



Office of the City Manager

CONSENT CALENDAR

October 13, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Scott Ferris, Director, Parks Recreation and Waterfront

Subject: Lease Agreement for 225 University Avenue – Qasemi Abdul Moqim dba Berkeley Sportsman Center

RECOMMENDATION

Adopt first reading of an Ordinance authorizing the City Manager to execute a lease agreement and necessary amendments with Qasemi Abdul Moqim, doing business as Berkeley Sportsman Center, at 225 University Avenue at the Berkeley Marina for a term of three years, with a two-year option.

FISCAL IMPACTS OF RECOMMENDATION

Total rent for the subject building will be \$3,200/month, increasing annually by 3%. This is approximately 30% more than the current rent paid for the premises. The tenant agrees to make an estimated \$65,000 in improvements to the building. Revenue from this lease will be deposited into the Marina Fund, budget code 608-52-544-592-0000-000-000-461120-.

CURRENT SITUATION AND ITS EFFECTS

In 2016, Ordinance 7,453-N.S. was established to authorize a lease agreement with the Berkeley Sportsman Center to operate the bait shop at the City-owned property at 225 University Avenue. The lease expired in 2019 and has been in month-to-month holdover status since then. In early 2020, City staff released a Request for Applications for the premises. The City received two complete applications and selected Mr. Moqim's proposal as best serving the Marina community. Mr. Moqim has a history of successfully operating the Bait Shop and will continue to open as early as 4:30am during crab and salmon seasons to serve the fishing community. Mr. Moqim will pay approximately 30% more in rent; and will invest an estimated \$65,000 in the building, including for improvements to build out a new pizza kitchen.

BACKGROUND

The premises, known as the Bait Shop, is located at 225 University Ave, in front of Hana Japan Restaurant, located at the Berkeley Waterfront. It is 1,800 Sq. Ft. of commercial area with 800 Sq. Ft. of basement. It has operated as a Bait Shop since 1996. In 2004, the premises was leased with Hana Japan to the Bay Point

Development. In 2013, Mr. Moqim took over operation of the Bait shop and later entered a 4-year lease term with the City the following year. In December 2019, the lease agreement expired and went into holdover clause, month-to-month. The business continues to operate as the Berkeley Sportsman’s Center and is offering groceries, convenience items, sundries, fishing equipment, and frozen bait during the Shelter in Place orders.

ENVIRONMENTAL SUSTAINABILITY

Lease revenue generated at the Waterfront is required to be reinvested into the public trust lands overseen by the City, and supports the City’s environmental/ecological educational programming at the Shorebird Park Nature Center, habitat maintenance at Cesar Chavez Park, and capital projects.

RATIONALE FOR RECOMMENDATION

If adopted, this lease agreement will bring a 30% increase in revenue to the Marina Fund. The tenant will also invest \$45,000-\$65,000 in the building, and open a pizza kitchen that will introduce a new amenity for the Marina community. This will provide needed revenue to the Marina Fund and improve waterfront services for the public.

CONTACT PERSON

Scott Ferris, Director, Parks, Recreation and Waterfront, 981-6711  
Christina Erickson, Deputy Director, Parks, Recreation and Waterfront, 981-6703  
Alexandra Endress, Waterfront Manager, Parks, Recreation and Waterfront, 981-6737

Attachments:

- 1: Ordinance
  - Exhibit A: Lease Agreement

ORDINANCE NO. -N.S.

LEASE AGREEMENT: QASEMI ABDUL MOQIM DBA BERKELEY SPORTSMAN  
CENTER, FOR THE PROPERTY AT 225 UNIVERSITY AVENUE

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

Section 1.

The City Manager or designee is hereby authorized to execute a three-year lease agreement with a two-year option with Qasemi Abdul Moqim dba Berkeley Sportsman Center, for the property at 225 University Avenue in Berkeley, CA. Such lease shall be on substantially the same terms as set forth in Exhibit A.

Section 2.

The rent will be \$3,200/month with an annual increase of 3%. Berkeley Sportsman Center will make improvements to the building estimated at \$65,000, including upgrades to open a pizza kitchen. Revenue from this lease will be deposited into the Marina Fund, budget code 608-52-544-592-0000-000-000-461120-.

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 Council Chambers, 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 Agreement

**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

Qasemi Abdul Moqim  
DBA Berkeley Sportsman Center ,

as Tenant.

For the Property at  
225 University Avenue  
Berkeley, CA

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**LIST OF EXHIBITS**

**Exhibit A-1..... Property Description**

**Exhibit A-2.....Property Depiction**

**Exhibit B .....Maintenance Standards**

**PROPERTY LEASE**  
**BASIC LEASE INFORMATION**

1. **Landlord:** City of Berkeley, a California municipal corporation  
2180 Milvia Street  
Berkeley, CA 94704  
Attention: Director, Parks, Recreation & Waterfront  
Telephone: (510) 981-6700  
Facsimile: (510) 981-6710
  
2. **Tenant:** Qasemi Abdul Moqim dba Berkeley Sportsman Center  
3794 Castro Valley Blvd.  
Castro Valley, CA 94546  
Telephone: (510) 849-2727  
Facsimile: N/A  
Email: monesaq@yahoo.com
  
3. **Tenant Trade Name:** Tenant shall operate under the trade name **Berkeley Sportsman Center**
  
4. **Effective Date:** **November 1, 2020**
  
5. **Property:** The ground floor (approximately 1,800 square feet), the basement area (approximately 800 square feet), and the exterior hardscape to the south and east of the building ("**Premises**") of the building commonly known and referred to as 225 University Avenue, Berkeley, CA 94710, (the "**Building**").
  
6. **Permitted Uses:** Tenant shall operate a retail establishment on the property that provides a variety of convenience items, groceries, prepared foods and service the sale of fishing equipment, licenses and bait and tackle as described in Exhibit B- Scope of Services.
  
7. **Initial Term:** Three (3) Year(s) with an option to renew for two (2) Year(s), commencing as of November 1, 2020. ("**Commencement Date**").
  
8. **Rent:** \$3,200.00 per month with 3% annual increase
  
9. **Security Deposit:** N/A
  
10. **Guarantor:** Not required with this Lease.
  
