

ORDINANCE NO. 7,809-N.S.

AUTHORIZING LEASE AMENDMENT FOR OPTIONS RECOVER SERVICES AT 1835 ALLSTON WAY

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

Section 1. FINDINGS:

- A. The City adopted Ordinance No. 7,328-N.S. authorizing a Lease Agreement with Options Recovery Services (Lessee) executed April 23, 2014 with an initial term that ended December 31, 2019 for the Old City Hall Annex located at 1835 Allston Way, Berkeley, California.
- B. In the Lease, the City and Lessee agreed to two additional five (5) year option terms. The Lessee exercised its right to an option term to begin (retroactively) January 1, 2020 and expire December 31, 2024. The revenue projection to the City for the term of this lease option is \$500.00 (Five Hundred Dollars). Receipts will be entered in the General Fund ERMA Revenue Account: 011-54-624-697-0000-000-000-461110.

Section 2. AUTHORIZATION FOR CITY MANAGER TO AMEND THE LEASE AGREEMENT WITH OPTIONS RECOVERY SERVICES AT 1835 ALLSTON WAY.

The City Manager is hereby authorized to amend the lease agreement with Options Recovery Services for improved real property at 1835 Allston Way, Berkeley, CA, and to make any amendments thereto. Such lease amendment shall be on substantially the terms set forth in Exhibit A.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on April 26, 2022, this Ordinance was passed to print and ordered published by posting by the following vote:

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

Noes: None.

Absent: None.

**LEASE AMENDMENT FOR CITY OF BERKELEY
PROPERTY AT 1835 ALLSTON WAY**

This lease amendment (“**Amendment**”) is made on _____ between the CITY OF BERKELEY ("**Landlord**"), a Charter City organized and existing under the laws of the State of California and Options Recovery Services ("**Tenant**"), a nonprofit organization, who agree as follows:

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

A. Landlord is the owner of the real property at 1835 Allston Way, Berkeley, California, ("**Premises**") commonly referred to as the “Old City Hall Annex” as further described in Exhibit A, attached to and made a part of this lease.

B. Tenant entered into a lease (“**Lease**”) with Landlord on April 23, 2014. Tenant is occupying and conducting business in the total square footage of the building measuring 6,400 square feet of the premises and identified in Exhibit A, attached to and made part of this lease.

C. Tenant has exercised its right under the Lease to renew the Lease for another five (5) years per Section 2., Term. The Lease provides for a total of two options to renew for 5-year terms. This first option period shall commence (retroactively) on January 1, 2020, and end on December 31, 2024.

D. Tenant wishes to lease the premises for the purpose of continuing to operate a nonprofit organization that delivers substance abuse disorders treatment programs including intensive outpatient day treatment, and evening treatment program, case management services, associated mental health treatment, and physical health screening and drug testing in Berkeley and throughout Alameda County. _____.

E. Landlord and Tenant have agreed that the monthly base rent from January 1, 2020 to December 31, 2024, shall be ONE HUNDRED DOLLARS (\$100.00) for each year of the Lease per Section 3. Rent.

1. **Section 3. RENT**, subsection B., is amended to read as follows:

B. Manner of Payment All rent and other payments due from Tenant shall be made to Landlord in lawful money of the United States of America at Landlord's address for notice hereunder, or to such other person or at such other place as Landlord may from time to time designate in writing. At Tenant’s option, rent may be paid annually and due January 1st of the year being paid or pay the entire term (\$500) due within 30 days following approval and execution of this Lease Amendment. Any other payments from the Tenant (utilities, etc.,) and any other payments will be billed separately.

2. Section 6. **SERVICES**, subsection A., is deleted in its entirety and replaced by the following:

6. SERVICES

A. Tenant shall make all arrangements for and pay for all utilities and services, including electricity, gas, garbage, water, sewer and telephone, and all fees and periodic charges related thereto. Where direct payment of utilities and services by Tenant is not feasible, Tenant shall reimburse Landlord, without deduction, setoff, prior notice, or demand, the sum billed for the previous year’s utilities and services. The bill is due upon receipt and shall be paid to Landlord at the address to which notices to Landlord are given.

3. Section 29. **NOTICES**, is deleted in its entirety and replaced by the following:

29. NOTICES

A written notice is deemed served when a party sends the notice in an envelope addressed to the other party to this lease and deposits it with the U.S. Postal Service, registered mail, postage prepaid. For purposes of this lease, notices shall be addressed as follows, as appropriate:

To the Landlord: City of Berkeley
Department of Public Works - Real Property
1947 Center Street, Fifth Floor Suite 521
Berkeley, CA 94704

With a Copy to: City of Berkeley
Department of Public Works
2180 Milvia Street, 3rd Floor
Berkeley, CA 94704

To the Tenant: Executive Director
Options Recovery Services
1835 Allston Way
Berkeley, CA 94704

4. This Lease is amended to include the following language regarding the **Required Accessibility Disclosure**:

REQUIRED ACCESSIBILITY DISCLOSURE

- a. Landlord hereby advises Tenant that the Premises and Improvements have not undergone an inspection by a certified access specialist, and except to the extent expressly set forth in this Lease, Landlord shall have no liability or responsibility to make any repairs or modifications to the Premises or the Building in order to comply with accessibility standards. The following disclosure is hereby made pursuant to applicable California law:
 - b. “A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or landlord may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.” [Cal. Civ. Code Section 1938€]. Any CASp inspection shall be conducted in compliance with reasonable rules in effect at the Premises with regard to such inspections and shall be subject to Landlord’s prior written consent.
5. Further, this Contract is amended to include the following language regarding the City’s Sanctuary Contracting Ordinance:

SANCTUARY CITY CONTRACTING

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

- a. “Data Broker” means either of the following:

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

In all other respects, the Lease executed on April 23, 2014, shall remain in full force and effect.

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

LANDLORD
CITY OF BERKELEY

By: _____
City Manager

THIS LEASE HAS BEEN
APPROVED AS TO FORM
BY THE CITY ATTORNEY
OF THE CITY OF BERKELEY
6/2004

REGISTERED BY:

City Auditor

ATTEST:

Deputy City Clerk

TENANT:

Signature: _____
Title: _____

City of Berkeley Business License No.

ORDINANCE NO. 7,328-N.S.

LEASE: OLD CITY HALL ANNEX TO OPTIONS RECOVERY SERVICES

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

Section 1. FINDINGS:

The Old City Hall Annex is located at 1835 Allston Way, to the south of the Maudelle Shirek Building (Old City Hall). The front door is on Allston Way; and the other entrance is from the adjacent parking lot. The Annex is approximately 6,400SF with interior divisions into office and meeting room spaces of different sizes, and non-ADA accessible men's and women's restrooms. Options Recovery Services is a non-profit organization currently doing business at the Veterans Memorial Building at 1931 Center Street in Berkeley. The organization will expand its operations to provide more services for men and women, including: substance abuse disorders treatment programs including intensive outpatient day treatment, an evening treatment program for people working or going to school, case management services, associated mental health treatment, physical health screening and drug testing. The Old City Hall Annex is currently vacant and requires a significant amount of repairs and improvements. Options Recovery Services will be responsible for all upgrades and renovations in the Annex, as required by the terms of the lease. Repairs and improvements are expected to be completed in August 2014.

