

ORDINANCE NO. 7,887-N.S.

LEASING THE ANN CHANDLER HEALTH CENTER AT 830 UNIVERSITY TO LIFELONG MEDICAL CARE AND THE BERKELEY FREE CLINIC

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

Section 1. FINDINGS:

1. The City of Berkeley acquired 830 University Avenue in 1933 for use as a health clinic.
2. The Department of Health, Housing, and Community Services' Public Health Division ceased operating clinic services in 830 University Avenue in early 2023.
3. Lifelong Medical Care has proposed using the site to offer homeless health care services, and the Berkeley Free Clinic has proposed to move their current operations to this location.

Section 2. AUTHORIZATION FOR CITY MANAGER TO ENTER INTO A LEASE FOR 830 UNIVERSITY.

The City Manager is hereby authorized to enter into a five-year lease agreement with the option for a five-year extension with Lifelong Medical Care for real property located at 830 University and known at the Ann Chandler Health Center. Such lease shall be on substantially the terms set forth in Exhibit A.

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

At a regular meeting of the Council of the City of Berkeley held on September 19, 2023, this Ordinance was passed to print and ordered published by posting by the following vote:

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

Noes: None.

Absent: Harrison.

LEASE

By and Between

CITY OF BERKELEY
a Charter City organized and existing under the laws of the State of California
("Landlord")

and

LIFELONG MEDICAL CARE
a non-profit corporation
("Tenant")

Dated: , 2023

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Internal

LEASE

BASIC LEASE INFORMATION

1. Landlord: City of Berkeley, a Charter City organized and existing under the laws of the State of California
2180 Milvia Street, 2nd Floor
Berkeley, CA 94704
Attn: Deputy Director, Health, Housing, and Community Services
Telephone: 510-981-5400

2. Tenant: Lifelong Medical Care, a non-profit corporation
2344 Sixth Street
Berkeley, CA 94710
Phone: 510-981-4177

3. Effective Date: [REDACTED], 2023

4. Premises: Approximately ten thousand (10,000) rentable square feet of space in the building commonly known and referred to as 830 University Avenue, Berkeley, California 94710 (the "**Premises**").

5. Permitted Uses: Medical office and clinical operations to serve low income and unhoused residents of the City of Berkeley. Any other associated or related legal uses shall be permitted.

6. Initial Term: Five (5) years, commencing as of the "**Commencement Date**" as that term is defined in the Lease.

7. Rent: In lieu of base rent, a monthly Maintenance Fee of two thousand dollars (\$2,000) (hereinafter "Maintenance Fee" or "Rent") shall be paid due during the Initial Term and during any Additional Term.

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 [REDACTED]

TENANT'S INITIALS [REDACTED]

LEASE

This Lease Agreement ("**Lease**") is made and entered into as of the effective date specified in Section 3 of the Basic Lease Information, above ("**Effective Date**"), by and between City of Berkeley, a Charter City organized and existing under the laws of the State of California ("**Landlord**" or "**City**"), and Lifelong Medical Care, a non-profit corporation ("**Tenant**").

1. PREMISES.

1.1. Premises. Landlord is the owner of the land parcel(s) on which the Premises are located (the "**Property**"). A legal description of the Property is attached hereto and incorporated by reference as Exhibit A-1. 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 pursuant to Section 9 of this Lease are referred to in this Lease as "**Tenant Improvements.**"

1.2. Commencement Date: [REDACTED], 2023

1.3. Delivery Condition. Except as otherwise expressly provided, Tenant shall accept the Premises "as is."

1.4. Premises Name. Tenant acknowledges that the Premises has been known as the Ann Chandler Public Health Clinic, and agrees that any name Tenant gives to its operations at the Premises shall include the term "Ann Chandler." By way of example, Tenant may use the name "Trust Clinic at the Ann Chandler Health Center."