11. **Permitted Uses:** 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 Qasemi Abdul Moqim DBA Berkeley Sportsman Center, a California corporation, doing business at 225 University Avenue in Berkeley, CA ("Tenant").

WITNESSETH:

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Property 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:

A. "Affiliate," as to any person, shall mean such person's partners, members, commissioners, officers, employees, volunteers and agents.

B. "Building" shall mean the ground floor (approximately 1,800 square feet), the basement area (approximately 800 square feet), and the exterior hardscape to the south and east of the building commonly known and referred to as 225 University, as more fully described on Exhibit A, attached hereto.

C. "Lease Year" shall mean each consecutive twelve-calendar-month period during the term of the Lease commencing upon the effective date of the Lease.

D. "Property" shall mean the property described on Exhibit A, including all building(s) and other improvements on, or appurtenances to, such property.

**2. TERM**

A. The Initial Term shall commence on the November 1, 2020 ("Lease Commencement Date") and expire on October 31, 2025 ("Lease Expiration Date").

B. Tenant is granted the option ("Extension Option") to extend the initial term of this lease for an additional term of two (2) years ("Extension Term") provided all of the Extension Conditions are met.

C. "Extension Conditions" shall mean, as a condition to Tenant exercising each Extension Option: (a) Tenant gives Landlord written notice no less than eight (8) months prior to the commencement of the Extension Term, as applicable, that Tenant is exercising the Extension Option; (b) at the date the applicable Extension Option is exercised, and at the commencement of the Extension Term, as applicable, no Event of Default has occurred and is continuing; and (c) Tenant has not been more than ten (10) days late in the payment of any or all rent more than a total of three (3) times for all periods prior to the commencement of the Extension Term.

D. If Landlord, in its sole discretion, determines that Tenant has complied with all Extension Conditions, at least sixty (60) days prior to the Lease Expiration Date, Landlord shall provide written notice to Tenant of any additional improvements that will be required to be completed by Tenant or increase in rent during the five-year Extension Term and shall provide notice of its determination to grant renewal of the lease upon condition that Tenant agrees, at least thirty (30) days prior to the expiration of the Initial Term.

E. If, after Landlord's initial determination that Tenant has complied with the Extension Conditions but prior to the Lease Expiration Date, Landlord determines, at its sole discretion, that Tenant has failed to comply with any of the Extension Conditions, Landlord may revoke the granting of the Extension Term and seek applicable remedies under the Lease, including, but not limited to Paragraph 18.

F. At the Lease Expiration Date, or expiration of the Extension Term, or any sooner termination of this lease due to default, Tenant agrees to quit and surrender possession of the Property and its appurtenances to Landlord in good order and condition. 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 damage by the 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. Fixed Rent. Tenant shall pay to Landlord as rent for its use and occupancy of the Property a monthly rent beginning at **Three Thousand Two Hundred Dollars (\$3,200.00)** per month, and escalating as summarized in the table below:

Lease Period Beginning:	Monthly Rent Due	Annual Rent Due
November 1, 2020	\$3,200.00	\$38,400.00
November 1, 2021	\$3,296.00	\$39,552.00
November 1, 2022	\$3,394.88	\$40,738.56
November 1, 2023	\$3,496.73	\$41,960.72
Option Year Beginning:		
November 1, 2024	\$3,601.63	\$43,219.54
November 1, 2025	\$3,709.68	\$44,516.16

B. Special Event Percentage Rent. Tenant shall pay to Landlord 5% of Tenant's gross income earned from any special events. A "special event" shall be defined as a concession or revenue-generating event on the Property.

C. Records. Tenant shall keep complete and accurate books and accounts of its daily gross sales in every part of its business operating at any time during the currency of this Lease in any part of the Leased Property. Lessor and its agents and employees shall have the right at any time during regular business hours to examine and inspect all the books and accounts of Lessee related to gross sales, including sales tax reports, tax returns, or other reports to any

governmental agency, for the purpose of verifying the gross sales of the business.

D. 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 for notice hereunder, or to such other person or at such other place as Landlord may from time to time designate in writing. If the term shall commence on a day between the 1st of the month and the 14th of the month, the Lease Year shall be deemed to start on the 1st of the then current month. If the term shall commence on a day between the 15th and the end of the month, the Lease Year shall be deemed to start on the 1st day of the following month. Special Event Percentage Rent shall be due at the same time as Fixed Rent and shall be based on any and all special event income earned by Tenant in the prior month.

E. Tenant understands that this Lease does not guarantee that the City, in its regulatory capacity, will grant any particular request for a permit. Tenant understands that the City may grant or deny such permit in its sole discretion, and may impose such terms and conditions as it deems consistent with that discretion.

F. Delinquency and Late Charges; Interest.

1. Tenant hereby acknowledges that its late payment of rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult or impracticable to ascertain. Such costs include, without limitation, processing and accounting charges and overtime wages. Accordingly, any payment of rent or other sum due hereunder that remains due and unpaid for a period of ten (10) days after it becomes due and payable shall be subject to a delinquency charge of ten percent (10%) of the delinquent amount. The parties agree that such charge represents a fair and reasonable estimate of the costs Landlord shall incur by reason of Tenant's late payment. Landlord shall apply any monies received from Tenant first to any accrued delinquency charges and then to any rent then due. Acceptance of such delinquency charges by Landlord shall not constitute a waiver of Tenant's default with respect to such overdue amount. The delinquency charge is in addition to all other remedies that Landlord may have under this Lease or at law.

2. Any amount due to Landlord, if not paid when due, shall bear interest from the date due until paid at the rate of the twelve percent (12%) per annum. Interest shall not be payable on delinquency or late charges nor on any amounts upon which such charges are paid by Tenant, to the extent such interest would cause the total interest to exceed that legally permitted. Payment of interest shall not excuse or cure any default hereunder by Tenant.

