



Office of the City Manager

CONSENT CALENDAR  
July 28, 2020

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Liam Garland, Director, Public Works Department  
Subject: Lease Agreement: 1001 University Avenue with The Berkeley Food Network

RECOMMENDATION

Adopt first reading of an Ordinance authorizing the City Manager to execute a retroactive lease agreement with The Berkeley Food Network to use the City property at 1001 University Avenue for a three-year lease term with an option to extend for two additional one-year terms.

FISCAL IMPACTS OF RECOMMENDATION

The monthly rent for this three-year lease agreement will be one dollar (\$1.00). In exchange for favorable rent, the Berkeley Food Network (BFN) will take full responsibility for all maintenance and utility costs at 1001 University Avenue, the warehouse building owned by the City of Berkeley ("City") located at University Avenue Center, the former Premier Cru site. In addition, BFN will 1) complete improvements to the building described in Exhibit C of the lease, at an estimated cost of \$80,000 and 2) submit an annual report detailing BFN's statistics serving City of Berkeley community members. The report will include at minimum the following information: a) pounds of food distributed in the City of Berkeley, number of individuals served in Berkeley, amount of food received by program participants, and value of food distributed. Revenue from this lease will be deposited in the General Fund, revenue budget code 011-54-624-702-0000-000-000-461110-.

CURRENT SITUATION AND ITS EFFECTS

The warehouse building at 1001 University Avenue initially served as the location for the City's 2017-18 Winter Shelter beginning in December 2017. In May of 2018 the City issued an RFP seeking proposals from for-profit, non-profit, governmental and nongovernmental agencies interested in leasing all or part of 1001 and 1011 University Avenue. BFN was selected as one of three organizations offered the spaces. Prior to final determination of shared occupancy of the spaces, BFN requested to be allowed to move into 1001 University by March 1, 2019. A six-month license agreement was approved by the City Manager in February of 2019 with a term ending August 31, 2019.

Staff envisioned the six-months would be used to finalize occupants for the spaces and negotiate leases to be submitted to City Council for a start date of September 1, 2019. The retail-commercial building at 1011 University Avenue, initially considered an ideal location for an interim City Council Chamber was ultimately approved for use as temporary office and program space for City staff displaced by Measure T1 Bond projects. The space is currently occupied by Meals on Wheels, Black Infant Health, and other Health, Housing and Community Service Department programs displaced by renovation of the North Berkeley Senior Center. That project's budget included allocation of funds for relocating staff. After a thorough market search for space, 1011 University at a rate of \$1 per square foot per month, proved to be the most beneficial in meeting current City needs.

Since March 1, 2019, BFN has operated and plans to continue to operate a food rescue and distribution center from the warehouse at 1001 University Avenue should City Council authorize the City Manager to sign the lease. If approved, the lease's retroactive start date will be September 1, 2019 for a term of three (3) years terminating August 31, 2022 with two (2) one-year options to extend. The lease rate is \$1.00 per month. BFN is responsible for payment of all utilities.

#### BACKGROUND

On March 28, 2017 City Council adopted an Ordinance authorizing the acquisition of 1001, 1007, and 1011 University and 1925 Ninth Street (University Avenue Center, "UAC") as a site for future redevelopment into substantially below market rate housing. Bauman Culinary College was a tenant at the time of purchase and has the option to occupy 1007 University Avenue (a historic building) until 2031. 1001 University Avenue (a warehouse) and 1011 University Avenue (a retail-commercial space) were both unoccupied at the time of purchase. The City Manager directed City staff to use or publicly lease the two buildings for at least three (3) years but no more than five (5) years, at which time plans and permits for redevelopment as housing should be complete or, at minimum, a more time-certain timeline for redevelopment or sale of the property would be complete.

#### ENVIRONMENTAL SUSTAINABILITY

The Berkeley Food Network program rescues viable food by diverting it from the waste stream and distributing it to those in need of food in Berkeley and throughout Alameda County.

#### RATIONALE FOR RECOMMENDATION

Lease of City owned property to a non-profit organization promoting food rescue and distribution supports City of Berkeley program goals and its most vulnerable community members directly. This lease's term supports City Manager direction to lease until plans and permits for redevelopment as low-income housing are substantially complete.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Dionne Early, Community Development Project Coordinator, Department of Public Works, (510) 981-6453

Attachments:

1: Ordinance

Exhibit A: Lease

ORDINANCE NO. -N.S.

LEASE: 1001 UNIVERSITY AVENUE WAREHOUSE TO THE BERKELEY FOOD NETWORK

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

Section 1. FINDINGS:

The warehouse located in University Avenue Center (“UAC”), owned by the City of Berkeley and consisting of two parcels with three buildings and an additional parcel with a surface parking lot. UAC is located on the northern side of University Avenue between Ninth Street and Tenth Street. The warehouse address is 1001 University Avenue and shares a parcel with 1007 University Avenue, the Mobilized Women of Berkeley City Landmark building (currently Bauman College) on the northeasterly corner of University Avenue and Ninth Street. The entrance is located at the rear of the building from the parking lot (1925 Ninth Street). The door fronting on University Avenue is a fire exit only. The loading dock fronts on Ninth Street. The warehouse is approximately 9,625 square feet of rentable space with two floors of offices, one ADA compliant restroom, two storage rooms, one enclosed trash room, and a loading dock. The Berkeley Food Network plans to continue operating a food rescue and distribution center which it has been operating from this location since March 1, 2019.

Section 2. AUTHORIZATION FOR CITY MANAGER TO ENTER INTO LEASE AT 1001 University Avenue, Berkeley, California.

The City Manager is hereby authorized to enter into a three (3)-year lease agreement with the option for two (2), 1-year extensions with The Berkeley Food Network for real property located at 1001 University Avenue, Berkeley, California. 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.

Exhibits  
A: Lease

**CITY OF BERKELEY**  
**IMPROVED PROPERTY LEASE**

Between

THE CITY OF BERKELEY, A CHARTER CITY  
ORGANIZED AND EXISTING UNDER THE LAWS  
OF THE STATE OF CALIFORNIA

As Landlord,

And

The Berkeley Food Network

As Tenant

For the Property at  
1001 University Avenue at the University Avenue Center  
Berkeley, CA

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**PROPERTY LEASE**

**BASIC LEASE INFORMATION**

- 1. **Landlord:** City of Berkeley, a California municipal corporation  
2180 Milvia Street  
Berkeley, CA 94704  
Attention: Director, Public Works  
Telephone: (510) 981-6700 / Facsimile: (510) 981-6710
- 2. **Tenant:** The Berkeley Food Network
- 3. **Tenant Trade Name:** Tenant shall operate under the trade name The Berkeley Food Network (BFN)
- 4. **Effective Date:** September 1, 2019
- 5. **Premises:** Approximately 9,625 rentable square feet comprising the entirety of the building located at 1001 University Avenue and one dedicated parking space in the parking lot located at 1925 Ninth Street (“**Premises**”). The Premises includes the area as shown in Exhibit A.
- 6. **Permitted Uses:** The Premises are to be used to operate and coordinate food provision services, including a food distribution hub and a mobile pantry, for individuals, families, schools and other organizations living in and/or operating in Berkeley.
- 7. **Initial Term:** Three (3) years, commencing September 1, 2019 (“**Commencement Date**”) and terminating August 31, 2022 with two, one year options to extend.
- 8. **Base Rent:** \$1.00 per month; with Tenant prepaying Base Rent for the entire Initial Term of Thirty Six Dollars (\$36.00) on or before the Effective Date
- 9. **Improvements:** See Exhibit C for list of improvements tenant is required to complete.
- 10. **Security Deposit:** \$0.00

The Basic Lease Information set forth above and the Exhibits attached hereto are incorporated into and made a part of the following Lease. In the event of any conflict between the Basic Lease Information and terms of the Lease, the terms of the Lease shall control.

LANDLORD’S INITIALS \_\_\_\_\_ TENANT’S INITIALS \_\_\_\_\_

**LEASE**

THIS LEASE is made by and between the CITY OF BERKELEY, a Charter City organized and existing under the laws of the State of California ("Landlord or City") and Berkeley Food Network, a California non-profit corporation, doing business at 1569 Solano Avenue, #243, Berkeley, CA 94707 ("Tenant").

WITNESSETH

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises for the term and subject to the terms, covenants, agreements and conditions set forth below, to each and all of which Landlord and Tenant hereby mutually agree.

1. **DEFINITIONS**

Unless the context otherwise specifies or requires, the following terms shall have the meanings herein specified:

1. "Affiliate," as to any person, shall mean such person's partners, members, commissioners, officers, employees, volunteers and agents.
2. "Building" shall mean the building(s) on the Premises as described in Exhibit A.
3. "Lease Year" shall mean each twelve-month period during the term of the Lease commencing upon the effective date of the Lease.
4. "Premises" shall mean the warehouse Building at 1001 University Avenue in Berkeley, California and measuring approximately 9,625 square feet consisting of a main storage area, a smaller storage room, one restroom, a loading dock, trash room, and offices on the first and second floor, and one dedicated parking space in the parking lot located at 1925 Ninth Street, as further described in Exhibit A, attached to and made a part of this Lease.
5. "Property" shall mean University Avenue Center consisting of the warehouse building at 1001 University Avenue, Bauman Cooking School at 1007 University, the retail-office building at 1011 University Avenue, and the parking lot at 1925 Ninth Street in Berkeley, California.

2. **TERM**

A. Initial Term and Option to Extend. The initial term is for a period of three (3) years with a start date of September 1, 2019. Tenant has the option, under certain terms and conditions as described below, to extend this lease for two additional one-year terms. This Lease shall take effect once duly approved by the Berkeley City Council and executed by both Landlord and Tenant with a the Effective Date”).

B. Procedure for Extension. After the Initial Lease Term, the Lease may be extended for up to two additional terms of one (1) year each subject to the following terms and conditions. If Tenant wishes to extend the Lease beyond the Initial Lease Term, Tenant must provide written

notice of such intent to Landlord at least **one hundred and eighty (180) days** prior to the expiration of the Lease. **At least sixty (60) days prior to expiration of the Lease**, Landlord shall provide written notice to Tenant of (1) any additional improvements that will be required to be completed by Tenant during the extension lease terms and (2) notice of Landlord’s determination to grant an extension of the lease upon condition that Tenant agrees to the additional improvements and rental rate at least thirty (30) days prior to the expiration of the Lease.

C. Procedure for Early Termination.

- a. If at any time prior to actual expiration of the Lease, Landlord determines, at its sole discretion, that Tenant has failed to comply, following notice and cure periods, with any term or condition of the Lease, Landlord may revoke the granting of the additional term and seek applicable remedies under the Lease, including, but not limited to Paragraph 20.
- b. If at any time prior to the actual expiration of the lease, provided Tenant has completed the improvements set forth on Exhibit C, then Tenant may terminate the lease with six (6) months’ written notice for any reason.
- c. If at any time prior to the actual expiration of the lease, the Landlord has finalized constructions plans and is ready (or will be ready within 6 months)to begin construction of low-income housing on the property, the purpose for which the property was purchased, Landlord may terminate the lease with six (6) months’ written notice to the Tenant.