2. TERM.

2.1. Initial Term. The "**Initial Term**" of this Lease shall be as set forth in Section 6 of the Basic Lease Information and shall commence as of the Commencement Date set forth in Section 1.2 of the Lease. The Initial Term together with any Renewal Term(s), if any, are collectively referred to herein as the "**Term.**"

2.2. Renewal Term. Tenant shall have one (1) option to renew this Lease for a term of five (5) years (the "**Renewal Term**").

2.2.1 Right to Exercise. Tenant may exercise the option to renew this Lease only if it is fully compliant and current with all obligations after any applicable notice and cure periods as provided for under the Lease.

2.2.2 Notice. Tenant will provide Landlord with written notice of its election to renew the Lease with no less than six (6) months, prior to the end of the Term. If Tenant fails to provide such notice, its right to renew the Lease will not expire until fifteen (15) working days after the Tenant's receipt of Landlord's written demand that the Tenant exercise or forfeit the option to renew.

2.2.3 Extension of Term. Upon the commencement of a Renewal Term, all references to the Term of this Lease will be deemed to mean the Term as extended pursuant to this Section 2.2.

3. RENT

3.1. Maintenance Fees in Lieu of Base Rent. In lieu of base rent, Tenant shall pay Maintenance Fees as set forth in Section 7 of the Basic Lease Information. Maintenance Fees under this Lease shall become due as of the Commencement Date. Maintenance Fees shall be paid as set forth in Section 7 of the Basic Lease Information and this Section 3. Tenant shall pay to Landlord, at Landlord's address 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 Maintenance Fees, the Maintenance Fees designated in Section 7 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 Maintenance Fees. If Maintenance Fees are due for a period of less than a full month, the amount due shall be prorated for such partial month on the basis of a 30-day month.

3.1.1 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. UTILITIES

4.1. Tenant Utility and Service Costs. Tenant shall pay for all utilities and services required or desired by Tenant in connection with its use or occupancy of the Premises, including: (i) heat and air conditioning; (ii) water; (iii) gas, if applicable; (iv) elevator or lift service, if any; (v) electricity; (vi) telephone, computer, communications; (vii) trash pick-up; and (viii) any other materials, services, or utilities (individually and collectively, the "**Services**").

4.2. Conservation and Use Policies. Tenant, at its 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. TAXES

5.1. Taxes. Tenant represents and warrants that Tenant is a not for profit organization and is exempt from possessory interest tax.

6. INSURANCE

6.1. Landlord. Landlord shall maintain insurance or an insurance equivalent insuring the Premises (excluding Tenant's Property and any Tenant Improvements) on an occurrence basis against fire and extended coverage (including, "all risk" coverage, earthquake/volcanic action, flood and/or surface water insurance) 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 6.1 is referred to herein as "**Landlord's Insurance.**"

6.2. Tenant.

6.2.1 Tenant at its cost shall maintain public liability and property damage insurance with a single combined liability limit of \$2,000,000, and property insurance against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision, including glass insurance and property damage limits of not less than \$200,000 insuring against all liability of Tenant and its authorized representatives arising out of and in connection with Tenant's use or occupancy of the Premises. All such insurance shall insure performance by Tenant of the indemnity provisions set forth in Section 7. 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. All such insurance or insurance equivalent maintained by Tenant pursuant to this Section 6.2 is referred to herein as "**Tenant's Insurance.**"

6.2.2 If the insurance referred to in this Section 6.2 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.

6.2.3 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 the proceeds from any such policy shall be used by Tenant for the replacement of personal property or the restoration of Tenant's Improvements or alterations.

6.2.4 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 (or, if the insurer will not agree to give such notice, Tenant must promptly notify the City of any such cancellation, termination or modification of coverage); 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, such approval not to be unreasonably withheld, conditioned or delayed.

6.2.5 Tenant shall forward copies of all insurance documents to: Department of Public Works, Real Property Division, 1947 Center Street, Fifth Floor, Ste. 521, Berkeley, California, 94704.