F. Accord and Satisfaction. Landlord's acceptance of a lesser amount of rent or other sum due hereunder shall not be deemed to be other than on account of the earliest rent or payment due and shall be applied by Landlord as provided in subparagraph E. (1). No endorsement or statement on any check or letter accompanying any such check or payment shall be deemed an accord and satisfaction, and Landlord may accept such check or payment and pursue any other remedy available under this Lease or at law. Landlord may accept any partial payment from Tenant without invalidation of any contractual notice required hereunder (if required) and without invalidation of any notice required pursuant to California Code of Civil Procedure Section 1161, et seq., or any successor statute.

**4. PROPERTY AND OTHER TAXES**

A. Possessory Interest Taxes. The property interests created by this Lease may be subject to property taxation and Tenant, in whom the possessory interest is vested, will be responsible for the timely payment of any property taxes levied on such possessory interest. Tenant agrees to pay before delinquency all lawful taxes, assessments, fees or charges which at any time may be levied by the state, county, city or any tax or assessment levying body against the transfer of the leasehold interest hereunder upon recordation or otherwise, or upon any activity carried on under this Lease, any interest in this Lease or any possessory right which Tenant may have in or to the Property or the Property by reason of its use or occupancy thereof or otherwise.

B. City of Berkeley Assessments. Tenant also shall be responsible for and shall pay prior to delinquency all assessments imposed against the Property and/or the Property by Landlord. Tenant acknowledges that Landlord has established certain assessment districts within the City of Berkeley and that all properties within the assessment districts are subject to annual assessments. Landlord reserves the right to create additional districts and to terminate any such district(s). Landlord shall provide Tenant with written notice of each such assessment not later than sixty (60) days before such assessment is due and payable.

C. Personal Property and Other Taxes. In addition to all other sums to be paid by Tenant hereunder, Tenant shall pay, before delinquency, any and all taxes levied or assessed during the term of the Lease on Tenant's equipment, furniture, fixtures, merchandise, and other personal property located in the Property, and shall pay, or shall reimburse Landlord for, any and all assessments (including, without limitation, all assessments for public improvements, services or benefits, irrespective of when commenced or completed), excises, levies, business taxes, Lease, permit, inspection and other authorization fees, transit fees, service payments in lieu of taxes and any other fees or charges of any kind, which are levied, assessed, or imposed by any public authority: (i) upon or measured by rental payable hereunder, including without limitation, any gross income tax or excise tax levied by the City of Berkeley, Alameda County, the State of California, the Federal Government or any other government body with respect to the receipt of such rental; (ii) upon or with respect to the development, possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Property or any portion thereof; (iii) upon, measured by or reasonably attributable to the cost or value of Tenant's equipment, furniture, fixtures, merchandise, and other personal property located at or in the Property or by the cost or value of any improvements made by Tenant to the Property, regardless of whether title to such improvements shall be in Tenant or Landlord; or (iv) upon this Lease or any document to which Tenant is a party creating or transferring an interest in the Property.

D. 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 PROPERTY**

A. Landlord and Tenant specifically agree that a material consideration of this Lease is Tenant's agreement to continually operate, maintain and improve the Property as first-class commercial space, to be used in accord with the Public Trust Doctrine, and attract and serve visitors to the Berkeley Marina.

B. Tenant is authorized to use the Property for the purpose of operating a retail shop (establishment) to provide a variety of convenience items, groceries, prepared foods and services including the sale of fishing licenses and bait and tackle as described in Exhibit B- Scope of Services. Tenant proposes to build out a pizza kitchen that will sale pizza slices to go. Tenant may conduct ancillary uses only after requesting such uses in writing and receiving authorization by the Landlord prior to commencement.

C. Tenant shall operate its business in the Property in a manner consistent with the use permitted herein and the standards promulgated by Landlord.

D. Tenant shall not do or permit to be done in, on, or about the Property 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, 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 the Berkeley Waterfront or the Property 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 the Berkeley Waterfront or the Property, 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 Property or the Berkeley Waterfront which increases the existing rate of such insurance upon Berkeley Waterfront or the Property 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 Berkeley Waterfront, including, without limitation, tenants, their employees or invitees, disturb or annoy them, or use or allow the Property to be used for any improper, unlawful or objectionable purpose. Tenant shall not maintain or permit any nuisance in or about the Property or commit or suffer to be committed any waste in or upon the Property.

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

F. Tenant shall not use or permit the Property 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 Property; (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 Property or the Building; (iv) impair or interfere with the proper operation and maintenance of the Property and/or Berkeley Waterfront; or (v) violate any of Tenant's other obligations under this Lease.

G. If any governmental license or permit 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.

H. Nothing shall be done in or about the Property 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 Berkeley Waterfront 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 designate action to Tenant, which Tenant will undertake to 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 Property 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 BERKELEY WATERFRONT PROPERTY; PUBLIC TRUST**

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 or the Berkeley Waterfront, 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 the Berkeley Waterfront (other than the Building) 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 Property, except temporarily during periods of construction. Landlord shall have the right to establish, promulgate, and enforce such reasonable rules and regulations concerning the Berkeley Waterfront, 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 the Berkeley Waterfront, including, without limitation, the right to lease, license or permit the use of space within the Berkeley Waterfront to persons for the sale of merchandise and/or services and the right to permit advertising displays, educational displays, displays of art, special events (including but not limited to the Fourth of July, Bay Festival, Winter on the Waterfront, and Events approved through the City's Special Event Permit Application Process), and promotional activities and entertainment. Tenant acknowledges that this may impact access to the Waterfront on several occasions each year.

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 Property, and for the safety of those using the Property pursuant to this Lease or any permits or licenses from the City. Tenant acknowledges that if Landlord provides security guards or police patrols for the Berkeley Waterfront or any portion thereof, Landlord does not represent,

guarantee or assume responsibility that Tenant or any person or entity will be secure from losses caused by the illegal acts of third parties and does not assume responsibility for any such illegal acts. To induce Landlord to provide such security, if any, as Landlord in its sole discretion deems reasonable, appropriate and economically feasible, 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. Landlord shall not be obligated to provide any public liability or property damage insurance for the benefit of Tenant or any other person or entity, each such party being responsible for its own insurance.

