



Office of the City Manager

CONSENT CALENDAR  
November 27, 2007

To: Honorable Mayor and Members of the City Council

From: *PK* Phil Kamlarz, City Manager

Submitted by: Renelda Mary, Interim Director, Housing

Subject: Lease Agreement: Property at 711 Harrison Street

RECOMMENDATION

Adopt first reading of an Ordinance authorizing the City Manager to execute a lease agreement and any amendments with Building Opportunities for Self-Sufficiency (BOSS) to lease a City-owned parcel of property to be created at 711 Harrison Street for a five-year period with a conditional option to extend for an additional seventeen-year period.

SUMMARY

BOSS has requested a lease for the Harrison House emergency shelter and transitional housing program on City-owned property at 711 Harrison Street that will allow them to apply for and use State of California financing to rehabilitate the existing building. BOSS also anticipates the future development of the adjacent land. Both portions of the site are currently on the same legal parcel as Harrison Park.

To allow BOSS to access State funding and keep opportunities open for the future financing and development of the site, staff recommended subdividing the City-owned property to create two new legal parcels and developing two leases. City Council authorized proceeding with this approach on June 12, 2007 when Resolution No. 63,719–N.S. was adopted. BOSS submitted an application for the subdivision in August 2007, which is in the process of being reviewed by the Planning Department. The lease for the Harrison House portion of the site is now submitted for City Council consideration.

FISCAL IMPACTS OF RECOMMENDATION

Currently, BOSS pays \$1 per year for the lease of the Harrison House property. Once the property is subdivided, there will be two parcels. The current lease will be \$1 per year, and another parcel created is proposed to be leased for \$1 per year, for a total of \$2 annually.

CURRENT SITUATION AND ITS EFFECTS

On June 12, 2007 the City Council adopted Resolution No. 63,719–N.S. authorizing staff to proceed with an application for subdividing the City-owned property at 711 Harrison Street and developing two lease agreements for the proposed parcels.

BOSS requested a lease for Harrison House to secure State of California Emergency Housing Assistance Program (EHAP) financing for its rehabilitation. Application to EHAP for substantial rehabilitation requires a lease term of at least 17 years concurrent with the EHAP loan term in order to demonstrate site control. Closing on the State's financing also requires a recorded lease, Lease Rider, and Estoppel Agreement, Deed of Trust, and Regulatory Agreement on an established parcel. BOSS also anticipates applying to one of the Federal Home Loan Bank's (FHLB) member banks for Affordable Housing Program (AHP) financing. AHP financing will require recording a Deed of Trust restricting the use of the property.

Since the Harrison House site is legally part of Harrison Park, subdividing the parcel to separate Harrison House from Harrison Park is necessary to allow for the recording of the State's documents. The City can subdivide real estate under the California Subdivision Map Act and the City of Berkeley Municipal Code, Title 21. The subdivision application currently under review by the Planning Department would create two new parcels, shown as Parcel 1 and Parcel 2 on the Exhibit A: Tentative Parcel Map attached to the ordinance. "Parcel 1" is the location of Harrison House and the proposed rear parcel is marked "Parcel 2". The lease to be authorized for Parcel 1 was written to allow for BOSS' continued occupancy and operation of the site as well as for the purpose of applying to EHAP and AHP. The anticipated lease for Parcel 2 which staff expects to submit to Council within the next few months, will allow BOSS to continue operating services on the site.

The final definitions of the parcel will be determined through review and approval by the City Planning Department, and must be recorded with Alameda County. The parcels on the final parcel map may differ slightly from those on the Tentative Parcel Map if deemed necessary by the Planning Department to accommodate applicable laws and regulations. The leases may not be executed until the subdivision has been completed but are being reviewed simultaneously to accommodate the state's EHAP application deadline of February 1, 2008. Also to accommodate this funding deadline, the Harrison House lease is being submitted ahead of the lease for the rear portion of the site. The lease for the rear portion will be submitted next.

The Housing Advisory Commission reviewed and approved the proposal to subdivide and lease both parcels at its April 5, 2007 meeting, with the provision that the City ensure adequate protection of the parking lot for the use of Parks. The proposal was reviewed and approved by the Parks and Recreation Commission at its April 23, 2007 meeting. A related report has been submitted to the Joint Powers Financing Authority for today.

## BACKGROUND

The Harrison House started operating at 711 Harrison Street as a youth hostel in 1971. Since 1976, BOSS has operated emergency shelter and transitional housing at Harrison House, and has added support service space in trailers at the rear of the site. Prior to the City's acquisition of the property in 2000, BOSS leased the property from the University of California. The City is currently in a month-to-month lease agreement with BOSS for the site containing Harrison House, the trailers, and surrounding open space outside Harrison Park. The site currently occupied by BOSS is part of the larger Harrison Park parcel purchased by the City, which includes the field house associated with the Gabe Catalfo Fields and the City skateboard park. BOSS pays an annual rent to the City of one dollar (\$1.00) for the portion it occupies.

The City acquired the Harrison Park site using Lease Revenue bonds issued by the Joint Powers Financing Authority. Related to the bond financing, the City leases the property to the Joint Powers Financing Authority, which leases it back to the City.

BOSS created a master plan to redevelop the site into Ursula Sherman Village (USV), a community where homeless families and single adults can participate in support services to transform their lives. The City supported development of this plan through a contract for a \$240,000 predevelopment loan executed in 2000. The proposed USV master plan includes rehabilitation of the Harrison House building, new construction adding approximately 17,000 square feet of new space to the site, and removal of three existing temporary trailers in order to expand and upgrade the space available for housing and services.