D. Expiration of Term. At the expiration of the term, or any sooner termination of this lease due to default, Tenant agrees to quit and surrender possession of the Premises and its appurtenances to Landlord in good order and condition. Tenant will ensure that all scheduled capital improvement projects have been completed through the particular date of termination. Tenant agrees to reimburse the Landlord for any damage done to the property caused by Tenant’s occupation or tenancy excepting reasonable wear and tear and external damage from the weather or elements. Tenant shall not leave or allow to remain on the property any garbage, refuse, debris, or personal property. Tenant will pay Landlord any removal costs incurred by Landlord. At the end of the tenancy, Tenant agrees to deliver the property keys to the Landlord in person or by mail to the Landlord’s designated agent.

3. RENT

A. Minimum Rent. Tenant shall pay to Landlord as a minimum rental for its use and occupancy of the Premises a monthly rent of ONE DOLLAR (\$1.00) for the initial three (3) year term or Thirty Six Dollars (\$36.00) and, if exercised, each of the renewal option periods.

| <u>Initial Period</u>        | <u>Monthly Amount</u>  |
|------------------------------|------------------------|
| 09/01/2019 – 08/31/2022      | \$1 or \$36.00 prepaid |
| <u>Renewal Option Period</u> |                        |
| 09/01/2022 – 08/31/2023      | \$1 or \$12.00 prepaid |
| 09/01/2023 – 08/31/2024      | \$1 or \$12.00 prepaid |

B. Annual Reporting Requirement. In recognition of the nominal Minimum Rent, Tenant agrees to the following: On or about March 1, 2020 and on or about March 1<sup>st</sup> annually thereafter during the Term and any Renewal Option Period, Tenant agrees to submit a copy of its

annual statistics for the prior calendar year including a) pounds of food distributed; b) individuals served (duplicated and unduplicated); c) amount of food received by program participants; d) value of food distributed including calculation methodology; and e) a list of Berkeley-based organizations and City of Berkeley sponsored or supported programs served.

C. Manner of Payment. All rent and other payments due from Tenant shall be made to Landlord in lawful money of the United States of America at Landlord's address below or to such other person or at such other place as Landlord may from time to time designate in writing. Payments shall be made payable to the "City of Berkeley" and delivered in person or by mail to the:

Finance Department  
Customer Service Counter  
1947 Center Street, 1<sup>st</sup> Floor  
Berkeley, CA 94704

4. **PROPERTY AND OTHER TAXES**

A. Taxes. As used in this Lease "Taxes" means Possessory Interest Taxes and Personal Taxes. Tenant's obligations for Taxes for the last full or partial year of the Term and for any prior unpaid Taxes shall survive the expiration or earlier termination of this Lease.

B. Possessory Interest Taxes. This Lease creates a possessory property interest in Tenant. Tenant's property interest may be subject to property taxation, and Tenant or the party in whom the possessory interest is vested shall be responsible for payment of any and all property taxes levied on the interest (collectively, "**Possessory Interest Taxes**").

C. Personal Taxes. Tenant shall pay directly to the taxing authority all taxes and assessments levied upon the trade fixtures, alterations, additions, improvements, partitions, cabling, wiring, furniture, equipment, inventories and other personal property located and/or installed on the Premises by or on behalf of Tenant (individually and collectively "**Tenant's Property**") and any Tenant Improvements (collectively, "**Personal Taxes**").

D. Payment of Taxes. Tenant shall pay all Taxes prior to delinquency. To the extent any such taxes are not separately assessed or billed to Tenant by the taxing authority, Landlord shall deliver to Tenant copies of the assessment and tax bill. Tenant shall pay such amount directly to the taxing authority no later than ten (10) business days prior to the date on which such Taxes are due. Should Tenant fail to pay its Taxes, Landlord may elect to do so on Tenant's behalf within five (5) days of Landlord's demand therefore. Tenant shall reimburse Landlord for such Taxes and any penalties and fines, together with interest at the Applicable Interest Rate, from the date Landlord tendered payment.

E. Tenant's Right to Contest. Tenant may, at no cost to Landlord, reasonably contest the legal validity or amount of any taxes, assessments, or charges for which Tenant is responsible under this Lease, and institute such proceedings as Tenant considers necessary; provided, however, that Tenant shall at all times protect Landlord from foreclosure of any lien,

and that Landlord shall not be required to join in any proceeding or contest brought by Tenant.

5. **USE OF PREMISES**

A. The Premises shall be used to operate and coordinate food provision services, including a food distribution hub and a mobile pantry, for individuals, families, schools and other organizations living in and/or operating in Berkeley. Tenant may operate seven days per week to maintain its programs and services for a term of three (3) years with two one year options to extend. The Premises may not be subleased or rented to the public or other organizations. Landlord's granting of this Lease is not to be construed as a promise or a guarantee that such approval will be granted by the City in its regulatory capacity.

B. Tenant shall operate its business on and about the Premises in a manner consistent with the use permitted herein and the standards of this Lease, including those described in Exhibit B.

C. At all times, Tenant agrees to provide adequate personnel to ensure the safe and efficient management of its use of the Premises.

D. Tenant will comply with all applicable safety standards in effect at any given time, and take all necessary steps to ensure that its participants and patrons are properly supervised to prevent injury to participants and others. Tenant will provide adequate supervision of the participants and patrons at all times while using the Premises.

E. Landlord shall have no responsibility for Tenant's furnishings, property or equipment that may be lost, stolen, or damaged.

F. Tenant acknowledges that the Premises is located within University Avenue Center, three parcels consisting of three buildings and one surface parking lot, and agrees to require its employees, participants, and patrons who use the Premises to abide by standards of this Lease, including those described in Exhibit B.

G. Business may be conducted with the public on the Premises at any time provided that Tenant shall have obtained all required permits and abide by rules and regulations as described in the Berkeley Municipal Code. Tenant shall obtain any required permits from the City if it sponsors any special events that require doing business after 10 p.m. on any day.

H. Tenant shall not, without the written consent of Landlord:

1. place, construct or maintain in, on, or about the Premises any advertisement media, including without limitation, searchlights, flashing lights, loudspeakers, or other similar media or device subject to Berkeley Municipal Code, Title 20;

2. place or permit the use in or on the Premises of any video games, pinball machines or other devices or equipment for amusement or recreation, or any vending machines, newspaper racks or other coin operated devices (excepting pay telephones).

3. warehouse or stock on the Premises any goods, wares or merchandise other than that which is directly related to the Tenant's use of the Premises;
4. store, display or sell goods or merchandise on the Premises other than that which is directly related to the Tenant's use of the Premises, or place or permit portable signs or other devices to be stored or to remain on the Premises;
5. use or permit any portion of the Premises to be used as living or sleeping quarters; and
6. sell, distribute, display, or offer for sale any item, which, in Landlord's good faith judgment, may tend to detract from the image of University Avenue Center or tenants of University Avenue Center including but not limited to Bauman College.

I. Tenant shall not do or permit to be done in, on, or about the Premises anything which is prohibited by, or may conflict with, any law, statute, ordinance or governmental rule or regulation now in force or hereafter enacted or promulgated, or which is prohibited by the standard forms of special form or commercial general liability insurance, or which may cause a cancellation of any insurance policy covering University Avenue Center, or the Premises or any of its contents, or (except with the prior written consent of Landlord) which may increase the existing rate of or affect any special form or commercial general liability insurance or other insurance upon University Avenue Center, or the Premises, or any of its contents. In the event Tenant does or permits to be done anything or keeps or permits to be kept anything on or about the Premises which increases the existing rate of such insurance upon University Avenue Center or the Premises or any of its contents, Tenant shall pay the amount of any such increase promptly upon Landlord's demand. Tenant shall not do or permit anything to be done which will in any way obstruct or interfere with the rights of other lawful users of University Avenue Center, including, without limitation, tenants, their employees or invitees, disturb or annoy them, or use or allow the Premises to be used for any improper, unlawful or objectionable purpose. Tenant shall not maintain or permit any nuisance in or about the Premises or commit or suffer to be committed any waste in or upon the Premises.

J. No auction, fire, bankruptcy, distress, clearance, or going-out-of-business sale shall be conducted on the Premises nor shall any sign or advertisement regarding such activity be posted in or about the Premises.

K. Tenant shall not use or permit the Premises to be used in any manner or permit anything to be brought into or kept therein which would (i) violate the certificate of occupancy for the Premises; (ii) make it impossible or extraordinarily difficult to obtain special form coverage, commercial general liability or other insurance required to be furnished by Tenant under this Lease; (iii) cause structural injury to any part of the Premises or the Building; (iv) impair or interfere with the proper operation and maintenance of the Premises or University Avenue Center; or (v) violate any of Tenant's other obligations under this Lease.

L. If any governmental license or permit, other than a certificate of occupancy, shall be required for the proper and lawful conduct of Tenant's business, Tenant shall procure and

maintain such license or permit and submit the same for inspection by Landlord. Tenant at all times shall comply with the terms and conditions of each such license or permit.

M. Nothing shall be done in or about the Premises by Tenant or anyone having a contractual relationship with Tenant that will result in substantial interference, by themselves or third parties, with normal operation and use of University Avenue Center or the means of ingress and egress thereto ("Substantial Interference"). Tenant shall use every effort to eliminate Substantial Interference, including legal action. If Tenant fails to bring an immediate halt to any Substantial Interference, Landlord shall have the right (i) to take action and require Tenant to undertake and eliminate such Substantial Interference and (ii) to commence any legal action to eliminate such Substantial Interference. Any agreement entered into by Tenant with regard to use of the Premises shall contain a provision reserving to Tenant all of the necessary rights and remedies to permit Tenant to comply with its obligations under this provision and authorizing Landlord to enforce the terms of such provision if Tenant fails to do so.

6. **USE OF 1001 UNIVERSITY AVENUE PREMISES**

A. Tenant agrees that except as otherwise provided in this Lease, it is not a covenant or condition of this Lease or of any other agreement with Tenant that Landlord undertake or cause to be undertaken any development or redevelopment of the Property (University Avenue Center) or the Premises (1001 University Avenue), and Landlord shall incur no liability whatsoever to Tenant for failure to undertake such development or redevelopment.

B. Landlord at all times shall have the right and privilege of making such changes in and to Property (other than the Premises) from time to time which in its sole opinion are deemed to be desirable or appropriate, including the location and relocation of stairways, sidewalks, pathways, driveways, streets, entrances, exits, automobile parking spaces, the direction and flow of traffic, designation of prohibited areas, landscaped areas, utilities and all other facilities; provided, however, that the foregoing is not intended to entitle Landlord to unreasonably effect changes that would materially and adversely affect access to or visibility of the Premises, except temporarily during periods of construction. Landlord shall have the right to establish, promulgate, and enforce such reasonable rules and regulations concerning University Avenue Center, as it may deem necessary or advisable for the proper and efficient management, operation, maintenance and use thereof, and Tenant shall comply with the same.

