

# COMMERCIAL OFFICE BUILDING LEASE

This Commercial Office Building Lease ("Lease") between **2000 Center Street LLC** ("Landlord"), and the **BERKELEY HOUSING AUTHORITY** ("Tenant"), is dated 8/28/2025 for reference purposes only.

## 1. LEASE OF PREMISES.

In consideration of the provisions of this Lease, Landlord leases to Tenant and Tenant leases from Landlord the Premises shown on the floor plan attached hereto as Exhibit "A," and further described at Section 2.i. The Premises are located within the Building and Project described in Section 2.j. Except as otherwise set forth herein, Tenant shall have the non-exclusive right in common with Landlord, other tenants, subtenants and invitees, to use of the Common Areas (as defined at Section 2.d).

## 2. DEFINITIONS

As used in this Lease, the following terms shall have the following meanings:

**a. Base Rent (initial): \$15,950.00 per month (\$2.90/rsf), Fully Serviced for months 8-12 of Lease Term. Rent and Tenant's share of Operating Costs shall be abated for months 1 through 7 of the Lease See Lease Article 5.5 for definition of "Rent".**

**b. Base Year.2026**

**c. Commencement Date:** Upon the later of 1/15/2026 or substantial completion of the Tenant Improvements.

**d. Common Areas:** the building lobbies, common corridors and hallways, restrooms, stairways, elevators and other generally understood public or common areas. Landlord shall have the right to regulate or restrict the use of the Common Areas, subject to the provisions contained in this Lease.

**e. Expiration Date: The last day of the 120<sup>th</sup> month of the Lease Term.**

**f. Index (Section 5.3): - DELETED**

**g. Landlord's Mailing Address:** P.O. Box 680, Alamo, CA 94507.

**Tenant's Mailing Address:** 2000 Center Street, Suite 100, Berkeley, CA 94704.

**h. Monthly Installments of Base Rent (initial):** \$15,950 per month, being \$2.90.rsaf, Fully Serviced for months 8-12 of Lease Term. See Lease Article 2n for Rent Adjustments & Rent Adjustment Dates.

**i. Premises:** that portion of the Building containing approximately 5,500 square feet of Rentable Area as set forth on Exhibit "A" and described in Section 2.k; located on the first floor of the Building and known as Suite 100.

**j. Project:** -the ground floor of the 2000 Center Street, Berkeley CA building of which the Premises are a part, including common areas, (the "Building"), except for the spaces known as 2175 Milvia Street (United Services Credit Union) and 2002 Center Street (K's Café). The project, as defined herein, consists of a total of 11,600 usable square feet.

**k. Total Due Upon Lease Execution:** \$31,900 (this amount includes payment of Base Rent for the 8<sup>th</sup> month of the Lease Term and the Security Deposit.

**l. Security Deposit (Section 7):** \$15,950.00.

**m. State:** California.

**n. Tenant's Rent Adjustments and Adjustment Dates:** Base Rent to be increased by 2.5% on the 13<sup>th</sup>, 25<sup>th</sup>, 37<sup>th</sup>, 49<sup>th</sup> and 61<sup>st</sup> months after Commencement Date, and subsequently by 3.0% on the 73<sup>rd</sup>, 85<sup>th</sup>, 97<sup>th</sup> and 109<sup>th</sup> month after Commencement Date. The schedule of rents will be as follows:

- o Months 1-7 Free Rent
- o Months 8 – 12 \$2.90 Per RSF Per Month = \$15,950 Per Month
- o Months 13-24 \$2.97 Per RSF Per Month = \$16,349 Per Month
- o Months 25-36 \$3.05 Per RSF Per Month = \$16,758 Per Month
- o Months 37-48 \$3.12 Per RSF Per Month = \$17,177 Per Month
- o Months 49-60 \$3.20 Per RSF Per Month = \$17,606 Per Month
- o Months 61-72 \$3.28 Per RSF Per Month = \$18,134 Per Month

- Months 73-84 \$3.38 Per RSF Per Month = \$18,678 Per Month
- Months 85-96 \$3.48 Per RSF Per Month = \$19,239 Per Month
- Months 97-108 \$3.59 Per RSF Per Month = \$19,815 Per Month
- Months 109-120 \$3.69 Per RSF Per Month = \$20,410 Per Month

**o. Tenant's Proportionate Share of Project Operating Costs is 11.18%.** Such share is a fraction, the numerator of which is the 5,500 rentable sq. ft. of the Premises, and the denominator of which is the 49,214 rentable square feet of the Building.

**p. Tenant's Use Clause (Section 8):** General Office Use and any other use permitted by law. Landlord hereby acknowledges that the public will be visiting the Premises for Tenant's services and Tenant's public meetings.-

**q. Term:** 120 Months, commencing on the Commencement Date and expiring at midnight on the Expiration Date.

### 3. EXHIBITS AND ADDENDA.

The exhibits and addenda listed below (unless lined out) are incorporated by reference in this Lease:

- a. Exhibit "A" - Floor Plan showing the Premises.
- b. Exhibit "B" – Landlord's Work.
- c. Exhibit "C" - Rules and Regulations.
- d. Exhibit "D" – Schedule of Janitorial Services

### 4. DELIVERY OF POSSESSION.

Tenant shall be provided free access to Premises thirty (30) day prior to the Commencement Date (or the earlier delivery if improvements are substantially completed sooner), in order to install Tenant's furniture, fixtures and equipment, but Tenant shall not interfere with the improvement work being provided by Landlord pursuant to Exhibit B (Landlord's Work). If for any reason Landlord does not deliver possession of the Premises to Tenant on the Commencement Date: (a) Landlord shall not be subject to any liability for such failure, and (b) the Expiration Date shall not change and the validity/enforceability of this Lease shall not be impaired, but Rent and Operating costs shall be abated until delivery of possession. The seven (7) months of free rent shall commence on the date that Landlord delivers possession of the Premises to Tenant. "Delivery of possession" shall be deemed to occur on the date Landlord provides Tenant with keys to Premises. Landlord shall use commercially reasonable efforts to deliver the premises to Tenant as soon as commercially reasonably possible after January 15, 2026.

### 5. RENT.

**5.1 Payment of Base Rent. Rent and Operating Costs shall be abated for months 1 through 7 of lease. Subsequently,** Tenant shall pay the Base Rent for the Premises pursuant to the schedule listed in lease Article 2n. Monthly Installments of Base Rent shall be payable in advance on the first day of each calendar month of the Term. Tenant shall pay Landlord the first Monthly Installment of Base Rent when Tenant executes the Lease. In the subsequent month of the lease, Tenant shall pay a prorated amount of rent, such that future month's rent payments shall be due on the 1<sup>st</sup> day of the month. For example, if the actual Commencement Date is 1/10/26, Tenant's prepaid first month's rent shall apply to the period 1/10/26-2/9/26, and Tenant shall then pay a partial month rent for the period 2/11/26-2/28/26, and subsequently shall pay rent on the first day of each calendar month thereafter.

**5.2 - Minimum Annual Adjustment.** -DELETED

**5.3 Adjusted Base Rent-**See Article 2n.

**5.4 Project Operating Costs.** Tenant's payment of Project Operating costs will be abated for months 1-7 of Lease, the Rent Abatement Period.

**a.** In order that the Rent payable during the Term reflect any increase in Project Operating Costs, Tenant shall pay to Landlord as Rent, Tenant's Proportionate Share of all increases in costs, expenses and obligations attributable to the Project and its operation, all as provided below.

**b.** If, during any calendar year during the Term, Project Operating Costs exceed the Project Operating Costs for the Base Year, Tenant shall pay to Landlord, in addition to the Base Rent and all other payments due under this Lease, an amount equal to Tenant's Proportionate Share of such excess Project Operating Costs in accordance with the provisions of this Section 5.4b.

**(1)** The term "Project Operating Costs" shall include all those items described in the following subparagraphs (a) and (b):

**(a)** All taxes, assessments, water and sewer charges and other similar governmental charges levied on or attributable to the Building or Project or their operation, including without limitation, (i) real property taxes or assessments levied or assessed against the Building or Project, including, property tax rebates payable to tax exempt building tenants if property taxes are reduced due to their exempt status, (ii) assessments or charges levied or assessed against the Building or Project by any redevelopment agency, (iii) any tax measured by gross rentals received from the leasing of the Premises, Building or Project, excluding any net income, franchise, capital stock, estate or inheritance taxes imposed by the State or federal government or their agencies, branches or departments; provided that if at any time during the Term any governmental entity levies, assesses or imposes on Landlord any (1) general or special, ad valorem or specific, excise, capital levy or other tax, assessment, levy or charge directly on the Rent received under this Lease or on the rent received under any other leases of space in the Building or Project, or (2) any license fee, excise or franchise tax, assessment, levy or charge measured by or based, in whole or in part, upon such rent, or (3) any transfer, transaction, or similar tax, assessment, levy or charge based directly or indirectly upon the transaction represented by this Lease or such other leases, or (4) any occupancy, use, per capita or other tax, assessment, levy or charge based directly or indirectly upon the use or occupancy of the Premises or other premises within the Building or Project, then any such taxes, assessments, levies and charges shall be deemed to be included in the term Project Operating Costs. If at any time during the Term the assessed valuation of, or taxes on, the Project are not based on a completed Project having at least ninety five percent (95%) of the Rentable Area occupied, then the "taxes" component of Project Operating Costs shall be adjusted by Landlord to reasonably approximate the taxes which would have been payable if the Project were completed and at least ninety-five percent (95%) occupied.

**(b)** Operating costs incurred by Landlord in maintaining and operating the Building and Project, including without limitation the following: costs of (1) utilities; (2) supplies; (3) insurance (including public liability, property damage, earthquake, and fire and extended coverage insurance for the full replacement cost of the Building and Project as required by Landlord or its lenders for the Project; (4) services of independent contractors; (5) compensation (including employment taxes and benefits) of all persons who perform duties connected with the operation, maintenance, repair or overhaul of the Building or Project, and equipment, improvements and facilities located within the Project, including without limitation engineers, janitors, painters, floor waxers, window washers, security and parking personnel and gardeners (but excluding persons performing services not uniformly available to or performed for the benefit of substantially all Building or Project tenants); (6) operation and maintenance of a room for delivery and distribution of mail to tenants of the Building or Project as required by the U.S. Postal Service (including, without limitation, an amount equal to the fair market rental value of the mail room premises); (7) management of the Building or Project, whether managed by Landlord or an independent contractor (including, without limitation, an amount equal to the fair market value of any on-site manager's office) which said cost shall not exceed 8.0% of Gross rents of the building; provided, however that the 8.0% fee shall also be utilized and limited in the Base Year expenses. (8) rental expenses for (or a reasonable depreciation allowance on) personal property used in the maintenance, operation or repair of the Building or Project; (9) costs, expenditures or charges (whether capitalized or not) required by any governmental or quasi-governmental authority; (10) amortization of capital expenses (including financing costs) (i) required by a governmental entity for energy conservation or life safety purposes, or (ii) made by Landlord to reduce Project Operating Costs; and (11) any other costs or expenses incurred by Landlord under this Lease and not otherwise reimbursed by tenants of the Project. If at any time during the Term, less than ninety-five percent (95%) of the Rentable Area of the Project is occupied, the "operating costs" component of Project Operating Costs shall be adjusted by Landlord to reasonably approximate the operating costs, which would have been incurred if the Project had been at least ninety-five percent (95%) occupied.