E. Public Trust Tidelands Requirements. Tenant acknowledges that the Property is located on State tidelands held by the City of Berkeley in trust for the promotion of commerce, navigation, and fishery pursuant to Chapter 347 of the California Statutes of 1913, as amended ("the Grant"), subject to the conditions, restrictions, limitations, rights, powers, and duties reversionary rights and other rights created or reserved in the Grant. Tenant agrees that, notwithstanding anything in this Lease to the contrary, Tenant shall use the Building and the Property consistently with and in a manner that shall not result in a violation of the Grant or of provisions of the Berkeley City Charter, California law or the California Constitution.

F. Landlord reserves to itself and the right to grant to others in the future nonexclusive utility easements over, under, through, across or on the Property in locations that will not unreasonably interfere with Tenant's access to or use of the Property. Any interference shall be temporary, and all work on the Property shall proceed expeditiously. Tenant shall be given reasonable notice before commencement of any work on the Property. In the event the installation or maintenance of such future utility lines in such easements causes any damage to the Property, or any portion thereof, or to the Building, or other facilities located upon the Property, 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.

## 7. UTILITIES

A. Tenant, at Tenant's sole cost and expense, shall be responsible and shall directly contract and pay for any and all utilities and services required or desired by Tenant in connection with its use or occupancy of the Property, including, but not limited to, water, sewer, gas, electricity, telephone, computer, internet, communications services, plumbing and drain clean out services, and alarm.

B. Landlord makes no representation or warranty that the supply of any utility or service to the Property 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 Property or the Berkeley Waterfront; or (iv) failure to repair or cure any of the foregoing, except in the case of Landlord's gross negligence or willful misconduct.

**8. ALTERATIONS AND IMPROVEMENTS**

A. Tenant acknowledges that Landlord owns the Building(s). Tenant accepts the Building(s) from Landlord in its "as is" conditions, 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 Building(s); (ii) the Property's suitability for Tenant's proposed use; or (iii) the presence of any Hazardous Substance in or about the Property or the Building(s), 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 Building(s) and to conduct its own investigation as to the suitability of the Property and the Building(s) for Tenant's use.

B. If Tenant proposes to make or construct any alterations, improvements, additions or fixtures ("Alterations") that affect any portion of the Property or any structures located on the Property 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. Tenant shall not attach any fixture or item of equipment to the Building without Landlord's prior written consent. All such Alterations 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"). 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, Bay Conservation and Development Commission ("BCDC") and/or any other governmental agency, Tenant shall not perform any of Tenant's Work until Tenant has obtained all requisite permits. 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 Building without the Landlord's prior written consent. Tenant is responsible for the repair of any damage to any utility system, structural element of the Building(s), 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 Tenants, or any other party, from expanding uses or structures allowed on the Property 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 or docks, or construction of any new buildings or docks, or moving existing buildings onto the Property, are



all subject to the prior written approval of the Landlord and all improvements are subject to the environmental review and permit regulations and approvals of same by all applicable local, state, and federal agencies.<sup>1</sup>

E. Tenant shall not substantially deface or change any floors, walls, ceilings, roofs, or partition any of the structures or improvements on the Property 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. Except as may be specifically approved 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 Property and which may be secured by any mechanic's, material men's or other lien against the Property or Landlord's interest therein.

F. Unless otherwise elected by Landlord as hereinafter provided, all Alterations made by Tenant shall become the property of Landlord and shall be surrendered to Landlord on or before the Lease Expiration Date, except as otherwise set forth in this Lease. Notwithstanding the foregoing, movable equipment, trade fixtures, personal property, furniture, or any other items that can be removed without material harm to the Property will remain Tenant's property (collectively, "Tenant Owned Property") and shall not become the property of Landlord but shall be removed by Tenant, at its sole cost and expense, not later than the Lease Expiration Date. When granting consent for any Alterations that require Landlord's consent, Landlord shall indicate whether it will require the removal of those Alterations prior to the Lease Expiration Date. Prior to making any Alterations not requiring Landlord's consent, Tenant shall request that Landlord notify Tenant whether Landlord requires Tenant to remove that Alteration prior to the Lease Expiration Date. Tenant shall repair at its sole cost and expense all damage caused to the Property or the Building by the removal of any Alterations that Tenant is required to remove or Tenant Owned Property. Landlord may remove any Tenant Owned Property or Alterations that Tenant is required but fails to remove at the Lease Expiration Date and Tenant shall pay to Landlord the reasonable cost of removal. Tenant's obligations under this Section 8F shall survive the expiration or earlier termination of this Lease. Notwithstanding the foregoing, 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 Property.

G. 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. 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. In the event Tenant fails to meet its obligations under this Section 8.G., Landlord's remedy shall be to enforce its indemnification rights under Section 12 below and/or seek specific performance.

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**9. LIENS**

Tenant shall keep the Property, the Building, and the Berkeley Waterfront free from any liens arising out of any work performed, materials furnished or obligations incurred by Tenant. In the event that Tenant shall not cause any such liens to be released of record, 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 Property 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 Property. Tenant shall give Landlord at least ten (10) business days' prior notice of the date of commencement of any Tenant's work on or in the Property to allow Landlord to post such notices.

**10. 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 Building(s) on the Property, and all leasehold improvements, fixtures, furniture, equipment and other improvements located on the Property in good-quality order, repair and condition, as further described in Exhibit B, Maintenance Standards. 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 Building(s), whether required by deterioration or by operations of Tenant or otherwise. This obligation includes any repairs to the roof.

B. Tenant accepts responsibility to make improvements and repairs to the building at Tenant's sole cost, estimated at \$65,000, to facilitate a contemporary, clean, updated, functional, first class commercial business. Tenant acknowledges that failure to meet this deadline shall constitute an event of default under this Lease. Necessary improvements and repairs include, but are not limited to:

- New refrigeration system
- Kitchen remodel
- Complete build-out of pizza kitchen that will serve takeaway orders.
- replacement of broken kitchen equipment
- a deep cleaning
- a remodel/refresh of the interior (paint, wall and floor coverings, lighting, counter tops)
- repair/replacement of kitchen equipment if needed
- implementation of all necessary improvements to establish a safe, modern retail space.

Tenant shall not open the pizza business to the public without prior approval from Landlord, verifying that such improvements and repairs have been completed to the satisfaction of Landlord.

