

ORDINANCE NO. 7,754-N.S.

LEASE AGREEMENT: PATPATIA & ASSOCIATES, INC. FOR OFFICE SPACE AT  
125-127 UNIVERSITY AVENUE AT THE BERKELEY MARINA

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

Section 1. The City Manager is hereby authorized to execute a three-year lease agreement and any amendments with Patpatia & Associates for office space at 125-127 University Avenue at the Berkeley Marina. Such lease shall be on substantially the terms set forth in Exhibit A.

Section 2. The rent will be \$3,000 per month, escalating 3% annually, and will be deposited in the Marina Fund Budget Code 608-52-544-592-0000-000-000-461120-. The lease includes an option to extend for two additional years; if exercised, monthly rent will increase to \$3,412, and will escalate by 3% the following year.

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 23, 2021, 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 Agreement for 125-127 University Avenue- Patpatia & Associates, Inc.

**OFFICE LEASE**

by and between

**CITY OF BERKELEY**  
a California municipal corporation  
(as Landlord)

and

**Patpatia & Associates, Inc.**  
a California Corporation  
(as Tenant)

Dated: May 1, 2021

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Lease Agreement for 125-127 University Avenue- Patpatia & Associates, Inc.

**LIST OF EXHIBITS**

Exhibit A-1	Legal Description of Property
Exhibit A-2	Depiction of the Premises
Exhibit B	Rules and Regulations
Exhibit C	Deleted

Lease Agreement for 125-127 University Avenue- Patpatia & Associates, Inc.

**OFFICE LEASE**

**BASIC LEASE INFORMATION**

- 1. Landlord: City of Berkeley, a California municipal corporation  
2180 Milvia Street  
Berkeley, CA 94704  
Attention: Director, Parks, Recreation & Waterfront  
Telephone: (510) 981-6704  
Facsimile: (510) 981-6710
- 2. Tenant: Patpatia & Associates, Inc.  
1803 Sixth St. Suite A  
Berkeley, CA 94710  
Telephone: (510) 559-7140  
Facsimile: (510) 559-7145
- 3. Tenant Trade Name: Tenant shall operate under the trade name Patpatia & Associates, Inc.
- 4. Effective Date: May 1, 2021
- 5. Premises: Approximately 1,706 rentable square feet comprising the southern portion of the 2nd floor (“**Premises**”) of the building commonly known and referred to as 125-127 University Avenue, Berkeley, California 94710 (the “**Building**”).
- 6. Permitted Uses: General office and ancillary commercial use, subject to any applicable or required approvals from the City of Berkeley.
- 7. Initial Term: Three (3) years, commencing as of May 1, 2021, with an option to extend for 2 years (“**Commencement Date**”).
- 8. Base Rent: \$3,000 per month with 3% annual increase
- 9. Security Deposit: \$3,000
- 10. Guarantor: Not required with this Lease.

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

LANDLORD’S INITIALS \_\_\_\_\_

TENANT’S INITIALS \_\_\_\_\_

Lease Agreement for 125-127 University Avenue- Patpatia & Associates, Inc.

## OFFICE LEASE

This Office Lease (“**Lease**”) is made and entered into as of the effective date specified in Section 4 of the Basic Lease Information, above (“**Effective Date**”), by and between the City of Berkeley, a municipal corporation of the State of California (“**Landlord**”), and the tenant identified in Section 2 of the Basic Lease Information (“**Tenant**”).

### 1. PREMISES.

1.1 Premises. Landlord is the owner of that certain Building referred to in Basic Lease Information Section 5, and the underlying land on which the Premises are located as described in Exhibit A-1 attached hereto and incorporated herein (collectively, the “**Property**”). Landlord hereby leases to Tenant, and Tenant leases from Landlord, the Premises together with Tenant Improvements (defined below), if any. A drawing depicting the general location and layout of the demised Premises is attached hereto and incorporated by reference as Exhibit A-2. Any improvements or alterations existing in the Premises, or otherwise constructed by Tenant or on Tenant’s behalf therein (whether under this Lease, or any prior lease or sublease) are referred to in this Lease as “**Tenant Improvements.**” Notwithstanding the foregoing, Landlord will not be obligated to deliver possession of the Premises to Tenant (but Tenant will be liable for rent if Landlord can otherwise deliver the Premises to Tenant) until the City Council of Landlord has approved the Lease and Landlord has received from Tenant all of the following: (i) a copy of this Lease fully executed by Tenant and the guaranty of Tenant’s obligations under this Lease, if applicable, executed by the Guarantor(s) in the form attached hereto and incorporated by reference as Exhibit C (“**Guaranty**”); (ii) the Security Deposit and the first installment of Base Rent ; and (iii) copies of policies of insurance or certificates thereof as required under this Lease.

1.2 Landlord’s Reserved Rights. Landlord reserves the right to enter the Premises upon reasonable notice to Tenant (except that advance notice shall not be required in case of an emergency) for the following purposes: (i) to inspect the condition of the Premises; (ii) to ascertain the performance by Tenant of the terms and conditions hereof; (iii) to respond to an emergency at the Premises; (iv) to maintain, inspect and repair the Premises to the extent required or permitted under this Lease; (v) to post notices of non-responsibility for alterations, additions or repairs undertaken by Tenant; (vi) to show the Premises to prospective tenants or purchasers or persons acting on their behalf; (vii) to post a leasing sign in or about the Premises; and (viii) to perform any other right or duty of Landlord under this Lease. Landlord may exercise this right of entry without any abatement of Rent to Tenant for any loss of occupancy or quiet enjoyment of the Premises.

### 2. COMMON AREA.

2.1 Definition of Common Areas. The term “**Common Area,**” as used in this Lease, means all areas within the exterior boundaries of the Property now or later made available for the collective general use of Tenant and other persons entitled to occupy space in the Building, including the exterior surfaces and roof of the Building. Common Area shall not include any areas or facilities that could be considered as Common Area except that the areas or facilities are included in the description of premises leased to any other tenant of the Building.



2.2 Maintenance and Use of Common Area. The manner in which the Common Area shall be maintained shall be solely determined by Landlord. The use and occupancy by Tenant of the Premises shall include the right to use the Common Area (except areas used in the maintenance or operation of the Property), in common with Landlord and other tenants of the Property and their customers and invitees, subject to such reasonable, nondiscriminatory rules and regulations concerning the use of the Common Area as may be established by Landlord from time to time. Written notice of such rules and regulations and amendments and supplements thereto, if any, shall be given to Tenant thirty (30) days prior to their effective date. Tenant agrees to promptly comply with all such rules and regulations upon receipt of written notice from Landlord.

2.3 Control of and Changes to Common Area. Landlord shall have the sole and exclusive control of the Common Area, as well as the right to make reasonable changes to the Common Area. Landlord's rights shall include, but shall not be limited to, the right to: (i) restrain the use of the Common Area by unauthorized persons; (ii) cause Tenant to remove or restrain persons from any unauthorized use of the Common Area if they are using the Common Area by reason of Tenant's presence in the Property; (iii) temporarily close any portion of the Common Area for repairs, improvements or alterations, to discourage noncustomer use, to prevent dedication or an easement by prescription, or for any other reason deemed sufficient in Landlord's judgment; and (iv) reasonably change the shape and size of the Common Area, add, eliminate or change the location of improvements to the Common Area. Landlord may determine the nature, size and extent of the Common Area, as well as make changes to the Common Area from time to time which, in Landlord's opinion, are deemed desirable for the Property.

### 3. TERM.

3.1 Term; Commencement Date. The "**Initial Term**" of this Lease shall be as set forth in Section 7 of the Basic Lease Information and shall commence as of the Commencement Date set forth in Section 7 of the Basic Lease Information. The Initial Term together with the Extension Term(s), if any, are collectively referred to herein as the "**Term.**"

3.2 Option to Extend Term. Tenant has an option to extend this lease agreement for two (2) years. During option period, rent will increase to two dollars per square foot at the beginning of the first option year (\$3,412/month) and a 3% increase at the beginning of the second option year,

### 4. RENT; SECURITY DEPOSIT.

4.1 Base Rent; Rent. All Rent under this Lease shall commence as of the Commencement Date. Rent shall be paid as set forth in this Section 4. Tenant shall pay to Landlord, at Landlord's address for payment of Rent designated in Section 1 of the Basic Lease Information, or at such other address as Landlord may from time to time designate in writing to Tenant for the payment of Rent, the Base Rent designated in Section 8 of the Basic Lease Information, without notice, demand, offset or deduction, in advance, on the first day of each month of the Term. Upon execution of this Lease, Tenant shall pay to Landlord the first month's Base Rent. If Base Rent is due for a period of less than a full month, it shall be prorated for such

partial month on the basis of a thirty (30) day month. The term "Rent" means the Base Rent and any other amounts of any kind that become due and payable by Tenant to Landlord under this Lease. Tenant's obligation to pay Rent under this Lease survives the Term to the extent such obligation has not been fulfilled during the Term.

4.2 Application of Payments. All payments received by Landlord from Tenant shall be applied to the oldest obligation owed by Tenant to Landlord. No designation by Tenant, either in a separate writing, on a check or money order, or otherwise shall modify this clause or have any force or effect.

