



Office of the City Manager

CONSENT CALENDAR
September 19, 2023

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Liam Garland, Director, Public Works
 Subject: License Agreement – RM Ventures, LLC, d.b.a, In the Wood Grill & Bar for Nonexclusive Use of the Elmwood Parking Lot Pedestrian Paseo

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a ground license agreement with RM Ventures LLC d.b.a., In the Wood Grill and Bar (In the Wood Grill & Bar) for the nonexclusive use of a portion of the Elmwood Parking Lot Pedestrian Access Path (“Paseo”), a City-owned midblock pedestrian path connecting the City’s Elmwood Parking Lot to College Avenue in the Elmwood Neighborhood Shopping District, for an initial term of five (5) years and authorize the City Manager to execute a renewal of this license, under the same terms, after the termination of the initial term.

FISCAL IMPACTS OF RECOMMENDATION

This license agreement for nonexclusive use of 557 square feet anticipates total revenue of \$8,871 for the initial five (5) year term. The initial monthly price per square foot is \$0.25 with an annual adjustment of 3% beginning the second year after the Commencement Date of the lease. The tenant is also required to maintain the entire width and length of the Paseo, including the pedestrian path, clean and free of trash on a daily basis. Rent will be deposited into the Off-Street Parking Fund for Surface Parking Lot Revenue.

CURRENT SITUATION AND ITS EFFECTS

Prospective licensee, In the Wood Grill & Bar, a restaurant located at 2930 College Avenue currently uses a portion of the Elmwood Parking Lot Paseo, a midblock paved pedestrian path connecting the City’s Elmwood Parking Lot to College Avenue in the Elmwood Neighborhood Shopping District, to serve food and drinks including beer and wine. Owners of In the Wood Grill and Bar recently applied and had approved a Planning Use Permit to add license for service of distilled spirits, in addition to beer and wine at the restaurant and outdoor dining area. Approval of this license will correct a prior incorrect determination that the area is public right of way, ensure tenant has sufficient liability insurance coverage for the nonexclusive use of the property, and

ensure conformance with an existing easement requiring a pedestrian access path at all times.

BACKGROUND

In 2022, RM Ventures applied for a Planning Use Permit to add license for service of distilled spirits at In the Wood Grill and Bar, a restaurant with outdoor dining area. During the application review process, City staff determined that previous approvals for the outdoor dining area incorrectly categorized the area as public right of way and issued approval for the use with a sidewalk café permit. Sidewalk café permits are only for public right of way.

The area is the Elmwood Parking Lot Paseo and is private property owned by the City of Berkeley. It consists of a portion of two parcels (APNs 052-156800700 and 052-156800601) that combined with six other parcels are the City's Elmwood Parking Lot. The portion of interest is a midblock, paved passageway between the parking lot and College Avenue. The Planning Use Permit (ZP2022-0139) to add a license for distilled spirits included Outdoor Dining Conditions and was approved February 23, 2023 and the outdoor dining area is shown in Exhibit A (Premises). With input from the City Attorney's Office it was determined that a land lease granting nonexclusive use of the Paseo to RM Ventures, LLC is the solution that ensures appropriate liability protections and a fair rent is collected by the City.

If approved, the restaurant's use of the area is nonexclusive because during nonoperational hours In the Wood Grill and Bar will remove all tables and chairs in the outdoor dining area and store them in a 60 square foot area at the west end of the Paseo. To ensure conformance with the existing easement agreement, the potential licensee and Public Works will work together to clearly mark the limits of the patio dining area to ensure no encroachment into the six-foot wide public access path at all times. This ensures adjacent business owners and operators, their customers, City maintenance staff, and the general public will have a generous access path at all times as required by the easement. The storage area and pedestrian path are shown in Exhibit A to License Agreement (Premises).

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects, climate impacts, or sustainability opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

The Elmwood Parking Lot Paseo is not public right of way. Approval of this license will correct a prior incorrect determination that the area is public right of way, ensure tenant has sufficient liability insurance coverage for the nonexclusive use of the property, and

ensure conformance with an existing easement requiring a pedestrian access path at all times.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

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

Attachments:

1: Resolution

Exhibit A: License Agreement

RESOLUTION NO. ##,###-N.S.

LICENSE AGREEMENT BETWEEN CITY OF BERKELEY AND RM VENTURES, LLC,
D.B.A., IN THE WOOD GRILL AND BAR

WHEREAS, the City owns six parcels upon which the Elmwood Parking Lot and Paseo, a midblock pedestrian pathway is located. The Paseo (located on APNs 052-156800700 and 052-156800601) connects visitors from the parking lot to College Avenue and back; and

WHEREAS, an easement established when the City purchased the properties guarantees access through the Paseo and throughout the parking lot for all property and business owners adjacent to the Lot; and

WHEREAS, the City previously, and incorrectly, issued a sidewalk café permit agreement for partial use of the Paseo for dining and flower sales and seeks to correct the matter with this License; and

WHEREAS, the City and Licensee, RM Ventures, LLC d.b.a., In the Wood Grill and Bar agreed to enter into this nonexclusive use land license agreement which replaces the previous sidewalk café permit and designates 497 square feet along the southern property line of 2930 College be used as an outdoor dining area, 60 square feet be used for storage of outdoor furniture during restaurant closures, and the remainder to be a minimum six-foot-wide pedestrian path maintained at all times; and