6.2.6 Waivers of Subrogation. Notwithstanding every other provision of this Lease to the contrary, Landlord shall not be liable (by way of subrogation or otherwise) to Tenant (or to any insurance company insuring Tenant), and Tenant shall not be liable (by way of subrogation or otherwise) to Landlord (or to any insurance company insuring Landlord), for any loss or damage to any of the property of Landlord or Tenant, as applicable, with respect to the Building, the Property or the Premises or any addition or improvements thereto, or any contents therein, to the extent covered by insurance carried or required to be carried by Landlord or Tenant, as applicable, even though such loss might have been occasioned by the negligence or willful acts or omissions of Landlord or Tenant, as applicable, or their respective employees, agents, contractors or invitees. Landlord and Tenant shall give their respective insurance providers which issue policies of insurance, with respect to the items covered by this waiver, written notice of the terms of this mutual waiver, and shall have such insurance policies properly endorsed, if necessary, to prevent the invalidation of any of the coverage provided by such insurance policies by reason of such mutual waiver. For the purpose of the foregoing waiver, the amount of any deductible applicable to any loss or damage shall be deemed covered by, and recoverable by Landlord or Tenant, as applicable, under the insurance policy to which such deductible relates.

7. INDEMNITY; LIABILITY EXEMPTION.

7.1. Indemnity. Except to the extent claims are caused by Landlord's 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, where the same continues beyond applicable notice and cure periods; (ii) Tenant's use of the Premises, the conduct of Tenant's business or any activity, work or thing done, permitted or suffered by Tenant in or about the Premises or the Property; (iii) 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; or (iv) any act, error or omission of Tenant in or about the Property or any portion thereof (collectively, the "**Indemnification**"). Tenant shall provide such Indemnification by and through counsel reasonably acceptable to Landlord; provided, additionally, that the Berkeley City Attorney's Office may participate in the response to or defense of any Indemnification claim under this Section 7.1 at the City's sole expense. Without limiting Tenant's Indemnification obligations, Landlord shall be entitled to participate in the defense of any third party claim that is reasonably likely to give rise to Indemnification claim under this Section 7.1. Landlord shall indemnify, protect, defend, and hold harmless Tenant and its 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 (1) the active negligence or willful misconduct of Landlord, or its officers, employees, volunteers, lenders, agents, representatives, contractors and each of their successors and assigns, and (2) any default in the performance of any obligation on Landlord's part to be performed under the terms of this Lease. The obligations of Tenant and Landlord under this Section 7.1 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.

7.2. 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 or the Property 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 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's officers, agents, or employees, or any other person in or about the Premises or the Property, 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 or the Property or from other sources or places, except damage or injury caused by Landlord's 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 or the Property except to the extent such damages are caused by Landlord's failure to enforce the terms of any agreements or any applicable law with parties other than Tenant.

8. REPAIRS AND MAINTENANCE.

8.1. Landlord's Repair and Maintenance. During the Term, Landlord shall be responsible for maintaining in good order, condition, and repair the following elements of the Premises: the foundations and footings of the Premises; all structural elements of the Premises, including roof structure, exterior walls, and interior bearing walls. Landlord's repair and maintenance requirements under this Section 8.1 shall include the necessary replacement of any of the listed elements of the Premises; provided, however, the scope of such requirements shall be subject to whether landlords of comparable buildings in the City of Berkeley would make the replacements of the listed elements of the Premises.

8.1.1 Performance by Tenant. If Tenant determines that any elements of the Premises subject to this Section 8.1 require maintenance, repair, or replacement, Tenant shall provide written notice of such to Landlord. Should Landlord fail to perform, within a reasonable time after such notice by Tenant, any maintenance, repairs, or replacements subject to this Section 8.1 (and expressly including Landlord's reasonable discretion hereunder), Tenant shall have the right (but not the obligation) to undertake such actions as may reasonably be required to effect a cure of Landlord's failure to so perform. Prior to undertaking any such actions, however,

Tenant shall consult with Landlord's Director of Public Works or their designee to determine the appropriate scope and cost of such actions. Landlord shall reimburse Tenant for all agreed upon, reasonable and necessary costs of cure within thirty (30) days after Tenant's delivery if an itemized statement of such costs, together with reasonable supporting documentation. Tenant may offset against Rent and other sums due to Landlord under the Lease any undisputed sums not timely paid by Landlord to Tenant, including interest thereon at the maximum lawful rate.