**(c)** Operating costs shall not include the following: (1) depreciation on the Building or equipment or systems therein; (2) debt service; (3) rental under any ground or underlying lease; (4) interest; (5) attorney's fees and expenses incurred in connection with lease negotiations with prospective Building tenants, (6) the cost (including any amortization thereof) of any improvements or alterations which would be properly classified as capital expenditures according to generally accepted property management practices (except to the extent expressly included in Operating Costs pursuant to Article 5.4b (1)(b)); (7) the cost of decorating, improving for tenant occupancy, (8) painting or redecorating portions of the Building to be demised to tenants, (9) executive salaries, (10) advertising or real estate brokers or other leasing commissions.

**(2)** Tenant's Proportionate Share of Project Operating Costs shall be payable by Tenant to Landlord as follows:

**(a)** Beginning with the calendar year following the Base Year and for each calendar year thereafter ("Comparison Year"), Tenant shall pay Landlord an amount equal to Tenant's Proportionate Share of the Excess Expenses. "Excess Expenses" is the amount by which the Project Operating Costs incurred by Landlord in the Comparison Year exceeds the total amount of Project Operating Costs payable by Landlord for the Base Year.

**(b)** To provide for current payments of Excess Expenses, Tenant shall, at Landlord's request, pay as additional rent during each Comparison Year, an amount equal to Tenant's Proportionate Share of the Excess Expenses payable

during such Comparison Year, as estimated by Landlord from time to time. Such payments shall be made in monthly installments, commencing on the first day of the month following the month in which Landlord notifies Tenant of the amount it is to pay hereunder and continuing until the first day of the month following the month in which Landlord gives Tenant a new notice of estimated Excess Expenses. It is the intention hereunder to estimate from time to time the amount of the Excess Expenses for each Comparison Year and Tenant's Proportionate Share thereof, and then to make an adjustment in the following year based on the actual Excess Expenses incurred for that Comparison Year.

- (c) On or before April 1st of each Comparison Year after the first Comparison Year (or as soon thereafter as is practical), Landlord shall deliver to Tenant a statement setting forth Tenant's Proportionate Share of the Excess Expenses for the preceding Comparison Year. If Tenant's Proportionate Share of the actual Excess Expenses for the previous Comparison Year exceeds the total of the estimated monthly payments made by Tenant for such year, Tenant shall pay Landlord the amount of the deficiency within thirty (30) days of the receipt of the statement. If such total exceeds Tenant's Proportionate Share of the actual Excess Expenses for such Comparison Year, then Landlord shall credit against Tenant's next ensuing monthly installment(s) of additional rent an amount equal to the difference until the credit is exhausted. If a credit is due from Landlord on the Expiration Date, Landlord shall pay Tenant the amount of the credit. The obligations of Tenant and Landlord to make payments required under this Section 5.4 shall survive the Expiration Date.
- (d) Tenant's Proportionate Share of Excess Expenses in any Comparison Year having less than 365 days shall be appropriately prorated.
- (e) If any dispute arises as to the amount of any additional rent due hereunder, Tenant shall have the right after reasonable notice and at reasonable times to inspect and audit Landlord's accounting records at Landlord's accounting office and, if after such inspection and audit Tenant still disputes the amount of additional rent owed, a certification to the proper amount shall be made by Landlord's certified public accountant, if after such certification by Landlord's certified public accountant Tenant continues to dispute such amount of additional rent, Tenant, without waiving any rights to contest such amount of additional rent and exercise remedies hereunder, shall pay such amount as demanded. Tenant shall pay the cost of such certification unless it is determined that Landlord's original statement overstated Project Operating Costs by more than five percent (5%).
- (f) Tenant shall not be responsible for Tenant's proportionate share of any Excess Expenses until the rent abatement period ends.

**5.5 Definition of Rent.** All costs and expenses which Tenant assumes and/or agrees to pay to Landlord under this Lease, including Operating costs, shall be deemed additional rent (which, together with the Base Rent is sometimes referred to as the "Rent"). The Rent shall be paid to the Landlord at such place, as Landlord may from time to time designate in writing, without any prior demand therefor and without deduction or offset, in lawful money of the United States of America.

**5.6 Rent Control.** If the amount of Rent or any other payment due under this Lease violates the terms of any governmental restrictions on such Rent or payment, then the Rent or payment due during the period of such restrictions shall be the maximum amount allowable under those restrictions. Upon termination of the restrictions, Landlord shall, to the extent it is legally permitted, recover from Tenant the difference between the amounts received during the period of the restrictions and the amounts Landlord would have received had there been no restrictions.

**5.7 Taxes Payable by Tenant.** In addition to the Rent and any other charges to be paid by Tenant hereunder, Tenant shall reimburse Landlord upon demand for any and all taxes payable by Landlord (other than net income taxes) which are not otherwise reimbursable under this Lease, whether or not now customary or within the contemplation of the parties, where such taxes are upon, measured by or reasonably attributable to (a) the cost or value of Tenant's equipment, furniture, fixtures and other personal property located in the Premises, or the cost or value of any leasehold improvements made in or to the Premises by or for Tenant (other than Building Standard Work made by Landlord), regardless of whether title to such improvements is held by Tenant or Landlord; (b) the gross or net Rent payable under this Lease, including, without limitation, any rental or gross receipts tax levied by any taxing authority with respect to the receipt of the Rent hereunder; (c) the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion thereof; or (d) this Lease transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises. If it becomes unlawful for Tenant to reimburse Landlord for any costs as required under this Lease, the Base Rent shall be revised to net Landlord the same net Rent after imposition of any tax or other charge upon Landlord as would have been payable to Landlord but for the reimbursement being unlawful.

Taxes payable by Tenant shall not include income tax, franchise tax, transfer tax, inheritance tax, or capital stock tax, unless, due to a change in the method of taxation, any of such taxes is levied or assessed against Landlord in lieu of, as a substitute (in whole or in part) for or as an addition to, any other charge which would otherwise constitute a tax expense.

**5.8. Renewal Options.** Tenant's two (2) five (5) year renewal options shall be for a renewal terms commencing on the 11th and 16th anniversary dates of the Commencement Date, as defined above, and shall be effective provided that, at the time of Tenant's exercise of such options, Tenant is not in default of the Lease, and provided further that Tenant's exercise of each successive option shall be made in the following manner:

a. Tenant must give written notice of exercise of its option ("Option Notice") to Landlord not less than 6 months before the expiration of the then-current term.

b. The Base monthly rent for the first year of the next renewal term shall be ninety-five (95%) of fair market value rent for like space in like facilities and for like uses in the downtown Berkeley area (hereinafter "Area") at the time of Tenant's exercise of option. The amount of rent shall be established by written agreement of the parties, or upon the failure of the parties to mutually agree on a fair rental figure, in accordance with the following procedure:

1. If the parties have not mutually agreed upon the Base rental amount to be paid for the initial year of the next renewal term provided for herein within 150 days before the expiration of the initial term, Tenant shall appoint one (1) representative who shall be an MAI real estate appraiser experienced in the appraisal of similar space in the Area to act as its appraiser ("Tenant's Appraiser"). Tenant's Appraiser so appointed shall determine the then fair market rental value of the use to which Tenant is then utilizing the demised premises pursuant to the terms and conditions of this Lease. The determination of said fair market rental value shall be made by Tenant's Appraiser within thirty (30) days of the commencement of said 150-day period prior to the expiration of the initial term or option period, as the case may be, and he shall submit said determination in writing, signed by him. The determination shall be submitted in duplicate with one copy delivered to Landlord and one copy to Tenant.
2. In the event that Landlord does not agree on the fair market base rental value for the demised premises for the initial year of the successive option period as determined by Tenant's Appraiser, Landlord shall appoint a second appraiser who shall be an MAI appraiser experienced in the appraisal of similar space in the Area ("Landlord's Appraiser"). The fair market base rental value for the initial year of the next renewal term shall be established by agreement of the Tenant's Appraiser and Landlord's Appraiser so appointed, which determination shall be made within sixty (60) days of the commencement of said 150 day period prior to the expiration of the initial term or prior option period, as the case may be, and shall be submitted in writing as provided in paragraph 2.3(b)(1), above.
3. In the event that said Tenant's Appraiser and Landlord's Appraiser cannot agree on the fair market base rental value for the demised premises for the initial year of the successive option period, said Tenant's Appraiser and Landlord's Appraiser shall appoint a third appraiser who shall be an MAI appraiser experienced in the appraisal of similar space in the Area. The fair market base rental value for the initial year of the next renewal term shall be established by agreement of the two (2) of the three (3) appraisers so appointed, which determination shall be made within ninety (90) days of the commencement of said 150 day period prior to the expiration of the initial term or prior option period, as the case may be, and shall be submitted in writing as provided in paragraph 2.3(b)(1), above.
4. If the fair market base rental value of the premises is not agreed upon by two (2) out of three (3) appraisers as provided in paragraph 2.3(b)(3), above, or if the initially appointed appraisers fail to agree on the appointment of a third appraiser within ninety (90) days prior to the expiration of the Lease term in question, Landlord and Tenant shall agree to utilize the average of the fair market rental values determined by the three (3) appraisers as the rent for applicable renewal option period.-Each party shall pay the charges and expenses of its respective appraiser. The charges and expenses of the third appraiser and the arbitrator, if required, shall be paid by the parties in equal shares.