WHEREAS, the initial term of this License shall be for a five-year term beginning retroactively on March 1, 2023 with the City Manager authorized to execute renewals of this license after the initial term. The total revenue for the initial five-year term of the agreement will be \$8,871 which will be entered into Off-Street Parking Fund for Surface Parking Lot Revenue.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to enter into a five-year lease agreement with RM Ventures, LLC d.b.a., In the Wood Grill and Bar for real property located on parcels designated sections of APNs 052-156800700 and 052-156800601, with the authority execute renewals of this License after the initial term. Such license shall be on substantially the terms set forth in Exhibit A.

Exhibits

A: License Agreement

LICENSE AGREEMENT

This LICENSE is entered into by and between the CITY OF BERKELEY, a Charter City organized and existing under the laws of the State of California ("City") and RM Ventures, a limited liability corporation d.b.a, In the Wood Grill & Bar ("Licensee"), who agrees as follows:

1. LICENSE

- a. City hereby grants a license to Licensee, subject to all the terms and conditions herein, for the nonexclusive use of a portion of the City's property, a site that measures approximately 557 (five hundred fifty-seven) square feet located on portions of assessor parcel numbers (APN) 052-156800700 and 052-1568601, adjacent to the southern property line of 2930 College Avenue, Berkeley, California and further described in Exhibit A - Premises, attached hereto and made part of this License.
- b. This License is not a lease; Licensee does not by this License obtain an exclusive right, against the City or the public, to any part of the Property.
- c. This License is granted for the purpose of Licensee using 497 square feet of land for outdoor food and beverage service during In the Wood Grill & Bar's hours of operation and using an additional 60 square feet of space for storage of the outdoor dining furniture during hours of nonoperation as described in Exhibit B – Use of Premises, attached hereto and made a part of this License. If Licensee fails to use the Premises for such purposes, or to provide the services described herein, or uses the Premises for unauthorized purposes, City may, in its sole discretion, immediately terminate this License.
- d. Business may be conducted with the public on the licensed premises at any time on any day, provided that, to do business after 10:00 p.m. on any day Licensee shall have obtained any permit required by federal, state or local law. Licensee shall operate the outdoor dining area with sufficient staff to serve patrons and only during the hours of operation of the associated restaurant and in conformance with any and all permits required by federal, state, or local law.
- e. In addition to Licensee's agreement to abide by all other restrictions on Licensee's use, Licensee shall maintain at all times a minimum six-foot wide pedestrian path parallel to the outdoor dining and storage area to ensure a midblock pedestrian path to and from the Elmwood Parking Lot and College Avenue is continuously maintained in the Paseo, further described in Exhibit A and Exhibit B, attached hereto.
- f. Licensee acknowledges that this License does not convey an estate in land or a leasehold interest in the Premises and is not a lease.

2. TERM

- a. This License shall commence retroactively on March 1, 2023. The effective date of the resolution provides and shall be for a period of five (5) years and terminate February 29, 2028, as shown in Exhibit B – Term and Payment, attached hereto and made a part of this License. Either party may terminate this License for any reason with thirty (30) days prior written notice to the other party.

- b. Additionally, City Council authorizes the City Manager to amend and renew this License after the first five-year term under the same terms set forth in this agreement. Licensee must notify the Landlord in writing no more than one year and no less than six months prior to the termination of the Licenses initial term as shown in Exhibit C, attached hereto and made a part of this License.

3. LICENSE FEE

In consideration for the rights conveyed by this License, Licensee shall pay to City an initial fee of \$0.25 per square foot per year with an annual increase of 3.0 percent (3%) each year beginning year two. Payment for the first year, March 1, 2023 to February 28, 2024 in the amount of One thousand, six hundred seventy-one Dollars (\$1,671.00) is due immediately upon City Council approval of the License and receipt of a fully executed License. License Fee is due no later than March 1st of each year of the License. Licensee shall make payments to City in accordance with the provisions described in Exhibit C, attached hereto.

4. SECURITY DEPOSIT

City and Licensee acknowledge that there shall be no security deposit.

5. NOTICES

A written notice shall be deemed served upon mailing said notice to the other party and depositing the same with the U.S. Post Office, first class mail, with postage paid. For purposes of this License, all notices to the City shall be addressed to:

City of Berkeley
Public Works Real Property
1947 Center Street, 5th Floor, Suite 521
Berkeley, CA 94704

For purposes of this License, all notices to Licensee shall be addressed to below. Licensee shall promptly notify City of any change of address within two weeks of any such change.

RM Ventures, LLC – In the Wood Grill & Bar
2930 College Avenue
Berkeley, CA 94705

6. MAINTENANCE AND ALTERATIONS

- a. Licensee is responsible for ensuring that the Premises meet all applicable City of Berkeley codes and regulations during the term of this License, and that they are in good order, condition and repair and present no safety issues or hazards.
- a. Licensee shall, to the City's satisfaction, keep and maintain the Premises and Licensee's equipment, furniture, and any other personal property of Licensee in good order, condition and repair. Licensee shall keep the Premises and the property immediately adjacent to the Premises reasonably free and clean of all debris and trash that is generated by Licensee or Licensee's customers.