C. Waiver. 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 untenable conditions of the Property or the Building.

D. "Good-quality order, repair and condition", as used herein, shall mean the maintenance, repair, or renovation of the Building, equipment, furniture, fixtures, outdoor lighting, signage, and appurtenances necessary to keep and maintain the Building in efficient and attractive condition, given the nature and age of the Building, at any time during the term of this Lease.

E. Tenant shall provide its own janitorial service for the Property, and Tenant shall remove all of Tenant's rubbish to such location(s) on the Property or within the Berkeley Waterfront as may be designated by Landlord for pick-up and disposal.

F. Landlord shall maintain or cause to be maintained, at Landlord's expense, all exterior structural elements of the Building (including the structural walls).

G. City shall use good faith efforts in providing for the safe and reasonable use of the Building and the Berkeley Waterfront. In the event of a dispute, if Landlord and Tenant cannot informally resolve the dispute, 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.

H. Nothing in this Paragraph 10 shall be deemed to affect or impair Landlord's rights under Paragraph 7 of this Lease. Other than Landlord's commitment in Paragraph 8 to repair the sewer lateral, 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 Property, or any part thereof. Landlord has made no representations respecting the condition of the Building, the Property, or the Berkeley Waterfront, except as specifically set forth in this Lease.

## **11. DAMAGE OR DESTRUCTION**

A. In the event the Property is damaged by fire, earthquake, flood, hurricane, act of God, the elements, or other casualty, then (unless this Lease is terminated pursuant to this Paragraph 11) Tenant shall forthwith repair the same, at its sole expense. In this event, 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, neither Tenant nor Landlord shall have any obligation to repair or rebuild the Property or the Building, as the case may be, 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 replacement cost of the Property or Buildings, 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 property is damaged or destroyed and agrees that such event shall be governed by the terms of this Lease.

## 12. INDEMNIFICATION

Landlord and its Affiliates shall not be liable to Tenant and, to the fullest extent permitted by law, Tenant hereby waives all claims against each of them, for any injury to or death of any person or damage to or destruction of property in or about the Property, the Building or the Berkeley Waterfront by or from any cause whatsoever, including, without limitation, gas, fire, oil, electricity or leakage or invasion of water or contaminants of any character from the roof, walls, basement, subsurface or other portion of the Property, the Building or Berkeley Waterfront, except any injury to or death of any person or damage to or destruction of any property which is caused solely by the willful misconduct of Landlord or its Affiliates. Tenant shall indemnify each of said parties and hold them harmless from and against any and all penalties, liability, claims, losses, damages, (including consequential damages), injury, cost and expense, including attorneys' fees and disbursements, arising out of or related to (i) Tenant's breach of any obligations under this Lease, or (ii) claims of injury to or death of persons or damage to property resulting directly or indirectly from Tenant's use or occupancy of the Property or activities of Tenant, its employees, agents, contractors or invitees in or about the Property, Building or Berkeley Waterfront or (iii) claims of injury to or death of persons or damage to property by Tenant or third parties (except Landlord) resulting from any cause or causes whatsoever while in or upon the Property or the Building. Such indemnity shall include, without limitation, the obligation to reimburse all costs of defense, including the legal fees for counsel selected by Landlord.

## 13. 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 Property or the Building, 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 Property or Berkeley Waterfront.

2. Special form property insurance for the full replacement cost of damage to the Building, including, without limitation, alterations, Tenant's Work, trade fixtures, furnishings, equipment, goods and inventory, and, during any term of construction of Tenant's Work, builders' All-Risk Insurance. Such insurance shall include coverage for vandalism and malicious

mischievous 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 coverage's except for workers compensation (i) shall name Landlord and each of its Affiliates as additional insured and, with respect to casualty insurance, as their respective interests may appear and (ii) 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 33 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 Property 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 13 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. Each of Tenant's property insurance policies insuring the Property and Tenant's property in the Property shall include a waiver of the insurer's right of subrogation against Landlord, 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.

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 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 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.

#### **14. COMPLIANCE WITH LAWS**

A. Tenant, at its sole expense, shall promptly comply with all 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 Property, insofar as any of the foregoing relate to or affect the condition, use or occupancy of the Property or the Building. Such compliance by Tenant shall include, without limitation, compliance with all obligations to alter, maintain, or restore the Property (and, as applicable, the Building), or construct improvements in or to the Property, 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 Property and making certain alterations and improvements may require an authorization, approval or permit (collectively, "Regulatory Approval") from a governmental authority having jurisdiction over the Property, including but not limited to BCDC. 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 Property 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 Property. By Landlord's entering into this Lease, neither Landlord nor any of Landlord's Council, boards, commissions, agencies, departments, or Affiliates obligates itself to any other governmental agent, board, commission or agency, or to Tenant, or to any other individual or entity, with regard to any discretionary action relating to development or operation of the Property or Berkeley Waterfront. 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 Property or Berkeley Waterfront. By entering into this Lease, Landlord is in no way modifying or limiting the obligation of Tenant to cause the Property to be used and occupied in accordance with all laws.

## **15. ASSIGNMENT AND SUBLEASE**

A. Any provision of this Lease to the contrary notwithstanding, 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 Property or Tenant's interest in and to the Property (collectively, an "Assignment") or sublet the Property or any portion thereof or permit the Property 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 Landlord's prior written consent in each instance.

B. If Tenant is a partnership or a limited liability company, any cumulative transfer of more than fifty percent (50%) of the partnership or the limited liability company membership interests, as applicable, shall constitute an Assignment and shall require Landlord's consent. Without limiting the foregoing, it shall constitute an Assignment and shall require Landlord's consent if: (a) Tenant is a limited partnership, and there is a transfer of a general partner interest; or (b) if Tenant is a limited liability company, and there is a transfer of any managing members

interest. If Tenant is a corporation, any change in a controlling interest of the voting stock of the corporation shall constitute an Assignment and shall require Landlord's prior consent.

C. 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 Property shall not be divested from Tenant in such proceedings or by any process of law without the prior written consent of Landlord.