## **6. INTEREST AND LATE CHARGES.**

If Tenant fails to pay when due any Rent or other amounts or charges which Tenant is obligated to pay under the terms of this Lease, all such unpaid amounts shall bear interest at the maximum rate then allowed by law. Tenant acknowledges that the late payment of any Monthly Installment of Base Rent will cause Landlord to lose the use of that money and incur costs and expenses not contemplated under this Lease, including without limitation, administrative and collection costs and processing and accounting expenses, the exact amount of which is extremely difficult to ascertain. Therefore, if any such installment is not received by Landlord by the seventh (7th) calendar day from and including the date it is due, Tenant shall pay Landlord a late charge equal to ten percent (10%) of such installment (in addition to the installment amount owed and interest), which Tenant acknowledges and agree is fair compensation to Landlord for losses caused by Tenant's late payment. Acceptance of any interest or late charge shall not constitute a waiver of Tenant's default by Landlord, and nor shall Landlord be prevented from exercising any other rights or remedies available to Landlord under this Lease.

## 7. SECURITY DEPOSIT.

a. Tenant shall deposit with Landlord the Security Deposit set forth at Section 2.I upon execution of this Lease, as security for Tenant's faithful performance of its obligations under this Lease. Landlord and Tenant agree that the Security Deposit may be commingled with funds of Landlord and Landlord shall have no obligation or liability for payment of interest on such deposit. Tenant shall not mortgage, assign, transfer or encumber the Security Deposit without the prior written consent of Landlord and any attempt by Tenant to do so shall be void, without force or effect and shall not be binding upon Landlord.

b. If Tenant fails to pay any Rent or other amount when due and payable under this Lease, or fails to perform any of the terms hereof, Landlord may appropriate and apply or use all or any portion of the Security Deposit for Rent payments or any other amount then due and unpaid, for payment of any amount for which Landlord has become obligated as a result of Tenant's default or breach, and for any loss or damage sustained by Landlord as a result of Tenant's default or breach, and Landlord may so apply or use this deposit without prejudice to any other remedy Landlord may have by reason of Tenant's default or breach. If Landlord so uses any of the Security Deposit, Tenant shall, within ten (10) days after written demand therefor, restore the Security Deposit to the full amount originally deposited; Tenant's failure to do so shall constitute an act of default hereunder and Landlord shall have the right to exercise any remedy provided for at Section 27 hereof. Within fifteen (15) days after the Term (or any extension thereof) has expired or Tenant has vacated the Premises, whichever shall last occur, and provided Tenant is not then in default on any of its obligations hereunder, Landlord shall return the Security Deposit to Tenant, or, if Tenant has assigned its interest under this Lease, to the last assignee of Tenant. If Landlord sells its interest in the Premises, Landlord may deliver the Security Deposit to the purchaser of Landlord's interest and thereupon be relieved of any further liability or obligation with respect to the Security Deposit.

## 8. TENANT'S USE OF THE PREMISES.

a. Tenant shall use the Premises solely for the purposes set forth in Tenant's Use Clause. Tenant shall not use or occupy the Premises in violation of law or any covenant, condition or restriction affecting the Building or Project or the certificate of occupancy issued for the Building or Project, and shall, upon notice from Landlord, immediately discontinue any use of the Premises which is declared by any governmental authority having jurisdiction to be a violation of law or the certificate of occupancy. Tenant, at Tenant's own cost and expense, shall comply with all laws, ordinances, regulations, rules and/or any directions of any governmental agencies or authorities having jurisdiction which shall, by reason of the nature of Tenant's use or occupancy of the Premises, impose any duty upon Tenant or Landlord with respect to the Premises or its use or occupation. A judgment of any court of competent jurisdiction or the admission by Tenant in any action or proceeding against Tenant that Tenant has violated any such laws, ordinances, regulations, rules and/or directions in the use of the Premises shall be deemed to be a conclusive determination of that fact as between Landlord and Tenant. Tenant shall not do or permit to be done anything which will invalidate or increase the cost of any fire, extended coverage or other insurance policy covering the Building or Project and/or property located therein, and shall comply with all rules, orders, regulations, requirements and recommendations of the Insurance Services Office or any other organization performing a similar function. Tenant shall promptly upon demand reimburse Landlord for any additional premium charged for any such policy by reason of Tenant's failure to comply with the provisions of this Section. Tenant shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other tenants, occupants or visitors of the Building or Project, or injure or annoy them, or use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or suffer to be committed any waste in or upon the Premises. Notwithstanding anything to the contrary contained herein, Landlord acknowledges and agrees that Tenant is a public entity servicing members of the public during its normal business hours and after not less than 24 hours prior notice, shall allow for additional public access to the building and premises during Tenant's public meetings. See Lease Article 9 for additional conditions related to after-hours usage.

b. **Hazardous Materials.** Tenant shall not transport, use, store, maintain, manufacture, handle, dispose, release or discharge any "Hazardous Material" upon the premises, except that Tenant may use and store hazardous substances upon the premises if such substances are customarily used in the business of Tenant to be carried upon the premises, and such use or storage is in compliance with all environmental laws. The term "Hazardous Material" for purposes hereof shall mean any chemical, substance, material, or waste or component thereof which is now or hereafter listed, defined, or regulated as a hazardous or toxic chemical, substance, material, or waste or component thereof by any federal, state, or local governing or regulatory body having jurisdiction, or which would trigger any employee or community "right-to-know" requirements adopted by any such body, or for which any such body has adopted any requirements for the preparation or distribution of any MSDS. If any Hazardous Material is released, discharged or disposed of by Tenant or any other occupant (claiming under Tenant) of the Premises, or their employees, agents, or contractors, on or about the Property in violation of the foregoing provisions, Tenant shall immediately, properly, and in compliance with applicable Laws clean up and remove the Hazardous Material from the Property and any other affected property and clean or replace any affected personal property (whether or not owned by Landlord), at Tenant's sole expense. Such clean up and removal work shall be subject to Landlord's prior written approval (except in emergencies), and shall include, without limitation, any testing, investigation, and the preparation and

implementation of any remedial action plan required by any governmental body having jurisdiction or reasonably required by Landlord. If Tenant fail to comply with the provisions of this Section within five (5) days after written notice by Landlord, or such shorter time as may be required by Law, emergency and/or in order to minimize any hazard to persons or property, Landlord may (but shall not be obligated to) arrange for such compliance directly or as Tenant's agent through contractors or other parties selected by Landlord, at Tenant's sole expense (without limiting Landlord's other remedies under this Lease or applicable law).

## 9. SERVICES AND UTILITIES.

Provided that Tenant is not in default of the Lease terms, Landlord agrees to furnish to the Premises and to the Common Areas shared by other tenants, the following Services, Utilities and Supplies:

- Electricity for lighting and normal desk top office equipment and normal copying equipment.
- Electricity and/or gas as necessary to provide power for Heating, Ventilating and Air-conditioning (HVAC) as required in Landlord's judgement for the comfortable use and occupancy of Premises.
- Water and sewer service to Common Area restrooms and approved plumbing installations within Premises.
- Trash disposal.
- Janitorial services and supplies in accordance with **Exhibit "D"**.
- Maintenance and lighting of the common stairs, hallways, lobbies, common entries and restrooms in the Building.
- Elevator service and lighting replacement for building standard lights in a manner that such services are customarily furnished to comparable office buildings in the area.

a. Such Services, Utilities and Supplies shall be provided during generally recognized business days, and during the hours of 7am to 6pm, Monday through Friday except legal holidays, and during any Tenant Meetings that must be accessible to the public, per **Exhibit "C"**, the Rules and Regulations of the Building. If Tenant desires HVAC at any other time, Landlord shall use commercially reasonable efforts to furnish such service upon reasonable notice from Tenant and Tenant shall pay Landlord's actual charges therefor on demand. Landlord shall not be in default hereunder or be liable for any damages directly or indirectly resulting from, nor shall the Rent be abated by reason of: (i) the installation, use or interruption of use of any equipment in connection with the furnishing of any of the foregoing Services, Utilities and Supplies, (ii) failure to furnish or delay in furnishing any such Services, Utilities and Supplies where such failure or delay is caused by accident or any condition or event beyond the reasonable control of Landlord, or by the making of necessary repairs or improvements to the Premises, Building or Project, or (iii) the limitation, curtailment or rationing of, or restrictions on, use of water, electricity, gas or any other form of energy serving the Premises, Building or Project. Landlord shall not be liable under any circumstances for a loss of or injury to property or business, however occurring, through or in connection with or incidental to failure to furnish any such Services, Utilities and Supplies.

NOTE: The public shall have access to all of Tenant's meetings held during and after normal business hours. Tenant may hold Board meetings, that are open to the public, Monday through Friday. Landlord will make arrangements for public access through the Center Street entry by changing the automatic locking schedule as necessary to accommodate said meetings and shall arrange for after-hours HVAC appropriate for said usage. Tenant will provide Landlord with not less than 24 hours' notice, and Landlord will promptly make changes to the aforementioned access schedule. Landlord shall provide and install a keypad door entry lock on the All-Gender restroom adjacent to the Center Street lobby and will provide entry code to Tenant. Tenant shall insure that the All-Gender Restroom adjacent to the Center Street lobby shall be kept locked and available only for Tenant and Tenant's invitees or visitors.

b. Tenant shall not, without the written consent of Landlord, use any apparatus or device in the Premises which consumes more electricity than is usually furnished or supplied for the use of premises as general office space. **TENANT SHALL PROHIBIT THE USE OF ELECTRIC SPACE HEATERS WITHIN THE PREMISES BY ANY AND ALL EMPLOYEES AND/OR GUESTS.** Tenant shall not connect any apparatus with electric current except through existing electrical outlets in the Premises.

c. Nothing contained in this Section shall restrict Landlord's right to require at any time separate metering of utilities furnished to the Premises. In the event utilities are separately metered, Tenant shall pay promptly upon demand for all utilities consumed at utility rates charged by the local public utility plus any additional expense incurred by Landlord in keeping account of the utilities so consumed. Tenant shall be responsible for the maintenance and repair of any such meters at its sole cost.