C. Landlord at all times shall have the sole and exclusive management and control of University Avenue Center, including without limitation, the right to lease, license or permit the use of space within University Avenue Center to persons for the sale of merchandise and/or services and the right to permit advertising displays, educational displays, displays of art, and promotional activities and entertainment.

D. Nothing contained herein shall be deemed to create any liability to Landlord for any personal injury, or any damage to motor vehicles, vessels, or other property of Tenant's members, employees or others, unless caused by the gross negligence or willful misconduct of Landlord, its agents, servants or employees. Tenant is solely responsible for the security of the Premises, and for the safety of those using the Premises pursuant to this Lease or any permits or licenses from the City. Tenant acknowledges that if Landlord provides security guards or police

patrols for University Avenue Center or any portion thereof, Landlord does not represent, guarantee or assume responsibility that Tenant or any person or entity will be secure from losses or injury caused by the acts of third parties and does not assume responsibility for any such illegal acts. Tenant hereby waives any present or future claims Tenant may have against Landlord, whether known or unknown, for bodily injury or property damage arising from the performance of such security agents. City shall not be obligated to provide any public liability or property damage or loss insurance for the benefit of Tenant or any other person or entity.

E. Tenant will use its best efforts to maintain effective relations with other tenants and users of University Avenue Center and with neighbors. Tenant shall park vehicles only in legal and/or designated parking areas and only for the legal period of time; shall deposit all trash in legal containers; shall not deposit food or material of any kind on adjacent Premises; and shall respect the environment of University Avenue Center.

F. Tenant shall not interfere with the free and unobstructed access by the public and/or other tenants to University Avenue Center. Tenant shall not preclude other users of the Property from exercising a different use without first obtaining any and all appropriate permits. However, the foregoing is not intended, and shall not be construed to confer any right of action upon any third party.

G. Landlord reserves to itself the right to grant to others in the future nonexclusive utility easements over, under, through, across or on the Premises in locations that will not unreasonably interfere with Tenant's access to or use of the Premises. Any interference shall be temporary, and all work on the Premises shall proceed expeditiously. Tenant shall be given reasonable notice before commencement of any work on the Premises. In the event the installation or maintenance of such future utility lines in such easements causes any damage to the Premises, or any portion thereof, or other facilities located upon the Premises, including but not limited to pavement, curbs and sidewalks, the same shall be repaired by Landlord at its expense, if not so repaired by the party installing and maintaining the line. Landlord shall hold harmless and indemnify Tenant from all claims arising out of the grant or use of such a utility easement, except to the extent they result from the negligence or willful misconduct of Tenant or its sub-lessees or sub-tenants.

7. **SERVICES**

A. Tenant shall make all arrangements for and pay for the following utilities and services, including garbage, telephone, internet/cable, and all fees and periodic charges related thereto. Tenant shall be billed by Landlord on a regular and mutually agreeable basis and pay the Landlord, within 30 days of the date of the invoice, for the following utilities and services including but not limited to water, sewer, electricity and gas. For electricity, Tenant agrees to reimburse Landlord for 77% of the monthly electrical bill for 1001-1007 University Avenue and 100% of the gas bill (if any) for 1001 University under this Lease.

B. Landlord makes no representation or warranty that the supply of any utility or service to the Premises and/or the Building will not be interrupted, delayed or reduced.

C. Landlord shall not be liable for damages to either person or property; nor shall



Landlord be deemed to have evicted Tenant; nor shall there be any abatement of any rent; nor shall Tenant be relieved from performance of any covenant on its part to be performed hereunder by reason of any (i) breakdown of equipment or machinery utilized in supplying utilities or services; (ii) interruption of or failure to supply or delay in supplying any such utilities or services; (iii) the limitation or restriction on use of water, electricity gas, or telecommunications service serving the Premises or University Avenue Center; or (iv) failure to repair or cure any of the foregoing, except in the case of Landlord's gross negligence or willful misconduct.

8. **OBLIGATION OF TENANT TO REMOVE PERSONAL PROPERTY**

Upon the expiration of this Agreement, Tenant is obligated to remove any personal property placed in the Premises by the Tenant. If any personal property does remain on the Premises upon the expiration of the Agreement it will be considered abandoned personal property, which will be removed by the City and the Tenant will be responsible for all costs associated with removing the personal property from the Premises.

9. **ALTERATIONS AND IMPROVEMENTS**

A. Tenant acknowledges that Landlord owns the Premises. Tenant accepts the Premises from Landlord in its "AS IS" condition, the conditions that exist as of the Effective Date of this Lease. Tenant acknowledges that Landlord makes no representation or warranty concerning (i) the physical condition of the Premises; (ii) the Premises suitability for Tenant's proposed use; or (iii) the presence of any Hazardous Substance in or about the Property or the Premises, except as otherwise expressly set forth in this Lease. Landlord has encouraged Tenant to make its own physical inspection of all aspects of the Property and the Premises and to conduct its own investigation as to the suitability of the Property and the Premises for Tenant's use.

B. Tenant shall not make any alterations, additions or improvements to the Premises ("Tenant's Work") affecting the Building structure or utility systems, or attach any fixture or item of equipment thereto without Landlord's prior written consent. All such alterations, additions, or improvements shall be made at Tenant's sole expense in accordance with Landlord's General Design Requirements (if any) and the plans and specifications (including specifications for materials to be used in connection therewith) and a statement of the estimated cost of such work submitted to and approved by Landlord (collectively the "Plans and Specifications"). If the cost thereof exceeds \$5,000 for any single instance, or if such Tenant's Work involves the Building structure or utility systems, any contractor or person selected by Tenant must be a licensed contractor. Landlord, in its sole discretion, shall approve or disapprove Tenant's request and may disapprove Tenant's use of any materials or substances, including but not limited to asbestos and fiber glass, which Landlord, in its sole discretion, deems potentially hazardous, toxic or threatening to health. To the extent that Tenant's Work shall require a building permit or other permits from the City of Berkeley, and/or any other governmental agency, Tenant shall not perform any of Tenant's Work until Tenant has obtained all requisite permits. As the Property owner, all permits must be approved and signed by the Director of Public Works or his/her designee. Tenant further shall comply with all prevailing wage requirements of California Labor Code Sections 1720 et seq., to the extent such requirements are applicable to Tenant's work.

C. Except as otherwise expressly provided in this Lease, Tenant shall not repair, replace or modify any utility system located within the Premises without the Landlord's prior written consent. Tenant is responsible for the repair of any damage to any utility system, structural element of the Premises, facilities of Landlord or any other facilities arising out of Tenant's construction activities or Tenant's negligence or willful misconduct; provided, however, such provision is not intended to and shall not be interpreted to make any other person or entity a third party beneficiary thereof.

D. This Lease specifically prohibits Tenant, or any other party, from expanding uses or structures allowed on the Premises beyond those designated in use permits approved by the City of Berkeley. Notwithstanding approval of any new Use Permit allowing expansion, or any future expansion of the uses in existing buildings, or additions to existing buildings, construction of any new buildings, or moving existing buildings onto the Premises, are all subject to the prior written approval of the Landlord and all improvements (including Exhibit B) are subject to the environmental review and permit regulations and approvals of same by all applicable local, state, and federal agencies.

E. If Tenant proposes to make or construct any alterations, improvements, additions or fixtures that affect any portion of the Premises or any structures located on the Premises that are allowed under an existing use permit, Tenant shall first provide the Landlord with thirty (30) days prior written notice. If Landlord raises no objections within thirty (30) days after receipt of such notice, Tenant may proceed, provided Tenant obtains all required permits.

F. 1. Tenant shall not substantially deface or change any floors, walls, ceilings, roofs, or partition any of the structures or improvements on 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, provided Tenant obtains all required permits. If required in writing by Landlord, Tenant shall require all contractors to provide a labor and materials bond for the full amount of any contract for improvements that exceed \$50,000. 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 Premises and which may be secured by any mechanic's, material men's or other lien against the Premises or Landlord's interest therein.

2. All alterations, improvements or additions that are now or in the future attached permanently to the Premises shall be the Property of Landlord and shall remain with the Property 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 equipment that Tenant has affixed to the Premises.

G. As of the date of this Lease, the Premises has not been inspected by a Certified Access Specialist (CASP). City makes no warranty or representation as to whether or not the Premises comply with the ADA or any similar legislation. In the event that Tenant's use of the Premises requires modifications or additions to the Premises in order to comply with the ADA or similar legislation, Tenant agrees to make any such necessary modifications and/or additions at Tenant's expense.

H. 1. 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 prevailing rate of per diem wages, and travel and subsistence payments (defined in applicable collective bargaining agreements filed in accordance with Section 1773.8 of the California Labor Code), in effect on the date of Landlord's first approval of a building permit or other approval of the work. 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 Property. Tenant, as a penalty to Landlord, shall forfeit Twenty-Five Dollars (\$25) 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), for each worker paid less than the applicable prevailing rates for such work or craft in which such worker is employed. 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.

2. Tenant agrees to keep or cause to be kept by each contractor and subcontractor an accurate payroll record for each worker employed on Tenant's Work covered by this subparagraph H showing all of the information specified in subsection (a) of Section 1776 of the California Labor Code. All such payroll records shall be certified, available for inspection and filed in accordance with the procedures specified in subsections (b)-€ inclusive of Section 1776 of the California Labor Code. In the event of noncompliance with the foregoing requirements concerning payroll records which continues for more than ten (10) days after Landlord gives Tenant written notice specifying in what respects Tenant must comply, Tenant shall forfeit, as a penalty to Landlord, for each worker Twenty-Five Dollars (\$25) for each calendar day, or portion thereof, until strict compliance is effectuated. Tenant shall be responsible for complying with Section 1777.5 of the California Labor Code concerning apprenticeable occupations, with respect to all work covered by that section. For purposes of the prevailing wage requirements of this subparagraph, Tenant shall be deemed to be "a contractor" as that term is used in Sections 1720 et seq., of the California Labor Code. Except where the context otherwise requires, the definitions of terms and phrases contained in the State prevailing wage law, Sections 1720 et seq., of the California Labor Code, and in the implementing administrative regulations, shall apply to the same terms and phrases which are used in the prevailing wage requirements of this subparagraph H.