D. 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 Property would be unreasonable.

## 16. INSPECTION

Landlord may enter the Property 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 Property 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 Building or Berkeley Waterfront; 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 Property resulting from Landlord's entry into the Property or any work performed therein by Landlord. Landlord shall at all times have a key to all doors in and about the Property (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 Property. 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 Property. Any entry to the Property 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 Property or an eviction (actual or constructive) of Tenant from the Property.

## 17. DEFAULT

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

A. Failure to Use Property. Failure to use the Property 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 five (5) 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 Section 365 of Title 11 of the United States Code applicable to shopping center leases.

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

G. Insolvency. The attachment, execution or other judicial seizure of all or substantially all of Tenant's assets in or on the Property; 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 Property and/or the Berkeley Waterfront 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 the Berkeley Waterfront 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 Substances. Any release or discharge of chemicals, toxics, solution in connection with the manufacturing and mixing of any illegal substance on the Property.

## **18. 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 Property or any part thereof and to expel and remove Tenant, any other person or party occupying the same and all property located therein, by any lawful means and to reenter the Property 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 relent the Property 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 Property, (2) in cleaning and making repairs and alterations to the Property reasonably necessary to return the Property to good condition for the use permitted by this Lease and otherwise to prepare the Property for reletting, (3) in removing all persons and property from the Property and transporting and storing any of Tenant's property left at the Property, although Landlord shall have no obligation to remove, transport, or store any of such property, and (4) in reletting the Property 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 Property by reason of Tenant's default.

## 19. 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 Property 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 Property 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 Property, Tenant shall immediately notify the Berkeley Police Department and Toxics Management Division 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 Property

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 Property or the Property 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 12 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 Property, or Berkeley Waterfront 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 Property, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Property, 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 Property or in any improvements. Without limiting the foregoing, if the presence of any Hazardous Substance in, on, under or about the Property caused or permitted by Tenant results in any contamination of the Property or Berkeley Waterfront, Tenant, at its sole expense, promptly shall take all action that is necessary to return the Property to the condition existing prior to the introduction of such Hazardous Substance in, on, under or about the Property; 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 Property. Tenant's obligations under this Paragraph 19.C. shall survive the expiration or termination of this Lease.

## **20. 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 17, 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.

## **21. EMINENT DOMAIN**

A. If all or any part of the Property 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 date title vests in the condemning authority or such authority takes possession of the Property. 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 Property by written notice to the other 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 Property taken shall be of such extent and nature as substantially to impede or impair Tenant's use of the balance of the Property. 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 Property 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 Property taken bears to the original rentable area of the Property. Landlord, upon receipt of the award, shall make all necessary repairs and alterations (exclusive of Tenant's trade fixtures, furniture, furnishings, personal property, decorations, signs and contents) to restore the portion of the Property 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 Property 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 property, 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.

## **22. 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 Property, (ii) any Declaration of Covenants, Conditions and Restrictions now or hereafter recorded affecting Berkeley Waterfront, 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.

## **23. 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 sub-tenancies or operate as an assignment to it of any or all such subleases or sub-tenancies.

## **24. TRANSFER BY LANDLORD**

In the event the original Landlord or any successor owner of Berkeley Waterfront shall sell or convey the Property or the Building, or any portion thereof that includes the Property, 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.

**25. 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 month's rent has been paid in advance.

**26. HOLDING OVER**

If, without objection by Landlord, Tenant holds possession of the Property after expiration of the Term of the Lease, Tenant shall become a tenant from month-to-month upon all provisions of this Lease applicable immediately prior to the expiration of such Term, or as otherwise fixed from time to time by Landlord, except that the Rent shall be 120% of that applicable immediately prior to the expiration of such Term, payable monthly, in advance. Each party shall give the other at least thirty (30) days' written notice of its intention to terminate such month-to-month tenancy.

**27. CHANGES BY LANDLORD**

A. The description of the Property and the location of any Property utility system(s), including without limitation electrical, plumbing, shall be subject to such minor changes as Landlord determines to be necessary or desirable in the course of any construction performed by or under the authorization of Landlord. No such changes shall invalidate or affect this Lease. Landlord shall effect such changes using reasonable efforts not to disturb Tenant's business. Tenant shall have no claim against Landlord for abatement of rent or loss of business as a result of any such disturbance.

B. Landlord shall have the right in its sole discretion to, among other things, change permitted land uses, install, maintain and remove public improvements, change the arrangement, character, use or location of entrances or passageways, walkways, streets, sidewalks, parking

areas, stairs, landscaping, toilets, and other facilities and portions of Berkeley Waterfront, and to change the name, number or designation by which the Building is commonly known. None of the foregoing shall be deemed an actual or constructive eviction of Tenant, nor shall it entitle Tenant to any reduction of rent hereunder or result in any liability of Landlord to Tenant; provided, however, Landlord shall not unreasonably obstruct or interfere with access to or the lines of sight toward the Property.

**28. GOVERNING LAW**

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

**29. SIGNAGE**

The size, design, material and location of any sign, marquee, awning, decoration or other attachment, advertising material or lettering on the Property 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 Landlord's General Design Requirements (if any) 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. Upon Landlord's approval of the Sign Plans, Landlord shall issue a sign permit to Tenant authorizing installation of the sign(s) reflected on the Sign Plans.

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 in writing by Landlord.

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 Property or Building contrary to the terms of this Paragraph 30. If Tenant fails to do so, Landlord may enter upon the Property 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 Building 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 at the Berkeley Waterfront.

**30. 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.

**31. 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:** Qasemi Abdul Moqim  
3794 Castro Valley Blvd. Castro Valley, CA 94546  
Telephone: (510) 849-2727  
Email: monesaq@yahoo.com

**To Landlord:** Director, Department of Parks, Recreation & Waterfront  
City of Berkeley  
2180 Milvia Street, Third Floor  
Berkeley, CA 94704

<b>With copies to:</b>	City Manager	Waterfront Manager
	City of Berkeley	City of Berkeley
	2180 Milvia Street, 5th Floor	201 University Avenue
	Berkeley, CA 94704	Berkeley, CA 94710

Notices to Landlord regarding Hazardous Substances required by Paragraph 19 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 Property.

Tenant will appoint an agent to receive the service of all proceedings, demands and notices the agent will be in charge of or occupying the Property 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 Property.