## 10. CONDITION OF THE PREMISES.

Tenant's taking possession of the Premises shall be deemed conclusive evidence that as of the date of taking possession the Premises are in good order and satisfactory condition, except for such matters as to which Tenant provided Landlord with written notice on or before the Commencement Date. No promise of Landlord to alter, remodel, repair or improve the Premises, the Building or the Project and no representation, express or implied, respecting any matter or thing relating to the Premises, Building, Project or this Lease (including, without limitation, the condition of the Premises, the Building or the Project) have been made to Tenant by Landlord or its broker or sales agent, other than as may be expressly contained herein or in a separate exhibit or addendum signed by Landlord and Tenant. Notwithstanding the foregoing, Landlord shall deliver the Premises in clean condition, free of hazardous materials, and in good operating condition, including the HVAC mechanical, electrical and plumbing systems, and in good working order. Landlord shall warrant the systems at its sole cost and expense for the duration of the Term, including any extensions, except in the event of damage caused by Tenant and except for any Tenant to which the Tenant has subleased or assigned the Lease. Landlord acknowledges that the limitation on the duration of warranties in the aforementioned sentence shall not apply to an assignment to Tenant's affiliate, which affiliate entity shall have the same rights as to the warranty as Tenant. **See Exhibit "B" for Landlord's Work.**

## 11. CONSTRUCTION, REPAIRS AND MAINTENANCE.

**a. Landlord's Obligations.** Landlord shall perform Landlord's Work on the Premises as described in **Exhibit "B"**. Landlord shall maintain in good order, condition and repair the Building and all other portions of the Premises which are not otherwise the obligation of Tenant or of any other tenant in the Building.

**b. Tenant's Obligations.**

(1) Tenant, at Tenant's sole expense, shall maintain the following:

- (a) suite entry security and lock system.
- (b) interior door key or lock changes, which must be conformed to building master.
- (c) any maintenance and repair to property, equipment or fixtures owned by Tenant; and
- (d) any items or installations made by or at the expense of Tenant.

(2) Except for Services, Utilities and Supplies and Landlord's Work to be performed or provided by Landlord pursuant to Sections 9 and 11 hereof, Tenant, at Tenant's sole expense, shall maintain the Premises in good order, condition and repair, including the interior surfaces of the ceilings, walls and floors, all doors, locks and hardware, all interior windows, all plumbing, pipes and fixtures, electrical wiring, switches and fixtures, Building Standard furnishings, and additionally, will maintain in good order, condition and repair any items or installations made by or at the expense of Tenant.

(3) Tenant shall be responsible for all repairs and alterations in and to the Premises, Building and Project and the facilities and systems thereof, the need for which arises out of (i) Tenant's use or occupancy of the Premises, (ii) the installation, removal, use or operation of Tenant's Property (as defined in Section 13) in or about the Premises, (iii) the moving of Tenant's Property into or out of the Building, or (iv) the act, omission, misuse or negligence of Tenant, its agents, contractors, employees or invitees.

(4) If Tenant fails to maintain the Premises in good order, condition and repair, Landlord shall give Tenant notice to do such acts as are reasonably required to so maintain the Premises. If Tenant fails to promptly commence such work and diligently prosecute it to completion, then Landlord shall have the right to do such acts and expend such funds at the expense of Tenant as are reasonably required to perform such work. Any amount so expended by Landlord shall be paid by Tenant promptly after demand with interest at the prime commercial rate then being charged by Bank of America NT & SA plus two percent (2%) per annum, accruing from the date of such work, but not to exceed the maximum rate then allowed by law. Landlord shall have no liability to Tenant for any damage, inconvenience, or interference with the use of the Premises by Tenant as a result of performing any such work.

(5) **Compliance with Law.** Landlord and Tenant shall each do all acts required to comply with all applicable laws, ordinances, and rules of any public authority relating to their respective maintenance obligations as set forth herein. Notwithstanding the foregoing, During the Term and any extensions thereof, Landlord shall, at Landlord's sole cost and expense, be responsible for placing and keeping the Building, and all Building systems (including, but not limited to fire, safety, security, elevators, etc.) in compliance with all governmental laws, regulations, rules and orders, including environmental laws, any "Green" building requirements, whether voluntary or mandated, Title 24, and the Americans with Disabilities Act (collectively, "Legal Requirements"), regardless if any Legal Requirements are triggered as a result of the initial Tenant Improvements.

**d. DELETED.**

**e. Load and Equipment Limits.** Tenant shall not place a load upon any floor of the Premises which exceeds the load per square foot that such floor was designed to carry, as determined by Landlord or Landlord's structural engineer. The cost of any such determination made by Landlord's structural engineer shall be paid for by Tenant upon demand. Tenant shall not install business machines or mechanical equipment which cause noise or vibration to such a degree as to be objectionable to Landlord or other Building tenants.

**f.** Except as otherwise expressly provided in this Lease, Landlord shall have no liability to Tenant nor shall Tenant's obligations under this Lease be reduced or abated in any manner whatsoever by reason of any inconvenience, annoyance, interruption or injury to business arising from Landlord's making any repairs or changes which Landlord is required or permitted by this Lease or by any other tenant's lease or required by law to make in or to any portion of the Project, Building or the Premises. Landlord shall nevertheless use commercially reasonable efforts to minimize any interference with Tenant's business in the Premises.

**g.** Tenant shall give Landlord prompt notice of any damage to or defective condition in any part or appurtenance of the Building's mechanical, electrical, plumbing, HVAC or other systems serving, located in, or passing through the Premises.

**h.** Upon the expiration or earlier termination of this Lease, Tenant shall return the Premises to Landlord clean and in the same condition as on the date Tenant took possession, except for normal wear and tear. Any damage to the Premises, including but not limited to any structural damage, resulting from Tenant's use or from the removal of Tenant's fixtures, furnishings and equipment pursuant to Section 13b shall be repaired by Tenant at Tenant's sole expense.

## **12. ALTERATIONS AND ADDITIONS.**

**a.** Tenant shall not make any additions, alterations or improvements to the Premises without obtaining the prior written consent of Landlord. Landlord's consent may be conditioned on Tenant's removing any such additions, alterations or improvements upon the expiration of the Term and restoring the Premises to the same condition as on the date Tenant took possession. All work with respect to any addition, alteration or improvement shall be done in a good and workmanlike manner by properly qualified and licensed personnel approved by Landlord, and such work shall be diligently prosecuted to completion.

**b.** Tenant shall pay the costs of any work done on the Premises pursuant to Section 12a, and shall keep the Premises, Building and Project free and clear of liens of any kind. Tenant shall indemnify, defend against and keep Landlord free and harmless from all liability, loss, damage, costs, attorneys' fees and any other expense incurred on account of claims by any person performing work or furnishing materials or supplies for Tenant or any person claiming under Tenant.

**c.** Tenant shall keep Tenant's leasehold interest, and any additions or improvements, which are or become the property of Landlord under this Lease, free and clear of all attachment or judgment liens. Before the actual commencement of any work for which a claim or lien may be filed, Tenant shall give Landlord notice of the intended commencement date a sufficient time before that date to enable Landlord to post notices of non-responsibility or any other notices which Landlord deems necessary for the proper protection of Landlord's interest in the Premises, Building or the Project, and Landlord shall have the right to enter the Premises and post such notices at any reasonable time.

**d.** Landlord may require, at Landlord's sole option, that Tenant provide to Landlord, at Tenant's expense, a lien and completion bond in an amount equal to at least one and one-half (1½) times the total estimated cost of any additions, alterations or improvements to be made in or to the Premises, to protect Landlord against any liability for mechanic's and materialmen's liens and to insure timely completion of the work. Nothing contained in this section 12d shall relieve Tenant of its obligation under Section 12b to keep the Premises, Building and Project free of all liens.

**e.** Unless their removal is required by Landlord as provided in Section 12a, all additions, alterations and improvements made to the Premises shall become the property of Landlord and be surrendered with the Premises upon the expiration of the Term; provided, however, Tenant's equipment, machinery and trade fixtures which can be removed without damage to the Premises shall remain the property of Tenant and may be removed, subject to the provisions of Section 13b.

**f.** Notwithstanding the foregoing or anything to the contrary contained elsewhere in this Paragraph 12, Tenant shall have the right, without Landlord's consent, to make any alteration that meets all of the following criteria (a "Cosmetic Alteration"): (a) the alteration is decorative in nature (such as paint, carpet or other wall or floor finishes, movable partitions or other such work), (b) Tenant provides Landlord with ten (10) days' advance written notice of the commencement of such alteration, (c) such alteration does not affect the Building's electrical, mechanical, life safety, plumbing, security, or HVAC systems or any structural portion of the Building or any part of the Building other than the Premises, (d) the work will not decrease the value of the Premises, does not require a building permit or other governmental permit, and is performed in a workman-like manner, (e) the work does not involve any Hazardous Materials (excluding, however, paint, glue and other common construction materials, but including any asbestos containing materials and other Hazardous Materials for which alternative materials are

available that are not Hazardous Materials and such alternative materials are commonly used), and (f) the work does not involve opening the ceiling of the Premises. At the time Tenant notifies Landlord of any Cosmetic Alteration, Tenant shall give Landlord a copy of Tenant's plans for the work. If the Cosmetic Alteration is of such a nature that formal plans will not be prepared for the work, Tenant shall provide Landlord with a reasonably specific description of the work. Notwithstanding anything to the contrary herein, Tenant may, without prior notice to or consent from Landlord, hang on the walls of the Premises artwork and other items typically hung in office premises.

### **13. LEASEHOLD IMPROVEMENTS; TENANT'S PROPERTY.**

a. All improvements and appurtenances attached to or built into the Premises at the commencement of or during the Term, whether or not by or at the expense of Tenant ("Leasehold Improvements"), shall be and remain a part of the Premises, shall be the property of Landlord and shall not be removed by Tenant, except as expressly provided in Section 13b.

b. All movable partitions, business and trade fixtures, machinery and equipment, communications equipment and office equipment located in the Premises and acquired by or for the account of Tenant, without expense to Landlord, which can be removed without structural damage to the Building, and all furniture, furnishings and other articles of movable personal property owned by Tenant and located in the Premises (collectively "Tenant's Property") shall be and shall remain the property of Tenant and may be removed by Tenant at any time during the Term; provided that if any of Tenant's Property is removed, Tenant shall promptly repair any damage to the Premises or to the Building resulting from such removal.

### **14. RULES AND REGULATIONS.**

Tenant shall comply with (and cause its agents, contractors, employees and invitees to comply with) the Rules and Regulations attached hereto as **Exhibit "C"** and with such reasonable modifications thereof and additions thereto as Landlord may from time to time make. Landlord shall not be responsible for any violation of said rules and regulations by other tenants, occupants or visitors of the Building or Project.