4.3 Late Charge and Interest. The late payment of any Rent will cause Landlord to incur additional costs, including administration and collection costs and processing and accounting expenses ("**Delinquency Costs**"). If Landlord has not received any installment of Rent within five (5) business days after such amount is due, Tenant shall pay a late charge of ten percent (10%) of the delinquent amount immediately. The ten percent (10%) late charge represents a reasonable estimate of the Delinquency Costs incurred by Landlord. In addition, all such delinquent amounts shall bear interest from the date such amount was due until paid in full at a rate per annum ("**Applicable Interest Rate**") equal to the lesser of (i) the maximum interest rate permitted by Law, or (ii) five percent (5%) above the rate publicly announced by Bank of America, N.A. (or if Bank of America, N.A. ceases to exist, the largest bank then headquartered in the State of California) ("**Bank**") as its "**Reference Rate.**" If the use of the announced Reference Rate is discontinued by the Bank, then the term Reference Rate shall mean the announced rate charged by the Bank which is, from time to time, substituted for the Reference Rate. Landlord and Tenant recognize that the damage which Landlord shall suffer as a result of Tenant's failure to pay such amounts is difficult to ascertain and said late charge and interest are the best estimate of the damage which Landlord shall suffer in the event of late payment. Landlord's acceptance of late Rent, partial Rent and late charges does not equate with a waiver of Tenant's default with respect to the overdue amount, or prevent Landlord from exercising any rights and remedies available under this Lease and/or by operation of Law.

4.4 Security Deposit. The cash sum specified under Section 9 of the Basic Lease Information, if any, shall be deposited with Landlord concurrently with Tenant's execution of this Lease ("**Security Deposit**"). Landlord shall hold the Security Deposit as security for the performance of Tenant's obligations under this Lease. Tenant is not entitled to any interest on the Security Deposit and Landlord shall not be liable therefor. If Tenant defaults on any provision of this Lease, Landlord may, at its election and without prejudice to any remedy it has under this Lease or by operation of Law, apply all or part of the Security Deposit to: (i) Rent or other sum in default; (ii) any amount that Landlord may spend or become obligated to spend in exercising Landlord's rights under this Lease; (iii) unamortized costs of improvements paid for by Landlord, if any; (iv) unamortized costs of brokerage commissions, if any; or (v) any expense, loss or damage that Landlord may suffer because of Tenant's default. Tenant waives the provisions of California Civil Code section 1950.7, and all Laws in force or that become in force after the date of execution of this Lease, that provide that Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of Rent, to repair damage caused by Tenant, or to clean the Premises. Landlord may, in addition, claim those sums reasonably necessary to compensate Landlord for any other foreseeable or unforeseeable loss or damage caused by the act or omission of Tenant, or of Tenant's officers,

agents, employees, independent contractors, invitees, customers, licensees, assignees or subtenants (individually and collectively, “**Tenant’s Parties**”).

4.5 Restoration of Security Deposit; Return of Security Deposit. If Landlord applies any portion of the Security Deposit during the Term, Tenant shall, within ten (10) days after demand by Landlord, deposit with Landlord an amount sufficient to restore the Security Deposit to its original amount. If Tenant performs every provision of this Lease to be performed by Tenant, the unused portion of the Security Deposit, if any, shall be returned to Tenant or the last assignee of Tenant’s interest under this Lease within thirty (30) days following the expiration or termination of the Term.

4.6 Transfer of Security Deposit; Assignment or Encumbrance of Security Deposit. If Landlord disposes of its interest in the Premises, Landlord may deliver the remaining Security Deposit to Landlord’s successor in interest in the Premises and thereupon be relieved of further responsibility with respect to the Security Deposit. Tenant may not assign or encumber the Security Deposit without the prior written consent of Landlord. Any attempt to do so shall be void and shall not be binding on Landlord.

## 5. UTILITIES AND JANITORIAL SERVICES.

5.1 Landlord Utility and Service Costs. Landlord shall be responsible and directly contract and pay for the following utilities and services in connection with Tenant’s use or occupancy of the Premises: (i) water; (ii) sewage; (iii) the Landlord janitorial services described in Section 5.2 below; (iv) trash removal; and (v) HVAC (individually and collectively, the “**Landlord Services**”).

5.2 Janitorial Services. Landlord shall provide all janitorial services to common areas only. Tenant shall provide and pay for all janitorial services, including supplies and shampooing carpets, to the Leased Premises during this lease term.

5.3 Tenant Utility and Service Costs. Tenant, at Tenant’s sole cost and expense, shall be responsible and shall directly contract and pay for any and all utilities and services required or desired by Tenant in connection with its use or occupancy of the Premises, which are not expressly included within the definition of Landlord Services, including, but not limited to, electricity, gas, telephone, computer, internet, communications services, plumbing and drain clean out services, and alarm.

5.4 Conservation and Use Policies. Tenant, at Tenant’s sole cost and expense, shall comply with federal, state, or local governmental controls, rules, regulations, or restrictions on the use or consumption of energy or other utilities during the Term.

5.5 Exculpation of Liability. Landlord is not obligated to furnish any security patrol or any other services to Tenant, other than the Landlord Services expressly described above, and Landlord shall not be liable for any loss or damage suffered by Tenant or others, by reason of Landlord’s failure to furnish or election to discontinue providing any security patrol or other services. Landlord shall not be liable for any failure or interruption of any Landlord Service being furnished to the Premises, and no such failure or interruption shall entitle Tenant to terminate this Lease. Landlord makes no representation with respect to the presence, adequacy

or fitness of the heating, air conditioning or ventilation equipment on or about the Premises to maintain temperatures which may be required for, or because of, any equipment of Tenant. The exculpation of liability under this Section 5.5 shall not apply to the extent claims are caused by Landlord's gross negligence or willful misconduct.

## 6. TAXES.

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

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

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

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

## 7. INSURANCE.

7.1 Landlord. Landlord may elect to self-insure, jointly-insure, or maintain insurance or an insurance equivalent (including, but not limited to, that offered to a municipality through and by a joint powers authority, a self-insurance pool of liability coverage authorized pursuant to California Government Code Section 6500, or similar collective) insuring the Property (excluding Tenant's Property and any Tenant Improvements) on an occurrence basis against fire and extended coverage (including, if Landlord elects, "all risk" coverage) similar in type and coverage limits to that carried by Landlord on its other properties. At Landlord's option, such insurance or insurance equivalent may be carried under any blanket or umbrella policies or other insurance or insurance equivalent which Landlord has in force for other buildings or projects. Landlord may also carry such other insurance as Landlord may deem prudent or advisable, in such amounts and on such terms as Landlord shall determine. All such insurance or insurance equivalent maintained by Landlord pursuant to this Section 7.1 is referred to herein as "**Landlord's Insurance.**" Landlord's Insurance shall not, under any circumstances, include

Tenant's Property, any Tenant Improvements, or other items required to be covered by Tenant's Insurance.

7.2 Tenant. Tenant shall, at Tenant's expense, obtain and keep in force at all times during the Term the following "**Tenant's Insurance**," and shall be liable for all premiums, deductibles, and self-insured amounts, if any, in connection therewith. Tenant's Insurance shall not have a deductible amount exceeding Five Thousand Dollars (\$5,000).

7.3 Commercial General Liability Insurance. A policy of commercial general liability insurance (occurrence form) having a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate, providing coverage for, among other things, blanket contractual liability (including Tenant's indemnification obligations under this Lease), premises liability, products and completed operations liability, owner's protective coverage, broad form property damage, and bodily injury (including wrongful death) and advertising injury coverage. If necessary, Tenant shall provide for restoration of the aggregate limit.

7.4 Workers' Compensation and Employer's Liability Insurance. Workers' compensation insurance, if required by Law, which complies with all applicable state statutes and regulatory requirements, and employer's liability insurance coverage in statutory amounts.

7.5 Property Insurance. "All risk" property insurance including fire and extended coverage, sprinkler leakage, vandalism and malicious mischief coverage, covering damage to or loss of Tenant's Property or any Tenant Improvements (together with, if the property of Tenant's invitees is to be kept in the Premises, warehouse's legal liability or bailee customers insurance insuring property belonging to invitees and located in or about the Premises), in an amount not less than the full replacement cost thereof. In the event that there shall be a dispute as to the amount which comprises full replacement cost, the decision of Landlord or the mortgagees of Landlord shall be presumptive.

7.6 Other Insurance. Any other form or forms of insurance as Landlord or the mortgagees of Landlord may reasonably require from time to time, in form, amounts and for insurance risks against which a prudent tenant would protect itself, but only to the extent such risks and amounts are available in the insurance market at commercially reasonable costs.

7.7 General.

7.7.1 Insurance Companies. Tenant's Insurance shall be written by companies licensed to do business in California and having a "General Policyholders Rating" of at least A-VII (or such higher rating as may be required by a lender having a lien on the Premises) as set forth in the most current issue of "Best's Insurance Guide."

7.7.2 Certificates of Insurance. Tenant shall deliver to Landlord certificates of insurance for Tenant's Insurance, in the form of the ACORD standard certificate of insurance, prior to the Commencement Date. Tenant shall, at least thirty (30) days prior to expiration of the policy, furnish Landlord with certificates of renewal or "binders" thereof. Each certificate shall expressly provide that such policies shall not be cancelable or otherwise subject to modification except after thirty (30) days' prior written notice to the parties named as additional insureds as

required in this Lease. If Tenant fails to maintain any insurance required in this Lease, Tenant shall be liable for all losses and costs resulting from said failure.

7.7.3 Additional Insureds. Landlord and any property management company of Landlord for the Premises shall be named as additional insureds on the commercial general liability policy required by Section 7.3. An additional insured endorsement naming such parties as additional insured(s) shall be attached to the certificate of insurance.

7.7.4 Primary Coverage. Tenant's Insurance shall be primary, without right of contribution from any Landlord's Insurance.