Section 2. AUTHORIZATION FOR CITY MANAGER TO ENTER INTO A LEASE for property at 1835 Allston Way, Berkeley, California.

The City Manager is hereby authorized to execute a 5-year lease agreement with two 5-year options, and any amendments thereto, with Options Recovery Services for real property located at 1835 Allston Way, Berkeley, California. Such lease shall be on substantially the terms set forth in Exhibit A.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on February 11, 2014 this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington, Wozniak and Bates.

Noes: None.

Absent: None.

* * * * *

At a regular meeting of the Council of the City of Berkeley held on February 25, 2014, this Ordinance was adopted by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington, Wozniak and Bates.

Noes: None.

Absent: None.

ATTEST: 
Mark Numainville, CMC, City Clerk


Tom Bates, Mayor

Date signed: February 27, 2014

CITY OF BERKELEY
IMPROVED PROPERTY LEASE

Between

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

as Landlord,

and

OPTIONS RECOVERY SERVICES

as Tenant.

For the Property at
1835 Allston Way (Old City Hall Annex)
Berkeley, CA

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LEASE

THIS LEASE is made by and between the CITY OF BERKELEY, a Charter City organized and existing under the laws of the State of California ("Landlord" or "City") and OPTIONS RECOVERY SERVICES, a non-profit organization doing business at 1931 Center Street, in Berkeley, CA ("Tenant").

WITNESSETH:

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

1. DEFINITIONS

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

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

C. "Building" shall mean the building(s) on the Premises as shown on Exhibit A.

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

E. "Premises" shall mean the building located at 1835 Allston Way, commonly known as "Old City Hall Annex," including the exterior perimeter out to the edge of the sidewalks as further described on Exhibit "A", the total square footage of the building measuring approximately 6,400 sq. ft. with interior divisions into offices and meeting room spaces. (See Exhibit B).

F. "Renewal Term" shall mean the 5-year period after either option to renew the Lease is exercised.

2. TERM

A. Initial Term and Term of Renewal. This Lease shall take effect once duly approved by the Berkeley City Council and executed by both Landlord and Tenant ("the Effective Date"). The Initial Lease Term will expire at midnight December 31, 2019 ("the Termination Date"). Tenant shall have an option to renew this lease for two (2) additional 5-year terms upon the conditions set forth in subparagraph B, below.

B. Procedure for Renewal. If Tenant wishes to renew the Lease beyond the Initial Lease Term, Tenant must provide written notice of such intent to Landlord at least one hundred and twenty (120) days prior to the expiration of the Initial Term. If Tenant exercises the first option and wishes to renew the Lease beyond the first Renewal Term, Tenant must provide

written notice of such intent to Landlord at least one hundred and twenty (120) days prior to the expiration of the first Renewal Term. If Landlord, at its sole discretion, determines that Tenant has complied with all terms and conditions of the Lease, at least sixty (60) days prior to expiration of the Lease, Landlord shall provide written notice to Tenant of any additional improvements that will be required to be completed by Tenant during either of the 5-year renewal terms and notice of its determination to grant renewal of the lease upon condition that Tenant agrees to the additional improvements, if any, at least thirty (30) days prior to the expiration of the Lease.

C. If, after Landlord's initial determination that Tenant has complied with the terms and conditions of the Lease but prior to its actual expiration, Landlord determines, at its sole discretion, that Tenant has failed to comply with any term or condition of the Lease, Landlord may revoke the granting of any additional term and seek applicable remedies under the Lease, including, but not limited to Paragraph 19.

D. After the Initial Lease Term, Landlord may, at its sole discretion and without cause, provide 18 months notice to Tenant of the termination of lease, after the expiration of which the Lease shall terminate. In the event of termination under this subparagraph, Landlord shall: (i) reimburse Tenant for the depreciated costs, amortized over a 10 year period from year one of original lease, of any improvements it has made that are set forth in Exhibit C; and (ii) make its best efforts to assist Tenant with relocation.

E. At the expiration of the Initial Term, or either Renewal Term, or any sooner termination of this lease due to default, Tenant agrees to quit and surrender possession of the premises and its appurtenances to Landlord in good order and condition. Tenant agrees to reimburse the Landlord for any damage done to the property caused by Tenant's occupation or tenancy excepting reasonable wear and tear and damage by the elements. Tenant shall not leave or allow to remain on the property any garbage, refuse, debris, or personal property. Tenant will pay Landlord any removal costs incurred by Landlord. At the end of the tenancy, Tenant agrees to deliver the property keys to the Landlord in person or by mail to the Landlord's designated agent.

3. RENT

A. Minimum Rent Tenant shall pay to Landlord as a minimum rental for its use and occupancy of the Premises an annual rent of **ONE HUNDRED DOLLARS (\$100.00)** for each year of the Lease. For purposes of determining Minimum Rent for the first year of the Lease, ending on December 31, 2014 the amount will be pro-rated for a partial year. In each subsequent Lease Year during the Initial Term, and during any Renewal Term, the Minimum Rent shall be **ONE HUNDRED DOLLARS (\$100.00)** per year. See also Exhibit "D" – Payment.

B. Manner of Payment All rent and other payments due from Tenant shall be made to Landlord in lawful money of the United States of America at Landlord's address for notice hereunder, or to such other person or at such other place as Landlord may from time to time designate in writing.

C. Delinquency And Late Charges; Interest

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

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

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

4. PROPERTY AND OTHER TAXES

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

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

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

D. Tenant's Right to Contest. Tenant may, at no cost to Landlord, reasonably contest the legal validity or amount of any taxes, assessments, or charges for which Tenant is responsible under this Lease, and institute such proceedings as Tenant considers necessary; provided, however, that Tenant shall at all times protect Landlord from foreclosure of any lien, and that Landlord shall not be required to join in any proceeding or contest brought by Tenant.

5. USE OF PREMISES: OPERATION

A. The Premises shall be used by Tenant to deliver to men and women with substance abuse disorders treatment programs including intensive outpatient day treatment, an evening treatment program for people working or going to school, case management services, associated mental health treatment, physical health screening and drug testing. Tenant may add new program activities with written approval from the City 30 days prior to commencement and such permission will not be unreasonably withheld so long as the majority of the programs held on the Premises focus on providing primary and ancillary services for men and women with substance abuse disorders.

B. Business may be conducted with the public on the Premises Monday through Friday, 8:00 a.m. – 8:00 p.m. provided that Tenant shall have obtained all required permits.

C. Tenant shall operate its business on and about the Premises in a manner consistent with the use permitted herein and the standards promulgated by Landlord. Tenant shall not allow participants to congregate, smoke or make unreasonable noise on the sidewalk or any areas adjacent to the property.

D. With the exception of persons requiring ADA access, Tenant shall ensure that members of the public, including its program participants, use only the front entrance and not the rear entrance to enter the building, and shall ensure that none of its employees, volunteers,

guests, program participants or members of the public visiting the Premises, shall congregate or smoke in the Common Area or adjacent parking lot at the rear of the Premises.

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

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

G. Tenant agrees to cooperate with the City in promoting community participation in Tenant's programs and activities held on the Premises.