- b. Licensee shall not construct any facilities or improvements, permanently install any equipment, or make any alterations to the Premises without the City's prior written consent, which consent shall be within the sole discretion of City to grant or withhold. Upon termination of this License, Licensee shall at its own expense remove all of its equipment and shall surrender the Premises to City in the same condition as at the commencement of this License, subject to reasonable wear and tear.
- c. Licensee shall keep any public and/or common areas adjacent to the Premises free and clear of any obstructions, barricades or barriers placed or created by Licensee or resulting from Licensee's operations or use of the Premises. This includes Licensee's employees, contractors, and customers, garbage cans, and any other impacts of the Licensee's business.

7. ACCESS AND ENTRY TO THE PREMISES BY OTHERS

- g. City, its agents, employees, and representatives, have the right to inspect the Premises at any time, provided such entry does not cause unreasonable interference with Licensee's activities.
- h. City at all times shall have the right and privilege of making such changes in and to the Premises or adjacent areas owned by City which in its sole opinion are deemed to be desirable or appropriate, including the location and relocation of stairways, sidewalks, pathways, driveways, streets, entrances, exits, automobile parking spaces, the direction and flow of traffic, designation of prohibited areas, landscaped areas, utilities and all other facilities.
- i. Nothing contained herein shall be deemed to create any liability to the City for any personal injury, or any damage to any furniture, equipment, or other property of Licensee, or its employees or others, unless solely caused by the gross negligence or willful misconduct of City, its agents, servants, or employees. Licensee is solely responsible for the security of the Premises, and for the safety of those using the Premises.
- j. City reserves to itself the right to grant to others in the future nonexclusive utility easements over, under, through, across or on the Premises in locations that will not unreasonably interfere with Licensee's access to or use of the Premises. Any interference shall be temporary, and all work on the Premises shall proceed expeditiously. Licensee shall be given reasonable notice before commencement of any work on the Premises.

9. TAXES, ASSESSMENTS, AND OTHER CHARGES

Licensee shall pay all applicable personal property taxes lawfully levied on account of personal property owned by Licensee on the Premises, and pay any in-lieu, possessory interest, or use taxes lawfully imposed by reason of Licensee's use or occupancy of the Premises. Licensee shall obtain and pay for all local, state and federal permits and licenses necessary for the operation of its business.

11. ASSIGNMENT AND SUBLICENSING PROHIBITED

This License is personal to Licensee. Notwithstanding references to assignees and/or sub licensees elsewhere in this License, if any, Licensee may not assign or sublicense this

License in whole or in part, and any attempt to assign or sublicense this License shall terminate it.

12. INDEMNIFICATION

Licensee, for itself and its successors and assigns, agrees to release, defend, indemnify and hold harmless City, its officers, agents, volunteers and employees from and against any and all claims, demands, liability, damages, lawsuits or other actions, including without limitation actions for personal injury or death or property damage arising out of or caused by Licensee's operations under this License, or the performance of this License by Licensee or its officers, employees, partners, directors, agents, invitees, or guests.

13. INSURANCE

- k. Licensee at its cost shall maintain public liability and property damage insurance with a single combined liability limit of \$2,000,000 and property damage limits of not less than \$200,000 insuring against all liability of Licensee and its authorized representatives arising out of and in connection with Licensee's use of the Premises. All such insurance shall insure performance by Licensee of the preceding indemnity provisions. All insurance shall name the City of Berkeley, its officers, agents, volunteers and employees as additional insureds and shall provide primary coverage with respect to the City.
- l. If the insurance referred to above is written on a Claims Made Form, then following termination of this License, coverage shall survive for a period of not less than five years. Coverage shall also provide for retroactive date of placement coinciding with the effective date of this License.
- m. Licensee at its cost shall maintain on all its personal property, Licensee's improvements, and alterations, in on, or about the premises, a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements. This coverage shall be considered primary, and the proceeds from any such policy shall be used by Licensee for the replacement of personal property or the restoration of Licensee's improvements or alterations.
- n. If Licensee employs any person, it shall carry workers' compensation and employer's liability insurance and shall provide a certificate of insurance to the City. 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 City; provide for a waiver of any right of subrogation against City to the extent permitted by law; and be approved as to form and sufficiency by the City's Risk Manager.
- o. Licensee shall forward all insurance documents to:

City of Berkeley
Public Works Real Property
194 7 Center Street, 5th Floor, Suite 521
Berkeley, CA 94704

14. RISK OF LOSS

Licensee bears all risk of loss under this License.