7.7.5 Umbrella/Excess Insurance. Any umbrella liability policy or excess liability policy shall provide that if the underlying aggregate is exhausted, the excess coverage will drop down as primary insurance. The limits of Tenant's Insurance shall not limit Tenant's liability under this Lease.

7.7.6 Waiver of Subrogation. Tenant waives any right to recover against Landlord for claims for damages to Tenant's Property or any Tenant Improvements to the extent covered (or required by this Lease to be covered) by Tenant's Insurance. This provision is intended to waive fully, and for the benefit of Landlord, any rights and/or claims which might give rise to a right of subrogation in favor of any insurance carrier. The coverage obtained by Tenant pursuant to this Lease shall include a waiver of subrogation endorsement attached to the certificate of insurance.

7.7.7 Notification of Incidents. Tenant shall notify Landlord within twenty-four (24) hours after the occurrence of any accident or incident on or about the Property or any portion thereof which could give rise to a claim against Landlord, Landlord's Insurance, Tenant, or Tenant's Insurance, except that Tenant shall not be obligated to give Landlord notice of any accident or incident which could give rise to a claim under Tenant's workers' compensation insurance. Tenant's notice shall be accompanied by a copy of any report(s) relating to the accident or incident.

7.7.8 Compliance With Insurance Requirements; Warranties. Tenant shall not do anything in the Premises, or bring or keep anything therein, or subject the Property or any portion thereof to any use which would damage the same or increase the risk of loss or fire, or violate Landlord's Insurance, or Tenant's Insurance, or which shall conflict with the regulations of the fire department or any Laws or with any insurance policy on the Premises or any part thereof, or with any rules or regulation established by any administrative body or official having jurisdiction. Tenant shall promptly comply with the reasonable requirements of any board of fire insurance underwriters or other similar body now or hereafter constituted.

## **8. INDEMNITY; LIABILITY EXEMPTION.**

8.1 Indemnity. Except to the extent claims are caused by Landlord's gross negligence or willful misconduct, Tenant shall indemnify, protect, defend, and hold harmless Landlord and its elected officials, officers, employees, volunteers, lenders, agents, representatives, contractors and each of their successors and assigns from and against any and all claims, judgments, causes of action, damages, penalties, costs, liabilities, and expenses, including all costs, attorneys' fees,

expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon, arising at any time during or after the Term as a result (directly or indirectly) of or in connection with (i) any default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease; (ii) Tenant's or Tenant's Parties use of the Premises, the Property, or any portion thereof, or the conduct of Tenant's business or any activity, work or thing done, permitted or suffered by Tenant or Tenant's Parties in or about the Premises, the Property or any portion thereof; (iii) any act, error or omission of Tenant or Tenant's Parties in or about the Property or any portion thereof; (iv) loss of, injury or damage to, or destruction of property (including but not limited to merchandise or inventory), including loss of use resulting from such loss, injury, damage, or destruction; or (v) any resulting economic loss, consequential damages, or exemplary damages (collectively, the "**Indemnification**"). Tenant shall provide such Indemnification by and through counsel reasonably acceptable to Landlord. The obligations of Tenant under this Section 8.1 shall survive the expiration or other termination of this Lease with respect to any claims or liability arising prior to such expiration or other termination.

8.2 Exemption of Landlord from Liability. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property including, but not limited to, Tenant's Property and any Tenant Improvements, and injury to or death of persons in, upon or about the Premises, the Property, or any portion thereof, arising from any cause, and Tenant hereby waives all claims in respect thereof against Landlord, except to the extent such claims are caused by Landlord's sole or active negligence or willful misconduct. Tenant hereby agrees that Landlord shall not be liable for injury to Tenant's business or any loss of income therefrom or for damage to the property of Tenant, or injury to or death of Tenant, Tenant's Parties or any other person in or about the Premises, the Property, or any portion thereof, whether such damage or injury is caused by fire, steam, electricity, gas, water or rain, or from the breakage, leakage or other defects of sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said damage or injury results from conditions arising within or about the Premises, the Property, or any portion thereof or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant, except damage or injury caused solely by Landlord's sole or active negligence or willful misconduct. Landlord shall not be liable for any damages arising from any act or neglect of any other tenant or occupant, if any, of the Premises, the Property, or any portion thereof, or Landlord's failure to enforce the terms of any agreements with parties other than Tenant.

## **9. REPAIRS AND MAINTENANCE.**

9.1 Landlord's Obligations. The Premises are being leased to Tenant in their current, existing, "AS-IS" condition. It is specifically understood and agreed that Landlord has no obligation and has made no promises to alter, remodel, improve, decorate or paint the Premises, construct or install any Tenant Improvements, or otherwise alter or improve the Premises, Property, or any portion thereof. Having occupied the Premises before entering this Lease with Landlord, Tenant is familiar with the existing condition of the Property and Premises, including any Tenant Improvements, and acknowledges that Landlord has made no representation or warranty regarding the condition thereof. Landlord, at its expense shall maintain the Building's roof (including structure portions of the roof), foundation, and exterior walls, exterior windows,

common areas, building systems including HVAC, plumbing, and electrical and any items in the common areas required for compliance with applicable laws.

9.2 Tenant's Waiver. Notwithstanding anything in this Lease to the contrary, whether stated or implied in this Lease, Tenant waives and releases its rights, including its right to make repairs at Landlord's expense, under California Civil Code sections 1932(1), 1941, and 1942 or any similar Laws.

9.3 Tenant's Obligations. Tenant, at its expense, shall maintain the Premises in good order, condition and repair, including interior floor surfaces and floor coverings, interior walls and wall coverings, paintings, interior glass, doors, Tenant Improvements, Signs, , and any items required for compliance with Laws. In the event Tenant fails, in the reasonable judgment of Landlord, to so maintain the Premises in good order, condition and repair, Landlord shall in its sole discretion, upon five (5) days' written notice to Tenant, have the right but not the obligation to perform such maintenance, repairs or refurbishing at Tenant's expense, provided Tenant fails to do so within such five (5) day period. If Landlord elects to undertake any such repairs or maintenance as provided above, then Tenant shall pay as additional Rent, Landlord's actual costs paid or incurred in connection therewith.

## 10. ALTERATIONS.

10.1 Trade Fixtures; Alterations. Subject to the conditions and requirements of this Section 10, Tenant may install necessary trade fixtures, equipment and furniture in the Premises, provided that such items are installed and are removable without structural or material damage to the Premises or any Tenant Improvements. For purposes of this Lease, "**Trade Fixtures**" means specialty fixtures or equipment used in Tenant's trade or business as identified by Tenant and agreed to by Landlord in writing. Tenant shall not construct, or allow to be constructed, any alterations, physical additions, or improvements in, about, or to the Premises without the prior written consent of Landlord, which consent may be granted or denied in Landlord's sole discretion. If Landlord approves proposed alterations, additions or improvements, Landlord's consent may be conditioned upon Tenant's establishing compliance with Laws and with Landlord's reasonable requirements regarding selection of contractors and construction of improvements and alterations. Should Tenant make any alterations, additions, improvements without the prior written consent of Landlord, Landlord may, at any time during the Term of this Lease, require Tenant to remove any or all of the same and restore the Premises to their prior condition, at Tenant's sole cost and expense.

10.2 Satellites and Antennae. Notwithstanding anything in this Lease to the contrary, Landlord and Tenant agree that it shall be reasonable for Landlord to withhold its consent to installation in or about the Premises or any portion thereof of equipment comprising or relating to relays, monopoles, satellite dishes, antennae, wireless telecommunications devices, transmitters, roof mounts, two-way radios, or similar apparatus (collectively, "**Transmission Devices**").

10.2.1 Tenant will not place or allow any third party to place or maintain on the roof or on any exterior door, wall or windows (or within forty-eight inches (48") of any windows) of the Premises any sign, banner, flag, awning or canopy, advertising matter or



window coverings of any type without Landlord's prior written consent. Tenant further agrees to maintain such sign, awning, canopy, decoration, lettering, advertising matter or window coverings as may be approved in good condition and repair at all times.

10.3 Signs. All signs, graphics, and awnings of every kind visible in or from public view or corridors, or the exterior of the Premises, installed or caused to be installed by, for the benefit of, or at the request of Tenant ("Signs") shall be, at Tenant's sole cost and expense, and subject to Landlord's prior written approval, and subject to all applicable Laws. Tenant shall remove all such Signs prior to the termination of this Lease. Such installations and removals shall be made in such manner as to avoid injury or defacement of the Premises; and Tenant shall repair any injury or defacement, including discoloration caused by such installation or removal. Tenant shall be responsible for all fees, costs and expenses associated with installation and removal of Signs. In the event any such fees, costs or expenses are incurred by Landlord (whether directly or indirectly), Landlord shall deliver to Tenant an invoice, with reasonable supporting documentation, and Tenant shall reimburse Landlord for those amounts within fifteen (15) days after receipt of such invoice.

10.4 Standard of Work. All work to be performed by or on behalf of Tenant shall be performed diligently and in a first-class, workmanlike manner, and in compliance with all applicable Laws and all insurance carrier requirements. Landlord shall have the right, but not the obligation, to periodically inspect such work and may require changes in the method or quality thereof. In no event shall such work materially obstruct access to the Property or any portion thereof.