### **15. CERTAIN RIGHTS RESERVED BY LANDLORD.**

Landlord reserves the following rights, exercisable without liability to Tenant on any basis, including but not limited to: (a) damage or injury to property, person or business, (b) causing an actual or constructive eviction from the Premises, or (c) disturbing Tenant's use or possession of the Premises:

a. To name the Building and Project and to change the name or street address of the Building or Project, provided that any proposed Building name shall not be deemed offensive, derogatory or discriminatory based on generally accepted community standards and shall not evoke associations with historical figures or events known for promoting or practicing discrimination, racism or violence. This includes, but is not limited to names based on race, color, religion, sex, national origin, age, disability or familial status.

b. To install and maintain all signs on the exterior and interior of the Building and Project.

c. To have passkeys to the Premises and all doors within the Premises, excluding Tenant's vaults and safes.

d. At any time during normal business hours of the Term, and on three (3) business days prior written notice to Tenant, except in the event of an emergency, to inspect the Premises, and to show the Premises to any prospective purchaser or mortgagee of the Project, or to any assignee of any mortgage on the Project, or to others having an interest in the Project or Landlord, and during the last six months of the Term, to show the Premises to prospective tenants thereof; and

e. During normal business hours and on three (3) business days prior written notice to Tenant, except in the event of an emergency or planned repair, to enter the Premises for the purpose of making inspections, alterations, additions or improvements to the Premises or the Building (including, without limitation, checking, calibrating, adjusting or balancing controls and other parts of the HVAC system), and to take all steps as may be necessary or desirable for the safety, protection, maintenance or preservation of the Premises or the Building or Landlord's interest therein, or as may be necessary or desirable for the operation or improvement of the Building or in order to comply with laws, orders or requirements of governmental or other authority. Landlord agrees to use commercially reasonable efforts (except in an emergency) to minimize interference with Tenant's business in the Premises in the course of any such entry.

### **16. ASSIGNMENT, SUBLEASE, TRANSFER, RIGHT OF FIRST REFUSAL**

**16.1. Definition.** For purposes of this Section 16, the terms "assignment" shall include and mean any act attempting to or document purporting to assign, transfer, sublet, enter into license or concession agreements for, change ownership of,

mortgage or hypothecation this Lease or Tenant's interest in and to the Premises or any part thereof.

**16.2. No Assignment by Tenant.** Tenant shall not assign this Lease or Tenant's interest in and to the Premises without obtaining the prior written consent of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed, subject to the terms, covenants and conditions herein, except in the event that such assignment is to an affiliate of Tenant, and provided that Landlord receives and reasonably approve appropriate financial information about any such affiliate.. Any attempt to assign this Lease without the prior written consent of Landlord shall be a breach hereof, and Landlord may, at Landlord's option, terminate this Lease. Landlord acknowledges that Affordable Housing Berkeley, Inc., is an affiliate of Tenant, although Landlord has not received and must still approve of the financial information of said affiliate.

**16.3. Restrictions on Assignment.** It is expressly agreed that Tenant shall not have the power to assign this Lease or sublet the Premises (i) for any use other than the use specified in Section 8 hereof, (ii) to any party, if in Landlord's reasonable business judgment the quality of the business operation is or may be adversely affected thereby, or (iii) to any party whose financial worth at the time of any proposed assignment or subletting is less than the financial worth of Tenant as of the date of this Lease, or as of the date of the proposed assignment or subletting, whichever is greater. Any such purported assignment or subletting without Landlord's consent shall be void and of no force or effect and shall not confer any benefit or estate on any person.

**16.4. Assumption of Liability.** Any assignment to which Landlord has consented shall be by an instrument in writing, satisfactory to Landlord, and any assignee, sub-lessee, transferee, licensee, concessionaire or mortgagee shall agree for the benefit of Landlord to be bound by, assume and perform all the terms, covenants and conditions of this Lease. Consent by Landlord to any assignment shall not constitute consent to any subsequent assignment. Any transfer by merger, consolidation, sale, liquidation or change in ownership of twenty-five percent (25%) or more, in the aggregate, of any stock or interest in Tenant shall constitute an assignment for purposes of this Article 16.

**16.5. Adjustment to Rent.**

**16.6. Assignment Conditions.** Tenant shall pay Landlord the non-refundable sum of \$500.00 to enable Landlord adequately to investigate the proposed assignee's qualifications as a permitted assignee. Landlord shall not be required to account for the use of the sum paid.

**16.7. Right of First Refusal.** Provided that Tenant is not in breach or default of the Lease, Tenant shall have the Right of First Refusal on any space that is or becomes available on the first floor of the Building. In the event that such space becomes available and is within Landlord's ability and control to offer it for lease Landlord shall promptly notify Tenant, and Tenant shall thereafter have 14 days to enter into a non-binding letter of intent to add such space to it's Lease by a written addendum thereto. Any costs related to the leasing of such space, including real estate leasing commissions, shall be borne by Tenant, and Tenant shall accept such space in its current, as-is condition.

## **17. HOLDING OVER.**

If after expiration of the Term, Tenant remains in possession of the Premises with Landlord's permission, Tenant shall become a tenant from month-to-month only, subject to all the provisions of this Lease with the exception of term and Base Rent, and the "Monthly Installments of Base Rent" payable by Tenant shall be increased to one hundred fifty percent (150%) of the Monthly Installments of Base Rent payable by Tenant at the expiration of the Term. Such monthly rent shall be payable in advance on or before the first day of each month. If either party desires to terminate such month-to-month tenancy, it shall give the other party not less than thirty (30) days advance written notice of the date of termination.

## **18. SURRENDER OF PREMISES.**

**a.** Tenant shall peaceably surrender the Premises to Landlord on the Expiration Date, in broom-clean condition and in as good condition as when Tenant took possession, except for (i) reasonable wear and tear, (ii) loss by fire or other casualty, and (iii) loss by condemnation. Tenant shall, on Landlord's request, remove Tenant's Property on or before the Expiration Date and promptly repair all damage to the Premises or Building caused by such removal.

**b.** If Tenant abandons or surrenders the Premises, or is dispossessed by process of law or otherwise, any of Tenant's Property left on the Premises shall be deemed to be abandoned, and, at Landlord's option, title shall pass to Landlord under this Lease as by a bill of sale. If Landlord elects to remove all or any part of such Tenant's Property, the cost of removal, including repairing any damage to the Premises or Building caused by such removal, shall be paid by Tenant. On the Expiration Date Tenant shall surrender all keys to the Premises.

## 19. DESTRUCTION OR DAMAGE.

a. If all or any part of the Premises or any material portion of the balance of the Building is damaged by fire or other casualty, Landlord shall, within sixty (60) days of the date of the damage, give Tenant written notice of Landlord's reasonable estimate of the time required from the date of the damage to repair the damage (the "Damage Estimate"). Landlord shall use commercially reasonable efforts to diligently proceed to repair the damage and this Lease shall remain in full force and effect if (i) the damage is caused by a peril covered by Landlord's insurance, the proceeds from such insurance are sufficient (without considering any deductible amounts) to repair the damage (an "Insured Casualty"), and the Damage Estimate is one hundred eighty (180) days or less, or (ii) the damage is caused by a peril not covered by Landlord's insurance or the proceeds from Landlord's insurance are not sufficient (without considering any deductible amounts) to repair the damage (an "Uninsured Casualty"), and the Damage Estimate is ninety (90) days or less. If the Damage Estimate is more than one hundred eighty (180) days, in the case of an Insured Casualty, or more than ninety (90) days, in the case of an Uninsured Casualty, Landlord, at its option exercised by written notice to Tenant within sixty (60) days of the date of the damage, shall either (a) diligently proceed to repair the damage, in which event this Lease shall continue in full force and effect, or (b) terminate this Lease as of the date specified by Landlord in the notice, which date shall be not less than thirty (30) days nor more than sixty (60) days after the date such notice is given, and this Lease shall terminate on the date specified in the notice. If the damage is to the Premises or if the Building is so damaged that access to or use and occupancy of the Premises is materially impaired, the Damage Estimate is more than two hundred seventy (270) days, and Landlord does not give notice terminating this Lease within the sixty (60) day period provided above, then Tenant may give notice to Landlord, within fifteen (15) calendar days after the expiration of the aforesaid sixty (60) day period, terminating this Lease as of the date specified in Tenant's termination notice, which date shall not be before the date of such notice or more than thirty (30) days after the date of Tenant's termination notice.

b. Notwithstanding anything to contrary contained in this Paragraph 19, if the initial Damage Estimate is more than ninety (90) days, and the date on which Landlord reasonably anticipates the repairs of such damage will be completed is during the last twelve (12) months of the Lease term, Landlord and Tenant shall each have the option to terminate this Lease by giving written notice to the other, in the case of Landlord together with the Damage Estimate, or, in the case of Tenant, within thirty (30) days of Tenant's receipt of the Damage Estimate, and this Lease shall terminate as of the date specified by the party in its termination notice, which date shall not be before the date of such notice or more than thirty (30) days after the date of such notice.

c. Notwithstanding anything to the contrary in this Paragraph 19, if damage which would otherwise lead to a right to terminate this Lease results from the willful misconduct of Landlord or Tenant, the party from whose misconduct such damage results shall have no right to terminate this Lease.

d. If the fire or other casualty damages the Premises or the common areas of the Building necessary for Tenant's use and occupancy of the Premises, Tenant ceases to use any portion of the Premises as a result of such damage, and the damage does not result from the negligence or willful misconduct of Tenant or any other Tenant Parties, then during the period the Premises or portion thereof are rendered unusable by such damage and repair, Tenant's Monthly Rent and Additional Rent under Article 5 shall be proportionately reduced based upon the extent to which the damage and repair prevents Tenant from conducting, and Tenant does not conduct, its business at the Premises.

e. A total destruction of the Building shall automatically terminate this Lease. In no event shall Tenant be entitled to any compensation or damages from Landlord for loss of use of the whole or any portion of the Premises or for any inconvenience occasioned by any such destruction, rebuilding or restoration of the Premises, the Building or access thereto, except for the rent abatement expressly provided above.