15. CONFORMITY WITH LAW

- p. Licensee shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the activities of Licensee hereunder, including the Occupational Safety and Health Act of 1979 as amended, all California Occupational Safety and Health regulations, and all applicable federal, state, municipal and local regulations relating to health, safety, noise, environmental protection, waste disposal, hazardous materials, and water and air quality. All activities conducted by Licensee on the Premises must be in accordance with these laws, ordinances, codes and regulations. Licensee shall defend, indemnify and hold harmless City, its officers, agents, volunteers and employees from any and all damages, liability, fines, penalties and consequences from any noncompliance or violation by Licensee, or its officers, Employees, partners, directors, agents, invitees, or guests, of any laws, ordinances, codes or regulations.
- q. If a death, serious personal injury or substantial property damage occurs in connection with the performance of this License, Licensee shall immediately notify the City's Risk Manager by telephone at 510.981.6998. If any accident occurs in connection with this License, Licensee shall promptly submit a written report to City, in such form as the City 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 Licensee's liability insurance carrier; and 3) a detailed description of the accident, including whether any of City's equipment, tools or materials were involved.
- r. If a release of hazardous materials or hazardous waste occurs in connection with the performance of this License, Licensee shall immediately notify the Berkeley Police Department and the City's Toxics Management office, in addition to complying with all other obligations imposed by law, ordinance, code or regulation. Licensee shall not store hazardous materials or hazardous waste within the City of Berkeley without a proper permit from the City.

16. MATERIAL SAFETY DATA SHEETS

- a. To comply with the City's Hazard Communication Program, Licensee agrees to submit Material Safety Data Sheets (MSDS) for all "hazardous substances" Licensee intends to use in the performance of work under this License in any City facility. "Hazardous substances" are defined as those substances so designated by the Director of Industrial Relations pursuant to the Hazardous Substances Information and Training Act (Labor Code sec. 6360 et seq.). The MSDS for all products must be submitted to the City before commencing work. The MSDS for a particular product must be reviewed and approved by the City's Risk Manager before Licensee may use that product.
- b. City will inform Licensee about hazardous substances to which it may be exposed while on the job site and protective measures that can be taken to reduce the possibility of exposure.

17. INDEPENDENT CAPACITY

For purposes of this License, and for the duration of this License, Licensee, including its agents and employees shall be, and are, an independent Licensee and not an agent or employee of the City. Licensee has and shall retain the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting Licensee in the performance of this License. Licensee shall be solely responsible for all matters relating to the payment of its employees, including compliance with Social Security withholding taxes and all other regulations governing such matters, and shall be solely responsible for its own acts and those of its agents and employees

18. CITY NON-DISCRIMINATION ORDINANCE

Licensee hereby agrees to comply with the provisions of the Berkeley Municipal Code (B.M.C.) Chapter 13.26 as amended from time to time. In the performance of this License, Licensee agrees as follows:

- a. Licensee shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.
- b. Licensee shall permit the City access to records of employment, employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the opinion of the City, are necessary to monitor compliance with this non-discrimination provision. In addition, Licensee shall fill-out, in a timely fashion, forms supplied by the City to monitor this non-discrimination provision.

19. CITY NON-DISCRIMINATION AGAINST PERSONS WITH DISABILITIES

- a. If Licensee provides any aid, service or benefit to others on the City's behalf, Licensee 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. Licensee shall further observe and comply with all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination against individuals with disabilities or ensuring that individuals with disabilities are not excluded from participating in or receiving benefits, services or activities of the City.
- b. If Licensee is or becomes a "public accommodation" as defined in Title III of the Americans with Disabilities Act of 1990, Licensee 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 Licensee. All Licensees' activities must be in accordance with these laws, ordinances, codes and regulations and Licensee shall be solely responsible for complying therewith.

20. CONFLICT OF INTEREST PROHIBITED

- a. In accordance with Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64, neither Licensee nor any employee, officer, director, partner or

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

- b. In accordance with 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 the Licensee, or immediate family member of any of the preceding, shall make or participate in a decision made by the City or a City board, commission or committee, 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 Licensee.
- c. Interpretation of this section 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.

21. NUCLEAR FREE BERKELEY

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

22. OPPRESSIVE STATES

- a. In accordance with Resolution No. 59,853-N.S., Licensee certifies that it has no contractual relations with, and agrees during the term of this License 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 its License with the City), for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.
- b. For purposes of this License, the Tibet Autonomous Region and the provinces of Amdo, Kham, and U-Tsang shall be deemed oppressive states.
- c. Licensee's failure to comply with this section shall constitute a default of this License and City may terminate this License pursuant to Section 3. In the event that the City terminates Licensee due to a default under this provision, City may deem Licensee a non-responsible bidder for not more than five (5) years from the date this License is terminated.

23. BERKELEY LIVING WAGE ORDINANCE

- a. Licensee agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance. If Licensee employs six (6) or more part-time, full-time or

stipend employees, and generates \$350,000 or more in annual gross receipts, Licensee 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. Licensee shall be required to maintain all reasonable records and documents that would establish whether Licensee is subject to Berkeley's Living Wage Ordinance (LWO). If Licensee is subject to the LWO, as defined therein, Licensee shall be further required to maintain monthly records of those employees located on the licensed premises. These records shall include the total number of hours worked, the number of hours spent providing service on the licensed property, the hourly rate paid, and the amount paid by Licensee for health benefits, if any, for each of its employees providing services under the license. The records described in this Section shall be made available upon the City's request. The failure to produce these records upon demand shall be considered a default.
- c. If Licensee is subject to the LWO, Licensee shall include the requirements of the ordinance, as defined in B.M.C. Chapter 13.27, in any and all sublicenses in which Licensee enters with regard to the subject premises. Sublicensees shall be required to comply with this ordinance with regard to any employees who spend 25% or more of their compensated time on the licensed property.
- d. If Licensee fails to comply with the requirements of this the LWO and this license, the City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.
- e. Licensee's failure to comply with this Section shall constitute default of the license, upon which City may terminate this license.