10.5 Damage; Removal. Tenant shall repair all damage to the Premises, Property and any portions thereof caused by the installation or removal of Tenant's Trade Fixtures or other work performed by or on behalf of Tenant. All alterations, improvements or additions that are now or in the future attached permanently to the premises shall be the property of Landlord and remain with the premises at the termination of this lease. Upon the expiration or other termination of this Lease, Tenant shall perform any closure work, investigation and environmental remedial work required by the presence or suspected presence of any Hazardous Materials under Hazardous Materials Laws (as hereinafter defined) or by any other applicable Laws; provided, however, Landlord may require, upon written notice to Tenant no less than fifteen (15) days before the expiration or other termination of the Term, any such items (except Trade Fixtures) designated by Landlord to remain on the Premises, in which event they shall be and become the property of Landlord upon the expiration or other termination of this Lease. All such removals and restoration shall be accomplished in a good and workmanlike manner so as not to cause any damage to the Premises, the Property, or any portion thereof, whatsoever and in strict accordance with all applicable Laws.

10.6 Liens. Tenant shall promptly pay and discharge all claims for labor performed, supplies furnished and services rendered at the request of Tenant and shall keep the Premises and Property and all portions thereof free of all mechanics' and materialmen's liens in connection therewith. Tenant shall provide at least ten (10) business days' prior written notice to Landlord before any labor is performed, supplies furnished or services rendered on or at the Premises and Landlord shall have the right to post on the Premises notices of non-responsibility. If any lien is filed, Tenant shall cause such lien to be released and removed within ten (10) days after the date

of filing, and if Tenant fails to do so, Landlord may take such action as may be necessary to remove such lien, without the duty to investigate the validity of it, and Tenant shall pay Landlord such amounts expended by Landlord together with interest thereon, at the Applicable Interest Rate, from the date of expenditure.

10.7 Bonds. Landlord may require Tenant to provide Landlord, at Tenant's sole cost and expense, lien, performance, and payment completion bonds in an amount equal to one and one-half times the estimated cost of any alterations, additions, or improvements to insure Landlord, the Premises and the Property against any liability for mechanic's and materialmen's liens, and to ensure completion of the work and payment of any contractors or subcontractors.

## 11. PREVAILING WAGES.

11.1 Prevailing Wages. Tenant acknowledges and agrees that any Tenant Improvements, repairs, maintenance, or alterations made by or on behalf of Tenant to the Premises, Property, or any portion thereof ("**Improvement Work**"), which will become Landlord's property upon the expiration or termination of this Lease, whether paid for in whole or part by Landlord or which are considered to have been paid for in whole or part by Landlord, will constitute "[c]onstruction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds..." California Labor Code § 1720. Accordingly, Tenant shall comply with applicable prevailing wage policies as set forth in the City of Berkeley Municipal Code, applicable California Labor Code requirements pertaining to "public works" (California Labor Code Section 1720 et seq., as amended from time to time and implementing regulations)), and other applicable Laws addressing the payment of prevailing wages in connection with any Improvement Work (collectively, "**Prevailing Wage Laws**"). Tenant shall require the general contractor for any Improvement Work to submit, upon request by Landlord, certified copies of payroll records to Landlord and to maintain and make records available to Landlord and its designees for inspection and copying to ensure compliance with Prevailing Wage Laws. Tenant shall also include in its general contractor agreement, and in all of its subleases and other contracts, a provision in a form acceptable to Landlord which obligates the general contractor and others as applicable, (i) to comply with, and to require that their respective subtenants, contractors and/or subcontractors comply with, Prevailing Wage Laws, and (ii) upon request by Landlord to submit certified copies of payroll records to Landlord and to maintain and make such payroll records available to Landlord and its designees for inspection and copying during regular business hours at the Premises or at another location within the City of Berkeley. Tenant shall defend, indemnify and hold harmless Landlord and its officers, officials, employees, volunteers, agents and representatives (collectively, "**Indemnitees**") from and against any and all present and future liabilities, obligations, orders, claims, damages, fines, penalties and expenses (including attorneys' fees and costs) (collectively, "**Claims**"), arising out of or in any way connected with Tenant's obligation to comply with all such Prevailing Wage Laws, including all Claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code sections 1726. Tenant hereby waives, releases and discharges forever the Indemnitees from any and all present and future Claims arising out of or in any way connected with Tenant's obligation to comply with all Prevailing Wage Laws with respect to the Improvement Work.

**12. PERMITTED USE AND PUBLIC TRUST TIDELANDS REQUIREMENTS.**

12.1 Usage. The Premises shall be used only for the permitted uses set forth in Section 6 of the Basic Lease Information and for no other purpose whatsoever without the prior written consent of Landlord. Tenant's execution of this Lease and entry of the Premises hereunder shall conclusively establish that the foregoing were at such time in satisfactory condition. Tenant, at Tenant's expense, shall comply with all applicable Hazardous Materials Laws, statutes, laws, codes, rules, orders, zoning, ordinances, directions, regulations, regulations, permits, or other requirements of federal, state, county, municipal, or other governmental authorities having jurisdiction, now in force or which may hereafter be in force (individually "**Law**" and collectively "**Laws**"), which shall impose any duty upon Landlord or Tenant with respect to the use, occupancy, or alteration of the Premises. Tenant shall be responsible for obtaining a Berkeley Business License and any other permit or business license required by any governmental agency permitting Tenant's use of the Premises. Landlord makes no representation concerning the availability of any permits or approvals required or permitted under this Lease. Tenant shall comply with the rules and regulations, including observance of prohibited uses ("**Rules**"), attached hereto as Exhibit B and incorporated by reference, together with such reasonable additional rules and regulations as Landlord may from time to time prescribe. Tenant shall not commit waste; overload the floors or structure of the Premises; permit any unreasonable odors, smoke, dust, gas, substances, noise, or vibrations to emanate from the Premises that are offensive or objectionable to Landlord or other tenants or occupants of the Property; take any action which would constitute a nuisance or would disturb, obstruct, or endanger Landlord or other tenants or occupants of the Property; take any action which would abrogate any warranties; or use or allow the Premises to be used for any unlawful purpose; and shall cooperate with Landlord and Landlord's agents to prevent those actions. Landlord shall not be responsible for non-compliance by any other tenant or occupant with, or Landlord's failure to enforce, any of the Rules or any other terms or provisions of such tenant's or occupant's lease.

12.2 Public Trust Tidelands Requirements. Tenant acknowledges that the Property is located on State tidelands held by the City of Berkeley in trust for the promotion of commerce, navigation, and fishery pursuant to that certain statutory grant from the State of California to the City of Berkeley, as set forth in Statutes 1913, Chapter 347, as amended ("**Statutory Grant**"). Tenant agrees and covenants to use the Property in a manner consistent with the Statutory Grant and applicable public trust and tidelands requirements during the term of this Lease.

**13. ENVIRONMENTAL MATTERS.**

13.1 Environmental Compliance. Tenant shall, at its sole cost and expense, comply with all laws, codes, rules, orders, ordinances, directives, regulations, permits, or other requirements of federal, state, county, municipal or governmental authorities having jurisdiction, now in force or which may hereafter be in force (collectively, "**Hazardous Materials Laws**") concerning the management, use, generation, storage, transportation, discharge or disposal of any and all pollutants, wastes, flammables, explosives, radioactive materials, hazardous or toxic materials, hazardous or toxic wastes, hazardous or toxic substances, carcinogenic materials or contaminants and all other materials governed, monitored, or regulated by any Federal, State or local Law or regulation, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Substances Account Act, and/or the

Resources Conservation and Recovery Act. “**Hazardous Materials**” include asbestos, asbestos-containing materials, hydrocarbons, polychlorinated biphenyl (“**PCB**”) or PCB-containing materials, petroleum, gasoline, petroleum products, crude oil or any fraction, product or by-product thereof. Neither Tenant nor Tenant’s Parties shall use, handle, store, transport, treat, generate, release or dispose of any Hazardous Materials anywhere in, on, under or about the Premises or the Property. Tenant shall cause any and all Hazardous Materials brought onto, used, generated, handled, treated, stored, released or discharged on or under the Premises or the Property to be removed from the Premises and Property and transported for disposal in accordance with applicable Hazardous Materials Laws. Landlord shall have the right to enter the Premises from time to time to conduct tests, inspections and surveys concerning Hazardous Materials and to monitor Tenant’s compliance with its obligations concerning Hazardous Materials and Hazard Materials Laws. Tenant shall immediately notify Landlord in writing of: (i) any release or discharge of any Hazardous Material; (ii) any voluntary clean-up or removal action instituted or proposed by Tenant; (iii) any enforcement, clean-up, removal or other governmental or regulatory action instituted or threatened; or (iv) any claim made or threatened by any person against Landlord, Tenant, the Premises, Property, or any portion thereof relating to Hazardous Materials or Hazardous Materials Laws. Tenant shall also supply to Landlord as promptly as possible, and in any event within five (5) business days after Tenant receives or sends 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 Materials or Hazardous Materials Laws. In the event Tenant institutes a cleanup or removal action, Tenant shall provide copies of all workplans and subsequent reports submitted to the governmental agency with jurisdiction to Landlord in a timely manner.

13.2 Tenant’s Indemnification. Except to the extent caused by Landlord’s gross negligence or willful misconduct, Tenant shall indemnify, defend and hold Landlord harmless from any claims, causes of action, liabilities, losses, damages, injunctions, suits, fines, penalties, costs or expenses (including attorneys’ fees and expenses and consultant fees and expenses) relating to the presence of Hazardous Materials in, on, under, about, or emanating from the Premises, the Property, or any portion thereof, including, without limitation, any bodily injury, death, property damage, natural resource damage, decrease in value of the Premises, the Property, or any portion thereof, caused or alleged to have been caused by Tenant or Tenant’s Parties’ use, storage, handling, treatment, generation, discharge or release of Hazardous Materials in violation of Tenant’s obligations under this Lease, whether such claims, causes of action or liabilities are first asserted during the Term or thereafter, and including, without limitation, claims made against Landlord with respect to bodily injury, death or property damage sustained by third parties caused or alleged to have been caused by Tenant or Tenant’s Parties’ use, storage, handling, treatment, generation, discharge or release of Hazardous Materials.