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

1. Place, construct or maintain in, on, or about the Premises any advertisement media, including without limitation, searchlights, flashing lights, loudspeakers, or other similar media or device;

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

3. Warehouse or stock on the Premises any goods, wares or merchandise other than that which is directly related to the Tenant's use of the Premises;

4. Store, display or sell goods or merchandise on the Property or place or permit portable signs or other devices to be stored or to remain on the Property;

5. Use or permit any portion of the Premises, inside or outside the building, to be used as living or sleeping quarters or for sleeping; and

6. Sell, distribute, display, or offer for sale any item, which, in Landlord's good faith judgment, may tend to detract from the image of the Annex.

I. Tenant shall not do or permit to be done in, on, or about the Premises anything which is prohibited by or may conflict with any law, statute, ordinance or governmental rule or regulation now in force or hereafter enacted or promulgated, which is prohibited by the standard forms of special form or commercial general liability insurance or which may cause a cancellation of any insurance policy covering the Premises or any of its contents, or (except with the prior written consent of Landlord) which may increase the existing rate of or affect any special form or commercial general liability insurance or other insurance upon the Premises, or any of its contents. In the event Tenant does or permits to be done anything or keeps or permits to be kept anything on or about the Premises which increases the existing rate of such insurance upon the Premises or any of its contents, Tenant shall pay the amount of any such increase

promptly upon Landlord's demand. Tenant shall not do or permit anything to be done which will in any way obstruct or interfere with the rights of other lawful users of the Premises, including, without limitation, tenants, their employees or invitees, disturb or annoy them, or use or allow the Premises to be used for any improper, unlawful or objectionable purpose. Tenant shall not maintain or permit any nuisance in or about the Premises or commit or suffer to be committed any waste in or upon the Premises.

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

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

L. If any governmental license or permit, other than a certificate of occupancy, shall be required for the proper and lawful conduct of Tenant's business, Tenant shall procure and maintain such license or permit and submit the same for inspection by Landlord. Tenant at all times shall comply with the terms and conditions of each such license or permit.

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

N. The Tenant acknowledges that the Annex is a City of Berkeley Designated Landmark and that all construction, alterations and/or modifications to the building must comply with Chapter 3.24 of the Berkeley Municipal Code, including obtaining permits and approval of the Landmarks Preservation Commission.

6. SERVICES

A. Tenant shall make all arrangements for and pay for all utilities and services, including electricity, gas, garbage, water, sewer and telephone, and all fees and periodic charges

related thereto.

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

C. Landlord shall not be liable for damages to either person or property; nor shall Landlord be deemed to have evicted Tenant; nor shall there be any abatement of any rent; nor shall Tenant be relieved from performance of any covenant on its part to be performed hereunder by reason of any (i) breakdown of equipment or machinery utilized in supplying utilities or services; (ii) interruption of or failure to supply or delay in supplying any such utilities or services; (iii) the limitation or restriction on use of water, electricity gas, or telecommunications service serving the Premises; or (iv) failure to repair or cure any of the foregoing, except in the case of Landlord's gross negligence or willful misconduct.

D. PARKING – Tenant acknowledges that this lease does not include any parking spaces.

7. OBLIGATION OF TENANT TO REMOVE PERSONAL PROPERTY.

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

8. ALTERATIONS AND IMPROVEMENTS

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

B. Upon the execution of this Lease, Landlord approves and requires that Tenant complete all of the improvements to the Premises listed on Exhibit "C" and that Tenant shall complete the improvements within the timeframe as stated in Exhibit "C" (Tenant's Work). Tenant shall not make any alterations, additions or improvements to the Premises (i) costing in excess of \$5,000 for any single instance or \$15,000 in the aggregate for any twelve (12) consecutive months or (ii) affecting the Building structure or utility systems, or attach any fixture or item of equipment thereto without Landlord's prior written consent except for the improvements listed in Exhibit "C". All such alterations, additions, or improvements shall be made at Tenant's sole expense in accordance with Landlord's General Design Requirements (if any) and the plans and specifications (including specifications for materials to be used in connection therewith) and a statement of the estimated cost of such work submitted to and

approved by Landlord (collectively the "Plans and Specifications"). If the cost thereof exceeds \$5,000 for any single instance, or if such Tenant's Work involves the Building structure or utility systems, any contractor or person employed or used by Tenant must be a licensed contractor. Landlord, in its sole discretion, shall approve or disapprove Tenant's request and may disapprove Tenant's use of any materials or substances, including but not limited to asbestos and fiber glass, which Landlord, in its sole discretion, deems potentially hazardous, toxic or threatening to health. To the extent that Tenant's Work shall require a building permit or other permits from the City of Berkeley and/or any other governmental agency, Tenant shall not perform any of Tenant's Work until Tenant has obtained all requisite permits. Tenant further shall comply with all prevailing wage requirements of California Labor Code Sections 1720 et seq., to the extent such requirements are applicable to Tenant's work.

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

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

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

F. Except for Exhibit C Improvements, Tenant shall not substantially deface or change any floors, walls, ceilings, roofs, or partition any of the structures or improvements on the Premises without first providing thirty (30) days written notice to Landlord. If Landlord raises no objections within thirty (30) days after receipt of such notice, Tenant may proceed, provided Tenant obtains all required permits. Except as may be specifically approved in writing by Landlord, Tenant shall require all contractors to provide a labor and materials bond for the full amount of any contract for improvements that exceed \$50,000, including any applicable Exhibit C Improvements. Tenant shall pay, when due, all sums of money that may be due or become due for any labor, services, materials, supplies or equipment furnished to or for Tenant in, at, upon or about the Premises and which may be secured by any mechanic's, material men's or other lien against the Premises or Landlord's interest therein.

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

1. Tenant agrees that to the extent it is required to comply with the prevailing wage requirements, Tenant shall assure that all workers are paid the prevailing rate of per diem wages, and travel and subsistence payments (defined in applicable collective bargaining agreements filed in accordance with Section 1773.8 of the California Labor Code), in effect on the date of Landlord's first approval of a building permit or other approval of the work. Copies of the applicable prevailing rate of per diem wages are on file at Landlord's principal office and will be made available to any interested party on request. Tenant agrees to post a copy of the prevailing rate of per diem wages at the Property. Tenant, as a penalty to Landlord, shall forfeit Twenty-Five Dollars (\$25) for each calendar day, or portion thereof (or such other sum as specified from time to time by Section 1775 of the California Labor Code), for each worker paid less than the applicable prevailing rates for such work or craft in which such worker is employed. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Tenant.

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

9. LIENS

A. Tenant shall keep the Premises and the Building free from any liens arising out of any work performed, materials furnished or obligations incurred by Tenant. In the event that Tenant shall not cause any such liens to be released of record, Landlord shall have, in addition to all other remedies provided herein or by law, the right (but not the obligation) to cause the same

to be released by such means as Landlord shall deem proper, including payment of the claim giving rise to such lien. All sums paid and all expenses incurred by Landlord in connection therewith shall be reimbursed by Tenant promptly on demand. Landlord shall have the right to post and keep posted on the Premises any notices (including, without limitation, notices of non-responsibility pursuant to California Civil Code Section 3094) that Landlord may deem proper for protection of Landlord and the Premises. Tenant shall give Landlord at least ten (10) business days' prior notice of the date of commencement of any Tenant's work on or in the Premises to allow Landlord to post such notices.