The property is zoned Mixed Use-Light Industrial (MU-LI). In July 2003, a Use Permit was approved by the Zoning Adjustments Board (ZAB) approving modification of the existing Use Permit and increasing the maximum number of people allowed to stay on the site from 100 to 132. In 2003, the ZAB also certified the Environmental Impact Report prepared to assess the potential environmental effects associated with the proposed USV project and the modification of the existing Use Permit.

In 2004, BOSS took the first step toward implementation of the USV master plan, when the City subdivided the parcel and developed a lease for Sankofa House, which occupies about one-quarter of the larger Harrison House site. The parcel created for Sankofa House development is 701 Harrison Street, indicated by "Existing Lot" on the attached Tentative Parcel Map. Sankofa House provides transitional housing for up to 10 families in a shared living environment, and was financed with a \$500,000 loan from the State of California's Emergency Housing Assistance Program (EHAP), as well as a \$47,061 predevelopment loan and a \$938,250 development loan from the City. The related report to City Council on December 9, 2003 anticipated the future subdivision and lease of the site for further development of USV.

The City Parks Division has a parking lot located to the west of the portion occupied by BOSS, adjacent to the railroad right-of-way. Harrison House and Sankofa House

currently share the use of this parking lot as well. The Environmental Impact Report completed for USV anticipated that future development on the site would also share the use of this parking lot. Since it is primarily for the use of playing field users, this parking lot is not included in the property currently leased to BOSS.

RATIONALE FOR RECOMMENDATION

Resolution No. 63,719–N.S. adopted by Council on June 12, 2007 authorized staff to proceed with the subdivision application and creation of leases. All leases for City-owned property require City Council authorization.

To allow BOSS to access State funding and keep opportunities open for the future financing and development of the site, staff recommended subdividing the City-owned property to create two new legal parcels and developing two leases. Subdividing these parcels from each and from the larger Harrison Park parcel will help BOSS to secure financing.

ALTERNATIVE ACTIONS CONSIDERED

An alternative would be to create just one new parcel that includes both Harrison House and the portion currently occupied by the trailers. This approach was considered but not taken with the creation of the Sankofa House parcel. At that time, Housing Department and City Attorney's Office staff concluded that it was prudent that each building have its own lease and that the security interests for the financing of each building be separated. Establishing separate parcels for each building would ensure the separate treatment of each building in case of foreclosure action by the State. These same considerations still apply. Additionally, separating the parcels make the projects eligible for a greater amount of State financing, since the EHAP limit is \$1 million per project site.

Another alternative is to leave the site and lease as they are. This would allow BOSS to continue occupancy of the parcel but not allow for State financing for rehabilitation or development.

CONTACT PERSON

Renelda Mary, Interim Director, Housing, 981-5401

Amy Davidson, Mental Health Housing Development Coordinator, Housing, 981-5406

Attachments:

1: Ordinance

Exhibit A: Tentative Parcel Map

Exhibit B: Lease

ORDINANCE NO. -N.S.

AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT AND ANY AMENDMENTS WITH BUILDING OPPORTUNITIES FOR SELF-SUFFICIENCY (BOSS) TO LEASE CITY-OWNED PROPERTY LOCATED ON A PARCEL OF PROPERTY TO BE CREATED AT 711 HARRISON STREET

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

Section 1. FINDINGS:

- a. The City of Berkeley (the "City") owns certain real property located on Harrison Street between the abandoned 4<sup>th</sup> Street and the railroad right-of-way (the "Property"). The Property is shown in the Tentative Parcel Map attached hereto as Exhibit A, which is incorporated herein by this reference.
- b. Building Opportunities for Self Sufficiency (BOSS) has operated emergency shelter and transitional housing on the Property in the facility called Harrison House since 1976, prior to the City's acquisition of the Property.
- c. In 2000, the City entered into a contract with BOSS to support BOSS' development of a plan to develop additional emergency shelter and transitional housing on the Property. The planned redevelopment project is called Ursula Sherman Village and now includes a rehabilitated Harrison House as well as two new developments, known as Sankofa House and the Ubuntu Center.
- d. In 2003, the City approved a Use Permit for BOSS to redevelop the Property.
- e. In 2004, the City subdivided the Property to create 701 Harrison Street, and entered into a lease with BOSS which allowed BOSS to secure State of California financing for the development of Sankofa House.
- f. BOSS has requested a lease that would allow securing State of California financing for the rehabilitation of Harrison House, and City staff have determined that further subdivision of the Property is needed. On June 12, 2007, the City Council authorized a subdivision application and the development of related leases for the two parcels to be created, and in August 2007, BOSS submitted an application for this subdivision.

Section 2. AUTHORIZATION FOR CITY MANAGER TO ENTER INTO LEASE AT THE PARCEL TO BE CREATED AT 711 HARRISON STREET, SHOWN AS PARCEL 1 ON THE TENTATIVE PARCEL MAP IN EXHIBIT A.