8.2. Parking, Exterior Lighting, Landscaping. Tenant shall maintain the exterior lighting system and landscaping of the Building, in good order, condition, and repair.

8.3. Security. Tenant shall maintain all locks and key systems used in the Premises.

9. TENANT IMPROVEMENTS.

9.1. Pre-Approved Tenant Improvements. Subject to obtaining all required permits and approvals, including from the Director of Public Works representing the Landlord, Tenant will perform all maintenance, repairs and replacements called for by the May 20, 2022 Building Inspection Report by E. A. Davidovits & Co., Inc. (including all appendices but with the exception of roof maintenance or replacement), attached hereto as Exhibit B at its sole cost and expense.

9.2. Further Tenant Improvements. Tenant may make future alterations and improvements to the Premises with Landlord's prior written consent, not to be unreasonably withheld, conditioned, or delayed. Tenant shall have no duty to remove any alterations or improvements unless they are not customary for medical office use and Landlord notifies Tenant of the removal requirement at the time Landlord gives its consent to the alterations or improvements. Tenant may, at its sole cost and expense, install, operate, maintain, upgrade, repair, or replace an alarm, access control, or other building security system. Tenant may, at its sole cost and expense, install, operate, maintain, upgrade, repair, or replace, a solar electric generating system, which may include rooftop solar panels and battery backups. Landlord expressly grants Tenant the right to install solar panels on the roof of the Premises, and Tenant shall have no duty to remove such solar panels.

9.3. Standard of Work. All work to be performed by or on behalf of Landlord and 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.

9.4. Damage; Removal. Tenant shall repair all damage to the Premises, Property and any portions thereof caused by the installation or removal of alterations or other work performed by or on behalf of Tenant. If Landlord requires Tenant to remove improvements under Section 9.2, Tenant shall remove Tenant's trade fixtures and other improvements, alterations and additions and restore the Premises to their condition existing prior to the construction or installation of any such items and 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, but only to the extent Tenant, and not the Landlord or BFC (or their respective officers, employees, volunteers, lenders, agents, representatives, contractors and each of their successors and assigns), is responsible for causing the presence or suspected presence of Hazardous Materials in violation of Hazardous Materials Laws. All such removals and restoration shall be accomplished in a good and workmanlike manner so as not to cause any damage to the Premises or the Property whatsoever and in strict accordance with all applicable Laws.

9.5. 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 twenty (20) 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.

9.6. 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.

10. USE; JOINT POSSESSION; INSPECTION; QUIET ENJOYMENT.

10.1. Usage. The Premises shall be used only for the permitted uses set forth in Section 5 of the Basic Lease Information and for no other purpose without the prior written consent of Landlord. Tenant acknowledges that, except as expressly set forth in this Lease, neither Landlord nor any of Landlord's agents has made any representation or warranty with regard to the Premises, any Tenant Improvements, or the Property with respect to their suitability for the conduct of Tenant's business. 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; provided, however, if the Hazardous Materials was pre-existing prior to the Commencement Date, then Landlord, at its sole cost and expense, shall remedy such condition to comply with all Laws, and further provided that Tenant shall not be required under this Lease to remedy any such condition to the extent it is caused by BFC. Tenant shall be responsible for obtaining any permit or license required by any governmental agency permitting Tenant's use of the Premises.