In addition, at City's sole discretion, Licensee 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 Licensee's failure to pay any of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty of forfeiture for Licensee's breach.

24. SANCTUARY CITY CONTRACTING

Licensee agrees to comply with the provisions of the Sanctuary City Contracting Ordinance, B.M.C. Chapter 13.105. In accordance with this Chapter, Licensee 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; or

- 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 the City’s computer-network health and performance tools.

25. BERKELEY EQUAL BENEFITS ORDINANCE

- a. Licensee hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Licensee is currently subject to the Berkeley Equal Benefits Ordinance, Licensee will be required to provide all eligible employees with City mandated equal benefits during the term of this license, as defined in B.M.C. Chapter 13.29, as well as comply with the terms enumerated herein.
- b. If Licensee is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Licensee agrees to supply the City with any records the City deems necessary to determine compliance with this provision. Failure to do so shall be a considered a default.
- c. If Licensee 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.
- d. Licensee’s failure to comply with this Section shall constitute default of the license, upon which City may terminate this license.
- e. In addition, at City’s sole discretion, Licensee 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 Licensee’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 Licensee’s breach.

26. RECYCLED PAPER FOR WRITTEN REPORTS

If Licensee is required by this License to prepare a written report or study, Licensee shall use recycled paper for said report or study when such paper is available at a cost of not more than ten percent more than the cost of virgin paper, and when such paper is available at the time it is needed. For the purposes of this License, recycled paper is paper that contains at least 50% recycled product. If recycled paper is not available, Licensee shall use white paper. Written reports or studies prepared under this License shall be printed on both sides of the page whenever practical.

27. AUDIT

Pursuant to Section 61 of the Berkeley City Charter, the City Auditor’s Office may conduct an audit of Licensee’s financial, performance and compliance records maintained in connection with the operations and services performed under this License. In the event of such audit,

Licensee agrees to provide the City Auditor with reasonable access to Licensee's employees and make all such financial, performance and compliance records available to the Auditor's Office. City agrees to provide Licensee an opportunity to discuss and respond to any findings before a final audit report is filed.

28. SETOFF AGAINST DEBTS

Licensee agrees that City may deduct from any payments due to Licensee under this License any monies that Licensee owes City under any ordinance, License or resolution for any unpaid taxes, fees, licenses, unpaid checks or other amounts.

29. GOVERNING LAW

This License shall be deemed to have been executed in Alameda County. The formation, interpretation and performance of this License shall be governed by the laws of the State of California, excluding its conflict of laws rules. Venue for all litigation relative to the formation, interpretation and performance of this License shall be in Alameda County, California.

30. AMENDMENTS

The terms and conditions of this License or any attachments hereto shall not be altered or otherwise modified except by a written amendment to this License executed by City and Licensee.

31. SEVERABILITY

If any part of this License or the application thereof is declared invalid for any reason, such invalidity shall not affect the other provisions of this License which can be given effect without the invalid provision or application, and to this end the provisions of this License are declared to be severable.

32. WAIVER

Failure of City to insist on strict performance shall not constitute a waiver of any of the provisions of this License or a waiver of any other default of Licensee.

33. ASSIGNMENT

Licensee may not assign this License without the prior written consent of the City, except that Licensee may assign its right to any money due or to become due hereunder.

34. SURRENDER OF PROPERTY, REMOVAL OR PERSONAL PROPERTY

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

35. EFFECT ON SUCCESSORS AND ASSIGNS

This License shall be binding on and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto.

36. PESTICIDES

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

37. SIGNS

Licensee shall not install or letter any signs on the Premises without the prior written consent of City. All signs on the Premises shall conform to the provisions of B.M.C. Chapter 20.04 and the Marina design guidelines for signs.

38. REVIEW OF AGREEMENT BY COUNSEL; FAMILIARITY WITH CONTENTS AND EFFECTS

Licensee and City each represent that in entering into this Agreement, it has relied upon the legal advice of its attorneys, if it so chooses. Licensee further represents that the terms of this Agreement. have been completely read by it, and that these terms are fully understood and voluntarily accepted by it, and if applicable, its attorneys.

39. ENTIRE AGREEMENT

- a. The terms and conditions of this License, all exhibits attached and any documents expressly incorporated by reference represent the entire agreement between the parties with respect to the subject matter of this License. This License shall supersede any and all prior agreements, oral or written, regarding the subject matter between City and Licensee. No other agreement, statement, or promise relating to the subject matter of this License shall be valid or binding except by a written amendment to this License.
- b. If any conflicts arise between the terms and conditions of this License and the terms and conditions of the attached exhibits or any documents expressly incorporated, the terms and conditions of this License shall control.