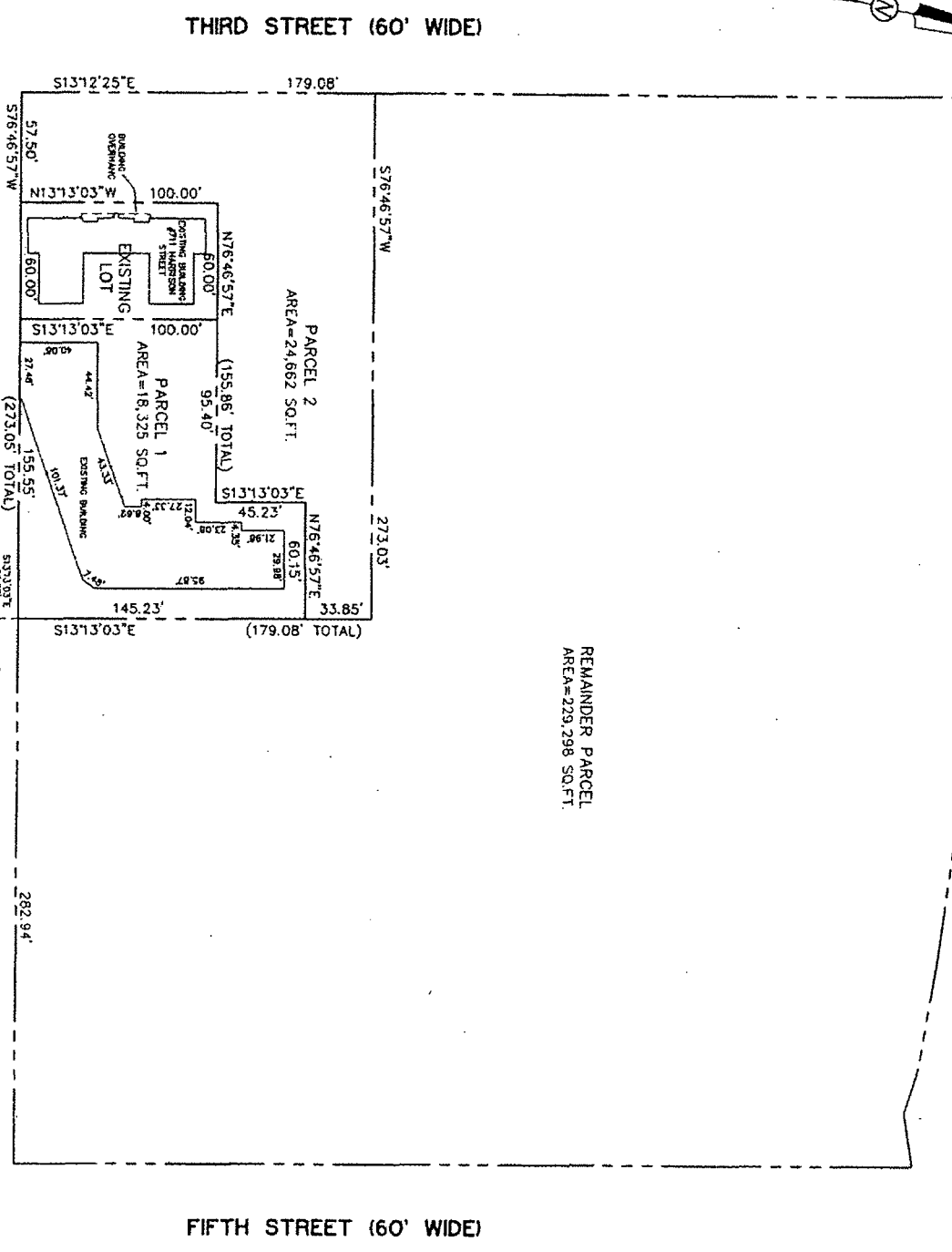
The City Manager is hereby authorized to enter into a five-year lease agreement with the option for a seventeen-year extension and any amendments with Building

Opportunities for Self-Sufficiency for real property located at a new parcel proposed to be created at 711 Harrison Street. Such lease shall be on substantially the terms set forth in Exhibit B.

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.



**TENTATIVE PARCEL MAP**



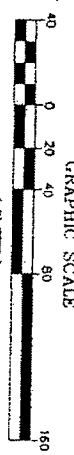
REMAINDER PARCEL  
AREA=229,298 SQ.FT.

FIFTH STREET (60' WIDE)

THIRD STREET (60' WIDE)

HARRISON STREET (60' WIDE)

FOURTH STREET



GRAPHIC SCALE

LEGEND  
● CITY MONUMENT

OWNER:  
CITY OF BERKELEY  
PHIL KALMAREZ, CITY MANAGER  
2180 MILVA STREET  
BERKELEY, CA 94704  
510/981-7000

BASIS OF BEARINGS:  
THE BEARING OF S76°46'57" W BETWEEN  
FOUND MONUMENTS IN HARRISON STREET  
PER CITY OF BERKELEY COORDINATES  
HAS BEEN TAKEN AS THE BASIS OF BEARINGS  
OF THIS MAP.

**SUBDIVISION**

A PORTION OF BLOCK 8  
MAP OF THE I.M. WENTWORTH BOOY &  
SHOE COMPANY'S TRACT (6 M 16)  
CITY OF BERKELEY, COUNTY OF ALAMEDA, CALIFORNIA

AUGUST, 2007 SCALE: 1" = 40'

**MORAN ENGINEERING, INC.**

CIVIL ENGINEERS \ LAND SURVEYORS  
1930 SPANTOUC AVENUE, SUITE A  
BERKELEY, CALIFORNIA 94704  
(510) 848-1930

**PM 9630**



**HARRISON HOUSE LEASE: EXHIBIT B**

**LEASE**

This lease is made on \_\_\_\_\_, 2007 between the CITY OF BERKELEY ("Landlord"), a Charter City organized and existing under the laws of the State of California and Building Opportunities for Self-Sufficiency ("Tenant"), a non-profit organization, with reference to the following facts:

**RECITALS**

- A. WHEREAS, Landlord is the owner of the real property at \_\_\_ Harrison Street, Berkeley, California, ("premises") as further described in Exhibit A, attached to and made a part of this lease;
- B. WHEREAS, Tenant is willing to lease the premises from Landlord pursuant to the provisions stated in this lease;
- C. WHEREAS, Tenant wishes to lease the premises for the purpose of operating programs providing shelter, transitional housing, and supportive services for homeless men, women, and children;
- D. WHEREAS, Tenant wishes to complete certain renovations to Harrison House, subject to securing adequate funding, including but not limited to rehabilitating existing bathrooms, painting, upgrading mechanical systems for energy efficiency, reconfiguring the existing facility to distinguish staff counseling area and service wing, completing incidental improvements to the Family Dorm, and relocating laundry area;
- E. WHEREAS, this Lease is for the rehabilitation and continued operation of Harrison House, which along with Sankofa House and other planned developments on Harrison Street together encompass the Ursula Sherman Village. This lease is intended to enable Tenant to secure financial assistance from the State of California Department of Housing and Community Development ("HCD") through its Emergency Housing Assistance Program ("EHAP"), the Federal Home Loan Bank's Affordable Housing Program (AHP), and/or other funding for the purpose of the rehabilitation of Harrison House; and
- F. WHEREAS, Tenant has examined the premises and is fully informed of the condition thereof.

NOW THEREFORE, the parties agree as follows.

## **AGREEMENT**

### **1. DESCRIPTION OF PREMISES**

Landlord leases to Tenant and Tenant leases from Landlord the premises described above and in Exhibit A, attached hereto.

### **2. TERM**

The term of this lease shall commence on the effective date of the ordinance which authorizes this lease, unless the ordinance provides otherwise, and shall be for a period of FIVE years plus the partial month, if any, immediately preceding the first full paid calendar month of this lease. So long as Tenant is not in default under this lease, either at the time of exercise or at the time the extended term commences, and on condition that the Tenant obtains an allocation from the State of California Emergency Housing Assistance Program (EHAP) and/or Federal Home Loan Bank Affordable Housing Program (AHP) funds and closes on those funds during the initial term of the lease in an amount sufficient to finance the rehabilitation of Harrison House, anticipated to be \$500,000, tenant shall have the option to extend the initial term of this lease for an additional period of SEVENTEEN (17) YEARS (the "option period") on the same terms, covenants, and conditions of this lease. In order to exercise this option, (a) Tenant shall provide Landlord with a copy of the executed loan documents immediately following closing on an EHAP loan or AHP loan (anticipated to occur in September 2008) and closing on AHP funds, and (b) Tenant shall give written notice of its election to exercise the option to Landlord at least 180 days prior to the expiration date of the initial lease term. Tenant shall have no other right to extend the term beyond the option period.

### **3. RENT**

Tenant shall pay to Landlord as rent, without deduction, setoff, prior notice, or demand, the sum of **ONE DOLLAR (\$1.00) PER YEAR** to be paid in a lump sum each year in advance, commencing on the date the term commences and continuing during the term. Rent for the first year or portion of it shall be paid on the day the term commences. Rent for any partial year shall be the same as the rent for the full year. All rent shall be paid to Landlord at the address to which notices to Landlord are given.

### **4. USE OF PREMISES; OPERATION**

a. Tenant will use the premises for the purpose of providing shelter, transitional housing, and supportive services to homeless men, women, and children and agrees to continuously and uninterruptedly occupy and use the entire

leased premises for said purpose and to maintain adequate personnel for the efficient service of clients or customers. Tenant shall not use nor permit the use of the whole or any part of the premises for any other purpose without the Landlord's prior written consent, provided that use of some portions of the premises may be restricted during rehabilitation. However, to the extent practical and consistent with safety, Tenant will continue to use those portions of the premises not under active rehabilitation for the purposes set forth herein. A plan of action will be submitted to Landlord which describes the scope of the rehabilitation, its duration and how the work will affect the use of the space by residents and staff and the delivery of services by the Tenant.

- b. Tenant will use its best efforts to maintain effective relations with neighbors. Occupants of the premises shall be instructed in writing to respect the privacy and property of all neighbors in the area. This instruction shall specifically state the following: to park vehicles only in legal and/or designated parking areas and only for the legal period of time; to deposit all trash in legal containers; to not deposit food or material of any kind on the adjacent playing fields or neighborhood; and to respect the sensitive environment of Codornices Creek.
- c. Business may be conducted with the public on the leased premises at any time on any day, provided that Tenant shall have obtained all required permits.
- d. Tenant may share use of the parking lot located adjacent to and west of 701 Harrison Street that is owned by Landlord.
- e. Tenant shall not contract with or otherwise permit management by a management agent for the operation of the programs on the premises without the prior written consent of Landlord.

## **5. TAXES AND ASSESSMENTS**

- a. Tenant recognizes and understands that this lease may create a possessory interest subject to property taxation and assessment and utility taxation, and that the Tenant will be responsible for the payment of any property taxes and assessments, and utility taxes levied on such interest.
- b. Tenant shall pay all taxes on its personal property, fixtures and on its leasehold or possessory interest in the leased premises and any other assessment that may be lawfully levied.

## **6. UTILITIES**

Tenant agrees to pay any and all charges for electricity, gas, heat, cooling,

telephone, sewer use, water, refuse collection and other utilities used in the premises. Tenant shall arrange for refuse collection services by the City of Berkeley.