10. **LIENS**

Tenant shall keep the property on which the Premises is situated, free from any liens arising out of any work performed, materials furnished or obligations incurred by Tenant. In the event that Tenant fails to cause any such liens to be released, Landlord shall have, in addition to all other remedies provided herein or by law, the right (but not the obligation) to cause the same to be released by such means as Landlord shall deem proper, including payment of the claim giving rise to such lien. All sums paid and all expenses incurred by Landlord in connection therewith shall be reimbursed by Tenant promptly on demand. Landlord shall have the right to post and keep posted on the Premises any notices (including, without limitation, notices of non-responsibility pursuant to California Civil Code Section 3094) that Landlord may deem proper

for protection of Landlord and the Premises. Tenant shall give Landlord at least ten (10) business days' prior notice of the date of commencement of any Tenant work on or in the Premises to allow Landlord to post such notices.

11. **TENANT AND LANDLORD MAINTENANCE OBLIGATIONS**

A. Tenant agrees that during the entire term of this Lease, at its own cost and expense, it shall keep and maintain the entire Premises, including the Building and all interior and exterior areas in the leased area, in good-quality order, repair and condition. Except as otherwise provided in this Lease, Tenant shall perform, at its own cost and expense, any and all maintenance, removal of graffiti, repairs, or rehabilitation to the Premises, whether required by deterioration or by operations of Tenant or otherwise.

B. To the extent applicable, Tenant hereby waives the provisions of Civil Code Sections 1941 and 1942, and any other provision of law now or hereafter in effect, with regard to the habitability of the Property and the Premises.

C. "Good-quality order, repair and condition", as used herein, shall mean the maintenance, repair, or renovation of the Premises necessary to keep and maintain the Building and Premises in safe, efficient, and attractive condition, given the nature and age of the Building, at any time during the term of this Lease.

D. Tenant shall provide its own janitorial service for the Premises, and all of Tenant's rubbish shall be removed by Tenant to such location(s) on the Premises or within University Avenue Center as may be designated by Landlord.

E. In the event of a dispute related to Tenant's maintenance and repair obligations under the Lease that Landlord and Tenant cannot informally resolve, Tenant's only remedy against Landlord shall be the right to terminate this Lease, effective thirty (30) days from the delivery of written notice to Landlord.

F. Nothing in this Paragraph 11 shall be deemed to affect or impair Landlord's rights under paragraph 9 of this Lease. Tenant acknowledges that Landlord has no obligation and has made no promises to alter, remodel, improve, repair, decorate or paint the Building or to improve the Premises, or any part thereof. Landlord has made no representations respecting the condition of the Building, the Premises, or University Avenue Center, except as specifically set forth in this Lease.

12. **DAMAGE OR DESTRUCTION**

A. In the event the Premises are damaged by fire, flood, earthquake, act of God, the elements, or other casualty, then Landlord shall forthwith repair the same, at its sole expense, unless Landlord or Tenant has the right to terminate pursuant to subparagraph 12.B below. Tenant shall be solely responsible for the loss, repair, and replacement of its all equipment and leasehold improvements.

B. Anything in subparagraph A to the contrary notwithstanding, Landlord shall not

have any obligation to repair or rebuild the Premises or the Building (and Tenant and Landlord shall each have the right to terminate this Lease): (i) following damage or destruction thereto if the damage or destruction is due to any cause or casualty other than one against which the responsible party is required to carry insurance or actually does carry insurance and such party reasonably estimates that the cost of repair or rebuilding exceeds ten percent (10%) of the then replacement cost of the Premises or Building, as the case may be. If the responsible party elects not to repair any damage or destruction pursuant to this provision, such party shall give the other party notice of such election within sixty (60) days after the date of such damage or destruction; and this Lease shall terminate as of the date of such damage or destruction.

C. Tenant hereby waives the provisions of California Civil Code Sections 1932 and 1933 and any other statutes now or hereafter in effect which relate to termination of a lease when leased Premises is damaged or destroyed and agrees that such event shall be governed by the terms of this Lease.

### 13. **INDEMNIFICATION**

A. **Indemnity.** Except to the extent claims are caused by Landlord's sole or active negligence or willful misconduct, Tenant shall indemnify, protect, defend, and hold harmless Landlord and its elected officials, officers, employees, volunteers, lenders, agents, representatives, contractors and each of their successors and assigns from and against any and all claims, judgments, causes of action, damages, penalties, costs, liabilities, and expenses, including all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon, arising at any time during or after the Term as a result (directly or indirectly) of or in connection with (i) any default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease; (ii) Tenant's or Tenant's Parties use of the Premises, the Property, or any portion thereof, or the conduct of Tenant's business or any activity, work or thing done, permitted or suffered by Tenant or Tenant's Parties in or about the Premises, the Property or any portion thereof; (iii) any act, error or omission of Tenant or Tenant's Parties in or about the Property or any portion thereof; (iv) loss of, injury or damage to, or destruction of property (including but not limited to merchandise or inventory), including loss of use resulting from such loss, injury, damage, or destruction; or (v) any resulting economic loss, consequential damages, or exemplary damages (collectively, the "**Indemnification**"). Tenant shall provide such Indemnification by and through counsel reasonably acceptable to Landlord. The obligations of Tenant under this Section A shall survive the expiration or other termination of this Lease with respect to any claims or liability arising prior to such expiration or other termination.

B. **Exemption of Landlord from Liability.** Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property including, but not limited to, Tenant's Property and any Tenant Improvements, and injury to or death of persons in, upon or about the Premises, the Property, or any portion thereof, arising from any cause, and Tenant hereby waives all claims in respect thereof against Landlord, except to the extent such claims are caused by Landlord's sole or active negligence or willful misconduct. Tenant hereby agrees that Landlord shall not be liable for injury to Tenant's business or any loss of income therefrom or for damage to the property of Tenant, or injury to or death of Tenant, Tenant's Parties or any other person in or about the Premises, the Property, or any portion thereof, whether such damage or injury is

caused by fire, steam, electricity, gas, water or rain, or from the breakage, leakage or other defects of sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said damage or injury results from conditions arising within or about the Premises, the Property, or any portion thereof or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant, except damage or injury caused solely by Landlord's sole or active negligence or willful misconduct. Landlord shall not be liable for any damages arising from any act or neglect of any other tenant or occupant, if any, of the Premises, the Property, or any portion thereof, or Landlord's failure to enforce the terms of any agreements with parties other than Tenant.

14. **INSURANCE**

A. Tenant, at its sole expense, shall procure and maintain the following insurance:

1. Commercial general liability insurance insuring Tenant against any liability arising out of its use, occupancy, repair or maintenance of the Premises or University Avenue Center, with a combined single limit of not less than \$2,000,000 for injury to or death of one or more persons in any one accident or occurrence and Property damage in any one accident or occurrence. Such comprehensive general liability insurance shall include fire liability coverage and public liability and Property damage insurance, including personal injury, broad form Property damage, blanket contractual, and other coverage as may be reasonably required by Landlord. Landlord shall have the right, from time to time, to require Tenant to increase the amount of its comprehensive general liability insurance coverage if, in Landlord's reasonable opinion, the amount of such coverage is not sufficient in light of the risks insured and Tenant's use of the Premises or University Avenue Center.

2. Special Form Property insurance for cost of damage to Tenant's improvements and personal property in the Premises, including, without limitation, during any term of construction of Tenant's Work, builders' All-Risk Insurance. Such insurance shall include coverage for vandalism and malicious mischief and cost of demolition and increased cost of construction by reason of changes in applicable ordinances/laws and shall not contain a co-insurance clause.

B. All policies of insurance and all renewals thereof shall be approved as to form and sufficiency by Landlord's Risk Manager and shall be issued by good and responsible companies qualified to do and doing business in California and rated A-: XIII or better in the most recent version of Best's Insurance Guide. Each of the required insurance coverages except for workers compensation (i) shall name Landlord, its officers, agents, employees and volunteers as additional insureds and, with respect to casualty insurance, as their respective interests may appear and (ii) if reasonably available, shall provide that it may not be canceled or altered by the insurer in such manner as to adversely affect the coverage unless sixty (60) days' prior notice is given by certified mail to Landlord at the address set forth in Paragraph 34 below, or to such place as Landlord may from time to time designate in a notice to Tenant.

C. An original certificate of each policy of insurance shall be delivered to Landlord prior to the date the Premises is delivered to Tenant and from time to time during the Term. If Tenant shall fail to procure or maintain any insurance required hereunder or shall fail to furnish

to Landlord any duplicate policy or certificate, Landlord may obtain such insurance; and any premium or cost paid by Landlord for such insurance shall be reimbursed by Tenant promptly upon Landlord's demand. Tenant shall make good faith efforts to ensure that at least sixty (60) days prior to the expiration of any such policy, an extension endorsement showing that such insurance coverage has been or will be renewed or extended shall be delivered to Landlord and if, despite such good faith efforts, such extension endorsement cannot be timely delivered, Tenant shall cause to be delivered to Landlord within said time other reasonable documentary evidence of renewal of coverage and shall continue exercising diligent efforts to deliver to Landlord the required extension endorsement. If such coverage is canceled or reduced, Tenant, within ten (10) days after receipt of written notice of such cancellation or reduction in coverage but in no event later than the effective date of cancellation or reduction, shall deliver to Landlord a certificate showing that the required insurance has been reinstated or provided through another insurance company (ies). Upon Tenant's failure to so deliver such certificate, Landlord may, without further notice and at its option, (1) exercise Landlord's rights as provided in this Lease or (2) procure such insurance coverage at Tenant's expense and Tenant shall promptly reimburse Landlord for such expense.

D. If any of the insurance required in this Paragraph 14 is provided under a claims-made form of policy, Tenant shall maintain such coverage continuously throughout the Term and without lapse for a period of not less than five (5) years beyond the termination of this Lease, to the effect that should occurrences during the Term give rise to claims made after termination of this Lease, such claims shall be covered by such claims-made policies.

E. Tenant's Property insurance policy insuring the Premises, Building, and Tenant's Property in the Premises shall include a waiver of the insurer's right of subrogation or, if such waiver should be unobtainable or unenforceable, (i) an express agreement that such policy shall not be invalidated if the assured waives, before the casualty, the right of recovery against any party responsible for a casualty covered by the policy or (ii) any other form of permission concerning the assured's right to waive its right of recovery. If such waiver, agreement or permission shall not be, or shall cease to be, obtainable, Tenant shall so notify Landlord promptly after learning thereof. To the extent that a loss occurs for which the Landlord has coverage through the Alliant Property Insurance Program, Landlord waives its right to recovery from Tenant for amounts in excess of the self-insured retention of the Bay Cities Joint Powers Insurance Authority (which as of execution of this Lease is \$250,000 consisting of a \$10,000 deductible for Landlord and a \$240,000 deductible for the Insurance Authority.) Notwithstanding the foregoing, Tenant's Property insurance shall be primary and the Landlord's property insurance shall be secondary.