#### 14. DAMAGE AND DESTRUCTION.

14.1 Casualty. If, during the Term, the Premises is totally or partially destroyed from any cause rendering the Premises totally or partially inaccessible or unusable (“**Casualty**”), then Landlord shall have the right at Landlord’s option to give written notice to Tenant within ninety (90) days after the date of the occurrence of such Casualty of Landlord’s intention to either (i) repair such Casualty as soon as reasonably possible at Landlord’s expense; or (ii) terminate this Lease as of the date of the occurrence of such damage. If Landlord elects to

repair the damage, and if the cost of such repairs does not exceed the amount of insurance proceeds received by Landlord from Landlord's Insurance pursuant to Section 7 above, on account of such damage, and if the restoration can be made under then existing Laws and can be completed within one hundred eighty (180) days after obtaining all necessary permits therefor, then Landlord shall restore the Premises (excluding Tenant's Property and any Tenant Improvements) to substantially the same condition as they were in immediately before destruction. If the restoration cannot be so made, then within fifteen (15) days after Landlord determines that the restoration cannot be made as stated in this Section 14.1, Tenant may terminate this Lease immediately by giving written notice to Landlord. If the existing Laws do not permit the restoration, either party may terminate this Lease by giving ninety (90) days prior written notice to the other party. In case of destruction, there shall be an abatement or reduction of Rent, between the date of destruction and the date of completion of restoration if restoration takes place, or the date of termination if the Lease is terminated, based on the extent to which the destruction actually and materially interferes with Tenant's use of the Premises.

14.2 Tenant's Fault. If the Premises, the Property, or any portion thereof, are damaged resulting from the negligence or breach of this Lease by Tenant or any of Tenant's Parties, Rent shall not be reduced during the repair of such damage, Tenant shall have no right to terminate this Lease as provided in Section 14.1, and Tenant shall be liable to Landlord for the cost of the repair caused thereby to the extent such cost is not covered by insurance proceeds.

14.3 Repair Limitation. Notwithstanding anything in this Lease to the contrary, Landlord shall not be required to repair any injury or damage, by fire or other cause, to Tenant's Property or any Tenant Improvements, if any, or to rebuild, repair or replace any decorations, alterations, partitions, fixtures, trade fixtures, additions or other improvements installed on the Premises by or for Tenant, unless and to the extent Landlord has received insurance proceeds from Tenant's property insurance as provided in Section 7.5 above, and neither Tenant or Landlord has opted to terminate this Lease as provided in Section 14.1.

14.4 Waiver. The provisions of this Lease contain an express agreement between Landlord and Tenant that applies in the event of any Casualty. Tenant fully waives the provisions of any statute or regulation, including California Civil Code sections 1932(2) and 1933(4) (as amended from time to time, and successor statutes thereto) for any rights or obligations concerning a Casualty.

## 15. EMINENT DOMAIN.

15.1 Effect on Rights and Obligations. If any portion of the Premises is permanently taken by condemnation, this Lease shall remain in effect, except that Tenant may elect to terminate this Lease if 25% or more of the total square footage of the Premises (but expressly excluding parking areas, if any) is taken and if the remaining portion of the Premises is rendered unsuitable for Tenant's continued use of the Premises. If Tenant elects to terminate this Lease, Tenant must exercise its right to terminate by giving written notice to Landlord within thirty (30) days after the nature and the extent of the taking have been finally determined, as of the date of termination, which date shall not be earlier than thirty (30) days nor later than ninety (90) days after Tenant has notified Landlord of its election to terminate; except that this Lease shall terminate on the date of taking if the date of taking falls on a date before the date of termination

as designated by Tenant. If Tenant does not terminate this Lease within the thirty- (30) day period, this Lease shall continue in full force and effect, except that the Base Rent thereafter to be paid shall be reduced on a pro-rata basis. Tenant shall notify Landlord in writing of any condemnation or threatened condemnation within ten (10) days after Tenant receives notice of said action or threatened action.

15.2 Award. In connection with any condemnation, Landlord shall be entitled to receive all compensation and anything of value awarded, paid, or received in settlement or otherwise (“**Award**”) and Tenant hereby irrevocably assigns and transfers to Landlord all rights to and interests in the Award and fully waives, releases, and relinquishes any claim to, right to make a claim on, or interest in the Award, including any amount attributable to any excess of the market value of the Premises for the remainder of the Term over the present value as of the termination date of the Rent payable for the remainder of the Term (commonly referred to as the “bonus value” of the Lease).

## 16. DEFAULT.

16.1 Events of Default. Where “default” is used in this Lease with reference to Tenant, default refers to any breach of Tenant’s obligations under this Lease, however brief. Where Tenant’s default continues for the period specified below, it shall, at Landlord’s option, constitute an Event of Default giving rise to the remedies set forth in Sections 16.2 and 16.3 of this Lease. The occurrence of any of the following events shall, at Landlord’s option, constitute an “**Event of Default**”:

16.1.1 Abandonment of or vacating the Premises, or cessation of Tenant’s business operations therein, for a period of ten (10) consecutive calendar days;

16.1.2 Failure to pay Rent or other sums on the date when due and the failure continuing for a period of ten (10) days after such payment is due;

16.1.3 Failure to perform Tenant’s covenants and obligations hereunder (except default in the payment of Rent) where such failure continues for a period of thirty (30) days;

16.1.4 The making of a general assignment by Tenant for the benefit of creditors; the filing of a voluntary petition by Tenant or the filing of an involuntary petition by any of Tenant’s creditors seeking the rehabilitation, liquidation or reorganization of Tenant under any Laws relating to bankruptcy, insolvency or other relief of debtors and, in the case of an involuntary action, the failure to remove or discharge the same within sixty (60) days of such filing; the appointment of a receiver or other custodian to take possession of substantially all of Tenant’s assets or this leasehold; Tenant’s insolvency or inability to pay Tenant’s debts or failure generally to pay Tenant’s debts when due; any court entering a decree or order directing the winding up or liquidation of Tenant or of substantially all of Tenant’s assets; Tenant taking any action toward the dissolution or winding up of Tenant’s affairs; the cessation or suspension of Tenant’s use of the Premises; or the attachment, execution or other judicial seizure of substantially all of Tenant’s assets or this leasehold; or

16.1.5 The making of any material misrepresentation or omission by Tenant or any successor in interest of Tenant in any materials delivered by or on behalf of Tenant to Landlord or Landlord's lender pursuant to this Lease.

16.2 Remedies.

16.2.1 Termination. In the event of the occurrence of any Event of Default, Landlord shall have the right to give a written termination notice to Tenant and, on the date specified in such notice (which date shall be at least three (3) business days following the date of delivery of such notice), this Lease shall terminate unless on or before such date all arrears of Rent and all other sums payable by Tenant under this Lease and all costs and expenses incurred by or on behalf of Landlord hereunder shall have been paid by Tenant and all other Events of Default at the time existing shall have been fully remedied to the satisfaction of Landlord

(a) Repossession. Following termination, without prejudice to other remedies Landlord may have, Landlord may (i) peaceably re-enter the Premises upon voluntary surrender by Tenant or remove Tenant therefrom and any other persons occupying the Premises, using such legal proceedings as may be available; (ii) repossess the Premises or relet the Premises or any part thereof for such term (which may be for a term extending beyond the Term), at such rental and upon such other terms and conditions as Landlord in Landlord's sole discretion shall determine, with the right to make reasonable alterations and repairs to the Premises; and (iii) remove all personal property therefrom.

(b) Unpaid Rent. Landlord shall have all the rights and remedies of a landlord provided by applicable Laws, including the right to recover from Tenant: (i) the worth, at the time of award, of the unpaid Rent that had been earned at the time of termination, (ii) the worth, at the time of award, of the amount by which the unpaid Rent that would have been earned after the date of termination until the time of award exceeds the amount of loss of rent that Tenant proves could have been reasonably avoided, (iii) the worth, at the time of award, of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided, and (iv) any other amount, and court costs, necessary to compensate Landlord for all detriment proximately caused by Tenant's default. The phrase "worth, at the time of award," as used in (i) and (ii) above, shall be computed at the Applicable Interest Rate, and as used in (iii) above, shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

16.3 Cumulative. Each right and remedy of Landlord provided for herein or now or hereafter existing at Law or in equity, by statute or otherwise shall be cumulative and shall not preclude Landlord from exercising any other rights or remedies provided for in this Lease or now or hereafter existing at Law or in equity, by statute or otherwise. No payment by Tenant of a lesser amount than the Rent nor any endorsement on any check or letter accompanying any check or payment of Rent shall be deemed an accord and satisfaction of full payment of Rent; and Landlord may accept such payment without prejudice to Landlord's right to recover the balance of such Rent or to pursue other remedies.