**7. MAINTENANCE AND REPAIR**

- a. Tenant is aware of the condition of the premises and accepts the premises in its "as-is" condition. Tenant is responsible for ensuring that the condition of the premises complies with all applicable federal, state and local laws. Landlord shall be responsible for remediating any environmental conditions on, about or under the premises arising out of Landlord's ownership that are in violation of any federal, state or local laws; except however, Tenant shall be responsible for remediating any environmental conditions on, about or under the premises arising out of its use and/or occupancy, including that which preceded Landlord's ownership of the premises, that are in violation of any federal, state or local laws.
- b. Tenant shall keep and maintain in good order, condition and repair (except for reasonable wear and tear) all portions of the premises, structural and otherwise, including without limitation, all fixtures, interior walls, floors, painting, ceilings, plumbing, rodent control, glass, roof, exterior walls, water lines, electric service, drainage, pathways, heating, ventilating and sewage facilities serving the leased premises, landscaping, and the sidewalks adjacent to the premises.
- c. As to any perimeter fence on the premises, Tenant shall be responsible for maintaining the inside of the perimeter fence and Landlord shall be responsible for maintaining the outside of the perimeter fence which faces the Harrison Park Gabe Catalfo Fields. If the entire perimeter fence or any portion thereof requires repair or maintenance to both the inside and the outside, Landlord and Tenant shall divide the cost of repair or replacement equally. In the event of such damage to both the inside and outside of the perimeter fence, Tenant shall notify Landlord within twenty-four (24) hours of its occurrence. Landlord reserves the right to paint or stain the exterior of the perimeter fence.
- d. Tenant shall make all required repairs upon written demand by Landlord based on Landlord's inspection. Failure to make such repairs within thirty (30) days of the Landlord's written demand shall constitute a default by Tenant. Tenant may execute separate contracts apart from this lease with the City or any licensed contractor to perform required maintenance work.

## 8. **IMPROVEMENTS**

- a. This lease agreement specifically prohibits Tenant, or any other party, from expanding uses or structures allowed on the premises beyond those designated in use permits approved by the City of Berkeley. Notwithstanding approval of any new use permit allowing expansion, any future expansion of the uses in existing buildings, or additions to existing buildings, or construction of any new buildings, or moving existing buildings onto the premises, are all subject to the prior written approval of the Landlord and are subject to the environmental review and permit regulations and approvals of same by all applicable local, state, and federal agencies.

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

In addition, Tenant shall not substantially mark, drill or in any way deface any floors, walls, ceilings, or partitions of any structures or improvements on the premises without first providing thirty (30) days' written notice to Landlord. If Landlord raises no objections within thirty (30) days after receipt of such notice, Tenant may proceed, provided Tenant obtains all required permits

- b. Tenant shall require all contractors performing work valued in excess of \$100,000 to provide a labor and materials bond for the full amount of the contract. Tenant shall pay, when due, all sums of money that may be due or become due for any labor, services, materials, supplies or equipment furnished to or for Tenant, in, at, upon or about the leased premises and which may be secured by any mechanic's, materialmen's or other lien against the premises or Landlord's interest therein.
- c. 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, except that Landlord can elect within thirty (30) days of the termination of the lease to require Tenant, at its cost, to remove any alterations, improvements or additions Tenant has made to the premises.

## **9. INDEMNIFICATION**

Tenant shall indemnify, defend and hold Landlord, its officers, agents, volunteers and employees harmless from: 1) all claims of liability for any damage to property or injury or death to any person occurring in, on, or about the premises; 2) all claims of liability arising out of Tenant's failure to perform any provision of this lease, or any act or omission by Tenant, its agents, contractors, invitees or employees; and 3) all damages, liability, fines, penalties, and any other consequences arising from any noncompliance or violation of any laws, ordinances, codes, or regulations, including but not limited to the Occupational Safety and Health Act of 1979 and the Americans with Disabilities Act of 1990. Except, however, that Landlord shall hold Tenant harmless from all claims of liability for damage resulting from the acts or omissions of Landlord or its authorized representatives.

## **10. INSURANCE**

- a. Tenant shall maintain public liability and property damage insurance with a single combined liability limit of \$2,000,000 and property damage limits of not less than \$200,000 insuring against all liability of Tenant and its authorized representatives arising from and in connection with Tenant's use or occupancy of the premises. Such insurance shall insure performance by Tenant of the preceding indemnity provisions. All insurance shall name the City of Berkeley, its officers, agents, volunteers and employees as additional insureds and shall provide primary coverage with respect to the City.
- b. If the insurance referred to above is written on a Claims Made Form, then following termination of this lease, coverage shall survive for a period of not less than five years. Coverage shall also provide for a retroactive date of placement coinciding with the effective date of this lease.
- c. Tenant at its cost shall maintain on all its personal property, tenant's improvements, and alterations, in, on, or about the premises, a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements. This coverage shall be considered primary, and Tenant shall use the proceeds from any such policy for the replacement of personal property or the restoration of Tenant's improvements or alterations.
- d. If Tenant employs any person, it shall carry workers' compensation and employer's liability insurance and shall provide a certificate of insurance to the Landlord. The workers' compensation insurance shall: provide that the insurance carrier shall not cancel, terminate, or otherwise modify the terms and conditions of said insurance except upon thirty (30) days' prior written notice to the Landlord; provide for a waiver of any right of subrogation against Landlord to the extent permitted by law; and be approved as to form

and sufficiency by the Landlord's Risk Manager.

- e. Tenant shall forward all insurance documents to the Risk Manager, Human Resources Department, City of Berkeley, 2180 Milvia Street, First Floor, Berkeley, California, 94704.