10. TENANT AND LANDLORD MAINTENANCE OBLIGATIONS

A. Except as provided for in subparagraph F below, Tenant agrees that during the entire term of this Lease, at its own cost and expense, it shall keep and maintain the Premises, and all leasehold improvements, fixtures, furniture, and other improvements located on the Premises, in good-quality order, repair and condition. Except as otherwise provided in this Lease, Tenant shall perform, at its own cost and expense, any and all maintenance, removal of graffiti, repairs, or rehabilitation to the Building(s), whether required by deterioration or by operations of Tenant or otherwise. This obligation includes any repairs to the roof. Tenant shall ensure that any graffiti on or about the Premises is abated within 72-hours of being discovered by Tenant, or within 48-hours of notification by City.

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

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

D. Prior to trimming any trees on the property, Tenant must obtain Landlord's permission.

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

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

G. Nothing in this Paragraph 10 shall be deemed to affect or impair Landlord's rights under Paragraph 9 of this Lease. Tenant acknowledges that Landlord has no obligation and has made no promises to alter, remodel, improve, repair, decorate or paint the Building or to improve the Premises, or any part thereof. Landlord has made no representations respecting the condition of the Building, or the Premises, except as specifically set forth in this Lease.

11. ENVIRONMENTAL

A. Lessee shall follow all environmental rules and regulations as they apply to City agencies. Specifically, Lessee shall minimize waste and recycle and compost, as per Recycling and Composting Guidelines for City Buildings. Guidelines for creating a recycling program are attached as Attachment 2. Lessee must participate in a recycling service provided by the City or provide an acceptable alternative with the approval of the City's Recycling Supervisor. To that end, Lessee shall:

Assign someone to be in charge of its recycling programs, and to communicate needs and questions to the City's Solid Waste Management Division.

- i. Recycle corrugated cardboard, office papers and beverage containers (glass bottles, plastic bottles, and cans).
- ii. Place collection containers for paper at desk sides and copy rooms, and break rooms. (See Attachment 2 for details.)
- iii. Provide a location for custodians to pick up flattened empty cardboard boxes. A central paper container is acceptable.
- iv. Educate employees, volunteers and participants about recycling procedures.
- v. Cooperate with the custodial service to make recyclables available for collection.
- vi. Recycle batteries and office equipment (contact the City's Solid Waste Management Division for information about vendors).
- vii. Cafeterias and commercial kitchens may participate in the City's organics recycling program, with the approval of the City's Solid Waste Supervisor. City provides containers and training.
- viii. Lessee shall recycle construction waste from tenant improvements.
- ix. Lessee shall conserve energy as specified in the City Manager's January 11, 2001 memorandum as shown in Attachment 3.

12. DAMAGE OR DESTRUCTION

A. In the event the Premises are damaged by fire, flood, earthquake, act of God, the elements, or other casualty, then (unless this Lease is terminated pursuant to this Paragraph 12) Tenant shall forthwith repair the same, at its sole expense. In this event, Tenant shall be solely responsible for the loss, repair, and replacement of its all equipment and leasehold improvements.

B. Anything in subparagraph A to the contrary notwithstanding, neither Tenant nor Landlord shall have any obligation to repair or rebuild the Premises or the Buildings following damage or destruction thereto if the damage or destruction is due to any cause or casualty other than one against which the responsible party is required to carry insurance or actually does carry insurance and such party reasonably estimates that the cost of repair or rebuilding exceeds ten percent (10%) of the then replacement cost of the Premises or Buildings, as the case may be. If the responsible party elects not to repair any damage or destruction pursuant to this provision, such party shall give the other party notice of such election within sixty (60) days after the date of such damage or destruction; and this Lease shall terminate as of the date of such damage or destruction.

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

13. INDEMNIFICATION

A. To the fullest extent permitted by law, Tenant shall (1) immediately defend and (2) indemnify Landlord, and its directors, officers, and employees from and against all liabilities regardless of nature, type, or cause, arising out of or resulting from or in connection with the Lease. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. The Tenant's obligation to indemnify applies regardless of whether a liability is a result of the negligence of any other person, unless it is adjudicated that the liability is caused by the sole active negligence or sole willful misconduct of an indemnified party.

B. The duty to defend is a separate and distinct obligation from the Tenant's duty to indemnify. The Tenant shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the Landlord, the Landlord and its directors, officers, and employees, immediately upon submittal to the Tenant of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. A determination of comparative active negligence or willful misconduct by an indemnified party does not relieve the Tenant from its separate and distinct obligation to defend Landlord. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Tenant asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of an indemnified party, Tenant may submit a claim to the Landlord for reimbursement of reasonable attorneys' fees and defense costs.

C. The review, acceptance or approval of any of Tenant's work or work product by any indemnified party shall not affect, relieve or reduce the Tenant's indemnification or defense obligations. This Section survives the termination of this Lease. The provisions of this Section are not limited by and do not affect the provisions of this Lease relating to insurance.

D. Liabilities subject to this Section include any claim of discrimination or harassment, including but not limited to sexual harassment, arising from the conduct of the Tenant or any of the Tenant's officers, employees, agents, licensees, or subcontractors. In the event of a discrimination or harassment complaint against any employee, agent, licensee or subcontractor of the Tenant or its subcontractors, the Tenant shall take immediate and appropriate action in response to such complaint, including, but not limited to termination or appropriate discipline of any responsible employee, agent, licensee or subcontractor.

E. TENANT ACKNOWLEDGES THAT THE PREMISES MAY BE UNSAFE

AND SUBJECT TO SEVERE DAMAGE DURING ANY MAJOR EARTHQUAKE. TENANT OCCUPIES THE BUILDING AT ITS OWN RISK. TENANT HEREBY RELEASES AND DISCHARGES THE CITY OF BERKELEY AND ITS EMPLOYEES, AGENTS, AND CONTRACTORS, FROM ALL ACTIONS, CLAIMS OR DEMANDS THAT TENANT, ITS HEIRS, GUARDIANS, AND LEGAL REPRESENTATIVES NOW HAVE OR MAY HAVE IN THE FUTURE FOR DAMAGE OR INJURY RESULTING FROM AN EARTHQUAKE.

14. INSURANCE

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

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

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

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

C. An original certificate of each policy of insurance shall be delivered to Landlord prior to the date the Premises is delivered to Tenant and from time to time during the Term. If Tenant shall fail to procure or maintain any insurance required hereunder or shall fail to furnish to Landlord any duplicate policy or certificate, Landlord may obtain such insurance; and any premium or cost paid by Landlord for such insurance shall be reimbursed by Tenant promptly upon Landlord's demand. Tenant shall make good faith efforts to ensure that at least sixty (60) days prior to the expiration of any such policy, an extension endorsement showing that such

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

D. If any of the insurance required in this Paragraph 13 is provided under a claims-made form of policy, Tenant shall maintain such coverage continuously throughout the Term and without lapse for a period of not less than five (5) years beyond the termination of this Lease, to the effect that should occurrences during the Term give rise to claims made after termination of this Lease, such claims shall be covered by such claims-made policies.