## 20. EMINENT DOMAIN.

- a. If the whole of the Building or Premises is lawfully taken by condemnation or in any other manner for any public or quasi-public purpose, this Lease shall terminate as of the date of such taking, and Rent shall be prorated to such date. If less than the whole of the Building or Premises is so taken, this Lease shall be unaffected by such taking, provided that (i) Tenant shall have the right to terminate this Lease by notice to Landlord given within ninety (90) days after the date of such taking if twenty percent (20%) or more of the Premises is taken and the remaining area of the Premises is not reasonably sufficient for Tenant to continue operation of its business, and (ii) Landlord shall have the right to terminate this Lease by notice to Tenant given within ninety (90) days after the date of such taking. If either Landlord or Tenant so elects to terminate this Lease, the Lease shall terminate on the thirtieth (30th) day after such notice. The Rent shall be prorated to the date of termination. If this Lease continues in force upon such partial taking, the Base Rent and Tenant's Proportionate Share shall be equitably adjusted according to the remaining Rentable Area of the Premises and Project.
- b. In the event of any taking, partial or whole, all of the proceeds of any award, judgment or settlement payable by the condemning authority shall be the exclusive property of Landlord, and Tenant hereby assigns to Landlord all of its right, title and interest in any award, judgment or settlement from the condemning authority. Tenant, however, shall have the right, to the extent that Landlord's award is not reduced or prejudiced, to prosecute a separate claim against the condemning authority for an amount separately designated for Tenant's relocation expenses or the interruption of or damage to Tenant's business or as compensation for Tenant's personal property, trade fixtures, alterations or other improvements paid for by Tenant.
- c. In the event of a partial taking of the Premises which does not result in a termination of this Lease, Landlord shall restore the remaining portion of the Premises as nearly as practicable to its condition prior to the condemnation or taking, but only to the extent of Building Standard Work. Tenant shall be responsible at its sole cost and expense for the repair, restoration and replacement of any other Leasehold Improvements and Tenant's Property.

## 21. INDEMNIFICATION.

- a. Tenant shall defend, indemnify and hold harmless Landlord and each of its owners, partners, employees, representatives, agents and assigns (Indemnities") against and from any and all claims, lawsuits, liabilities, judgments, costs, expenses, demands and causes of action by third parties (each, a "Claim") to the fullest extent of the law arising from (1) Tenant's use and occupancy of the Premises, or any work, activity or other things allowed or suffered by Tenant to be done in, on or about the Premises; provided that such work or activity was not performed at the direction of Landlord; (2) any breach or default by Tenant of any of Tenant's obligations under this Lease; (3) the condition of the Premises or any occurrence on or about the Premises from any cause whatsoever, except to the extent caused by the gross negligence or willful misconduct of Landlord and/or any Indemnities, or (4) any negligent or otherwise tortious act or omission of Tenant, its agents, employees, representatives, invitees or contractors, except to the extent caused by the gross negligence or willful misconduct of Landlord and/or any Indemnities. Tenant shall, at Tenant's expense and by counsel satisfactory to Landlord, defend Landlord in any action or proceeding arising from any such Claim and shall indemnify Landlord against all reasonable costs, reasonable attorneys' fees and disbursements, reasonable expert witness fees, judgments, settlements, and any other reasonable expenses incurred in such action or proceeding.

## 22. INSURANCE.

a. **TENANT'S INSURANCE.** Beginning on the date Tenant is given access to the Premises for any purpose and continuing until expiration of the Term, Tenant shall procure and maintain in effect, at its sole cost and expense, insurance issued by a responsible company acceptable to Landlord and Landlord's lender and qualified to do business in the State, as follows:

(1) Commercial General Liability Insurance, including bodily injury, wrongful death, property damage, products, completed operations and contractual liability covering Tenant's operations and activities at the Premises. The minimum limit of coverage of such policy shall be in the amount of not less than Two Million dollars (\$2,000,000.00) each occurrence and in the amount of not less than Four Million Dollars (\$4,000,000.00) in the aggregate. Coverage shall include (i) an extended liability endorsement providing contractual liability coverage (which shall include coverage for Tenant's indemnification obligations in this Lease), (ii) a severability of interest clause or a cross liability endorsement, (iii) a provision that such policy and the coverage evidenced thereby shall be primary and noncontributing with respect to any policies carried by Landlord and that any coverage carried by Landlord shall be excess insurance and (iv) a waiver by the insurer of any right of subrogation against Landlord, its agents, employees and representatives, which arises or might arise by reason of any payment under such policy or by reason of any act or omission of Landlord, its agents, employees or representatives. Tenant may satisfy the limits requirement of this Section 22(a)(1) using a combination of primary

commercial general liability insurance and umbrella/excess insurance. In the event that Tenant is involved in any manner in the sale of alcoholic beverages, Tenant's insurance must include Liquor Liability coverage.

(2) Business Automobile Liability Insurance for any Tenant owned automobiles, non-owned and hired automobiles with a combined single limit of not less than \$1,000,000 per occurrence. The Business Automobile Liability Insurance required by this section shall include a waiver by the insurer of any right of subrogation against Landlord, its agents, employees and representatives, which arises or might arise by reason of any payment under such policy or by reason of any act or omission of Landlord, its agents, employees or representatives.

(3) Property Insurance, including All-Risk insurance with valuation basis for one hundred percent (100%) of the actual replacement cost, providing coverage for all Tenant's Property (including Tenant's personal property, merchandise, furniture, furnishings, trade fixtures, and equipment), and all Leasehold Improvements (including any alterations, additions or improvements as may be made by Tenant pursuant to the provisions of Section 12 hereof), as well as all improvements for which Tenant is responsible for maintaining pursuant to Section 11(b)(2). During the term of this Lease, the proceeds from any such policy or policies of insurance shall be used for the repair or replacement of the property so insured. Landlord will not carry insurance on any of Tenant's possessions. The Property Insurance required by this section shall include a waiver by the insurer of any right of subrogation against Landlord, its agents, employees and representatives, which arises or might arise by reason of any payment under such policy or by reason of any act or omission of Landlord, its agents, employees or representatives.

(4) Workers' Compensation insurance as required by State law. The Workers' Compensation insurance required by this section shall include a waiver by the insurer of any right of subrogation against Landlord, its agents, employees and representatives, which arises or might arise by reason of any payment under such policy or by reason of any act or omission of Landlord, its agents, employees or representatives.

(5) Certificates of Insurance for any tradesmen or contractor hired by Tenant shall be provided by tradesmen or contractor prior to commencement of construction and shall name Landlord and Property Manager as Additional Insured, and coverage of such policy shall be in the amount of not less than Two Million dollars (\$2,000,000.00) each occurrence and in the amount of not less than Four Million Dollars (\$4,000,000.00) in the aggregate.

b. Each of Tenant's policies shall name Landlord, and any Property Manager and/or mortgagee or lender of Landlord as an additional insured, as their respective interests may appear. Any Additional Insured endorsement must utilize form CG2011 or its equivalent. If Landlord agrees to accept a Blanket Additional Insured Endorsement an Amendment to Cancellation Endorsement to the policy naming the Landlord and Property Manager must be included.

A copy of each paid up policy and additional insured endorsement (authenticated by the insurer) or certificate of the insurer evidencing the existence and amount of each insurance policy required hereunder shall be delivered to Landlord before the date Tenant is first given the right of possession of the Premises, and thereafter within thirty (30) days after any demand by Landlord therefor. Landlord may, at any time and from time to time, inspect and/or copy any insurance policies required to be maintained by Tenant hereunder. No such policy shall be cancelable except after thirty (30) days written notice to Landlord and Landlord's lender. Tenant shall furnish Landlord with renewals or "binders" of any such policy at least ten (10) days prior to the expiration thereof. Tenant agrees that if Tenant does not take out and maintain such insurance, Landlord may (but shall not be required to) procure said insurance on Tenant's behalf and charge the Tenant the premiums together with a twenty-five percent (25%) handling charge, payable upon demand. Tenant shall have the right to provide such insurance coverage pursuant to blanket policies obtained by the Tenant, provided such blanket policies expressly afford coverage to the Premises, Landlord, Landlord's mortgagee, Landlord's Property Manager and Tenant as required by this Lease.

c. Not less than every three (3) years during the Term, Landlord and Tenant shall mutually agree to increases in all of Tenant's insurance policy limits for all insurance to be carried by Tenant as set forth in this Section. In the event Landlord and Tenant cannot mutually agree upon the amounts of said increases, Tenant agrees that all insurance policy limits as set forth in this Section shall be adjusted for increases in the cost of living in the same manner as is set forth in Section 3.3 hereof for the adjustment of the Base Rent.

d. Notwithstanding anything to the contrary in Section 22 of the Lease, and provided that Tenant continues to be the original tenant named above in the preamble to the Lease, such Tenant may, with Landlord's prior written consent, satisfy the commercial general liability insurance requirements set forth in Section 22(a)(1) by a captive insurance program maintained through Tenant (referred to herein as "self-insurance"), provided that (i) such self-insurance is permitted under all laws applicable to Tenant and/or the Premises at the time in question, (ii) such self-insurance is

compliant with any minimum insurance requirements imposed by Landlord or by Landlord's lender(s), (iii) Tenant maintains a net worth (as shown by its financial statements audited in accordance with generally accepted accounting principles) of not less than One Hundred Million Dollars (\$100,000,000.00). Landlord reserves the right, at Landlord's discretion, to periodically review Tenant's financial status to meet the insurance obligations included herein by self-insurance. If at any time Landlord determines that Tenant cannot meet the insurance obligations included herein by self-insurance, Landlord may require Tenant to obtain and maintain insurance as provided in Section 22(a)(1) with a responsible insurance company qualified to do business in the State. To the extent Tenant chooses to use self-insurance to meet the requirements of this Lease, Tenant shall have all of the obligations and liabilities of an insurer, and the protection that Tenant provides to Landlord, Landlord's lender(s) and the Premises under such self-insurance shall be the same as if provided by a third-party insurer.

**e. LANDLORD'S INSURANCE.** Landlord shall insure its activities in connection with this Lease and obtain, keep in force and maintain insurance issued by a responsible company qualified to do business in the State, as follows:

(1) Commercial General Liability Insurance (contractual liability included) with minimum limits as follows:

- |  |             |
|--|-------------|
| (i) Each Occurrence                          | \$2 million |
| (ii) Products/Completed Operations Aggregate | \$2 million |
| (iii) Personal and Advertising Injury        | \$2 million |
| (iv) General Aggregate                       | \$4 million |

(v) If the above insurance is written on a claims-made form, it shall continue for three (3) years following termination of the Lease. The insurance policy shall have a retroactive date of placement prior to or coinciding with the Lease Commencement Date.

(vi) Landlord may satisfy the limits requirement of this Section 22(e) using a combination of primary commercial general liability insurance and umbrella/excess insurance.

(2) Business Automobile Liability Insurance for owned, scheduled non-owned or hired automobiles with a combined single limit of not less than \$1,000,000 per occurrence.

(3) Property, Fire and Extended Coverage Insurance in an amount equal to the lesser of (i) agreed value as established between Landlord and Landlord's insurance company, or (ii) one hundred percent (100%) of the full replacement value of the Building, including any tenant improvements or alterations owned by Landlord, and excluding land and coverage for water extrusion in basements.