**11. COMPLIANCE WITH LAW AND SAFETY**

- a. Tenant shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the Tenant's activities, including all provisions of the Occupational Safety and Health Act of 1979 and all amendments thereto, and all applicable federal, state, municipal, and local safety regulations. All of Tenant's activities must be in accordance with these laws, ordinances, codes, and regulations.
- b. If a death, serious personal injury, or substantial property damage occurs in, on, or about the premises, Tenant shall immediately notify the Landlord's Risk Management Office by telephone. If any accident occurs on the premises, Tenant shall promptly submit a written report to Landlord, in such form as Landlord may require. This report shall include the following information: 1) name and address of any injured or deceased person(s); 2) name and address of Tenant's contractor, if any; (3) name and address of Tenant's liability insurance carrier; and (4) a detailed description of the accident.
- c. If a release of hazardous materials or hazardous waste that cannot be controlled occurs on the premises, Tenant shall immediately notify the City of Berkeley Police Department and the City's Toxics Management Office. Tenant shall not store hazardous materials or hazardous waste on the premises without a proper permit from the City.

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

- a. 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 benefits, services or activities of the City.

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

**13. CITY NON-DISCRIMINATION ORDINANCE**

Tenant agrees to comply with the provisions of Berkeley Municipal Code Chapter 13.26 as amended from time to time. In the performance of this lease, the Tenant agrees as follows:

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

**14. NUCLEAR FREE BERKELEY**

Tenant agrees to comply with Berkeley Municipal Code Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

**15. OPPRESSIVE STATES**

- a. In accordance with Resolution No. 59,853-N.S., Tenant certifies that it has no contractual relations with, and agrees during the term of this Lease to forego contractual relations to provide personal services to or to purchase, sell, lease or distribute commodities in the conduct of business with, the following entities:
  - 1. The governing regime in any Oppressive State.
  - 2. Any business or corporation organized under the authority of the governing regime of any Oppressive State.

3. Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of its contract with the City), for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.
- b. For purposes of this lease, the Tibet Autonomous Region and the provinces of Abo, Kham, and U-Tsang shall be deemed oppressive states.
- c. Tenant's failure to comply with this section shall constitute a default of this lease and Landlord may terminate this lease pursuant to Section 23. In the event that the City terminates this lease due to a default under this provision, City may deem Tenant a non-responsible bidder for five (5) years from the date this lease is terminated.

**16. BERKELEY LIVING WAGE ORDINANCE**

- a. Tenant agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance. If Tenant employs six (6) or more part-time, full-time or stipend employees, and generates \$350,000 or more in annual gross receipts, Tenant will be required to provide all eligible employees with City mandated minimum compensation during the term of this lease, as defined in B.M.C. Chapter 13.27, and well as comply with the terms enumerated herein.
- b. Tenant shall be required to maintain all reasonable records and documents that would establish whether Tenant is subject to Berkeley's Living Wage Ordinance (LWO). If Tenant is subject to the LWO, as defined therein, Tenant shall be further required to maintain monthly records of those employees located on the leased premises. These records shall include the total number of hours worked, the number of hours spent providing service on the leased property, the hourly rate paid, and the amount paid by Tenant for health benefits, if any, for each of its employees providing services under the lease. The records described in this Section 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 sections 22 and 23 herein.
- c. If Tenant is subject to the LWO, Tenant shall include the requirements of the ordinance, as defined in B.M.C. Chapter 13.27, in any and all subleases in which Tenant enters with regard to the subject premises. Subtenants shall be required to comply with this ordinance with regard to any employees who spend 25% or more of their compensated time on the leased property.

- d. If Tenant fails to comply with the requirements of the LWO and this lease, the City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity. Tenant's failure to comply with this Section shall constitute default of the lease, upon which City may terminate this lease pursuant to Section 23. In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Tenant's failure to pay any of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty of forfeiture for Tenant's breach.

**17. BERKELEY EQUAL BENEFITS ORDINANCE**

- a. Tenant hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Tenant is currently subject to the Berkeley Equal Benefits Ordinance, Tenant will be required to provide all eligible employees with City mandated equal benefits during the term of this lease, as defined in B.M.C. Chapter 13.29, as well as comply with the terms enumerated herein.
- b. If Tenant is currently or becomes subject to the Equal Benefits Ordinance, Tenant agrees to supply the City with any records the City deems necessary to determine compliance with this provision. Failure to do so shall be a considered a default, subject to the provisions of Sections 22 and 23 of this lease.
- c. If Tenant fails to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.
- d. Tenant's failure to comply with this Section shall constitute default of the lease, upon which City may terminate this lease pursuant to Section 23. 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.

**18. PESTICIDES**

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

**19. SIGNS**

Tenant shall not install or letter any signs on the premises without the prior written consent of Landlord. All signs on the premises shall conform to the provisions of Berkeley Municipal Code Chapter 20.04.

**20. DAMAGE OR DESTRUCTION**

If the premises are totally or partially destroyed from any cause, rendering the premises totally or partially inaccessible or unusable, Landlord may elect to terminate this lease or continue this lease in effect by giving notice to Tenant within thirty (30) days of the date of destruction. If Landlord elects to continue this lease in full force and effect, then Landlord shall restore the premises and the rent shall be abated, from the date of destruction until the date restoration is completed, in an amount proportionate to the extent to which the destruction interferes with Tenant's use of the premises. If Landlord fails to give notice of its decision to terminate or continue this lease within the period stated, Tenant may elect to terminate this lease. Tenant waives the provisions of Civil Code sections 1932(2) and 1933(4) with respect to any destruction of the premises.