**32. 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.

**33. 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.

**34. 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 be 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.

**35. 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.

**36. 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.

**37. 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 39 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, payment of any sum due to Landlord under this Lease.

**38. TIME OF THE ESSENCE**

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

**39. 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 Property 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 Property or this Lease.

**40. 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.

**41. 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.

**42. CONFLICT OF INTEREST PROHIBITED**

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

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

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

**43. 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.

**44. REQUIRED ACCESSIBILITY DISCLOSURE**

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

“A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp

inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.” [Cal. Civ. Code Section 1938(e)]. Any CASp inspection shall be conducted in compliance with reasonable rules in effect at the Building with regard to such inspections and shall be subject to Landlord’s prior written consent.

**45. 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.

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

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

Tenant is subject to the LWO, as defined therein, Tenant shall be further required to maintain monthly records of those employees located on the leased Property. These records shall include the total number of hours worked, the number of hours spent providing service on the leased Property, the hourly rate paid, and the amount paid by Tenant for health benefits, if any, for each of its employees providing services under the lease. The records described in this 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 Property.

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

Tenant's failure to comply with this Section shall constitute default of the lease, upon which City may terminate this lease pursuant to 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 any of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty of forfeiture for Tenant's breach.

**47. 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 17 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.

**48. SANCTUARY CITY CONTRACTING**

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

A. "Data Broker" means either of the following:

- i. The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector business and government agencies;
- ii. The aggregation of data that was collected for another purpose from that for which it is ultimately used.

B. "Extreme Vetting" means data mining, threat modeling, predictive risk analysis, or other similar services. Extreme Vetting does not include:

- i. The City's computer-network health and performance tools;
- ii. Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, monitor for, prevent, and protect technology infrastructure and systems owned and operated by the City of Berkeley from potential cybersecurity events and cyber-forensic based investigations and prosecutions of illegal computer based activity.

**49. AUDIT.**

In addition to Landlord's financial audit rights set forth in Paragraph 3B., the City Auditor's Office, or its designee, may conduct an audit of Tenant's financial and compliance records maintained in connection with the operations and services performed under this Lease, and with the payments made under this Lease. In the event of such audit, Tenant agrees to make all such financial and compliance records available to the Auditor's Office, or to its designee.

City agrees to provide Tenant an opportunity to discuss and respond to any findings before a final audit report is filed.

**50. CITY BUSINESS LEASE, PAYMENT OF TAXES, TAX I.D. NUMBER.**

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

**51. SURVIVAL**

The provisions of Paragraphs 8, 9, 10, 12, 14, 19, and 40 and any other obligation of Tenant that, by its terms or nature, is to be performed after or is to survive termination of this Lease shall survive such termination.

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

TENANT:

Qasemi Abdul Moqim  
dba Berkeley Sportsman Center.

By: *Qasemi Abdul Moqim*  
Owner

LANDLORD:

City of Berkeley  
a California municipal corporation

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

Approved as to form:

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

Attest:

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

Registered by:

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

**TENANT INFORMATION**

Tax Identification No.

Incorporated: Yes  No

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

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

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

City Business License No. 005391, or Exempt pursuant to B.M.C. Section \_\_\_



**EXHIBIT A-1**

**PROPERTY DESCRIPTION**

The Property is located within the Berkeley Waterfront in the City of Berkeley, CA. The Property consists of the 1,800 square foot space known as the Bait Shop at 225 University Avenue, Berkeley, California, located on the southern side of the large building known as 235 University Avenue. This includes:

1. The name, Berkeley Sportsman Center
2. The primary phone number for Berkeley Sportsman Center, including (510)849-2727
3. A ground floor space of approximately 1,800 square feet located in the portion of the building known as 225 University Ave, Berkeley, California; and a basement floor space that contains laundry, bathroom, and storage space, bounded by a chain link fence on the north side. Also included is the outdoor plaza on the south side of the building, ending at the public sidewalk, and the hardscape area to the east of the building, ending at the curblin, containing the entryway to the shop and the picnic area, as shown in the depiction of the premises in Exhibit A-2.