**17. ASSIGNMENT AND SUBLETTING.**

17.1 Landlord's Consent. Tenant shall not assign, sublet or otherwise transfer, whether voluntarily or involuntarily or by operation of Law, this Lease, the Premises or any part thereof, without Landlord's prior written approval, which Landlord may withhold in its sole absolute discretion, without any obligation to consider any proposed assignment, sublet or transfer in good faith or otherwise. Tenant's attempted assignment/subletting without first obtaining Landlord's written consent shall be void at Landlord's election. Landlord's consent to one assignment or subletting shall not be deemed a consent to subsequent assignments and/or sublettings. In the event Tenant shall assign or sublet the Premises or request the consent of Landlord to any assignment or subletting or if Tenant shall request the consent of Landlord for any other act Tenant proposes to do, Tenant shall pay to Landlord any attorneys' fees incurred by Landlord in connection with each such request.

**18. ESTOPPEL, ATTORNMENT AND SUBORDINATION.**

18.1 Estoppel. Within ten (10) days after request by Landlord, Tenant shall deliver an estoppel certificate duly executed and acknowledged to any proposed mortgagee, beneficiary, purchaser, or Landlord, in a commercially reasonable form substantially similar to that requested and a statement certifying, without limitation: (i) the date of commencement of this Lease; (ii) the fact that this Lease is unmodified and in full force and effect (or, if there have been modifications hereto, that this Lease is in full force and effect, as modified, and stating the date and nature of such modifications); (iii) the date to which the rental and other sums payable under this Lease have been paid; (iv) the fact that there are no current defaults under this Lease by either Landlord or Tenant except as specified in Tenant's statement; (v) no deposit of any nature has been made in connection with the Lease (other than deposits the nature and amount of which are expressly described in the Lease); and (vi) such other matters requested by Landlord. Landlord and Tenant intend that any statement delivered pursuant to this Section 18 may be relied upon by any mortgagee, beneficiary, purchaser or prospective purchaser of the Premises, the Property, any portion thereof, or any interest therein. Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant that (i) this Lease is in full force and effect, without modification except as may be represented by Landlord; (ii) there are no uncured defaults in Landlord's performance; (iii) not more than one (1) month's rental has been paid in advance; and (iv) no deposit of any nature has been made in connection with the Lease except as represented by Landlord.

18.2 Subordination. This Lease shall be subject and subordinate to all ground leases, CC&Rs, and the lien of all mortgages and deeds of trust which now or hereafter affect the Premises or the Property or Landlord's interest therein, and all amendments thereto, all without the necessity of Tenant's executing further instruments to effect such subordination; provided, however, that Tenant's rights hereunder shall not be disturbed, except in accordance with the terms and provisions of this Lease. If requested, Tenant shall execute and deliver to Landlord within ten (10) days after Landlord's request, whatever documentation that may reasonably be required to further effect the provisions of this Section 18.2.

18.3 Attornment. In the event of a foreclosure proceeding, the exercise of the power of sale under any mortgage or deed of trust or the termination of a ground lease, Tenant shall, if



requested, attorn to the purchaser thereupon and recognize such purchaser as Landlord under this Lease. The transferee shall not be liable for any acts, omissions or defaults of Landlord that occurred before the sale or conveyance, or the return of any security deposit except for deposits actually paid to transferee, and except as reduced as expressly provided for in Section 4.4 of this Lease or by operation of Law.

**19. RELOCATION WAIVER.**

19.1 Waiver. Tenant fully releases and discharges Landlord (in its capacity as Landlord and otherwise as a municipal corporation) from all and any manner of rights, demands, liabilities, obligations, claims, or cause of actions, in Law or equity, of any kind or nature, known or unknown, now existing or hereinafter arising, which arise from or relate in any manner to the relocation of Tenant's business operations, or the relocation of any person(s), business(es), or other occupant(s) located on within, on, or about, the Premises following the full or partial termination or expiration of Tenant's leasehold interest in the Premises (collectively, "**Relocation Claims**"), including waiver and release of any relocation rights under Government Code sections 7260 et seq. or any federal Laws (collectively, "**Relocation Assistance Law**"). Tenant acknowledges and agrees that the release and waiver set forth in this Section 19 is material consideration for Landlord's agreement to enter into this Lease, and that, but for this release and waiver, Landlord would not have entered into this Lease. By releasing and forever discharging the Relocation Claims, Tenant expressly waives any rights under California Civil Code section 1542, which provides: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

**20. REQUIRED ACCESSIBILITY DISCLOSURE**

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

20.1.1 "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject Property 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 Property, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject Property 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 Property." [Cal. Civ. Code Section 1938(e)]. Any CASp inspection shall be conducted in compliance with reasonable rules in effect at the Building with regard to such inspections and shall be subject to The City's prior written consent.

**21. CITY NON-DISCRIMINATION ORDINANCE**

21.1 Tenant hereby agrees to comply with the provisions of B.M.C. Chapter 13.26 as amended from time to time. In the performance of this Lease, Tenant agrees as follows:

21.2 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.

21.3 Tenant 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, Tenant shall fill out, in a timely fashion, forms supplied by the City to monitor this non-discrimination provision.

21.4 Tenant represents that it is subject to state and federal anti-discrimination laws, and maintains a policy of non-discrimination in admission, access, and treatment in its programs, activities, and employment, which fulfill the requirements of subdivision (a), above. Assuming, arguendo, that the requirements of Chapter 13.26 would otherwise apply, for purposes of this Lease the City agrees that the documentation contemplated in subdivision (b) will not be required of Tenant.

**22. NON-DISCRIMINATION AGAINST PERSONS WITH DISABILITIES**

22.1 If Tenant provides any aid, service or benefit to others on the City'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 benefit, services or activities of the City.

22.2 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 Tenant's activities must be in accordance with these laws, ordinances, codes, and regulations, and Tenant shall solely be responsible for complying therewith.

**23. BERKELEY EQUAL BENEFITS ORDINANCE (EBO)**

23.1 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 License, as defined in B.M.C. Chapter 13.29, as well as comply with the terms enumerated herein.

23.2 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.

23.3 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 and equity. Tenant's failure to comply with this Paragraph shall constitute default of the Lease.

23.4 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.

#### **24. BERKELEY LIVING WAGE ORDINANCE (LWO)**

24.1 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 of Berkeley (City) mandated minimum compensation during the term of this Lease, as defined in B.M.C. Chapter 13.27, as well as comply with the terms enumerated herein.

24.2 Licensee shall be required to maintain all reasonable records and documents that would establish whether Licensee is subject to the 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 Property. These records shall include the total number of hours worked, the number of hours spent providing service on the 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 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 23 herein.

24.3 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 Property. Sublicenses shall be required to comply with this ordinance with regard to any employees who spend 25% or more of their compensated time on the Property.

24.4 If Licensee fails to comply with the requirements of the LWO and this Lease the City shall have the rights and remedies described in this Paragraph, in addition to any rights and remedies provided by law or equity. Licensee's failure to comply with this Paragraph shall

constitute default of the Lease, upon which City may terminate this Lease pursuant to Paragraph 23.

24.5 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 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 is not intended as a penalty of forfeiture for Licensee's breach.

## **25. OPPRESSIVE STATES**

25.1 In accordance with Resolution No. 59,583-N.S., Licensee certifies that it has no contractual relations with, and agrees during the term of this Lease to forgo contractual relations to provide personal services to, the following entities:

25.1.1 The governing regime in any Oppressive State.

25.1.2 Any business or corporation organized under the authority of the governing regime of any Oppressive State.

25.1.3 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.

25.2 For purposes of this Lease, the Tibet Autonomous Region and the provinces of Aho, Kham, and V-Tsang shall be deemed Oppressive States. Licensee's failure to comply with this paragraph shall constitute a default of this Lease and City may terminate this Lease. In the event that City terminates this Lease due to a default under this provision, City may deem Licensee a non-responsible bidder for five (5) years from the date this Lease is terminated

## **26. CONFLICT OF INTEREST PROHIBITED**

26.1 In accordance with Government code section 1090, Berkeley City Charter section 36, and the Berkeley Municipal Code (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 with the City as an elected officer, an employee, or a City board, committee or commission member, who has directly or indirectly influenced the making of this Lease.

26.2 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 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.

26.3 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.

**27. MISCELLANEOUS.**

27.1 General.

27.1.1 Entire Agreement. This Lease sets forth all the agreements between Landlord and Tenant concerning the Property and the Premises, and there are no agreements either oral or written other than as set forth herein.

27.1.2 Time of Essence. Time is of the essence of this Lease.

27.1.3 This subsection intentionally deleted.

27.1.4 Severability. If any provision of this Lease or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void or unenforceable to any extent, the remaining provisions of this Lease and the application thereof shall remain in full force and effect and shall not be affected, impaired or invalidated.

27.1.5 Law. This Lease shall be construed and enforced in accordance with the Laws of the State of California, without reference to its choice of law provisions.

27.1.6 Interpretation. The titles to the sections of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part of this Lease. As used in this Lease, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Lease shall be interpreted as though prepared jointly by both parties.

27.1.7 No Option. Submission of this Lease to Tenant for examination or negotiation does not constitute an option to lease, offer to lease or a reservation of, or option for, the Premises; and this Lease shall become effective and binding only upon the execution and delivery hereof by Landlord and Tenant.

27.1.8 Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the successors and assigns of Landlord and, subject to compliance with the terms of Section 17.

27.1.9 Third Party Beneficiaries. Nothing herein is intended to create any third party benefit.

27.1.10 Memorandum of Lease; Title. Landlord may elect to have either this Lease or a short form memorandum hereof recorded pursuant to the requirements of California Government Code section 37393. Tenant shall cooperate with Landlord in executing and acknowledging any such memorandum of lease. Upon the expiration or other termination of this Lease, Tenant shall immediately execute and deliver to Landlord a quitclaim deed to the Premises and the Property, as required, in recordable form, designating Landlord as transferee or grantee. Tenant shall not do any act which shall in any way encumber the title of Landlord in and to the Property or any portion thereof.