F. Tenant hereby releases Landlord with respect to any claim (including a claim for negligence) which Tenant might otherwise have against Landlord for loss, damage or destruction of Tenant's Property occurring during the Term to the extent to which Tenant is insured under a policy (ies) containing a waiver of subrogation or agreement or permission to release liability, as provided in subparagraph E above. If, notwithstanding the recovery of insurance proceeds by Tenant for such loss, damage or destruction, Landlord is liable to Tenant with respect thereto or is obligated under this Lease to make replacement, repair, restoration or payment, then (provided Tenant's right of full recovery under its insurance policies is not thereby prejudiced or otherwise adversely affected) the amount of the net proceeds of the Tenant's insurance against such loss,

damage or destruction shall be offset against Landlord's liability to Tenant therefore or shall be made available to Landlord to pay for replacement, repair or restoration, as the case may be. Nothing contained herein shall relieve either party of any duty to repair, restore or rebuild imposed elsewhere in this Lease or shall nullify any abatement of rent provided for elsewhere in this Lease.

G. 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.

H. If a death, serious personal injury, or substantial Property damage occurs in connection with the performance of this Lease, Tenant shall immediately notify the Landlord's Risk Manager. If any accident occurs in connection with this Lease, Tenant shall promptly submit a written report to Landlord, in such form as the 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 subtenant, if any; 3) name and address of Tenant's liability insurance carrier; and 4) a detailed description of the accident, including whether any of Landlord's equipment, tools or materials were involved.

I. Tenant or Tenant's designated agent shall forward all insurance documents to:

Director, Public Works Department (Attn: Real Property)  
City of Berkeley  
2180 Milvia St., 3<sup>rd</sup> Floor  
Berkeley, CA 94704

15. **COMPLIANCE WITH LAWS**

A. Tenant, at its sole expense, shall promptly comply with all applicable laws, ordinances, rules, regulations, permits or requirements now or hereafter in effect (whether foreseen or unforeseen by Landlord or Tenant); with the requirements of any board of fire underwriters or similar body now or hereafter constituted; with any occupancy certificate issued by any public officer; and with the provisions of all recorded documents affecting the Premises, insofar as any of the foregoing relate to or affect the condition, use or occupancy of the Premises or the Building. Such compliance by Tenant shall include, without limitation, compliance with all obligations to alter, maintain, or restore the Premises (and, as applicable, the Building), or construct improvements in or to the Premises, regardless of cost and regardless of when during the term of the Lease the work is required.

B. Tenant acknowledges that conducting its operations at the Premises and making certain alterations and improvements may require an authorization, approval or permit (collectively, "Regulatory Approval") from a governmental authority having jurisdiction over the Premises. Tenant shall be solely responsible for obtaining any such Regulatory Approval, and



Tenant shall not seek any Regulatory Approval without first obtaining the approval of Landlord. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne by Tenant. Tenant shall be solely responsible for complying with any and all conditions imposed by regulatory agencies as part of a Regulatory Approval; however, Landlord shall not take any action that would materially interfere or prevent Tenant from complying with all such conditions. Any fines or penalties imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval shall be paid and discharged by Tenant, and Landlord shall have no liability, monetary or otherwise, for said fines and penalties, except to the extent that such fines or penalties were caused by the willful acts or omissions of Landlord. To the fullest extent permitted by law, Tenant agrees to indemnify and hold Landlord and its officers, agents and employees harmless from and against any loss, expense, cost, damage, attorneys' fees, penalties, claims or liabilities which Landlord may incur as a result of Tenant's failure to timely obtain or comply with the terms and conditions of any Regulatory Approval. Landlord agrees to cooperate (but only to the same extent and in the same manner as a non-public entity could so cooperate, and not as an exercise of Landlord's police or regulatory power) with Tenant in filing, processing and obtaining all Regulatory Approvals, and upon request of Tenant, to join with Tenant as co-applicant in filing, processing and obtaining all Regulatory Approvals; provided, however, that Landlord may refuse to file, process or obtain Regulatory Approvals or to join Tenant as a co-applicant if Landlord determines in its sole and absolute discretion that it is not in Landlord's best interest to do so. Nothing contained herein shall be deemed to limit or otherwise constrain Landlord's discretion, powers, and duties as a regulatory agency with certain police powers.

C. Tenant understands and agrees that Landlord is entering into this Lease in its capacity as a landowner with a proprietary interest in the Premises and not as a regulatory agency of the City of Berkeley 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. By Landlord's entering into this Lease, neither Landlord nor any of City 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 University Avenue Center. 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 University Avenue Center. By entering into this Lease, Landlord is in no way modifying or limiting the obligation of Tenant to cause the Premises to be used and occupied in accordance with all laws.

16. **ASSIGNMENT AND SUBLEASE**

A. Except as otherwise expressly allowed herein, Tenant shall not directly or indirectly, by operation of law or otherwise, transfer, assign, pledge, encumber or hypothecate this Lease or all or any portion of the Premises or Tenant's interest in and to the Premises (collectively, an "Assignment") or sublet the Premises or any portion thereof or permit the Premises or any portion thereof to be used, occupied or managed by anyone other than Tenant pursuant to any Lease, use or concession agreement or otherwise (collectively, a "Sublease") without first obtaining Landlord's written consent. Any assignment, encumbrance, or sublease

without Landlord's written consent shall be voidable and, at Landlord's election, shall constitute a default. City has the sole discretion to determine whether to agree to any sublease or assignment. No consent to any assignment, encumbrance, or sublease shall constitute a further waiver of the provisions of this paragraph.

B. Neither this Lease nor any interest therein shall be assignable or transferable in proceedings in attachment, garnishment, or execution against Tenant, in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Tenant or by any process of law. Possession of the Premises shall not be divested from Tenant in such proceedings or by any process of law without the prior written consent of Landlord.

C. Tenant expressly waives any rights that it might otherwise be deemed to possess pursuant to applicable law, including without limitation, Section 1997.040 of the California Civil Code, to limit any remedy of Landlord pursuant to Section 1951.2 or 1951.4 of the Code by means of proof that enforcement of a restriction on use of the Premises would be unreasonable.

#### 17. **INSPECTION**

Landlord may enter the Premises at all reasonable times (with reasonable advance notice except in case of emergency) (i) to inspect the same; (ii) to exhibit the same to prospective purchasers, mortgagees or tenants; (iii) to conduct tests, inspections and surveys to determine whether Tenant is complying with all of its obligations hereunder; (iv) to post notices of non-responsibility or other notices that may be permitted hereunder; (v) to post "to Lease" signs of reasonable size upon the Premises during the last ninety (90) days of the Term; and (vi) to make repairs required or permitted to be made by Landlord or repairs to any adjoining space or any utility systems or to make repairs, alterations or additions to any other portion of the Premises or University Avenue Center; provided, however, that all such work shall be done as promptly and with as little interference to Tenant as reasonably possible. Tenant hereby waives all claims against Landlord for any injury or inconvenience to or interference with Tenant's business or any loss of occupancy or quiet enjoyment of the Premises resulting from Landlord's entry into the Premises or any work performed therein by Landlord. Landlord shall at all times have a key to all doors in and about the Premises (excluding Tenant's vaults, safes and similar areas designated by Tenant in writing in advance), and Landlord shall have the right to use any and all means which Landlord may deem proper in an emergency to obtain entry to the Premises. Tenant also shall provide Landlord with written notice of the name, address, telephone number, and Tenant's account number of the burglar alarm company (if any) utilized by Tenant for the Premises. Any entry to the Premises by any of said means or otherwise shall not under any circumstances be deemed a forcible or unlawful entry into or a detainer of the Premises or an eviction (actual or constructive) of Tenant from the Premises.

#### 18. **DEFAULT**

The occurrence of any one of the following shall constitute an event of default on the part of Tenant:

A. **Failure to Use Premises.** Abandonment and vacation of the Premises or failure to occupy and use the Premises as specified in paragraphs 5 and 6.

B. Nonpayment of Rent. Failure to pay any installment of rent or any other sum due and payable hereunder upon the date when such payment is due, such failure continuing for a period of ten (10) days after written notice of such failure; provided, however, that Landlord shall not be required to provide such notice more than twice during any consecutive twelve (12) months with respect to non-payment of any portion of rent, the third such non-payment during any consecutive twelve (12) months constituting an event of default without requirement of notice.

C. Other Obligations. Failure to perform any obligation, agreement or covenant under this Lease, such failure having continued for thirty (30) days after notice of such failure from Landlord or such longer period as is reasonably necessary to remedy such default, provided that Tenant has commenced to remedy the default within such thirty (30) day period and shall continuously and diligently pursue such remedy until such default is cured.

D. General Assignment. A general assignment by Tenant for the benefit of creditors.

E. Bankruptcy. The filing of a voluntary petition in bankruptcy by Tenant, or the filing of an involuntary petition by Tenant's creditors, which involuntary petition remains undischarged for a period of thirty (30) days. In the event that under applicable law the trustee in bankruptcy or Tenant has the right to affirm this Lease and to continue to perform the obligations of Tenant hereunder, such trustee or Tenant, in such time period as may be permitted by the bankruptcy court having jurisdiction, shall cure all defaults of Tenant hereunder outstanding as of the date of affirmance and shall provide to Landlord such adequate assurances as may be necessary to ensure Landlord of the continued performance of Tenant's obligations hereunder. Any transferee (by operation of law or otherwise) must provide Landlord with adequate assurance of its future performance under this Lease. In the event of Tenant's bankruptcy, insolvency or reorganization, the parties specifically intend that the actions of the trustee or Tenant in assuming and/or assigning this Lease shall be governed by Sections 362 – 365 of Title 11 of the United States Code applicable to executory contracts and expired leases..

F. Receivership. The employment of a receiver to take possession of all or substantially all of Tenant's assets in the Premises.

G. Insolvency. The attachment, execution or other judicial seizure of all or substantially all of Tenant's assets in or on the Premises; the admission by Tenant in writing of its inability to pay its debts as they become due; the filing by Tenant of a petition seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future law or regulation; the filing by Tenant of an answer admitting or failing timely to contest a material allegation of a petition filed against Tenant in any such proceeding or if, within thirty (30) days after the commencement of any proceeding against Tenant seeking reorganization or arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future law or regulation, such proceeding shall not have been dismissed.

H. Release of Hazardous or Toxic Substances or Materials and Other Environmental

Impacts. Any release or discharge in, on, under, around, or from the Premises and/or University Avenue Center by Tenant, its agents or employees of Hazardous Substances which has not been fully cleaned up within ten (10) days after such release or discharge. Any negative impacts to the natural habitat and environment of University Avenue Center caused by Tenant that are documented by a qualified, independent source and for which reasonable remediation measures are not available, or the Tenant fails to cooperate with the Landlord in implementing in a timely manner reasonable measures intended to mitigate any negative impacts.

I. Illegal Drugs. Any release or discharge of chemicals, toxics, solution in connection with the manufacturing and mixing of any illegal substance on the premises.

J. Non-compliance with lease terms. Failure to perform any of the obligations, and improvements listed on Exhibit B, such failure continuing for 30 days after notice from the landlord of said default.