**21. EMINENT DOMAIN**

If the whole or any portion of the premises is taken by any paramount public authority under the power of eminent domain, then the rights and obligations of the parties shall be determined as follows: If the premises are totally taken by condemnation, this lease shall terminate on the date of taking. If any portion of the premises is taken by condemnation, Tenant shall have the right to either terminate this lease or to continue in possession of the remainder of the premises under the terms of this lease. Such right to terminate must be exercised by notifying Landlord within thirty (30) days after possession of the part taken by eminent domain. If Tenant does not terminate this lease within the thirty (30) day period, this lease shall remain in full force and effect except that the fixed rent shall be reduced in the same proportion that the square footage of the premises taken bears to the square footage of the premises immediately before the taking. All damages awarded for such taking shall belong to and be the property of Landlord; provided, however, that Landlord shall not be entitled to any portion of the award made for loss of business and of business installations or improvements made by Tenant in accordance with this lease.

## **22. DEFAULT BY TENANT**

- a. The occurrence of any of the following shall constitute a default by Tenant:
  1. Failure to pay rent when due, if the failure continues for 10 days after notice has been given to Tenant.
  2. Abandonment and vacation of the premises (failure to occupy and operate the premises for 14 consecutive days shall be deemed an abandonment and vacation).
  3. Failure to comply with the terms of any predevelopment or development loan agreements between Landlord and Tenant, whether the loan already exists at the commencement of this lease or is entered into at any time during the term of this lease, for the development or rehabilitation of any premises at the Ursula Sherman Village.
  4. The making by Tenant of any general assignment or general arrangement for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant the same is dismissed within sixty (60) days); the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets, where possession is not restored to Tenant within forty-five (45) days; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets, where such seizure is not discharged within thirty (30) days.
  5. Failure to perform any other provision of this lease if the failure to perform is not cured after notice has been given to Tenant. If the default cannot reasonably be cured within the period specified in the notice, Tenant shall not be in default of this lease if Tenant commences to cure the default within the period and diligently and in good faith continues to cure the default.
- b. Notices given under this paragraph shall specify the alleged default and the applicable lease provisions, and shall demand that Tenant perform the provisions of this lease or pay the rent that is in arrears, as the case may be, within the applicable period of time, or quit the premises. No such notice shall be deemed a forfeiture or a termination of this lease unless Landlord so elects in the notice.

## 23. **LANDLORD'S REMEDIES**

Landlord shall have the following remedies if Tenant commits a default. These remedies are not exclusive; they are cumulative in addition to any remedies now or later allowed by law.

- a. Tenant's Right to Possession Not Terminated: Landlord can continue this lease in full force and effect, and the lease will continue in effect as long as Landlord does not terminate Tenant's right to possession, and Landlord shall have the right to collect rent when due. During the period Tenant is in default, Landlord can enter the premises and relet them, or any part of them, to third parties for Tenant's account. Reletting can be for a period shorter or longer than the remaining term of this lease. Tenant shall pay to Landlord the rent due under this lease on the dates the rent is due, less the rent Landlord receives from any reletting. No act by Landlord allowed by this paragraph shall terminate this lease unless Landlord notifies Tenant that Landlord elects to terminate this lease. After Tenant's default and for as long as Landlord does not terminate Tenant's right to possession of the premises, Tenant shall have the right to assign or sublet its interest in this lease if Tenant obtains Landlord's consent, but Tenant shall not be released from liability.

If Landlord elects to relet the premises as provided in this paragraph, rent that Landlord receives from reletting shall be applied to the payment of: first, any indebtedness from Tenant to Landlord other than rent due from Tenant; second, all costs, including for maintenance, incurred by Landlord in reletting; third, rent due and unpaid under this lease. After deducting the payments referred to in this paragraph, any sum remaining from the rent Landlord receives from reletting shall be held by Landlord and applied in payment of future rent as rent becomes due under this lease. In no event shall Tenant be entitled to any excess rent received by Landlord. If, on the date rent is due under this lease, the rent received from the reletting is less than the rent due on that date, Tenant shall pay to Landlord, in addition to the remaining rent due, all costs, including for maintenance, Landlord incurred in reletting that remain after applying the rent received from the reletting as provided in this paragraph.

- b. Termination of Tenant's Right to Possession: Landlord can terminate Tenant's right to possession of the premises at any time. No act by Landlord other than giving notice to Tenant shall terminate this lease. Acts of maintenance, efforts to relet the premises, or the appointment of a receiver on Landlord's initiative to protect Landlord's interest under this lease shall not constitute a termination of Tenant's right to possession. On termination, Landlord has the right to recover from Tenant:

1. The worth, at the time of award, of the unpaid rent that had been earned at the time of termination of this lease;
2. 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 of this lease until the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided;
3. 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
4. Any other amount, and court costs (but excluding attorneys fees), necessary to compensate Landlord for all detriment proximately caused by Tenant's default.

"The worth, at the time of award," as used in 1 and 2 of this section, is to be computed by allowing interest at the maximum rate permitted by law to charge. "The worth, at the time of award," as referred to in 3 of this section, is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus 1%.

- c. Appointment of Receiver: If Tenant is in default of this lease Landlord shall have the right to have a receiver appointed to collect rent and conduct Tenant's business. Neither the filing of a petition for the appointment of a receiver nor the appointment itself shall constitute an election by Landlord to terminate this lease, nor shall such petition or appointment as initiated by Landlord or HCD be construed as a default of this lease by Tenant.
- d. Landlord's Right to Cure: Landlord, at any time after Tenant commits a default, can cure the default at Tenant's cost. If Landlord at any time, by reason of Tenant's default, pays any sum or does any act that requires the payment of any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord at the time the sum is paid, and if paid at a later date shall bear interest at the maximum rate an individual is permitted by law to charge from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. The sum, together with interest on it, shall be additional rent.