E. Each of Tenant's Property insurance policies insuring the Premises and Tenant's Property in the Premises shall include a waiver of the insurer's right of subrogation against Landlord, or, if such waiver should be unobtainable or unenforceable, (i) an express agreement that such policy shall not be invalidated if the assured waives, before the casualty, the right of recovery against any party responsible for a casualty covered by the policy or (ii) any other form of permission concerning the assured's right to waive its right of recovery. If such waiver, agreement or permission shall not be, or shall cease to be, obtainable, Tenant shall so notify Landlord promptly after learning thereof.

F. Tenant hereby releases Landlord with respect to any claim (including a claim for negligence) which Tenant might otherwise have against Landlord for loss, damage or destruction of Tenant's Property occurring during the Term to the extent to which Tenant is insured under a policy (ies) containing a waiver of subrogation or agreement or permission to release liability, as provided in E. above. If, notwithstanding the recovery of insurance proceeds by Tenant for such loss, damage or destruction, Landlord is liable to Tenant with respect thereto or is obligated under this Lease to make replacement, repair, restoration or payment, then (provided Tenant's right of full recovery under its insurance policies is not thereby prejudiced or otherwise adversely affected) the amount of the net proceeds of the Tenant's insurance against such loss, damage or destruction shall be offset against Landlord's liability to Tenant therefore or shall be made available to Landlord to pay for replacement, repair or restoration, as the case may be. Nothing contained herein shall relieve either party of any duty to repair, restore or rebuild imposed elsewhere in this Lease or shall nullify any abatement of rent provided for elsewhere in this Lease.

G. If a death, serious personal injury, or substantial Property damage occurs in connection with the performance of this Lease, Tenant shall immediately notify the Landlord's Risk Manager. If any accident occurs in connection with this Lease, Tenant shall promptly submit a written report to Landlord, in such form as the Landlord may require. This report shall

include the following information: 1) name and address of the injured or deceased person(s); 2) name and address of Tenant's subtenant, if any; 3) name and address of Tenant's liability insurance carrier; and 4) a detailed description of the accident, including whether any of Landlord's equipment, tools or materials were involved.

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

I. Tenant shall forward all insurance documents to:

City of Berkeley
Real Property Administrator
1947 Center Street, 4th Floor
Berkeley, CA 94704

15. COMPLIANCE WITH LAWS

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

B. Tenant acknowledges that conducting its operations at the Premises and making certain alterations and improvements may require an authorization, approval or permit (collectively, "Regulatory Approval") from a governmental authority having jurisdiction over the Premises. Tenant shall be solely responsible for obtaining any such Regulatory Approval, and Tenant shall not seek any Regulatory Approval without first obtaining the approval of Landlord, except for items listed on Exhibit "C". All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne by Tenant. Tenant shall be solely responsible for complying with any and all conditions imposed by regulatory agencies as part of a Regulatory Approval; however, Landlord shall not take any action that would materially interfere or prevent Tenant from complying with all such conditions. Any fines or penalties imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval shall be paid and discharged by Tenant, and Landlord shall have no liability, monetary or otherwise, for said fines and penalties, except to the extent that such fines or penalties were caused by the willful acts or omissions of Landlord. To the fullest extent permitted by law, Tenant agrees to indemnify and hold Landlord and its officers, agents and employees harmless from and against

any loss, expense, cost, damage, attorneys' fees, penalties, claims or liabilities which Landlord may incur as a result of Tenant's failure to timely obtain or comply with the terms and conditions of any Regulatory Approval. Landlord agrees to cooperate (but only to the same extent and in the same manner as a non-public entity could so cooperate, and not as an exercise of Landlord's police or regulatory power) with Tenant in filing, processing and obtaining all Regulatory Approvals, and upon request of Tenant, to join with Tenant as co-applicant in filing, processing and obtaining all Regulatory Approvals; provided, however, that Landlord may refuse to file, process or obtain Regulatory Approvals or to join Tenant as a co-applicant if Landlord determines in its sole and absolute discretion that it is not in Landlord's best interest to do so. Nothing contained herein shall be deemed to limit or otherwise constrain Landlord's discretion, powers, and duties as a regulatory agency with certain police powers.

C. Tenant understands and agrees that Landlord is entering into this Lease in its capacity as a landowner with a proprietary interest in the Premises and not as a regulatory agency of the City of Berkeley with certain police powers. Landlord's legal status shall in no way limit the obligation of Tenant to obtain any required approvals from Landlord's departments, boards, or commissions that have jurisdiction over the Premises. By Landlord's entering into this Lease, neither Landlord nor any of City Council, boards, commissions, agencies, departments, or Affiliates obligates itself to any other governmental agent, board, commission or agency, or to Tenant, or to any other individual or entity, with regard to any discretionary action relating to development or operation of the Premises. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals that may be required or desirable for the improvement, alteration, or operation of the Premises. By entering into this Lease, Landlord is in no way modifying or limiting the obligation of Tenant to cause the Premises to be used and occupied in accordance with all laws.

16. ASSIGNMENT AND SUBLEASE

A. Any provision of this Lease to the contrary notwithstanding, Tenant shall not directly or indirectly, by operation of law or otherwise, transfer, assign, pledge, encumber or hypothecate this Lease or all or any portion of the Premises or Tenant's interest in and to the Premises (collectively, an "Assignment") or sublet the Premises or any portion thereof or permit the Premises or any portion thereof to be used, occupied or managed by anyone other than Tenant pursuant to any Lease, use or concession agreement or otherwise (collectively, a "Sublease") without first obtaining Landlord's written consent. Any assignment, encumbrance, or sublease without Landlord's written consent shall be voidable and, at Landlord's election, shall constitute a default. City has the sole discretion to determine whether to agree to any sublease or assignment. No consent to any assignment, encumbrance, or sublease shall constitute a further waiver of the provisions of this paragraph.

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

C. Tenant expressly waives any rights that it might otherwise be deemed to possess

pursuant to applicable law, including without limitation, Section 1997.040 of the California Civil Code, to limit any remedy of Landlord pursuant to Section 1951.2 or 1951.4 of the Code by means of proof that enforcement of a restriction on use of the Premises would be unreasonable.

17. INSPECTION

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

18. DEFAULT

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

A. Failure To Use Premises. Failure to use the Premises as specified in Paragraphs 5 and 6.

B. Nonpayment of Rent. Failure to pay any installment of rent or any other sum due and payable hereunder upon the date when such payment is due, such failure continuing for a period of five (5) days after written notice of such failure; provided, however, that Landlord shall not be required to provide such notice more than twice during any consecutive twelve (12) months with respect to non-payment of any portion of rent, the third such non-payment during any consecutive twelve (12) months constituting an event of default without requirement of notice.

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

continuously and diligently pursue such remedy until such default is cured.

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

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

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

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

H. Release of Hazardous or Toxic Substances or Materials and Other Environmental Impacts. Any release or discharge in, on, under, around, or from the Premises and/or by Tenant, its agents or employees of Hazardous Substances which has not been fully remediated within ten (10) days after such release or discharge.

I. Illegal Drugs. Any use, sale, release or discharge of any illegal drug or controlled substances on the Premises.

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

K. Failure to Comply with Council requirements. Failure to comply with subparagraph 5.C of the Lease and failure to provide the "Additional Required Improvements" set forth in Exhibit C.