40. CONSULTANTS TO SUBMIT STATEMENTS OF ECONOMIC INTEREST

The City's Conflict of Interest Code, Resolution No. 60,788-N.S., as amended, requires consultants who make a governmental decision or act in a staff capacity as defined in 2 Cal. Code of Regs. §18700, as amended from time to time, to disclose conflicts of interest by filing a Statement of Economic Interest (Form 700). Consultants agree to file such statements with the City Clerk at the beginning of the License period and upon termination of the Licensee's service.

41. SECTION HEADINGS

The sections and other headings of this License are for convenience of reference only and shall be disregarded in the interpretation of this License.

42. CITY BUSINESS LICENSE, PAYMENT OF TAXES, TAX I.D. NUMBER

Licensee has obtained a City business license as required by B.M.C. Chapter 9.04, and its license number is written below; or, Licensee 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. Licensee shall pay all

state and federal income taxes and any other taxes due. Licensee certifies under penalty of perjury that the taxpayer identification number written below is correct.

[SIGNATURES FOLLOW ON NEXT PAGE]

CITY OF BERKELEY

Richard Tapp, on behalf of RM Ventures,
LLC

By: _____
City Manager

By: _____
Richard Tapp, Managing Member
Berkeley Business
License No.: BL-008950
Taxpayer ID No.: _____

Exhibit A

Premises

568

The Berry-Bangs Tract Map No. 3 < Bk. 13 Pg. 78 >

Scale: - 1" = 40'

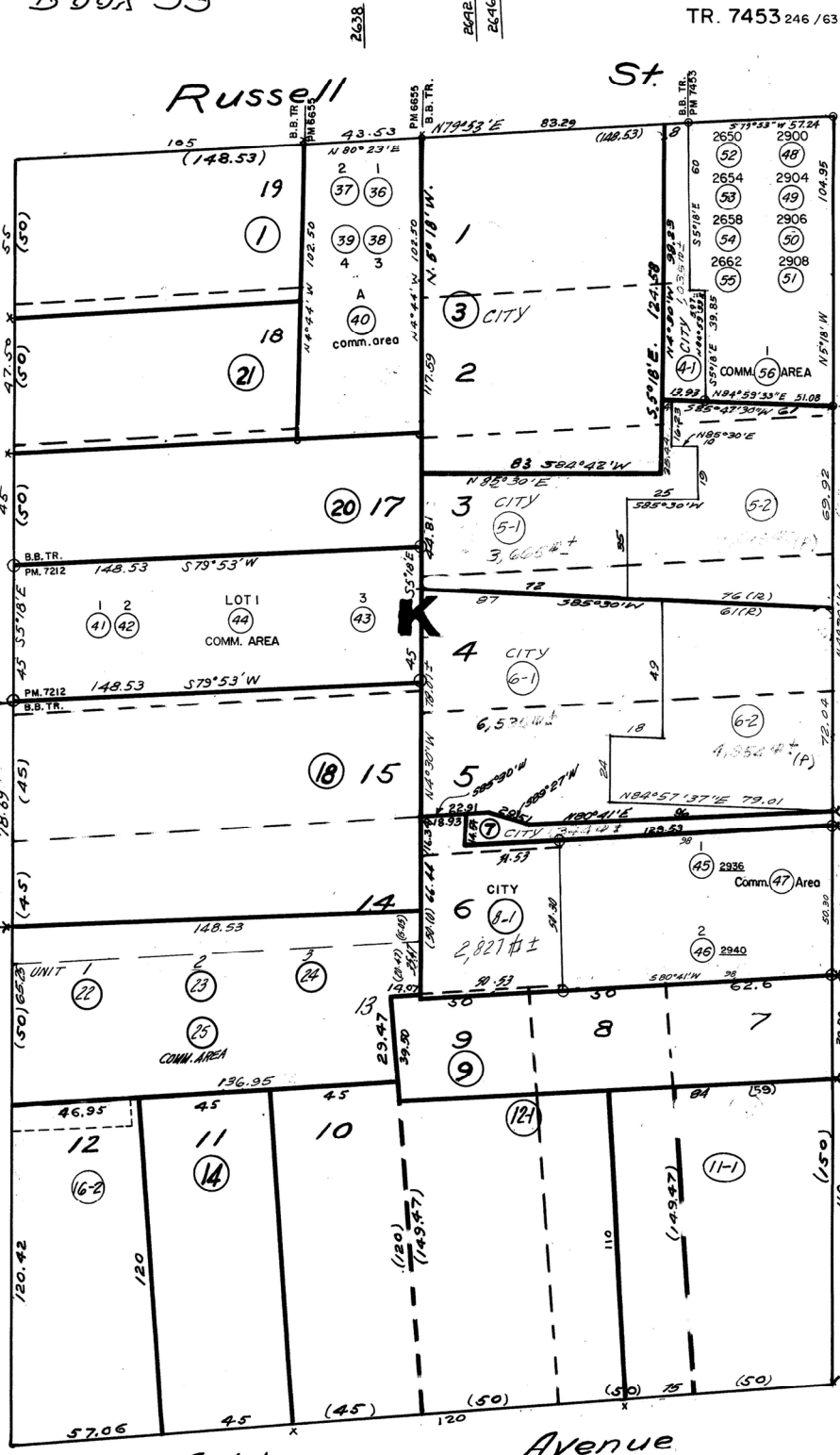
BOOK 53

TR. 5130 140/95 P.M. 7212 234/43
P.M. 6655 223/95 P.M. 7160 236/88
TR. 7453 246 / 63

3-17-84 B.C.S.
5-24-86 B.V.B.
9-02-88 L.G.B.
1-13-89 P.B.
3-9-00 P.B.
11-3-00 P.B.