#### 19. REMEDIES UPON DEFAULT

A. Termination. In the event of the occurrence of any event of default, Landlord shall have the right immediately to terminate this Lease by written notice and at any time thereafter to recover possession of the Premises or any part thereof and to expel and remove Tenant, any other person or party occupying the same and all Premises located therein, by any lawful means and to reenter the Premises without prejudice to any of the remedies that Landlord may have under this Lease or under law or equity.

B. Continuation after Default. In the event of any default, this Lease shall continue in effect for so long as Landlord does not terminate this Lease under subparagraph A above. In such case, Landlord may enforce all its rights and remedies under this Lease, including without limitation, the right to recover rent as it becomes due, and all of its rights and remedies under law. Acts of maintenance, preservation, efforts to relet the Premises for Tenant's account or the appointment of a receiver upon application of Landlord to protect Landlord's interest under this Lease shall not constitute an election to terminate this Lease or Tenant's right to possession.

C. Damages upon Termination. Should Landlord terminate this Lease pursuant to subparagraph A above, in addition to any other rights and remedies to which it may be entitled under applicable law, Landlord shall be entitled to recover from Tenant: (i) the worth at the time of the award of the unpaid rent and other amounts which had been earned at the time of termination; plus (ii) the worth at the time of the award of the amount by which the unpaid rent which would have been earned after termination until the time of the award exceeds the amount of such rent loss that Tenant proves reasonably could have been avoided; plus (iii) the worth at the time of the award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rent loss that Tenant proves reasonably could be avoided; plus (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which, in the ordinary course of things, would likely result therefrom, including without limitation, the costs and expenses (including brokerage commissions and advertising costs) incurred by Landlord, with or without terminating the Lease, (1) in retaking possession of the Premises; (2)

in cleaning and making repairs and alterations to the Premises reasonably necessary to return the Premises to good condition for the use permitted by this Lease and otherwise to prepare the Premises for reletting; (3) in removing all persons and personal property from the Premises and transporting and storing any of Tenant's personal property left at the Premises, although Landlord shall have no obligation to remove, transport, or store any of such personal property; and (4) in reletting the Premises for such term, at such rent and upon such other terms and conditions as Landlord in its sole discretion may deem advisable; plus (v) such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time under California law. The "worth at the time of award" of the amounts referred to in (i) and (ii) shall be computed with interest at the maximum rate allowed by law. The "worth at the time of award" of the amount referred to in (iii) shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one percent (1%).

D. Computation of Rent for Purposes of Default. For purposes of computing unpaid rent which would have accrued and become payable pursuant to subparagraph C above, unpaid rent shall include the total rent for the balance of the term of the Lease.

E. Remedies Cumulative. All rights, privileges and elections or remedies of the parties are cumulative and not alternative to the extent permitted by law and except as otherwise specifically provided herein.

F. No Waiver. Landlord's waiver of any breach of a covenant or condition hereof, or Landlord's failure to declare any default immediately upon occurrence thereof or a delay in taking any action in connection therewith shall not waive such breach or such covenant or condition or any subsequent breach thereof. The subsequent acceptance of rent or other monies by Landlord shall not be deemed a waiver of any preceding default by Tenant, other than the failure of Tenant to pay the particular rent or other sum so accepted, regardless of Landlord's knowledge of such default at the time of its acceptance of rent.

G. No Right of Redemption. Tenant waives any right of redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179 or any other present or future law in the event Tenant is evicted or Landlord takes possession of the Premises by reason of Tenant's default.

## 20. ENVIRONMENTAL OBLIGATIONS

A. Tenant shall not, without Landlord's prior written consent (which consent may be granted or denied in Landlord's sole discretion), install, bring into or release or discharge in, on, under, around, or from the Premises any (i) asbestos-containing materials, (ii) electrical transformers, fluorescent light fixtures with ballasts or other equipment containing PCB's or (iii) materials which constitute hazardous, extremely hazardous or toxic materials under the Resource Conservation and Recovery Act, the California Hazardous Waste Control Act, the Comprehensive Environmental Response Compensation and Liability Act, the California Safe Drinking Water and Toxic Enforcement Act of 1986 or any other applicable law or regulation concerning hazardous or toxic materials, (collectively "Hazardous Substances") and has not done so prior to the effective date of this Lease. Any Hazardous Substances which are used, stored, treated, disposed of or released from the Premises by Tenant or its representatives, agents,

employees or invitees, shall be used, stored, treated, released and disposed of in accordance with all applicable laws and regulations.

B. If Tenant knows or has reasonable cause to believe that any Hazardous Substance has been released on or beneath the Premises, Tenant shall immediately notify the Berkeley Police Department and the Toxic Management Office and promptly give written notice of same to Landlord. If Tenant knows or has reasonable cause to believe that such substance is an imminent and material danger to public health or safety, Tenant shall take all actions necessary to alleviate such danger. Tenant shall provide to Landlord as promptly as possible, and in any event within five business days after Tenant first receives or sends the same, copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Premises or Tenant's use thereof and concerning Hazardous Substances. Tenant shall not negotiate or enter into any settlement agreement, consent decree or other compromise in respect of Hazardous Substances affecting the Premises or the Premises without first giving Landlord prior written notice and full opportunity to appear, intervene or otherwise protect Landlord's rights and interests.

C. Without limitation of the provisions of paragraph 13 hereof, Tenant shall indemnify, defend and hold Landlord and its affiliates harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses which arise during or after the term of this Lease as a result of the handling of Hazardous Substances on the Premises, or University Avenue Center by Tenant, its agents or invitees, including without limitation, all costs of monitoring, investigating, and remediation of the same, damages for diminution in the value of the Premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises, damages arising from any adverse impact on marketing of any such space and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees. This indemnification by Tenant includes, but is not limited to, costs incurred in connection with any investigation of site conditions or any clean-up, remediation, removal or restoration work requested by Landlord or required by any federal, state or local governmental agency or political subdivision because of Hazardous Substance present in the soil or groundwater in, on or under the Premises or in any improvements. Without limiting the foregoing, if the presence of any Hazardous Substance in, on, under or about the Premises caused or permitted by Tenant results in any contamination of the Premises or University Avenue Center, Tenant, at its sole expense, promptly shall take all action that is necessary to return the Premises to the condition existing prior to the introduction of such Hazardous Substance in, on, under or about the Premises; provided that Landlord's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions could not potentially have any material adverse effect upon the Premises. Tenant's obligations under this paragraph 20.C. shall survive the expiration or termination of this Lease.

D. Tenant's obligations under the Lease regarding Hazardous Substances apply only in connection with, and to the extent of, Hazardous Substances brought onto the Premises or University Avenue Center by Tenant and/or Tenant's employees, agents, invitees or contractors.

21. **ENVIRONMENTAL DUTIES**

A. Tenant shall minimize waste and recycle and compost. Tenant must participate in a recycling service provided by the City or provide an acceptable alternative with the approval of

the City's Recycling Program Manager. To that end, Tenant shall:

1. Assign someone to be in charge of its recycling programs, and to communicate needs and questions to the Zero Waste Division in the City's Public Works Department.
2. Recycle corrugated cardboard, office papers and beverage containers (glass bottles, plastic bottles, and cans)
3. Place collection containers for paper at convenient locations.
4. Educate employees and program participants about recycling procedures.
5. Recycle batteries and office equipment (contact the City's Zero Waste Division for information about vendors).
6. Tenant shall recycle construction waste from tenant improvements.

22. **LANDLORD'S RIGHT TO CURE**

All covenants to be performed by Tenant shall be performed at Tenant's sole cost and expense and without abatement of rent. Without limiting Landlord's rights under any other provision of this Lease, if Tenant shall fail to pay any sum of money or shall fail to perform any other act and such failure shall have become an event of default under paragraph 18, Landlord, without waiving or releasing Tenant from any of its obligations, may make (but shall not be obligated to make) any such payment or perform any such other act. All sums so paid by Landlord and all necessary incidental costs shall be deemed additional rent and shall be payable to Landlord immediately upon Landlord's written demand.

23. **EMINENT DOMAIN**

A. If all or any part of the Premises shall be taken as a result of the exercise of the power of eminent domain, this Lease shall terminate as to the part so taken on the earlier of the dates that title vests in the condemning authority or such authority takes possession of the Premises. In the case of a partial taking, either Landlord or Tenant shall have the right to terminate this Lease as to the balance of the Premises by written notice to the other party within thirty (30) days after such date of taking; provided, however, that Tenant shall have no right to terminate this Lease unless the portion of the Premises taken shall be of such extent and nature as substantially to impede or impair Tenant's use of the balance of the Premises. In the event of any such taking, Landlord shall be entitled to all compensation, damages, income, rent, awards and interest that may be paid or made in connection with such taking. Tenant shall have no claim against Landlord for the value of any unexpired Term; however, Landlord shall cooperate with Tenant if Tenant seeks to recover, at its sole expense, proceeds or awards paid to compensate for damage to the "goodwill" associated with Tenant's business. Any such amounts recovered shall belong to Tenant.

B. If any part of the Premises shall be so taken and this Lease shall not be terminated, then this Lease shall continue in full force and effect, except that the Rent shall be reduced in the same proportion that the rentable area of the Premises taken bears to the original rentable area of the Premises. Landlord, upon receipt of the award, shall make all necessary repairs and alterations (exclusive of Tenant's trade fixtures, furniture, furnishings, personal Premises, decorations, signs and contents) to restore the portion of the Premises remaining to as near its former condition as the circumstances will permit and to restore the Building to the

extent necessary to constitute the portion of the Building not so taken a complete architectural unit. Landlord, in any event, shall not be required to spend for such repairs and alterations an amount in excess of the amount received by Landlord as damages for the taking of such part of the Premises and/or Building; and Tenant, at its sole cost and expense, shall make all necessary repairs and alterations to Tenant's trade and lighting fixtures, furniture, furnishings, personal Premises, decorations, signs and contents.

C. As used herein, the "amount received by Landlord" shall mean that portion of the award received by Landlord as damages from the condemning authority which is free and clear of all prior claims or collections by Landlord and less reasonable attorneys' and appraisers' fees and expenses.

24. **SUBORDINATION**

A. This Lease shall be subject and subordinated to (i) all ground or underlying leases which have been or may hereafter be executed affecting the Premises, (ii) any Declaration of Covenants, Conditions and Restrictions now or hereafter recorded affecting University Avenue Center, all without the necessity of having further instruments executed on behalf of Tenant to effectuate such subordination.

B. Tenant agrees to execute and deliver upon demand such further instruments or documents as may reasonably be required by Landlord to evidence any such subordination of this Lease. Tenant hereby constitutes and appoints Landlord, as Tenant's attorney-in-fact, coupled with an interest, to execute and deliver any such instrument(s) on behalf of Tenant.

25. **NO MERGER**

The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger and shall, at the option of Landlord, terminate all or any existing subleases or subtenancies or operate as an assignment to it of any or all such subleases or subtenancies.