19. REMEDIES UPON DEFAULT

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

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

C. Damages Upon Termination. Should Landlord terminate this Lease pursuant to subparagraph A above, in addition to any other rights and remedies to which it may be entitled under applicable law, Landlord shall be entitled to recover from Tenant: (i) the worth at the time of the award of the unpaid rent and other amounts which had been earned at the time of termination; plus (ii) the worth at the time of the award of the amount by which the unpaid rent which would have been earned after termination until the time of the award exceeds the amount of such rent loss that Tenant proves reasonably could have been avoided; plus (iii) the worth at the time of the award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rent loss that Tenant proves reasonably could be avoided; plus (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which, in the ordinary course of things, would likely result therefrom, including without limitation, the costs and expenses (including brokerage commissions and advertising costs) incurred by Landlord, with or without terminating the Lease, (1) in retaking possession of the Premises; (2) in cleaning and making repairs and alterations to the Premises reasonably necessary to return the Premises to good condition for the use permitted by this Lease and otherwise to prepare the Premises for reletting; (3) in removing all persons and personal property from the Premises and transporting and storing any of Tenant's personal property left at the Premises, although Landlord shall have no obligation to remove, transport, or store any of such personal property; and (4) in reletting the Premises for such term, at such rent and upon such other terms and conditions as Landlord in its sole discretion may deem advisable; plus (v) such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time under California law. The "worth at the time of award" of the amounts referred to in (i) and (ii) shall be computed with interest at the maximum rate allowed by law. The "worth at the time of award" of the amount referred to in (iii) shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one percent (1%).

D. Computation of Rent For Purposes of Default. For purposes of computing unpaid rent which would have accrued and become payable pursuant to subparagraph C above, unpaid

rent shall include the total rent for the balance of the term of the Lease.

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

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

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

20. ENVIRONMENTAL OBLIGATIONS

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

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

interests.

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

21. LANDLORD'S RIGHT TO CURE

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

22. EMINENT DOMAIN

A. If all or any part of the Premises shall be taken as a result of the exercise of the power of eminent domain, this Lease shall terminate as to the part so taken on the earlier of the dates that title vests in the condemning authority or such authority takes possession of the Premises. In the case of a partial taking, either Landlord or Tenant shall have the right to terminate this Lease as to the balance of the Premises by written notice to the other party within thirty (30) days after such date of taking; provided, however, that Tenant shall have no right to terminate this Lease unless the portion of the Premises taken shall be of such extent and nature as substantially to impede or impair Tenant's use of the balance of the Premises. In the event of any such taking, Landlord shall be entitled to all compensation, damages, income, rent, awards and interest that may be paid or made in connection with such taking. Tenant shall have no claim

against Landlord for the value of any unexpired Term; however, Landlord shall cooperate with Tenant if Tenant seeks to recover, at its sole expense, proceeds or awards paid to compensate for damage to the "goodwill" associated with Tenant's business. Any such amounts recovered shall belong to Tenant.

B. If any part of the Premises shall be so taken and this Lease shall not be terminated, then this Lease shall continue in full force and effect, except that the Rent shall be reduced in the same proportion that the rentable area of the Premises taken bears to the original rentable area of the Premises. Landlord, upon receipt of the award, shall make all necessary repairs and alterations (exclusive of Tenant's trade fixtures, furniture, furnishings, personal Premises, decorations, signs and contents) to restore the portion of the Premises remaining to as near its former condition as the circumstances will permit and to restore the Building to the extent necessary to constitute the portion of the Building not so taken a complete architectural unit. Landlord, in any event, shall not be required to spend for such repairs and alterations an amount in excess of the amount received by Landlord as damages for the taking of such part of the Premises and/or Building; and Tenant, at its sole cost and expense, shall make all necessary repairs and alterations to Tenant's trade and lighting fixtures, furniture, furnishings, personal Premises, decorations, signs and contents.

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

23. SUBORDINATION

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

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

24. NO MERGER

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

25. TRANSFER BY LANDLORD

In the event the original Landlord or any successor owner of the Premises shall sell or convey the Premises or the Building, or any portion thereof that includes the Premises, all liabilities and obligations on the part of the original Landlord or such successor owner shall terminate. All

such liabilities and obligations thereupon shall be binding only upon the new owner. Tenant agrees to attorn to such new owner.

26. ESTOPPEL CERTIFICATES

From time to time, Tenant shall execute and deliver to Landlord promptly upon request a certificate certifying (i) that this Lease is unmodified and in full force and effect or, if there has been any modification, that this Lease is in full force and effect as modified, and stating the date and nature of each such modification; (ii) the date to which rent and other sums payable hereunder have been paid; (iii) that no notice has been received by Tenant of any default which has not been cured, except as to defaults specified in such certificate; (iv) that Landlord is not in default under this Lease and that Tenant has no claims, charges, offsets or defenses against Landlord, or specifying the nature of any such default or claim, charges, offsets or defense; and (v) such other matters as may be reasonably requested by Landlord. Any such certificate may be relied upon by any prospective purchaser, vendee, or other party. If Tenant fails to execute and deliver any such certificate within ten (10) business days after Landlord's written request, such failure, at Landlord's election, shall be conclusive against Tenant that this Lease is in full force and effect, without modification (except as may be represented by Landlord), that there are no uncured defaults in Landlord's performance, and that not more than one month's rent has been paid in advance.

27. HOLDING OVER

If, after the expiration of the Term of the Lease, Tenant remains in possession of the Premises with Landlord's consent all provisions of this Lease shall remain in effect with the following exceptions: (1) Tenant shall become a tenant from month-to-month, such tenancy terminable on thirty (30) days' notice given at any time by either party; and (2) the Rent shall increase to 120% of the amount of the rent when the Lease expired.

28. CHANGES BY LANDLORD

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

B. Landlord shall have the right in its sole discretion to, among other things, change permitted land uses, install, maintain and remove public improvements, change the arrangement, character, use or location of entrances or passageways, walkways, streets, sidewalks, parking areas, stairs, landscaping, toilets, and other facilities and portions of the Premises, and to change the name, number or designation by which the Building is commonly known. None of the foregoing shall be deemed an actual or constructive eviction of Tenant, nor shall it entitle Tenant to any reduction of rent hereunder or result in any liability of Landlord to Tenant; provided,

however, Landlord shall not unreasonably obstruct or interfere with access to or the lines of sight toward the Premises.

29. GOVERNING LAW

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

30. SECURITY DEPOSIT

As security for the faithful performance by Tenant of the terms, provisions, and condition of this Lease, Tenant shall deposit with Landlord an amount of **TWO HUNDRED DOLLARS (\$200)**, unless waived in whole or in part by Landlord. Such security shall be deposited on or before the Effective Date of this Lease.

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

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

31. SIGNAGE

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

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

B. Within ten (10) days after Landlord's approval of the Signage Proposal, Tenant, at its sole expense, shall cause to be prepared and submitted to Landlord two (2) sets of plans

("Sign Plans") reflecting in detail the information contained in the approved Signage Proposal. Landlord shall review the Sign Plans within thirty (30) days after Landlord's receipt of the same.