2901
2905
1569
2911
2915
2917
2919
2925
2927
2929
2933

Avenue
Benvenue



Avenue
College

2910
2912
2914
2918
2924
2926
2928
2930
2936
2940
2942
2944
2946
2948
2950
2952
2956

Ashby

Avenue

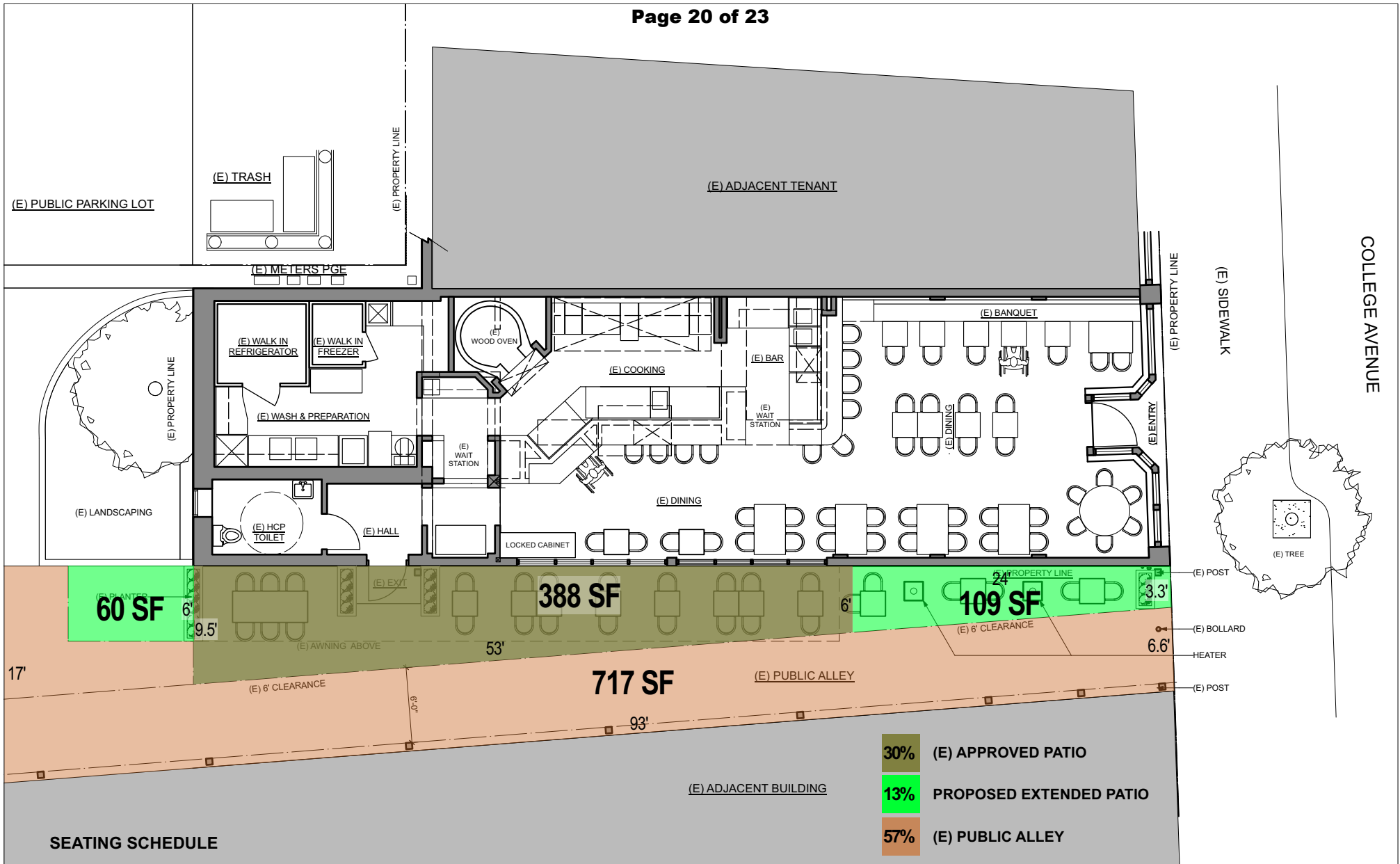
2627

2629
2635

2637

1573

HPN- 56



SEATING SCHEDULE

INTERIOR SEATS:	58
EXTERIOR SEATS:	28
TOTAL SEATS:	86

SITE PLAN
EXTERIOR SEATS PLAN WITH AREAS

- 30% (E) APPROVED PATIO
- 13% PROPOSED EXTENDED PATIO
- 57% (E) PUBLIC ALLEY



Richard Tapp Associates
 Architecture • Planning • Interior Design
 2 COMMODORE DR. UNIT 383, EMERYVILLE CA. 94707
 (510) 701-8277 - rtapparchitect@aol.com