EXHIBIT A-2

**DEPICTION OF PREMISES**

EXHIBIT A-2 – DEPICTION OF PROPERTY  
LEASE LINE – 225 UNIVERSITY AVE PROPERTY  
CITY OF BERKELEY

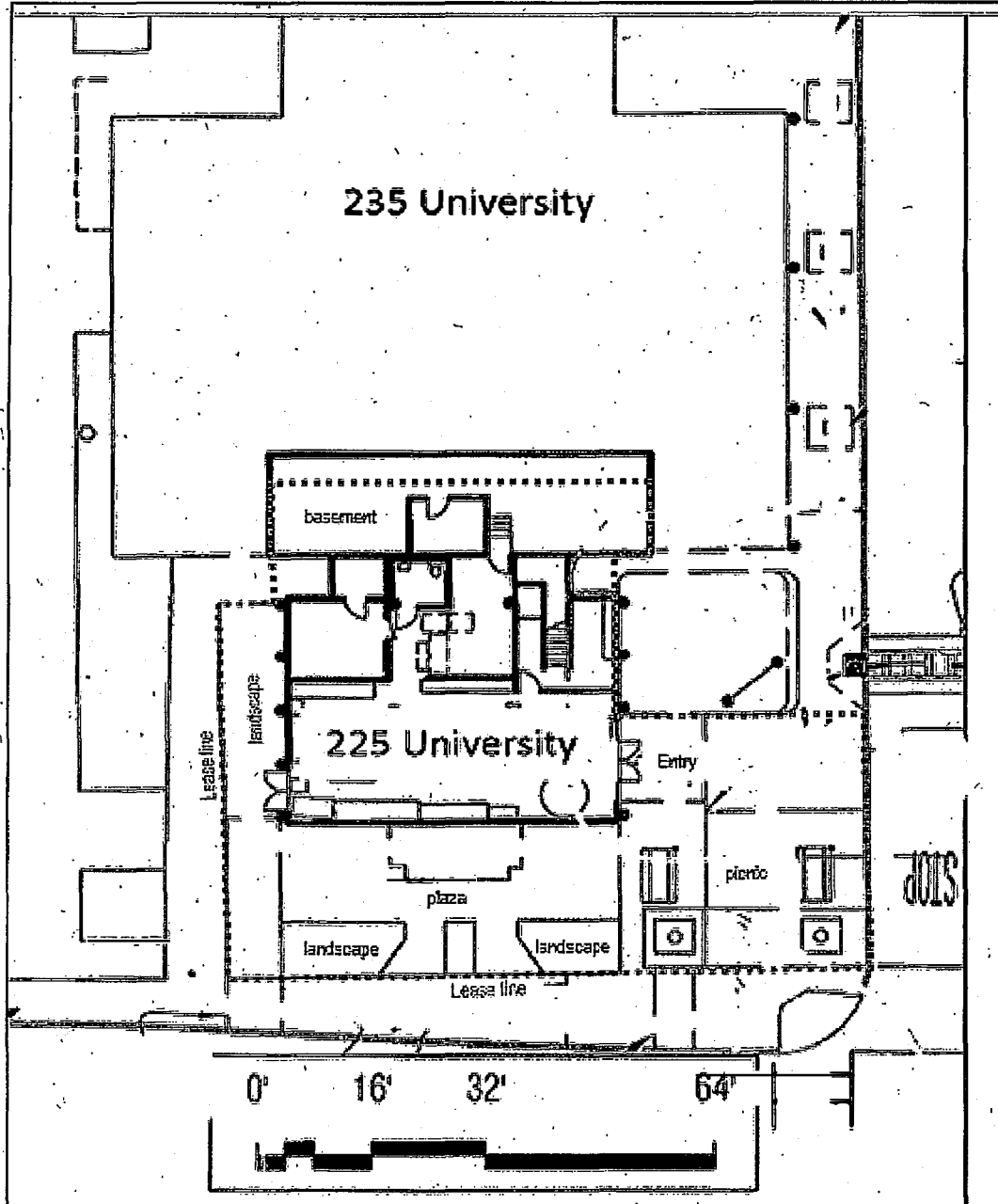


EXHIBIT A-2

## EXHIBIT B SCOPE OF SERVICES

- 1) Services: Lessee shall operate a retail establishment on the property that provides services to Marina visitors, employees and berthers. Specifically, Lessee shall operate a clean, commercially-appropriate retail space that at a minimum, provides a variety of convenience items and groceries; prepared foods; fishing licenses; as well as bait and tackle. Additionally, Lessee may and is encouraged to operate a pizza shop that sales pizza by the slice. They are also encouraged to build and sell custom fishing rods and/or other services defined below. Its design and décor would complement the Hana Japan Restaurant in the same building. In the operation of the retail establishment on the Property and the provision of those services, Lessee shall be permitted to engage in and conduct the following:
- a) Sale of groceries, convenience items, sundries, food and drink items. Lessee shall sell groceries, convenience items, sundries and food and drink items, including but not limited to, typical convenience store food and drink items (i.e., fresh, packaged, canned and frozen foods, packaged sandwiches, microwaveable packaged foods, candy, water, juice, energy drinks, chips etc.); sundries, including first aid, hygiene, cosmetic and other personal products; postcards, magazines, books and newspapers; cameras and film products; and similar items.
  - b) Sale of Prepared Foods: Lessee shall further be permitted to install and operate facilities to sell prepared foods, which would specifically include, but not be limited to typical coffee bar fare (i.e., espresso-style drinks, breakfast sandwiches and wraps, hot or cold cereal, pastries, bagels, etc.); typical lunch and light dinner fare (hot or cold sandwiches and wraps, hamburgers, pizza, hot dogs, soups, salads, etc.); and prepared fish or crab ready for consumption (steamed, boiled, raw, etc.).
  - c) Sale of Fishing Licenses, Bait, and Merchandise. Lessee shall sell State of California fishing licenses and bait and tackle. Lessee shall be permitted to sell all types of bait, whether live, fresh, or frozen.
  - d) Lessee shall be permitted to engage in retail and discount sales of fishing and related equipment. Including, but not limited to, fishing rods, fishing reels, fishing tackle, line winding, bait buckets, nets and other similar equipment together with marine apparel, sunglasses, sunscreen and other similar personal items. Further, Lessee shall be permitted to build and sell on the Premises custom fishing rods and other fishing equipment.
  - e) Lessee may use the Premises to sponsor events for children which involve the use of the Marina, after obtaining appropriate permits (if any are required), including but not limited to permits from the City which may be granted or denied in the City's sole discretion. The City will not, by granting or denying such permits, assume any responsibility for events sponsored by Lessee. Lessee agrees that the terms of this Agreement, including but not limited to Section 3 (Rent), Section 7(indemnification), and Section 6(insurance), and shall apply to such events, and that other conditions may be imposed before permits for particular events are granted.
  - f) Lessee may engage in other activities upon the Premises consistent with the foregoing, subject to the City Manager's prior written approval, which may be granted or denied at the City's sole discretion.
- 2) The hours of operation shall be as follows:
- a) Salmon/Crab Season: From 4:30 a.m. to 5:00 p.m., seven (7) days a week, weather permitting. If weather does not permit, then the hours of operation shall be from 8:00 a.m. to 5:00 p.m. The state of California, department of Fish and Game shall determine the dates of the Salmon Season.
  - b) Off Season (any dates outside of Salmon Season): From 8:00 a.m. to 5:00 p.m., seven (7) days a week.
  - c) Lessee may close its shop at 12:00 p.m. on Thanksgiving Day and maybe closed all day on Christmas Day.
  - d) Lessee, at its sole discretion, may increase the number of hours, days and months of operation to meet market

demand. Lessee may reduce its hour and days of operation below those specified above only with prior written approval of the Waterfront Manager.

Exhibit C

PAYMENT

- 1) The payments must be accompanied by an unaudited monthly statement of Gross Sales on Prepared Foods; Gross Sales on Fees and Licenses transacted during the preceding month.
- 2) Payments shall be made payable to the "City of Berkeley" and paid at the Finance Department at 1947 Center Street, Berkeley, CA 94704. Copies of all payments and statements of gross receipts shall be provided each month to the City's Waterfront manager at 201 University Avenue.