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

D. Upon Landlord's request, Tenant immediately shall remove any signage that Tenant has placed or permitted to be placed in, on or about the Premises or Building contrary to the terms of this Paragraph 30. If Tenant fails to do so, Landlord may enter upon the Premises and remove the same at Tenant's expense. Tenant, at its sole expense, shall maintain and replace all approved signage and shall repair, at its sole expense, any damage to the Building caused by the erection, maintenance or removal of any signage, including any damage caused by Tenant's removal of its signage at the expiration or earlier termination of the Lease. Tenant also shall comply with such regulations as may from time to time be promulgated by Landlord governing the signage of all tenants in .

32. NO PARTNERSHIP

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

33. NO WAIVER

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

34. NOTICES

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

To Tenant: Davida Coady, M.D.
Options Recovery Services
1931 Center Street
Berkeley, CA 94704

To Landlord: Property Management Office

City of Berkeley
1947 Center Street, 4th floor
Berkeley, CA 94704

With copies to: City Manager
City of Berkeley
2180 Milvia Street, 5th floor
Berkeley, CA 94704

Notices to Landlord regarding Hazardous Substances required by Paragraph 19 hereof shall be sent both to the above addresses and to such other place as either party may from time to time designate in a written notice to the other party, or in the case of Tenant, delivered to the Premises.

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

35. COMPLETE AGREEMENT

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

36. REQUESTS FOR CONSENT; WAIVER OF CLAIM

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

37. INTERPRETATION

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

38. SUCCESSORS AND ASSIGNS

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

39. AUTHORITY

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

40. UNAVOIDABLE DELAYS

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

B. Notwithstanding any provision of this Paragraph 39 or any other provision of this Lease to the contrary, it is understood and agreed that there shall be no abatement of, or delay in the commencement of, or payment of any sum due to Landlord under this Lease.

41. TIME OF THE ESSENCE

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

42. BROKERAGE

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

43. CITY NON-DISCRIMINATION ORDINANCE

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

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

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

B. Tenant understands that this Lease is governed by City Council Resolution No. 58,664 – N.S.. This resolution, as may be amended from time, stipulates that Tenant's memberships policies may be reviewed by the City for compliance therewith at any time, and that unsatisfactory membership policies may result in non-renewal of this Lease or termination by the City.

44. NON-DISCRIMINATION AGAINST PERSONS WITH DISABILITIES.

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

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

45. CONFLICT OF INTEREST PROHIBITED

A. In accordance with California Government Code Section 1090, Berkeley City Charter Section 36 and B.M.C. Chapter 3.64, neither Tenant nor any employee, officer, director,

partner or member of Tenant, or immediate family member of any of the preceding, shall have served as an elected officer, an employee, or a board, a committee or commission member of Landlord, who has directly or indirectly influenced the making of this Lease.

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

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

46. NUCLEAR FREE BERKELEY.

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

47. OPPRESSIVE STATES.

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

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

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

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

48. BERKELEY LIVING WAGE ORDINANCE (LWO)

A. Tenant agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance (LWO). If Tenant employs six (6) or more part-time or full-time employees, and generates \$350,000 or more in annual gross receipts, Tenant will be required to provide all eligible employees with City mandated minimum compensation during the term of this lease, as defined in B.M.C. Chapter 13.27, and well as comply with the terms enumerated herein.

B. Tenant shall be required to maintain all reasonable records and documents that would establish whether Tenant is subject to Berkeley's Living Wage Ordinance. If Tenant is subject to the LWO, as defined therein, Tenant shall be further required to maintain monthly records of those employees located on the leased premises. These records shall include the total number of hours worked, the number of hours spent providing service on the leased Premises, the hourly rate paid, and the amount paid by Tenant for health benefits, if any, for each of its employees providing services under the lease. The records described in this Paragraph shall be made available upon the City's request. The failure to produce these records upon demand shall be considered a default, subject to the provisions contained in Paragraph 18 herein.

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

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

Tenant's failure to comply with this Section shall constitute default of the lease, upon which City may terminate this lease pursuant to Paragraph 18.

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

49. BERKELEY EQUAL BENEFITS ORDINANCE (EBO)

A. Tenant hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Tenant is currently subject to the Berkeley Equal Benefits Ordinance, Tenant will be required to provide all eligible employees with City

mandated equal benefits during the term of this lease, as defined in B.M.C. Chapter 13.29, as well as comply with the terms enumerated herein.

B. If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant agrees to supply the City with any records the City deems necessary to determine compliance with this provision. Failure to do so shall be considered a default, subject to the provisions of Paragraph 17 of this lease.

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

Tenant's failure to comply with this Paragraph shall constitute default of the lease, upon which City may terminate this lease pursuant to Paragraph 18.

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

50. AUDIT

Pursuant to Section 61 of the Berkeley City Charter, the City Auditor's Office, or its designee, may conduct an audit of Tenant's financial, performance and compliance records maintained in connection with the operations and services performed under this Lease, and with the payments made under this Lease. In the event of such audit, Tenant agrees to make all such financial, performance and compliance records available to the Auditor's Office, or to its designee. City agrees to provide Tenant an opportunity to discuss and respond to any findings before a final audit report is filed.

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

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

52. SURVIVAL

The provisions of Paragraphs 8, 9, 10, 12, 13, 14, 19, and 40 and any other obligation of Tenant that, by its terms or nature, is to be performed after or is to survive termination of this Lease shall survive such termination.

53. EXHIBITS

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

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

TENANT:

LANDLORD:

OPTIONS RECOVERY SERVICES
A non-profit organization

CITY OF BERKELEY
a municipal corporation

By: _____
Davida Coady, M.D., Date
Executive Director

By: _____
Christine Daniel, City Manager Date

Approved as to form:

Registered by:

City Attorney Date

City Auditor Date

Attest:

City Clerk Date

TENANT INFORMATION

Tax Identification No.

Incorporated: Yes No

Certified Woman Business Enterprise: Yes ____ No X

Certified Minority Business Enterprise: Yes ____ No X

Certified Disadvantaged Business Enterprise: Yes No

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

Exhibit "B"

Common Area

The walkway that leads to the rear entrance of the building including sidewalks, which may be shared by users of the parking lot. See attached aerial photograph for view of the property.

1835 Allston Way, Berkeley, CA - Google Maps

Google

To see all the details that are visible on the screen, use the "Print" link next to the map.



