 12,748.92	\$ 12,748.92	\$ 12,748.92	\$ 12,748.92	\$ 152,987.04
<b>Ten Year TTL:</b>													\$ 1,404,263.52

**EXHIBIT C**  
**PAYMENTS**

**EXHIBIT D**

**RULES, RESTRICTIONS AND PROHIBITED USES**

Tenant shall not use or permit the use of the Premises for any other business or purpose, except as set forth in this Lease and in strict accordance with the Rules and Regulations and/or the *City of Berkeley Employee Handbook: 1947 Center Street*, either of which may be periodically updated at any time by the Landlord/City of Berkeley. No part of the exterior shall be used for an automatic teller machine. No part of the Premises shall be used for any use that would increase the demand or requirement for parking in the Garage in excess of that required by the Permitted Use. No part of the Premises shall be used in a way that endangers the health or safety of any user of the Garage. **THE FOLLOWING PROHIBITIONS AND RESTRICTIONS SHALL NOT BE DEEMED TO APPLY TO LANDLORD, BUT ONLY TO TENANT UNDER THIS LEASE.** Landlord shall have the right, in Landlord's sole and absolute discretion, to waive all or any of the prohibitions set forth herein upon such matters, terms and conditions as Landlord, in its sole discretion, may determine.

**RULES AND REGULATIONS**

1. The sidewalks, entrances, Building main lobby, elevators, stairways and public corridors shall be used only as a means of ingress and egress and shall remain unobstructed at all times. Loitering in any part of the Building or obstruction of any means of ingress or egress shall not be permitted. Doors and windows shall not be covered or obstructed.
2. Plumbing fixtures shall not be used for any purposes other than those for which they were constructed and no rubbish, newspapers, trash or other substances of any kind shall be deposited therein. The use of electrical current shall not exceed safety standards established in the applicable building code. Walls, floors, and ceilings shall not be defaced in any way and no tenant shall be permitted to mark, nail, screw or drill into, paint, or in any way mark any Building surface, except that pictures, certificates, licenses and similar items normally used in Tenant's business may be carefully attached to the walls by tenant in a manner to be prescribed by Landlord. Upon removal of such items by Tenant, any damage beyond normal wear and tear to the walls or other surfaces shall be repaired by the Tenant.
3. No awning, shade, sign, advertisement or notice shall be inscribed, painted or affixed on or to any part of the outside in the common areas or inside of the Building, without prior written approval by Landlord. All tenant identification on public corridor doors, or walls will be installed by Landlord for Tenant. No lettering or signs other than the name of the Tenant and approved subtenants will be permitted on public corridor doors, or walls, with the size and type of the letters to be prescribed by Landlord. The bulletin board or directory of the Building will be provided exclusively for the display of the name and location of tenants and approved subtenants thereof, and Landlord reserves the right to exclude all other names therefrom. Landlord reserves the right to approve all listing requests.

4. The weight, size, position and installation of all safes and other unusually heavy objects used or placed in the Building shall be prescribed by Landlord. All mechanical equipment and office machines that are placed in the Building shall be installed in fittings that, in the judgment of Landlord, shall be sufficient to prevent noise, vibration and annoyance. The repair of any damage done to the Building or property therein by putting or taking out or maintaining such safes or other unusually heavy objects shall be paid for by Tenant.

5. All freight, furniture, fixtures and other personal property shall only be moved into, within, and out of the Building at all reasonable times and with Landlord's approval. In no event will Landlord be responsible for any loss or damage to such freight, furniture, and fixtures or personal property, except when caused by Landlord or its agents.

6. The storage of goods, wares, or merchandise on the Premises will not be permitted except in areas specifically designated by Landlord for storage. No auction, public or private, will be permitted on the Premises.

7. All keys to the Premises and the Building shall be obtained from the Landlord and all keys shall be returned to Landlord upon the termination of this Lease. Tenant shall not change the locks or install other locks on the doors.