27.1.11 No Agency, Partnership or Joint Venture. Nothing contained herein nor any acts of the parties hereto shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture by the parties hereto or any relationship other than the relationship of landlord and tenant.

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

27.1.13 Waiver. No waiver of any default or breach hereunder shall be implied from any omission to take action on account thereof, notwithstanding any custom and practice or course of dealing. No waiver by either party of any provision under this Lease shall be effective unless in writing and signed by such party. No waiver shall affect any default other than the default specified in the waiver and then such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant shall not be construed as a waiver of any subsequent breach of the same.

27.1.14 Limitation of Liability. The obligations of Landlord under this Lease are not personal obligations of Landlord; and Tenant shall look solely to the rents, issues, profits and other income generated by the Premises for satisfaction of any liability of Landlord and shall not look to other assets of Landlord nor seek recourse against the other assets of Landlord. Whenever Landlord transfers its interest, Landlord shall be automatically released from further performance under this Lease and from all further liabilities and expenses hereunder and the transferee of Landlord's interest shall assume all liabilities and obligations of Landlord hereunder from the date of such transfer.

27.1.15 Notices. All notices to be given hereunder shall be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, or delivered by personal or courier delivery, to Landlord's address and Tenant's address set forth in Sections 1 and 2 of the Basic Lease Information, or to such other place as Landlord or Tenant may designate in a written notice given to the other party. Notices shall be deemed served upon the earlier of receipt or three (3) days after the date of mailing.

27.1.16 Brokerage Commission. Landlord and Tenant each represents that they have not been represented by any broker in connection with this Lease, and that no real estate broker's commission, finder's fee or other compensation is due or payable. Tenant agrees to indemnify and hold harmless Landlord from any claims or liability, including reasonable

attorneys' fees, in connection with a claim by any person for a commission, Finder's Fee or other compensation based upon any statement, representation or agreement of Tenant.

27.1.17 Authorization. Each individual or entity executing this Lease on behalf of Tenant represents and warrants that he or she or it is duly authorized to execute and deliver this Lease on behalf of Tenant and that such execution is binding upon Tenant.

27.1.18 Holding Over. If, with Landlord's express written consent, Tenant holds over the Premises or any part thereof after expiration or earlier termination of the Term, such holding over shall constitute a month-to-month tenancy on all the other terms and conditions of this Lease, except that Base Rent shall be equal to 125% of the Base Rent payable under this Lease for the last full month before the date of expiration or termination. This section shall not be construed as Landlord's permission for Tenant to hold over. Acceptance of Rent by Landlord following expiration or termination shall not constitute a renewal of this Lease or extension of the Term, except as specifically set forth above. If Tenant remains in possession of the Premises after expiration or other termination of this Lease without Landlord's express written consent, Tenant's continued possession shall be on the basis of a tenancy at sufferance and Tenant shall pay as Base Rent during the holdover period an amount equal to one hundred fifty percent (150%) of the Rent payable under this Lease for the last full month before the date of expiration or termination. If Tenant fails to surrender the Premises upon expiration or other termination of this Lease, Tenant shall indemnify and hold Landlord harmless from and against all loss or liability resulting from or arising out of Tenant's failure to surrender the Premises, including, but not limited to, any amounts required to be paid to any tenant or prospective tenant who was to have occupied the Premises after the expiration or other termination of this Lease and any related attorneys' fees and brokerage commissions.

27.1.19 Surrender. Upon the expiration or other termination of this Lease or Tenant's right to possession of the Premises, Tenant will surrender the Premises, together with all keys, broom-swept clean and in good condition and repair, reasonable wear and tear excepted. Conditions existing because of Tenant's failure to perform maintenance, repairs or replacements shall not be deemed "reasonable wear and tear."

27.1.20 Joint and Several. If Tenant consists of more than one person, the obligation of all such persons shall be joint and several.

27.1.21 Covenants and Conditions. Each provision to be performed by Tenant hereunder shall be deemed to be both a covenant and a condition. This Lease shall be construed as though the covenants between Landlord and Tenant are independent and not dependent. Tenant expressly waives the benefit of any statute to the contrary, and agrees that even if Landlord fails to perform its obligations under this Lease, Tenant shall not be entitled to make repairs or perform any acts at Landlord's expense, or to any setoff against Rent or other amounts owing under this Lease against Landlord.

27.1.22 Force Majeure. For purposes of this Lease, the term "**Force Majeure**" shall mean and include the following: any delay caused by any action, inaction, order, ruling, moratorium, regulation, statute, condition or other decision of any governmental agency having jurisdiction over any portion of the Property, over any construction anticipated to occur thereon

or over any uses thereof, or by fire, flood, inclement weather, energy shortage, strikes, lockouts or other labor or industrial disturbance, civil disturbance, order of any government, court or regulatory body claiming jurisdiction or otherwise, governmental preemption or curtailment in connection with a national emergency or in connection with any rule, order, guideline or regulation of any department or governmental agency, or by reason of the conditions of supply and demand which have been or are affected by a war or other emergency, acts of terrorism, act of public enemy, war, riot, sabotage, blockade, embargo, failure or inability to secure an adequate supply of water, electricity, fuel, materials, supplies or labor through ordinary sources by reason of shortages or priority, discovery of Hazardous Materials (as defined in paragraph 13.1), earthquake, or other natural disaster, or any cause whatsoever beyond the reasonable control (excluding financial inability) of the party whose performance is required.

27.1.23 Financial Statements. Upon ten (10) days prior written request from Landlord (which Landlord may make at any time during the Term but no more often than once in any calendar year, unless Tenant is in default), Tenant shall deliver to Landlord a current financial statement of Tenant and any guarantor of this Lease. Such statements shall be prepared in accordance with generally acceptable accounting principles and certified as true in all material respects by Tenant (if Tenant is an individual) or by an authorized officer or general partner of Tenant (if Tenant is a corporation or partnership, respectively).

## 28. SANCTUARY CITY CONTRACTING

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

A. “Data Broker” means either of the following:

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

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

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





*[SIGNATURES FOLLOW ON NEXT PAGE]*

IN WITNESS WHEREOF, City and Tenant have executed this Lease as of the date written on number four (4) of the basic lease information sheet.

Approved as to form:

CITY OF BERKELEY

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

By \_\_\_\_\_  
City Manager

Registered by:

Attest:

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

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

Tenant  
Sunny Patpatia, Patpatia & Associates, Inc.

By \_\_\_\_\_  
Sunny Patpatia

TENANT INFORMATION:

Tax Identification No. \_\_\_\_\_

Incorporated: Yes \_\_\_\_\_ No \_\_\_\_\_

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

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

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

EXHIBIT A-1

**PROPERTY DESCRIPTION**

The property is located within the Berkeley Waterfront in the City of Berkeley, CA. The premises include approximately 1,706 square feet comprising the northwestern portion of the 2nd floor of the building commonly known and referred to as 125-127 University Avenue, Berkeley, CA 94710.