Exhibit "C"
List of Improvements
"Tenant's Work"

REQUIRED IMPROVEMENTS	COMPLETION DATE
ALL IMPROVEMENTS MUST BE COMPLETED WITHIN 18 MONTHS (1.5 YEARS) OF LEASE EXECUTION.	
1. ROOF (\$52,250)	
Demolition	
<ul style="list-style-type: none"> • Tear off old composition shingle roof to wood sheathing 	August 15, 2014
<ul style="list-style-type: none"> • Tear off old BUR/gravel roof to wood sheathing 	
<ul style="list-style-type: none"> • Remove all existing gutters and downspouts 	
<ul style="list-style-type: none"> • Remove all existing metal flashings at pipes, vents and curb flashings 	
<ul style="list-style-type: none"> • Break any stucco as needed to allow for new metal flashing 	
<ul style="list-style-type: none"> • Remove all debris from Premises 	
Installation	
<ul style="list-style-type: none"> • Install new 30 lb underlayment felt 	August 15, 2014
<ul style="list-style-type: none"> • Install new 30 year type with Limited Lifetime Warranty 	
<ul style="list-style-type: none"> • Install new Standard Ridge and Hip shingle caps 	
<ul style="list-style-type: none"> • Install new sheet metal Step flashings at confined rake locations 	
<ul style="list-style-type: none"> • Install new galvanized metal vent collars to pipes, and vents 	
<ul style="list-style-type: none"> • On flat roofs install new Heat weld 4 Ply 20-year Class A Fire rated APP Modified Bitumen roof system 	
<ul style="list-style-type: none"> • Install new OG seamless gutters 	
<ul style="list-style-type: none"> • Repair stucco broken for roof replacement work 	
<ul style="list-style-type: none"> • Replace dry rot damaged wood where found, including window frames 	
2. FLOORS (\$22,490)	
Demolition	
<ul style="list-style-type: none"> • Remove and properly dispose of all existing carpets, pads and damaged or loose tack strips in all rooms and hallways excluding the existing bathrooms 	August 15, 2014

REQUIRED IMPROVEMENTS	COMPLETION DATE
Installation	August 15, 2104
<ul style="list-style-type: none"> • Install new tack strips as needed 	
<ul style="list-style-type: none"> • Install new 20 oz commercial loop net carpet 	
<ul style="list-style-type: none"> • Install new 32 oz commercial pad 	
<ul style="list-style-type: none"> • Clean existing tile floors and grout in bathrooms and re-grout as necessary 	
<ul style="list-style-type: none"> • Polish existing vinyl flooring in main hallway area 	
3. INTERIOR PAINTING (\$24,450)	August 15, 2014
Dust Control	
<ul style="list-style-type: none"> • Mask and tape all existing light fixtures, switches, data and telephone system, cabinets, and glass on windows and doors 	
<ul style="list-style-type: none"> • Install utility paper to main hallway (to be saved) 	
<ul style="list-style-type: none"> • Install utility paper to protect existing bathroom tile 	
<ul style="list-style-type: none"> • Set up plastic perimeter to meet all Lead Safety Requirements 	
BUILDING MUST REMAIN VACANT DURING PREPARATION AND PAINTING PROCESS	
Preparation and Painting	August 15, 2014
<ul style="list-style-type: none"> • Sand all woodwork as needed, including all doors, windows casings, and baseboards 	
<ul style="list-style-type: none"> • Fill all nail holes with spackle 	
<ul style="list-style-type: none"> • Remove and replace damaged drywall/sheetrock 	
<ul style="list-style-type: none"> • Inspect for any damaged wood 	
<ul style="list-style-type: none"> • Clean all walls and ceilings 	
<ul style="list-style-type: none"> • Prime and seal all water stains 	
<ul style="list-style-type: none"> • Paint all wood trim doors and windows Bone White color in semi-gloss finish 	
<ul style="list-style-type: none"> • Paint all walls and ceilings Bone White color in eggshell finish 	
4. ELECTRICAL (\$10,550)	August 15, 2014
<ul style="list-style-type: none"> • Remove all existing light bulbs and upgrade with new T8s 	
<ul style="list-style-type: none"> • Clean up fixtures and repair/replace lenses as needed 	
<ul style="list-style-type: none"> • Change existing incandescent fixtures with new fluorescent fixtures 	
<ul style="list-style-type: none"> • Install new *SMART Dimmer plus system to all existing rooms and hallways 	

REQUIRED IMPROVEMENTS	COMPLETION DATE
***SMART Dimmer System consists of upgrading the existing fixtures with new dimmable ballast, a Smart dimmer, and a Smart Motion Sensor.	
5. CARPENTRY (in-kind/volunteer – value \$6,500)	August 15, 2014
<ul style="list-style-type: none"> • Repair windows and doors as needed to make them operable and remove any dry rot damage 	
6. CLEAN UP (in-kind/volunteer- value \$2,300)	August 15, 2014
<ul style="list-style-type: none"> • Clean up all windows inside and outside 	
<ul style="list-style-type: none"> • Trim back trees and bushes away from building 	
<ul style="list-style-type: none"> • Clean landscape area of weeds and garbage 	
7. ADA-COMPLIANT DOORS AND HARDWARE (\$5,300)	Prior to move-in or August 2014
<ul style="list-style-type: none"> • Remove all existing doors and locks 	
<ul style="list-style-type: none"> • Prep all doors to receive ADA compliant locks 	
<ul style="list-style-type: none"> • Install new S Series Saturn ADA compliant lock by Schlage 	
<ul style="list-style-type: none"> • Install new interconnected S Series ADA compliant lock 	
<ul style="list-style-type: none"> • Install new Basic auto closer and strike with 2 pads, one exterior and one interior for ADA access 	
<ul style="list-style-type: none"> • Build new word ramp and railing to meet ADA requirements 	
<ul style="list-style-type: none"> • Pressure treated wood to be used for the structural frame of ramp 	
<ul style="list-style-type: none"> • Ramp surface and railing to be built of wood composite material 	
8. NEW ADA RESTROOM (\$11,900)	Prior to move-in or August 2014
<ul style="list-style-type: none"> • Frame new partition wall to create space for new ADA compliant bath 	
<ul style="list-style-type: none"> • Install new wood blocking to support new bathroom fixtures and accessories 	
<ul style="list-style-type: none"> • Install new drywall/sheetrock and patch walls as needed 	
<ul style="list-style-type: none"> • Install new ADA compliant door and lock system 	
<ul style="list-style-type: none"> • Paint new bathroom 	
<ul style="list-style-type: none"> • Run all rough plumbing for new toilet and sink 	

REQUIRED IMPROVEMENTS	COMPLETION DATE
<ul style="list-style-type: none"> • Install new smart light system in new bathroom on its own dedicated circuit 	
<ul style="list-style-type: none"> • Install new hardibacker and tile floor 	
<ul style="list-style-type: none"> • Install new ADA compliant toilet and sink 	
<ul style="list-style-type: none"> • Install new safety grab bars as needed for ADA compliance 	
<ul style="list-style-type: none"> • Install new mirror 	
<ul style="list-style-type: none"> • Install new towel dispenser 	
<ul style="list-style-type: none"> • Install new toilet paper dispenser 	
<p>TOTAL ESTIMATED RENOVATION COST: \$135,740</p>	
<p>ADDITIONAL REQUIRED IMPROVEMENTS</p>	<p>Note: no cost estimates established</p>
<ul style="list-style-type: none"> • Provide lighting in the Alcove Area and lighting above the front door sufficient to illuminate the sidewalk in front of the building 	<p>Prior to move-in or August 2014</p>
<ul style="list-style-type: none"> • Replace dry rot damaged wood where found 	<p>Over the course of the lease term</p>

Tenant shall make every effort to use environmental construction techniques and materials such as rain collection systems, natural light, and potential solar wind power depending on ability to fundraise and obtain donated materials.

Exhibit "D"

PAYMENT

1. Annual payment of rental fees, as set forth in Item 3 of the Lease Agreement, shall be paid no later than January 15th of each calendar year for the forthcoming term year.
2. Payments shall be made payable to the "City of Berkeley" and paid at the Finance Department, 2180 Milvia Street, 3rd floor, Berkeley, California 94704.
3. Failure to make full payments on time is grounds for termination of this Lease by the City.