TENANT IMPROVEMENTS
 2930 COLLEGE AVE.
 BERKELEY, CA



GASTRO PUB

01/11/23

Exhibit B

Use of Premises

In addition to the terms and condition set forth in the License, Licensee shall use the Premises described on Exhibit A attached in conformity with the following:

- a. Licensee agrees and understands the premises is licensed in its “AS IS” condition and that use of the premises is nonexclusive.
- b. Licensee will use the premises for the purpose of outdoor dining including service of beer, wine, and spirits as detailed in approved Use Permit #ZP2022-0139 for the restaurant located at 2930 College Avenue and storage of furniture used for that outdoor dining area and agrees to continuously and uninterruptedly occupy and use the entire licensed premises for said purpose and to maintain adequate personnel for the efficient service of clients or customers. Licensee shall not use nor permit the use of the whole or any part of the premises for any other purpose without the Landlord's prior written consent.
- c. Business may be conducted with the public on the licensed premises at any time on any day, provided that, to do business after 10:00 p.m. on any day Licensee shall have obtained any permit required by federal, state or local law. Licensee shall operate the outdoor dining area with sufficient staff to serve patrons and only during the hours of operation of the associated restaurant and in conformance with any and all permits required by federal, state, or local law. Licensee shall serve beer, wine, and spirits in conformance with City of Berkeley Use Permit #ZP2022-0139 for a Type 47 ABC license.
- d. In addition to Licensee’s agreement to abide by all other restrictions on Licensee’s use, Licensee shall maintain at all times a minimum six-foot wide pedestrian path parallel to the outdoor dining and storage area to ensure a midblock pedestrian path to and from the Elmwood Parking Lot and College Avenue is continuously maintained in the Paseo. Licensee agrees that any violation of this use restriction shall constitute a default by Licensee under the license, and that Landlord’s notice to Lessee of this specific use restriction shall not be deemed a waiver by Landlord of any other use restriction imposed on the Licensee for the use of the demised premises.

Exhibit C

Term and Payment

1. The License Fee described in Paragraph 3.a of the License shall be paid in advance every year on or before March 1st and pro-rated for any partial month. Payments must be received no later than five (5) calendar days from the start of each year. Any payment received after this time period will be assessed a ten percent (10%) late penalty.
2. Payments shall be made payable to the "City of Berkeley" and paid in person or by mail to the

City of Berkeley
Public Works Real Property
1947 Center Street, 5th Floor, Suite 521
Berkeley, CA 94704

3. Please include the following account number in the notes section of checks, money orders, or other payments made to the City of Berkeley: 627-54-622-6665-3004-000-000-462110-
4. Failure of Licensee to make full payments on time is grounds for termination of this License by the City.

PAYMENT SCHEDULE FOR ELMWOOD PASEO OUTDOOR DINNING & DRINKING SPACE						
	YEAR	2023-2024	2024-2025	2025-2026	2026-2027	2027-2028
MARCH	1	\$ 139.25	\$ 143.43	\$ 147.73	\$ 152.16	\$ 156.73
APRIL	2	\$ 139.25	\$ 143.43	\$ 147.73	\$ 152.16	\$ 156.73
MAY	3	\$ 139.25	\$ 143.43	\$ 147.73	\$ 152.16	\$ 156.73
JUNE	4	\$ 139.25	\$ 143.43	\$ 147.73	\$ 152.16	\$ 156.73
JULY	5	\$ 139.25	\$ 143.43	\$ 147.73	\$ 152.16	\$ 156.73
AUGUST	6	\$ 139.25	\$ 143.43	\$ 147.73	\$ 152.16	\$ 156.73
SEPTEMBER	7	\$ 139.25	\$ 143.43	\$ 147.73	\$ 152.16	\$ 156.73
OCTOBER	8	\$ 139.25	\$ 143.43	\$ 147.73	\$ 152.16	\$ 156.73
NOVEMBER	9	\$ 139.25	\$ 143.43	\$ 147.73	\$ 152.16	\$ 156.73
DECEMBER	10	\$ 139.25	\$ 143.43	\$ 147.73	\$ 152.16	\$ 156.73
JANUARY	11	\$ 139.25	\$ 143.43	\$ 147.73	\$ 152.16	\$ 156.73
FEBRUARY	12	\$ 139.25	\$ 143.43	\$ 147.73	\$ 152.16	\$ 156.73
ANNUAL TOTAL:		\$ 1,671.00	\$ 1,721.13	\$ 1,772.76	\$ 1,825.95	\$ 1,880.73
				FIVE YEAR TOTAL: \$ 8,871.57		

PREMISES AREA (SQFT):		557
MONTHLY RATE PER SQFT:	\$	0.25
INITIAL MONTHLY RENT:	\$	139.25
ANNUAL INCREASE:		3.00%
LEASE START DATE:		March 1, 2023
INITIAL TERM:		60 MONTHS
INITIAL TERM TERMINATION DATE:		February 29, 2028
NOTIFY LANDLORD FOR RENEWAL BY		September 1, 2027