8. Tenant or any of Tenant's Parties using the Premises after regular business hours or on non-business days shall secure any entrance doors to the Building used by him/her immediately after entering or leaving the Building. Tenant shall furnish Landlord with names of all persons issued a card key for the entrance door security system. Tenant shall also notify Landlord immediately of terminated employees for elimination from the entry system. Landlord shall not be liable for any damage resulting from any error in regard to the entry security system or from the admission of any unauthorized person to the Building, except for deliberate action or negligence by Landlord.

9. Except for use of the microwave stovetop and refrigerator located in Premises, Tenant shall not permit any cooking to take place in the Premises, nor shall Tenant install therein any vending machines without Landlord's written consent.

10. Landlord reserves the reasonable right at any time to change or rescind any one or more of these Rules or Regulations or to make such other and further reasonable rules and regulations as in Landlord's judgment may from time to time be necessary for the management, safety, care and cleanliness of the Building, for the preservation of good order therein, and for the convenience of other occupants and tenants therein. Landlord shall not be responsible to Tenant or to any other person for the non-observance or violation of the Rules and Regulations by any other tenant or person.

11. Tenant will be charged by Landlord for any excessive number of false alarms caused by Tenant's personnel.

12. Except for service animals, no animals of any kind are allowed in the Building or on the Premises.

**EXHIBIT E**

**ASBESTOS NOTIFICATION**

October 9, 2020

To: Berkeley Housing Authority  
From: City of Berkeley Department of Public Works

Subject: **EMPLOYEE NOTIFICATION LETTER - PRESENCE OF ASBESTOS CONTAINING BUILDING MATERIALS IN CITY OF BERKELEY BUILDINGS**

The purpose of this memorandum is to advise you of the presence of asbestos containing building materials (ACBM) in 1947 Center Street. For your information, previous surveys have detected ACBM in the original plaster ceilings, some hot water piping behind existing walls, and in some of the old floor tile throughout the building. An abatement project in the early 1990's removed the ACBM plaster ceilings and pipe insulation on the first, second, fifth, and sixth floors. The recent tenant improvement project continued this process by removing the remaining ACBM plaster ceilings on the basement, third, and fourth floors. In most cases, however, the original ACBM floor tile was contained and allowed to remain in place under the new carpeting. This is a fairly standard procedure because the carpeting effectively contains the floor tile and prevents disturbance.

Since some ACBM remains in the building SECTION 25915 of the Health and Safety Code requires that a written notification be provided to employees informing them of the presence of asbestos in buildings. To comply with this regulation, this letter is to inform you that an asbestos survey has been completed and the report confirms the presence of ACBM in this city building.

The presence of asbestos in a building does not mean that the health of building occupants is endangered. If ACBM remains in good condition and is not disturbed, exposures will be negligible. However, when ACBM is damaged or disturbed without proper controls, asbestos fibers are released into the air. These fibers may pose a threat to your health.

Airborne asbestos levels in buildings are much lower than those in industrial workplaces where serious health effects such as lung cancer and asbestosis have been observed. However, it is important for employees to follow proper work practices to minimize the potential for disturbing ACBM. Good general practice requires that employees avoid touching asbestos materials on walls, ceilings, pipes, or boilers, drilling holes, or hanging plants or other objects from walls/ceilings made of ACBM, disturbing ACBM when replacing light bulbs, and other such practices. If you find ACBM that has been damaged, report it to Public Works, at (510) 981-6620. Do not disturb damaged asbestos material or asbestos debris. Only persons authorized

and properly trained should perform any work that may disturb asbestos materials.

Any employee may review the asbestos survey reports, results of bulk sampling, or air monitoring conducted in city buildings. All asbestos data will be available between the hours of 8:00 a.m. and 5:00 p.m. Monday thru Friday.

If you have any questions please contact Human Resources at (510) 981-6800, TDD: (510)981-6830.