26. **TRANSFER BY LANDLORD**

In the event the original Landlord or any successor owner of University Avenue Center shall sell or convey the Premises, or any portion thereof that includes the Premises, all liabilities and obligations on the part of the original Landlord or such successor owner shall terminate. All such liabilities and obligations thereupon shall be binding only upon the new owner. Tenant agrees to attorn to such new owner.

27. **ESTOPPEL CERTIFICATES**

From time to time, Tenant shall execute and deliver to Landlord promptly upon request a certificate certifying (i) that this Lease is unmodified and in full force and effect or, if there has been any modification, that this Lease is in full force and effect as modified, and stating the date and nature of each such modification; (ii) the date to which rent and other sums payable hereunder have been paid; (iii) that no notice has been received by Tenant of any default which



has not been cured, except as to defaults specified in such certificate; (iv) that Landlord is not in default under this Lease and that Tenant has no claims, charges, offsets or defenses against Landlord, or specifying the nature of any such default or claim, charges, offsets or defense; and (v) such other matters as may be reasonably requested by Landlord. Any such certificate may be relied upon by any prospective purchaser, vendee, or other party. If Tenant fails to execute and deliver any such certificate within ten (10) business days after Landlord's written request, such failure, at Landlord's election, shall be conclusive against Tenant that this Lease is in full force and effect, without modification (except as may be represented by Landlord), that there are no uncured defaults in Landlord's performance, and that not more than one year's rent has been paid in advance.

28. **HOLDING OVER**

If, after the expiration of the Term of the Lease, Tenant remains in possession of the Premises with Landlord's consent all provisions of this Lease shall remain in effect with the following exceptions: (1) Tenant shall become a tenant from month-to-month, such tenancy terminable on thirty (30) days' notice given at any time by either party.

29. **GOVERNING LAW**

This Lease shall be governed by the laws of the State of California.

30. **SECURITY DEPOSIT**

Landlord is waiving the security deposit.

31. **SIGNAGE**

The size, design, material and location of any sign, marquee, awning, decoration or other attachment, advertising material or lettering on the Premises or on the exterior of the Building (collectively "signage") shall be subject to Landlord's prior written approval. All such signage shall comply with the criteria outlined in Berkeley Municipal Code, Title 20 and shall be subject to the following provisions:

A. Tenant, at its sole expense, shall submit to Landlord a written description of all proposed signage, including dimensions, color, proposed location and other pertinent information ("Signage Proposal"). Landlord shall review the Signage Proposal and shall notify Tenant in writing of its approval, or reason(s) for its disapproval, within thirty (30) business days after Landlord's receipt of the Signage Proposal. If disapproved, Tenant shall make all required modifications to the Signage Proposal and shall resubmit the same to Landlord within seven (7) days after its receipt of Landlord's disapproval.

B. Within ten (10) days after Landlord's approval of the Signage Proposal, Tenant, at its sole expense, shall cause to be prepared and submitted to Landlord two (2) sets of plans ("Sign Plans") reflecting in detail the information contained in the approved Signage Proposal. Landlord shall review the Sign Plans within thirty (30) days after Landlord's receipt of the same.

C. Upon Tenant's receipt of its sign permit from Landlord, Tenant shall construct and/or install all signage shown on the Sign Plans; in any event, however, Tenant shall complete such construction and/or installation not later than thirty (30) days after the sign permit is issued, unless otherwise agreed to by the City in writing.

D. Upon Landlord's request, Tenant immediately shall remove any signage that Tenant has placed or permitted to be placed in, on or about the Premises or Building contrary to the terms of this paragraph 31. If Tenant fails to do so, Landlord may enter upon the Premises and remove the same at Tenant's expense. Tenant, at its sole expense, shall maintain and replace all approved signage and shall repair, at its sole expense, any damage to the Premises caused by the erection, maintenance or removal of any signage, including any damage caused by Tenant's removal of its signage at the expiration or earlier termination of the Lease. Tenant also shall comply with such regulations as may from time to time be promulgated by Landlord governing the signage of all tenants in University Avenue Center.

32. **NO PARTNERSHIP**

It is expressly understood and agreed that Landlord shall not be deemed in any way or for any purpose a partner, agent or principal of Tenant, in the conduct of its business or otherwise, or a joint venture or member of a joint enterprise with Tenant.

33. **NO WAIVER**

Landlord's waiver of Tenant's breach of any covenant or condition shall not be deemed a waiver of any subsequent breach of the same or any other covenant or condition, nor shall any custom or practice which may develop between the parties in the administration of the terms hereof be construed to waive or to lessen the right of Landlord to insist upon Tenant's performance in strict accordance with the terms of this Lease.

34. **NOTICES**

All notices, demands, consents or approvals which may or are required to be given by either party shall be in writing and shall be deemed to have been received when delivered personally or on the earlier of the date of actual receipt or two (2) business days following deposit in the United States mail, registered or certified, postage prepaid, addressed as follows:

**To Tenant:** The Berkeley Food Network  
1569 Solano Avenue  
Berkeley, CA 94707

**To Landlord:** City of Berkeley  
Public Works Department  
2180 Milvia Street, 3<sup>rd</sup> Floor  
Berkeley, CA 94704

**With copies to:** City Manager Real Property – Public Works

City of Berkeley  
2180 Milvia Street, 5<sup>th</sup> Floor  
Berkeley, CA 94704

City of Berkeley  
1947 Center Street, 5<sup>th</sup> Floor  
Berkeley, CA 94704

Notices to Landlord regarding Hazardous Substances required by paragraph 20 hereof shall be sent both to the above addresses and to such other place as either party may from time to time designate in a written notice to the other party, or in the case of Tenant, delivered to the Premises.

Tenant will appoint an agent to receive the service of all proceedings, demands, and notices hereunder as the person in charge of or occupying the Premises at the time. If no person shall be in charge of or occupying the same, then such service may be made by attaching the same on the main entrance of the Premises

35. **COMPLETE AGREEMENT**

This Lease is intended by the parties as the final expression of their agreement with respect to such terms as are included herein and may not be contradicted by evidence of any prior or contemporaneous agreement. The parties further intend that this Lease constitutes the complete and exclusive statement of its terms, and no extrinsic evidence whatsoever may be introduced in any judicial or other proceeding involving this Lease. The language and all parts of this Lease shall be construed as a whole and in accordance with its fair meaning and not restricted for or against either party. This Lease may be modified or amended only by a written instrument signed by both parties.

36. **REQUESTS FOR CONSENT; WAIVER OF CLAIM**

Tenant hereby waives any claim for damages against Landlord that it may have based upon any assertion that Landlord unreasonably has withheld or has delayed any consent or approval, and Tenant's sole remedy shall be an action for specific performance of such provision, injunction or declaratory judgment. In the event of a final determination in Tenant's favor, the requested consent or approval shall be deemed to have been granted.

37. **INTERPRETATION**

The use of masculine, feminine, or neuter genders shall include the other genders, and the singular shall include the plural and vice-versa. Headings are intended for convenience only and shall not be referred to in construing any provision. If there is more than one party as Tenant, the obligations imposed upon Tenant shall be joint and several. If any provision(s) of this Lease shall be found, to any extent, to be invalid or unenforceable the remainder of the Lease shall not be affected thereby.

38. **SUCCESSORS AND ASSIGNS**

This Lease shall be binding upon and shall inure to the benefit of Landlord, its successors and assigns, and shall be binding upon and shall inure to the benefit of Tenant, its heirs, successors and (to the extent assignment may be permitted hereunder) assigns.

39. **AUTHORITY**

If Tenant is a corporation or partnership, each of the persons executing this Lease on behalf of Tenant covenants and warrants that Tenant is a duly authorized and existing corporation or partnership, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Lease and that each person signing on behalf of Tenant is authorized to do so.

40. **UNAVOIDABLE DELAYS**

A. In the event that Tenant or Landlord is delayed, directly or indirectly, from the performance of any act or thing required to be done or performed under the terms or conditions hereof by acts of the other party to this Lease, acts of God, fire, floods, inclement weather, unavoidable governmental action, strikes or labor difficulties of any and all kinds, shortages of or delay in the delivery of materials, acts of war, riot and civil commotion, or by any other cause beyond the reasonable control of Tenant or Landlord, as the case may be, such failure shall not be deemed to be a breach of this Lease or a violation of any such covenants or conditions and the time within which Tenant or Landlord must perform any such act shall be extended by a period of time equal to the period of delay arising from any of such causes.

B. Notwithstanding any provision of this paragraph 40 or any other provision of this Lease to the contrary, it is understood and agreed that there shall be no abatement of, or delay in the commencement of, or payment of any sum due to Landlord under this Lease.

41. **TIME OF THE ESSENCE**

Time is of the essence of each and every covenant and condition of this Lease.

42. **BROKERAGE**

Landlord and Tenant hereby represent and warrant, each to the other, that they have not disclosed this Lease or the subject matter hereof to, and have not otherwise dealt with, any broker, finder or any other person, firm, corporation or other legal entity so as to create any legal right or claim of whatsoever kind or nature for a commission or similar fee or compensation with respect to the Premises or this Lease. Landlord and Tenant hereby indemnify each other against, and agree to hold each other harmless from, any liability or claim (and all expenses, including attorneys' fees, incurred in defending any such claim or in enforcing this indemnity) for a real estate brokerage commission or similar fee or compensation arising out of or in any way connected with any claimed dealings with the indemnitor and relating to the Premises or this Lease.

43. **CITY NON-DISCRIMINATION ORDINANCE**

A. 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 Lease, Tenant agrees as follows:

1. 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.

2. 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.

B. Tenant understands that this Lease is governed by City Council by Ordinance No. 6579, and Chapter 6.46 of this ordinance. This resolution, as may be amended from time, stipulates that Tenant's membership policies may be reviewed by the City for compliance therewith at any time, and that unsatisfactory membership policies may result in non-renewal of this Lease or termination by the City.

44. **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.

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.

45. **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 board, 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 reasonably 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 used 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.

46. **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.

47. **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, 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 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 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 paragraph shall constitute a default of this Lease and Landlord may terminate this Lease pursuant to paragraph 18. In the event that Landlord terminates this Lease due to a default under this provision, Landlord may deem Tenant a non-responsible bidder for five (5) years from the date this Lease is terminated.

48. **BERKELEY LIVING WAGE ORDINANCE (LWO)**

A. Tenant agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance (LWO). If Tenant employs six (6) 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 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. 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 paragraph 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 paragraph 18 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 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 paragraph 18.

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 all 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.

49. **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 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 paragraph 19 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 paragraph shall constitute default of the lease, upon which City may terminate this lease pursuant to paragraph 18.

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.

50. **AUDIT**

Pursuant to Section 61 of the Berkeley City Charter, the City Auditor's Office, or its designee, may conduct an audit of Tenant's financial, performance and compliance records maintained in connection with the operations and services performed under this Lease, and with the payments made under this Lease. In the event of such audit, Tenant agrees to make all such financial, performance 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.