## **24. ASSIGNMENT, SUBLETTING AND SALE**

Tenant shall not voluntarily assign or encumber its interest in this lease or in the premises, or sublease all or any part of the premises, or allow any other person or entity (except Tenant's authorized representative) to occupy or use all or any part of the premises, or sell or otherwise transfer its interest in any

improvements on the premises, without first obtaining Landlord's consent. Any assignments, encumbrance, or sublease without Landlord's consent shall be voidable and, at Landlord's election, shall constitute a default. No consent to any assignment, encumbrance, or sublease shall constitute a further waiver of the provisions of this paragraph.

**25. ENTRY**

Landlord and its authorized representatives shall have the right to enter the premises at all reasonable times for any of the following purposes: to determine whether the premises are in good condition and whether Tenant is complying with its obligations under the lease; to do any acts that may be necessary to protect Landlord's interest in the premises; or to perform Landlord's duties under this lease. Landlord shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of Landlord's entry on the premises as provided in this section, except damage resulting from the acts or omissions of Landlord or its authorized representatives.

**26. NOTICES AND ADMINISTRATION OF LEASE**

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

To the Landlord: Director, Housing Department  
City of Berkeley, 2180 Milvia Street, 2<sup>nd</sup> Floor  
Berkeley, CA 94704

To the Tenant: Executive Director  
Building Opportunities for Self-Sufficiency  
2065 Kittredge Street, Suite E  
Berkeley, CA 94704

The day-to-day administration of this lease shall be the responsibility of the Public Works Department, c/o Real Property Administrator, Department of Public Works, Facilities Division  
1947 Center Street, Fourth Floor, Berkeley, CA 94704.

**27. WAIVER**

No delay or omission in the exercise of any right or remedy of Landlord on any default by Tenant shall impair such a right or remedy or be construed as a waiver. The receipt and acceptance by Landlord of delinquent rent shall not constitute a waiver of any other default; it shall constitute only a waiver of timely

payment for the particular rent payment involved. Any waiver by Landlord of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of the lease.

No act or conduct of Landlord, including, without limitation, the acceptance of the keys to the premises, shall constitute an acceptance of the surrender of the premises by Tenant before the expiration of the term. Only a notice from Landlord to Tenant shall constitute acceptance of the surrender of the premises and accomplish a termination of the lease. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent act by Tenant.

**28. EXCUSABLE DELAYS**

If the performance of any act required of Landlord or Tenant is prevented or delayed by reason of strikes, lockouts, labor disputes, act of God, acts of the public enemy, fire, floods, epidemics, freight embargoes or other cause beyond the control of the party required to perform an act, the performance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for thirty (30) days.

**29. HOLDING OVER**

If Tenant remains in possession of the premises with Landlord's consent after the expiration of the term of this lease, such possession by Tenant shall be construed to be a tenancy from month-to-month, terminable on thirty (30) days' notice given at any time by either party. All provisions of this lease, except those pertaining to term, shall apply to the month-to-month tenancy.

**30. SURRENDER OF PREMISES, REMOVAL OF PERSONAL PROPERTY**

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

**31. TERMS BINDING ON SUCCESSORS**

All the terms, covenants and conditions of this lease shall inure to the benefit of and be binding upon the successors and assigns of the parties to this lease. The provisions of this section shall not be deemed as a waiver of any of the conditions against assignment set forth above.

**32. TIME OF ESSENCE**

Time shall be of the essence of each provision of this lease.

**33. COVENANTS AND CONDITIONS**

Each term and each provision of this lease performable by Tenant shall be construed to be both a covenant and condition.

**34. GOVERNING LAW**

The laws of the State of California shall govern this lease.

**35. ENTIRE AGREEMENT, AMENDMENTS**

a. This lease and all exhibits attached and any documents expressly incorporated by reference contain the entire agreement between the parties regarding the lease of the premises described herein and shall supersede any and all prior agreements, oral or written, between the parties regarding the lease of these premises. This lease cannot be altered or otherwise modified except by a written amendment.

**36. CONSENT OF PARTIES**

Whenever consent or approval of either party is required, that party shall not unreasonably withhold such consent or approval.

**37. BUSINESS LICENSE**

Tenant certifies that it has obtained or applied for a City of Berkeley business license number as required by Berkeley Municipal Code Chapter 9.04; or Tenant claims that it is exempt from the provisions of B.M.C. Ch. 9.04 and has written below the specific B.M.C. section under which it is exempt.

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

LANDLORD, CITY OF BERKELEY

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

Phil Kamlarz, Acting City Manager

REGISTERED BY:

APPROVED AS TO FORM:

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

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

ATTEST:

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

TENANT, BUILDING OPPORTUNITIES FOR  
SELF-SUFFICIENCY

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name and Title

Berkeley Business License # \_\_\_\_\_

EXHIBIT A

[LEGAL DESCRIPTION]

REAL PROPERTY in the City of Berkeley, Alameda County, California, described as follows:

[Legal description will be the Assessor's Parcel Number, assigned once the subdivision is approved by the City of Berkeley and recorded with Alameda County. The Assessor's Parcel Number will be inserted here. The parcel is shown on the attached Tentative Parcel Map as Parcel 1.]