EXHIBIT A-2

DEPICTION OF PREMISES

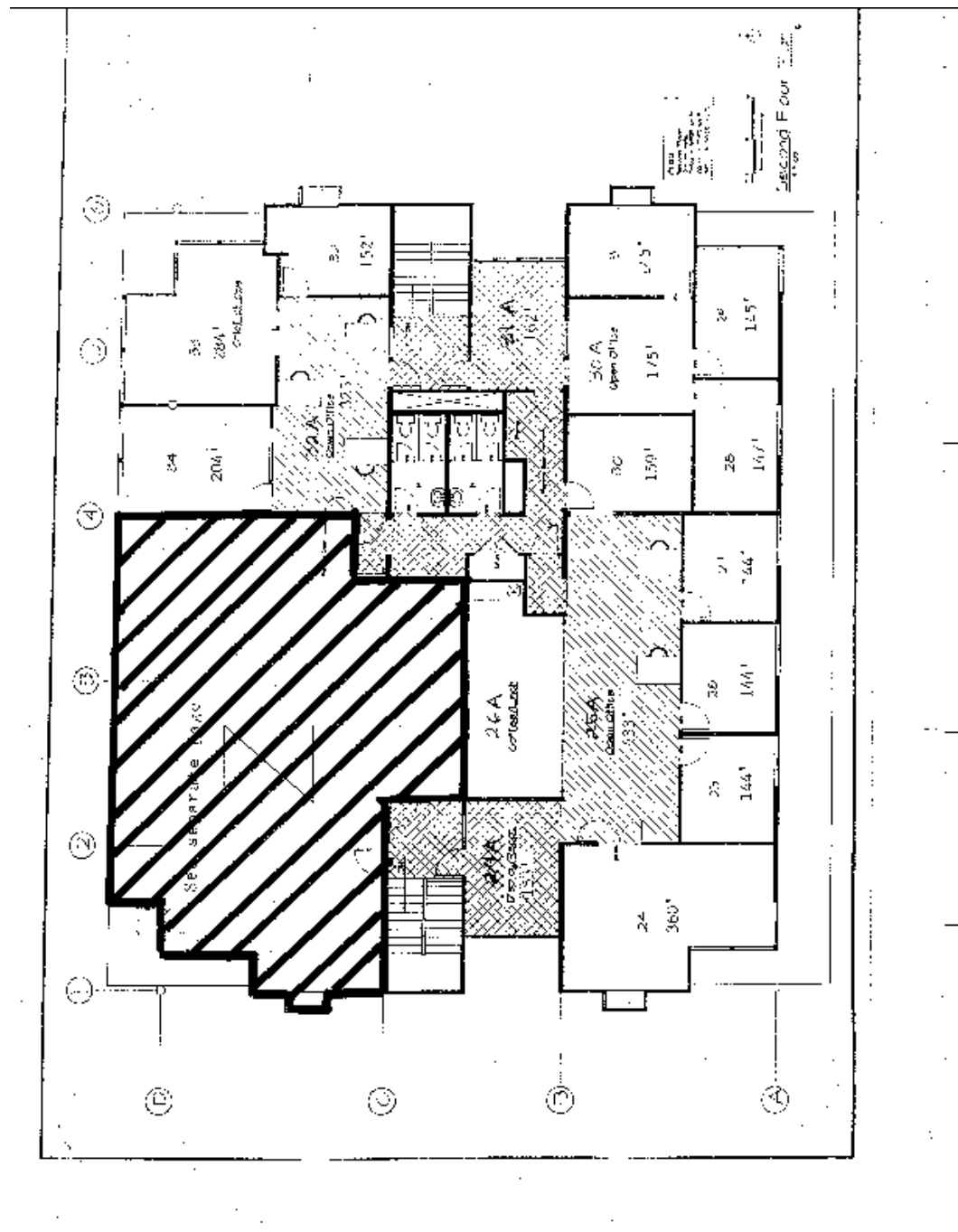


EXHIBIT B

**RULES AND REGULATIONS**

Tenant shall comply with the following Rules and Regulations (individually and collectively, “**Rules**”). Landlord shall not be responsible to Tenant for the nonperformance of any of these Rules.

1. Locks; Keys. Tenant shall not alter any lock or install any new or additional locks or bolts on any doors or windows of the Premises without obtaining Landlord’s prior written consent. Tenant shall bear the cost of any lock changes or repairs required by Tenant. Two keys shall be furnished by Landlord for the Premises, and any additional keys required by Tenant must be obtained from Landlord at a reasonable cost to be established by Landlord.
2. Doors Opening to Public Corridors; Protection of Premises. All doors opening to public corridors, if any, must be kept closed at all times except for normal ingress to and egress from the Premises. Tenant shall assume all responsibility, including keeping doors locked and other means of entry to the Premises closed, for protecting the Premises from theft, robbery, and pilferage.
3. Floor Loads. Landlord may prescribe the weight, size, and position of all safes, machinery, equipment, fixtures or other heavy property (“**Heavy Property**”) brought into the Premises and the times and manner of moving those items within and out of the Premises. Tenant shall not overload any floor in the Premises or use or operate any machinery, equipment, or other device, even though its installation may have been permitted, that in Landlord’s opinion is harmful to the Premises. If Tenant shall require Heavy Property, Tenant shall notify Landlord of such fact. If considered necessary by Landlord, Heavy Property must stand on supports that are adequate to distribute the weight properly and Tenant shall pay the cost of any necessary supports or structural bracing. Any damage to any property (whether or not belonging to Tenant), the Premises, the Property or any portion thereof, or its or their respective contents, or any harm to Tenant, its employees, agents, or any occupants or visitors caused by moving or maintaining any Heavy Property shall be the sole responsibility and expense of Tenant.
4. Requirements of Tenant. Any special requirements of Tenant not set forth as an obligation of Landlord under the Lease will be considered only upon written application to Landlord at Landlord’s address set forth in the Lease. Landlord’s employees shall not perform any work or do anything outside their regular duties unless under special instructions from Landlord.
5. Use of Plumbing Facilities; Responsibility for Damage. The plumbing facilities (including but not limited to restrooms, toilets, urinals, wash bowls, drains, and other apparatus) shall be used for no purpose other than that for which they were constructed, and no foreign substance of any kind shall be thrown into them. The expense of any breakage, stoppage, or damage resulting from violation of this rule shall be borne by Tenant.
6. Restrictions on Defacement; Maintenance of Premises. Tenant shall not mark, drive nails or screws into, or drill into the partitions, woodwork, or plaster, or in any way deface the

Premises, the Property or any portion thereof, without Landlord's prior written consent. Tenant shall maintain the Premises and all portions thereof in a safe, neat and clean condition.

7. Permitted Machines. No machines of more than one horsepower shall be installed, maintained, or operated on the Premises without Landlord's prior written consent.

8. Flammable or Combustible Fluids or Materials; Foul or Noxious Gases or Substances; Nontoxic Materials. Tenant shall not use or keep, or allow to be used or kept, in or on the Premises, the Property, or any portion thereof, any kerosene, gasoline, or other flammable or combustible fluid, material, or any foul or noxious gas or substance. All materials, fabrics, and products used in Tenant's furnishings, wall and floor coverings, and ceiling installations shall be nontoxic and subject to the prior approval of Landlord's architect or engineer. Nothing contained here is intended or shall be construed to alter or diminish any obligations of Tenant under any portion(s) of its Lease addressing environmental matters and compliance, Hazardous Materials Laws, Hazardous Materials, or similar matters, or compliance with Laws. Any existing materials supplied or installed by Landlord in the Premises are exempt from this provision.

9. Cooking; No Use of Premises for Improper Purposes. No cooking shall be done or permitted on the Premises, except that Underwriters' Laboratory (UL)-approved equipment and microwave ovens may be used in the Premises for heating food and brewing coffee, tea, hot chocolate, and similar beverages for employees and visitors. This use must be in accordance with all Laws. The Premises shall not be used for lodging, or for any improper, objectionable, or immoral purposes.

10. Exclusion or Expulsion. Landlord reserves the right to exclude or expel from the Property or any portion thereof any person who, in Landlord's judgment, is under the influence of alcohol or drugs or commits any act in violation of any of these Rules.

11. Loitering Prohibited. Tenant and Tenant's Parties shall not loiter in or about the Property for the purpose of smoking tobacco products or for any other purpose unrelated to Tenant's use of the Premises.

12. Smoking; Illegal Substances. Smoking of tobacco products and use of illegal substances is strictly prohibited in or about the Property or any portion thereof.

13. Extermination. Tenant agrees not to permit the extermination of vermin to be performed in, on or about the Property or any portion thereof except at times and by a person or company reasonably designated by Landlord.

14. Obstructions. Tenant and Tenant's Parties shall not in any way obstruct the sidewalks, entry passages, pedestrian passageways, driveways, entrances and exits to the Property, and they shall use the same only as passageways to and from the Premises. At no time shall Tenant or Tenant's Parties be permitted to conduct work activity (except for normal loading and unloading of vehicles) nor store wooden pallets, boxes, goods or other materials outside the confines of Tenant's Premises.

15. Disposal of Trash and Garbage. Tenant shall store all trash, garbage and refuse ("Trash") within the interior of the Premises. Tenant shall not place or have placed in Trash

boxes or receptacles any material that may not or cannot be disposed of in the ordinary and customary manner of removing and disposing of Trash in the vicinity of the Premises. Tenant shall comply fully with all applicable Laws when disposing of Trash.

16. Provision of Information to Tenant's Employees. Tenant shall comply with requests by Landlord that Tenant inform Tenant's employees and agents of items of importance to Landlord.

17. Prohibited Uses and Activities.

17.1 Any use, operation or activity which causes or produces the attraction of flies, insects, rodents or other animals, or the creation or emission of dust or dirt, without proper mitigating measures in place;

17.2 Any use, operation or activity which causes or produces any emission into the air of any (i) noxious, toxic, hazardous or corrosive fumes or gases; (ii) excessive smoke, dirt or dust; or (iii) pollutants in violation of any local, state or federal standards;

17.3 Any use, operation or activity which causes or produces any discharge of Hazardous Materials (as defined in Lease Section 13.1) into any sewer system or storm drain serving the Property in a manner that will result in any leaching into the soil, or release into the atmosphere or groundwater;

17.4 Hazardous or unsafe uses by reasons of danger of fire or explosion, or uses that will increase the fire hazard rating on the Property or other properties, or uses objectionable or offensive to adjoining properties;

17.5 Uses in violation of any applicable Laws;

17.6 Any construction, erection, or placement of ornamentation or other objects or equipment, permanently or temporarily, on the outside portions of the Property, whether such portion is improved or unimproved, except as specifically permitted by Landlord; and

17.7 Additional prohibited uses as determined by Landlord from time to time.

18. Conflict. In the event of any conflict between these Rules or any further or modified Rules from time to time issued by Landlord and the Lease provisions, the Lease shall govern and control.

19. Rule Changes; Waivers. Landlord reserves the right at any time to change or rescind any one or more of these Rules or to make such other and further reasonable Rules as, in Landlord's judgment, may from time to time be necessary for the operation, management, safety, care and cleanliness of the Property or any portion thereof, for the preservation of good order therein, or for the convenience of other occupants and tenants of the Property, if any. Landlord may waive any one or more of these Rules for the benefit of any particular tenant(s). Landlord further reserve(s) all the rights reserved to it or them by the provisions of the Lease, by any CC&Rs, or by operation of Law. No waiver by Landlord shall be construed as a waiver of those Rules in favor of any other tenant or occupant of the Premises or Property, and no waiver shall prevent Landlord from enforcing those Rules against any other tenant or occupant of the Property.



Landlord shall not be responsible to Tenant or to any other person for the non-observance or violation of the Rules by any other tenant, occupant, or other persons. Tenant shall abide by any additional rules or regulations which are ordered or requested by any governmental or military authority. Tenant shall be deemed to have read these rules and to have agreed to abide by them as a condition of Tenant's use and occupancy of the Premises