51. **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 lawfully assessed and due. Tenant certifies under penalty of perjury that the taxpayer identification number written below is correct.

52. **SURVIVAL**

The provisions of this Lease and obligations of Tenant that, by their nature, are to be performed after or are to survive termination of this Lease shall survive such termination.

53. **EXHIBITS**

Exhibit A, and any other exhibit, addendum or schedule referenced in this Lease are made a part hereof by this reference.



IN WITNESS WHEREOF, the parties hereto have executed this Lease at Berkeley, California effective as of the Effective Date.

TENANT:

THE BERKELEY FOOD NETWORK, a non-profit organization

By: Sara Webber Date 3/9/20  
Sara Webber, Executive Director

LANDLORD:

CITY OF BERKELEY, a municipal corporation

By: \_\_\_\_\_ Date \_\_\_\_\_  
Dee Williams-Ridley, City Manager

Approved as to form:

Registered by:

\_\_\_\_\_  
City Attorney Date \_\_\_\_\_ City Auditor Date \_\_\_\_\_

Attest:

\_\_\_\_\_  
City Clerk Date \_\_\_\_\_

**TENANT INFORMATION**

Tax Identification No. **81-4942342**  
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 \_\_\_\_\_

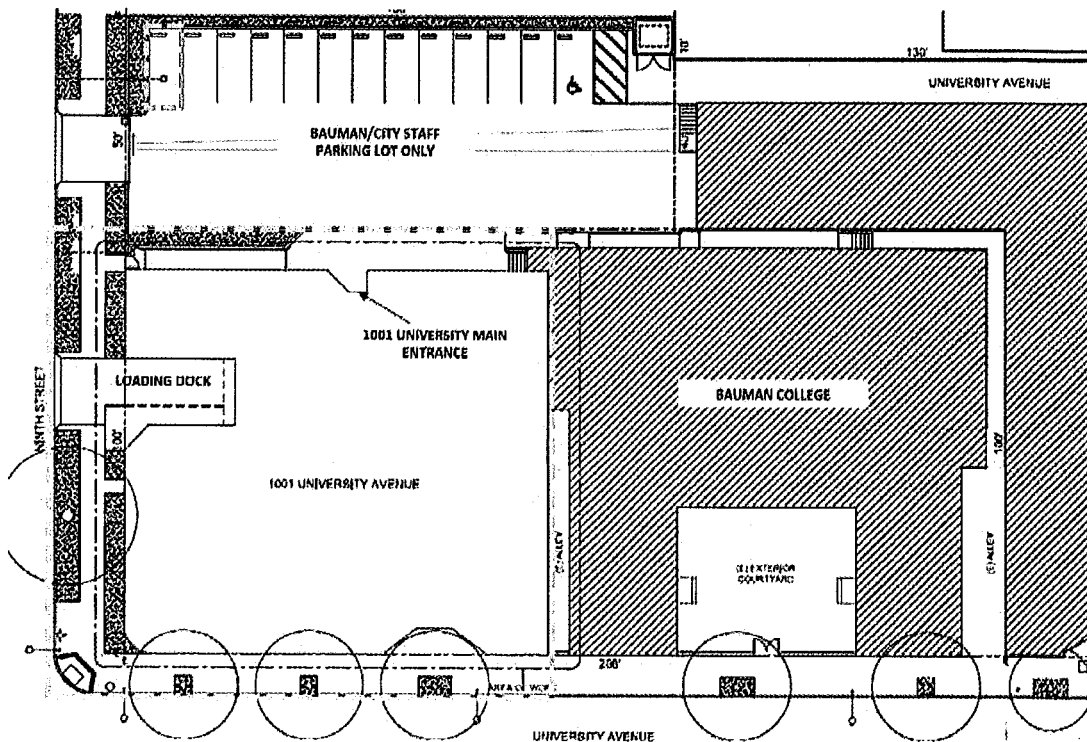


**EXHIBIT A  
PREMISES DESCRIPTION**

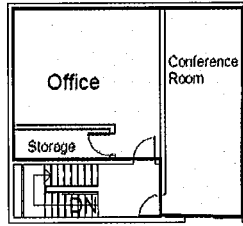
1001 University Avenue at University Avenue Center:

Lease of 1001 University Avenue (main entrance 1925 Ninth Street) include usage of the following:

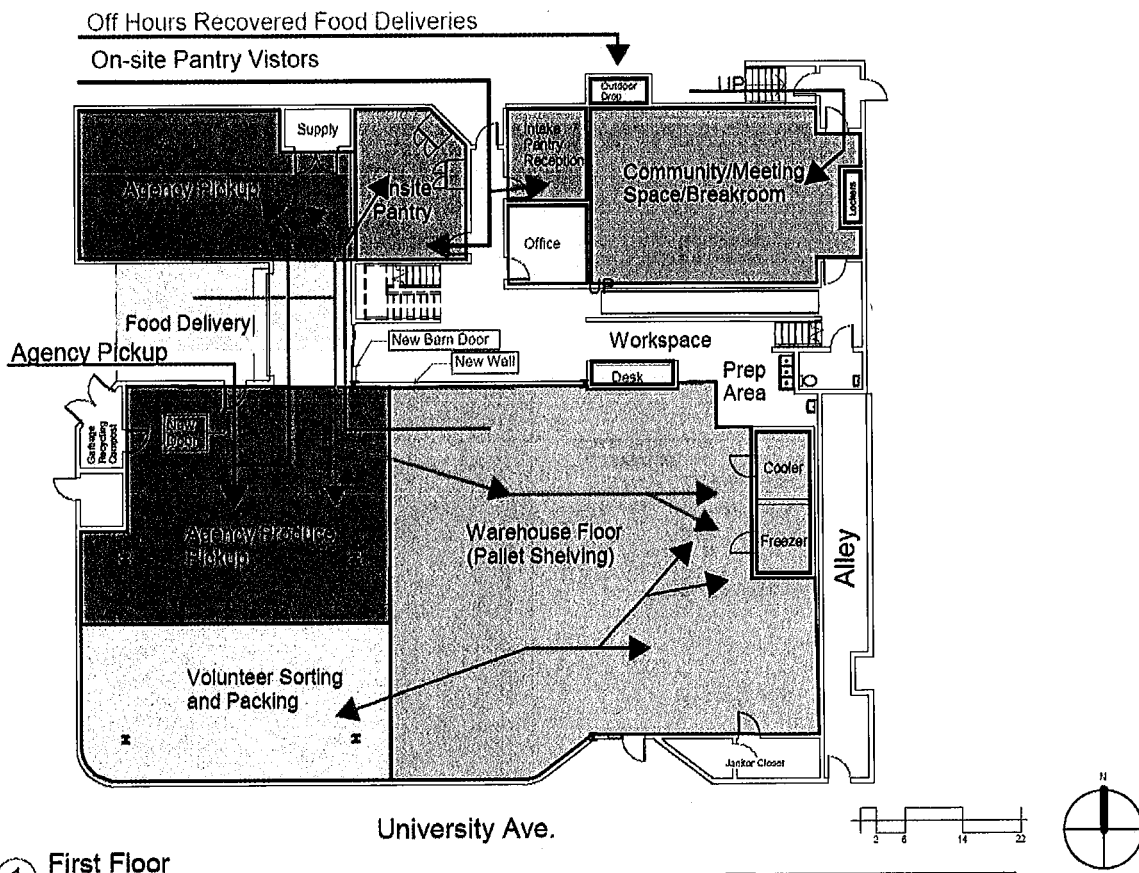
- The main warehouse;
- The smaller warehouse/storage room;
- The offices on the first and mezzanine levels;
- The loading dock;
- The bathroom;
- The attached trash enclosure/ trash room; and
- One dedicated parking space in the lot located at 1925 Ninth Street.



PRELIMINARY FLOOR PLAN



② Second Floor  
3/64" = 1'-0"



① First Floor  
3/64" = 1'-0"

|  |   |   |                     |
|--|---|---|---------------------|
|  | The Berkeley Food Network<br>1001 University Berkeley, CA | Preliminary Floor Plans (for illustration only) |                     |
|  |   | 001   | 107                 |
|  |   | 04/16/19  |                     |
|  |   | Drawn by SS                                     |                     |
|  |   | Checked by SS                                   | Scale 3/64" = 1'-0" |

**EXHIBIT B  
USE OF PROPERTY**

1. Tenant's use of the building located at 1001 University Avenue shall be exclusive.
2. Tenant shall use and occupy the Premises for the purpose of operating and coordinating food provision services, including a food distribution hub and a mobile pantry. The Premises shall be used by Tenant for no other purpose. Licensor represents that the Premises may lawfully be used for such purpose.
3. The Premises is available for use seven days per week, 24 hours per day.
4. The loading dock may be used to load and unload supplies, materials, etc., but shall not be used as a public entrance unless or until it is compliant with local, state and federal ADA regulations.
5. The Tenant must sign up for garbage, compost, and recycling service through the City of Berkeley. The Tenant is responsible for payment of the service. The Tenant's dumpsters/bins must be stored in the trash room/enclosure in the building.
6. Tenant shall not permit the facility to be used for:
  - a. Disruptive or destructive activity;
  - b. The creation or maintenance of a public nuisance;
  - c. Anything which is against the laws or regulations of any public authority;
  - d. Any purpose or in any manner which will obstruct, interfere with, or infringe upon the rights of neighbors.
7. The following conduct is prohibited and not permitted in any area of the facility:
  - a. Smoking of tobacco or cannabis;
  - b. Possession and/or consumption of alcoholic beverages, drugs or controlled substances;
  - c. Gambling;
  - d. The use of abusive, intimidating, threatening, or harassing language.
8. Portable heating units shall be used only with the express permission of the Berkeley Fire Department.
9. The Tenant has the right to park one (1) car in the adjacent lot located at 1925 Ninth Street, Berkeley, CA.

**EXHIBIT C  
IMPROVEMENTS  
“TENANT’S WORK”**

1. Tenant Improvements. Landlord will not provide any Tenant Improvements to the Premises. In lieu of market rate rent, the Tenant has directed funds toward roof improvements identified in the assessment provided by ABBAE and other improvements to the facility. Tenant hired and paid its own architect in designing the use of the Premises, hired and paid its own bonded Contractor (insurance required by Contractor), and paid for any building permits with Alameda County and/or City of Berkeley Planning Department. All improvements were approved by the Director of Public Works prior to the start of work. This work has been completed and cost approximately \$100,000.
2. Roof. City hired Allana Buick and Bers (ABBAE) to complete a condition assessment of the existing roof coverings and related flashings. Tenant completed the repairs listed for the Premises, identified in the report as 1001 University Avenue. Tenant is not required to complete any work on 1011 University Avenue, the other property assessed in the report. Tenant has completed the work and it has been inspected by designated City of Berkeley staff.