(4) Workers' Compensation Insurance as required by State law.

(5) The coverages referred to under 1 and 2 of this Section 22(e) shall include Tenant as an additional insured. Such a provision shall apply only in proportion to and to the extent of the negligent acts or omissions of Landlord, its officers, partners, agents and employees.

### **23. WAIVER OF SUBROGATION.**

Landlord and Tenant each hereby waive all rights of recovery against the other and against the officers, employees, agents and representatives of the other, for any loss or damage to Landlord or Tenant's property or the property of others under their control, to the extent that such loss or damage is insured against under any fire or extended coverage insurance policy which either party may have in force at the time of the loss or damage. The foregoing waiver shall be effective to the extent permitted by Landlord's and Tenant's respective insurers and provided that no policy of insurance is invalidated as a result of such waivers. The insuring party shall procure an appropriate clause in, or an endorsement on any and all insurance policies pursuant to which the insurance companies waive subrogation and all rights of recovery as between Landlord and Tenant, as set forth above. Tenant shall, upon obtaining the policies of insurance required under this Lease, give notice to its insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Lease.

### **24. SUBORDINATION AND ATTORNMENT.**

Upon ten (10) days prior written request of Landlord, or any mortgagee or deed of trust beneficiary of Landlord, or ground lessor of Landlord, Tenant shall, in writing, subordinate its rights under this Lease to the lien of any first mortgage or first deed of trust, or to the interest of any lease affecting any part of the Building or project in which Landlord is lessee, and to all advances made or hereafter to be made thereunder. However, before signing any subordination agreement, Tenant shall have the right to obtain from any lender or lessor or Landlord requesting such subordination, an agreement in writing providing that,

as long as Tenant is not in default hereunder, this Lease shall remain in effect for the full Term on the terms and conditions set forth herein. The holder of any security interest may, upon written notice to Tenant, elect to have this Lease prior to its security interest regardless of the time of the granting or recording of such security interest.

In the event of any foreclosure sale, transfer in lieu of foreclosure or termination of lease in which Landlord is lessee, Tenant shall attorn to the purchaser, transferee or lessor as the case may be, and recognize that party as Landlord under this Lease on the terms and conditions set forth herein, provided such party acquires and accepts the Premises subject to this Lease.

## **25. TENANT ESTOPPEL CERTIFICATES.**

Within ten (10) days after written request from Landlord, Tenant shall execute and deliver to Landlord or Landlord's designee, a written statement certifying (a) that this Lease is unmodified and in full force and effect, or is in full force and effect as modified and stating the modifications; (b) the amount of Base Rent and the date to which Base Rent and additional rent have been paid in advance; (c) the amount of any security deposited with Landlord; and (d) that Landlord is not in default hereunder or, if Landlord is claimed to be in default, stating the nature of any claimed default. Any such statement may be relied upon by a purchaser, assignee or lender. Tenant's failure to execute and deliver such statement within the time required shall at Landlord's election be a default under this Lease and shall also be conclusive upon Tenant that: (1) this Lease is in full force and effect and has not been modified except as represented by Landlord; (2) there are no uncured defaults in Landlord's performance and that Tenant has no right of offset, counterclaim or deduction against Rent; and (3) not more than one month's Rent has been paid in advance.

## **26. TRANSFER OF LANDLORD'S INTEREST.**

In the event of any sale or transfer by Landlord of the Premises, Building or Project, and assignment of this Lease by Landlord, Landlord shall be and is hereby entirely freed and relieved of any and all liability and obligations contained in or derived from this Lease arising out of any act, occurrence or omission relating to the Premises, Building, Project or Lease occurring after the consummation of such sale or transfer, providing the purchaser shall assume all of the covenants and obligations of Landlord under this Lease. If any Security Deposit or prepaid Rent has been paid by Tenant, Landlord may transfer the Security Depositor prepaid Rent to Landlord's successor and upon such transfer, Landlord shall be relieved of any and all further liability with respect thereto.

## **27. DEFAULT.**

**27.1 Tenant's Default.** The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant, after proper notice and reasonable opportunity to cure such default:

- a. Abandoning or vacating the Premises; or
- b. Failing to pay any Rent payment or any other charges when due and payable by Tenant; or
- c. Failing to promptly and fully perform any other covenant, condition or agreement contained in this Lease should such failure continue for thirty (30) days after written notice thereof from Landlord to Tenant; provided, however, if the failure to perform is such that, in Landlord's opinion, it cannot reasonably be cured within thirty (30) days, Tenant shall not be deemed to be in default hereunder if Tenant commences to cure within said thirty (30) day period and diligently prosecutes (to Landlord's satisfaction) such curing to completion; or
- d. Permitting Tenant's assets to be placed in the hands of a receiver or trustee for a period in excess of thirty (30) days; making an assignment for the benefit of creditors; instituting any proceedings under any bankruptcy act wherein Tenant seeks to be adjudicated a bankrupt, to be discharged of its debts or to effect a plan of liquidation, extension or reorganization; failing to have dismissed within sixty (60) days any involuntary proceeding filed against Tenant under any bankruptcy act; becoming insolvent; or failing to have dismissed within thirty (30) days any proceedings seeking to execute or levy against or attach fifty percent (50%) or more of Tenant's assets.

**27.2 Remedies.** In the event of Tenant's default hereunder after notice and reasonable opportunity to cure, in addition to any other rights or remedies Landlord may have under any law, Landlord shall have the right, at Landlord's option, without further notice or demand of any kind to do the following:

- a. Terminate this Lease and Tenant's right to possession of the Premises and reenter the Premises and take possession thereof, whereby Tenant shall have no further claim to the Premises or under this Lease; or
- b. Continue this Lease in full force and effect, reenter and occupy the Premises for the account of Tenant and collect any unpaid Rent or other charges which have or may thereafter become due and payable; or
- c. Reenter the Premises under the provisions of subparagraph (b) and thereafter elect to terminate this Lease and Tenant's right to possession of the Premises.

d. Should Landlord reenter the Premises under the provisions of subparagraphs (b) or (c) above, Landlord shall not be deemed to have terminated this Lease or the obligation of Tenant to pay Rent or other charges owing or thereafter accruing, unless Landlord notifies Tenant in writing of Landlord's election to terminate this Lease. In the event of any reentry or retaking of possession by Landlord, Landlord shall have the right, but not the obligation, to remove all or any part of the personal property in the Premises and to place such property in storage at a public warehouse at the sole expense and risk of Tenant.

e. Should Landlord elect to terminate this Lease under the provisions of subparagraph (a) or (c) above, Landlord may recover damages from Tenant, including but not limited to the following:

1. The worth at the time of award of any unpaid Rent which had been earned at the time of termination; and
2. 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 award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; and
3. 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 rental loss that Tenant proves could be reasonably avoided; and
4. Any other reasonable amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to any costs or expenses including costs of removing and storing Tenant's personal property, costs of sale thereof as provided for by law, and reasonable attorneys' fees, incurred by Landlord in (a) retaking possession of the Premises, (b) maintaining the Premises after Tenant's default, (c) preparing the Premises for reletting to a new tenant including any repairs or alterations, and (d) reletting the Premises, including but not limited to brokers' commissions. "The worth at the time of the award," as used in (1) and (2) above, is to be computed by allowing interest at the highest rate authorized by law. "The worth at the time of award," as used in (3) above, is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank, San Francisco branch at the time of the award plus one percent (1%).
5. During the continuance of an Event of Default, for so long as Landlord does not terminate Tenant's right to possession of the Premises and subject to Paragraph 16, entitled **Assignment, Sublease, Transfer, Right of First Refusal**, Landlord shall not unreasonably withhold its consent to assignment or sublease of Tenant's interest in the Premises or the Lease.

**27.3 Waiver of Breach.** The waiver by Landlord of any breach of any term, covenant or condition of this Lease shall not be deemed a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition. Acceptance of Rent by Landlord subsequent to any breach hereof shall not be deemed a waiver of any preceding breach other than the failure to pay the particular Rent so accepted, regardless of Landlord's knowledge of any breach at the time of such acceptance of Rent. Landlord shall not be deemed to have waived any term, covenant or condition unless Landlord gives Tenant written notice of such waiver.

**27.4. Landlord's Default.** If Landlord fails to perform any covenant, condition, or agreement contained in this Lease (a) within thirty (30) days after receipt of written notice from Tenant specifying such default, or (b) if such default cannot reasonably be cured within thirty (30) days, if Landlord fails to commence to cure within said thirty (30) day period, then Landlord shall be liable to Tenant for unmitigable damages sustained by Tenant as a direct result of Landlord's breach. If, after written notice to Landlord of default, Landlord fails to cure such default as provided herein, then Tenant shall have the right to cure such default at Landlord's reasonable expense.

## **28. BROKERAGE FEES.**

EXCEPT for representation by Cornish & Carey Commercial, a California corporation dba, Newmark which dually represented Landlord and Tenant, Tenant represents and warrants that it has had no dealings with any real estate broker or agent in connection with the negotiation of the transaction contemplated by this Lease, or if any other real estate brokers have been dealt with, the Tenant shall be fully responsible for all charges or costs assessed by such real estate brokers. Landlord shall pay the fees of Cornish & Carey Commercial, a California corporation dba, Newmark by separate agreement.

## **29. NOTICES.**

All notices, approvals and demands permitted or required to be given under this Lease shall be in writing and deemed duly served or given if sent by First Class U.S. Mail, postage prepaid, and addressed as follows: (a) if to Landlord, to Landlord's Mailing Address, and (b) if to Tenant, to Tenant's Mailing Address; provided, however, notices to Tenant shall be deemed duly served or given if delivered or mailed to Tenant at the Premises. Landlord and Tenant may from time to time by notice to the other designate another place for receipt of future notices.

## **30. GOVERNMENT ENERGY OR UTILITY CONTROLS.**

In the event of imposition of federal, state or local government controls, rules, regulations, or restrictions on the use or consumption of energy or other utilities during the Term, both Landlord and Tenant shall be bound thereby. In the event of a difference in interpretation by Landlord and Tenant of any such controls, the interpretation of Landlord shall prevail, and Landlord shall have the right to enforce compliance therewith, including the right of entry into the Premises to effect compliance.

## **31. RELOCATION OF PREMISES- DELETED**

## **32. QUIET ENJOYMENT.**

Tenant, upon paying the Rent and performing all of its obligations under this Lease, shall peaceably and quietly enjoy the Premises, subject to the terms of this Lease and to any mortgage, lease, or other agreement to which this Lease may be subordinate.

## **33. OBSERVANCE OF LAW.**

Tenant shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. Tenant shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force, and with the requirements of any board of fire insurance underwriters or other similar bodies now or hereafter constituted, relating to, or affecting the condition, use or occupancy of the Premises, excluding structural changes not related to or affected by Tenant's improvements or acts. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord is a party thereto or not, that Tenant has violated any law, ordinance or governmental rule, regulation or requirement, shall be conclusive of that fact as between Landlord and Tenant.

## **34. FORCE MAJEURE.**

Any prevention, delay or stoppage of work to be performed by Landlord or Tenant which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefor, acts of God, governmental restrictions or regulations or controls, judicial orders, enemy or hostile government actions, civil commotion, fire or other casualty, due to viruses, epidemics or pandemics, or other causes beyond the reasonable control of the party obligated to perform hereunder, shall excuse performance of the work by that party for a period equal to the duration of that prevention, delay or stoppage. Notwithstanding the foregoing, nothing in this Section 34 shall excuse or delay Tenant's obligation to pay Rent or other charges under this Lease.

## **35. CURING TENANT'S DEFAULTS.**

If Tenant defaults in the performance of any of its obligations under this Lease, Landlord may (but shall not be obligated to) without waiving such default, perform the same for the account at the expense of Tenant. Tenant shall pay Landlord all costs of such performance promptly upon receipt of a bill therefor.

## **36. SIGN CONTROL.**

Landlord, at Landlord's expense, shall provide and install building standard signage in the Center Street lobby and at the Center Street entrance to Tenant's suite. Tenant shall not affix, paint, erect or inscribe any sign, projection, awning, signal or advertisement of any kind to any part of the Premises, Building or Project, including without limitation, the inside or outside of windows or doors, without the written consent of Landlord. Landlord shall have the right to remove any signs or other matter, installed without Landlord's permission, without being liable to Tenant by reason of such removal, and to charge the cost of

removal to Tenant as additional Rent hereunder, payable within ten (10) days of written demand by Landlord.

### 37. MISCELLANEOUS.

**a. Accord and Satisfaction; Allocation of Payments.** No payment by Tenant or receipt by Landlord of a lesser amount than the Rent provided for in this Lease shall be deemed to be other than on account of the earliest due Rent, nor shall any endorsement or statement on any check or letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of the Rent or pursue any other remedy provided for in this Lease. In connection with the foregoing, Landlord shall have the absolute right in its sole discretion to apply any payment received from Tenant to any account or other payment of Tenant then not current and due or delinquent.

**b. Addenda.** If any provision contained in an addendum to this Lease is inconsistent with any other provision herein, the provision contained in the addendum shall control, unless otherwise provided in the addendum.

**c. Attorneys' Fees.** If any action or proceeding is brought by either party against the other pertaining to or arising out of this Lease, the finally prevailing party shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred on account of such action or proceeding.

**d. Captions, Articles and Section Numbers.** The captions appearing within the body of this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Lease. All references to Article and Section numbers refer to Articles and Sections in this Lease.

**e. Changes Requested by Lender.** Tenant shall use good faith efforts to review any written requests by lender or Landlord to consent to changes or amendments to the Lease, so long as these changes do not materially diminish any rights or materially increase any obligations of Tenant under the Lease as determined by Tenant in its discretion. Any changes or amendments to the Lease shall be subject to prior approval by Tenant's Board of Commissioners.

**f. Choice of Law.** This Lease shall be construed and enforced in accordance with the laws of the State, without reference to conflict of law principles that would result in the application of any law other than the law of the State of California.

**g. Consent.** Notwithstanding anything contained in this Lease to the contrary, Tenant shall have no claim, and hereby waives the right to any claim against Landlord for money damages by reason of any refusal, withholding or delaying by Landlord of any consent, approval or statement of satisfaction, and in such event, Tenant's only remedies therefor shall be an action for specific performance, injunction or declaratory judgment to enforce any right to such consent approval or statement of satisfaction\*, or the right to terminate this Lease if such a right is provided for in the Lease.

**h. Corporate Authority.** If Tenant is a corporation, each individual signing this Lease on behalf of Tenant represents and warrants that he/she is duly authorized to execute and deliver this Lease on behalf of the corporation, and that this Lease is binding on Tenant in accordance with its terms. Tenant shall, at Landlord's request, deliver a certified copy of a resolution of its board of directors authorizing such execution.

**i. Counterparts.** This Lease may be executed in multiple counterparts, all of which shall constitute one and the same Lease.

**j. Execution of Lease; No Option.** The submission of this Lease to Tenant shall be for examination purposes only and does not and shall not constitute a reservation of or option for Tenant to lease or otherwise create any interest of Tenant in the Premises or any other premises within the Building or Project. Execution of this Lease by Tenant and its return to Landlord shall not be binding on Landlord notwithstanding any time interval, until Landlord has in fact signed and delivered this Lease to Tenant.

**k. Furnishing of Financial Statements; Tenant's Representations.** After execution of the Lease, Tenant agrees that it shall promptly furnish Landlord, upon Landlord's written request with financial statements reflecting Tenant's then-current financial condition provided, however, that Landlord shall not request such financial statements unless the building is the for sale subject to a refinancing, or an event of default has occurred and is continuing. Tenant represents and warrants that all financial statements, records and information furnished by Tenant to Landlord in connection with this Lease shall be true, correct and complete in all respects.

**l. Further Assurances.** The parties agree to promptly sign all documents reasonably requested to give effect to the provisions of this Lease.

**m. Mortgagee Protection.** Tenant shall send by certified or registered mail to any mortgagee or deed of trust beneficiary of Landlord whose address has been furnished to Tenant, a copy of any notice of default served by Tenant on Landlord. If Landlord fails to cure such default within the time provided for in this Lease, such mortgagee or beneficiary shall have an additional one hundred twenty (120) days to cure such default; provided that if such default cannot reasonably be cured

within that one hundred twenty (120) day period, then such mortgagee or beneficiary shall have such additional time to cure the default as is reasonably necessary under the circumstances, but in no event more than one hundred eighty (180) days.

**n. Prior Agreements; Amendments.** This Lease contains all of the agreements of the parties with respect to any matter covered or mentioned in this Lease, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose. No provisions of this Lease may be amended or added to except by an agreement in writing signed by the parties or their respective successors in interest.

**o. Recording.** Tenant shall not record this Lease without the prior written consent of Landlord. Tenant, upon the request of Landlord, shall execute and acknowledge a "short form" memorandum of this Lease prepared by Landlord and approved by Tenant for recording purposes.

**p. Severability.** A final determination by a court of competent jurisdiction that any provision of this Lease is invalid shall not affect the validity of any other provision, and any provision so determined to be invalid shall, to the extent possible, be construed to accomplish its intended effect.

**q. Successors and Assigns.** This Lease shall apply to and bind the heirs, personal representatives, and permitted successors and assigns of the parties.

**r. Time of the Essence.** Time is of the essence of this Lease.

**s. Waiver.** No delay or omission in the exercise of any right or remedy of either Landlord or Tenant upon any default by Landlord or Tenant shall impair such right or remedy or be construed as a waiver of such default.

**t. Compliance.** Responsibility for compliance with all applicable Federal, State, and local laws, regulations, codes, ordinances and administrative orders, having jurisdiction over the parties, property or the subject matter of this Lease, including, but not limited to the 1964 Civil Rights Act and all amendments thereto, the Foreign Investment in Real Property Tax Act, the Comprehensive Environmental Response Compensation and Liability Act, and the Americans With Disabilities Act, as any such acts may be amended from time to time, and any regulations promulgated thereunder (the foregoing hereinafter collectively called Applicable Acts), shall be divided as hereinafter described between Tenant and Landlord. Tenant shall be responsible for compliance measures for Applicable Acts within its Premises and access areas outside its Premises, providing said access areas exclusively benefit Tenant's Premises. Landlord shall be responsible for compliance measures for common areas outside Tenant's Premises, unless said area exclusively benefits Tenant's Premises.

**u. CASp.** The Premises have not undergone an inspection by a Certified Access Specialist (CASp). This notice is given pursuant to California Civil Code Section 1938.

**v. Termination Rights.** Tenant shall have a continuous right to terminate the Lease at the end of month 72 of the Lease Term by giving Landlord no less than nine (9) months advance written notice. Should Tenant exercise Tenant's Lease Termination right, Tenant shall pay Landlord any unamortized and "deal costs" for the transaction plus the equivalent of 3.5 months of Base Rent based upon the monthly Base Rent paid in the year in which Tenant exercises its Termination right. The term "deal costs" shall include but are not necessarily limited to architectural fees, tenant Improvements per Landlord Work Letter, leasing commissions, reasonable legal fees and permitting costs and fees.

**w. Additional terms:**

1. To the extent that any of the terms in this Lease are conflict with the requirements of the United States Housing Act of 1937 (1937 Act), as amended, federal regulations, and the Annual Contributions Contract ("ACC"), as amended, and other U.S. Department of Housing and Urban Development ("HUD") requirements, the HUD requirements shall control and govern in such instances of conflict.

2. Notwithstanding anything to the contrary contained in this Lease, it is acknowledged and agreed that Tenant has no authority to provide guarantees, indemnifications, right of set off, or other pledges involving HUD restricted assets of Tenant, including, but not limited to any Housing Choice Voucher ("HCV") related assets of Tenant. Accordingly, except as approved by HUD in writing, it is acknowledged that there is no legal right of recourse against: (1) any operating receipts (as the term "operating receipts" is defined in the ACC), HCV receipts or Operating Funds of Tenant; or (2) any other asset of Tenant related to the 1937 Act. Should any assets of Tenant be identified at a later date as meeting the criteria set forth above, any guarantees, indemnifications, right of set off, or other pledges involving those assets will be deemed null, void, and unenforceable.

3. Notwithstanding anything to the contrary contained in this Lease, if HUD determines that the Lease does not comply with federal requirements, Tenant shall have the right to exercise any directives issued by HUD relating to this Lease.

4. HUD is not a Guarantor of Tenant and is not liable for the actions of Tenant under this Lease.

The parties hereto have executed this Lease as of the dates set forth below.

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

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

Berkeley 2000 LLC, Landlord

Berkeley Housing Authority, Tenant

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

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

John L. Lineweaver, Manager

James E. Williams, Executive Director