10.2. Joint Possession of and Operations on the Premises. Landlord and Tenant acknowledge and agree that, Landlord shall enter into a separate lease for the Premises with Berkeley Free Clinic ("**BFC**") to run concurrently with this Lease. Landlord and Tenant further acknowledge and agree that concurrently with the execution of this Lease, Tenant, and BFC will enter into a joint operating agreement ("**JOA**") under which Tenant will occupy the Premises between the hours of 8:00 a.m. and 5:30 p.m. Monday through Friday, and BFC will occupy the Premises on weekends and during the weekday hours not devoted to Tenant's use. It is understood that BFC shall be required under the JOA to operate in a manner consistent with the terms of this Lease. The JOA, as it may be revised or amended from time to time, shall be subordinate to the terms of this Lease. The parties agree their usage of the Premises space shall comply with any and all applicable requirements under the Health Insurance Portability and Accountability Act and other legal and health care regulatory requirements. In the event that the lease between Landlord and BFC terminates or expires, then Tenant shall have exclusive possession of the Premises twenty-four (24) hours a day, seven (7) days a week with no reduction in the Maintenance Fee. Upon the termination or expiration of the lease between Landlord and BFC, the JOA shall be automatically terminated.

10.3. Inspection. Landlord, or its representative or contractor, may enter the Premises by prior appointment with at least two business days' written notice between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday, holidays excepted, to determine that (i) the Premises is being reasonably cared for, (ii) no waste is being made and that all actions affecting the Premises are done in the manner best calculated to preserve the Premises, and (iii) Tenant is in compliance with the terms and conditions of this lease.

10.4. Quiet Enjoyment. Tenant may not commit, or suffer to be committed, any waste upon the Premises, or any nuisance or other act or thing that may disturb the quiet enjoyment of any other occupant of the Building. For so long as Tenant is in compliance with the material terms of this Lease, Landlord shall warrant and defend Tenant in the quiet enjoyment and possession of the Premises during the Term. Tenant acknowledges and agrees that possession or use of the Premises by BFC in a manner consistent with the terms of any JOA pursuant to Section 10.2 and any applicable laws shall not constitute a violation of this Section 10.4.

11. ENVIRONMENTAL MATTERS.

11.1. Hazardous Materials Defined. As used in this lease, the term "**Hazardous Materials**" refers to any and all pollutants, wastes, flammables, explosives, radioactive materials, hazardous, biohazardous, or toxic materials, hazardous, biohazardous, or toxic wastes, hazardous, biohazardous, 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.

11.2. Warranty; Hold Harmless. Landlord warrants that Landlord has no knowledge of the presence of any Hazardous Materials or other contamination in or under the Premises or Property in violation of any 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 concerning the management, use, generation, storage, transportation, presence, discharge or disposal of Hazardous Materials. Landlord shall defend, save, protect and hold Tenant harmless from any loss arising out of the presence of any Hazardous Materials on the Property that was not brought to the Property by or at the request of Tenant, its agents, contractors, invitees or employees. Landlord acknowledges and agrees that Tenant has no obligation to clean up or remediate, or contribute to the cost of clean-up or remediation, of any Hazardous Materials unless such Hazardous Materials are released, discharged or spilled on or about the Property by Tenant or any of its agents, employees, contractors, invitees or other representatives. The obligations of this Section shall survive the expiration or earlier termination of this Lease.

12. DAMAGE AND DESTRUCTION.

12.1. Perilous Condition. If, during the Term, Landlord's Director of Public Works becomes aware of a perilous condition on the Premises that, in his or her opinion, substantially and significantly threatens the health and safety of Tenant's employees or invitees (a "**Perilous Condition**"), the Director of Public Works, or his or her designee, will immediately notify Tenant of such Perilous Condition, and Tenant shall use best efforts to promptly eliminate the Perilous Condition. Tenant shall immediately address any condition reasonably constituting an emergency, whether Tenant learns of the condition through Landlord or otherwise. If Tenant fails to address a Perilous Condition within thirty six (36) hours after Landlord's notice or to immediately address an emergency situation, Landlord may attempt to resolve the Perilous Condition or emergency situation. Subject to repair and maintenance obligations set forth in Section 8, Tenant shall reimburse Landlord for any costs incurred by Landlord in addressing the Perilous Condition or emergency situation promptly upon receipt of any Landlord's invoice for such costs.

12.2. Insured Casualty. If, during the Term, the Premises are totally or partially destroyed or utility services are cut off from any cause rendering the Premises totally or partially inaccessible or unusable (the "**Casualty**"), and if the restoration can be made under then existing Laws and can be completed within one hundred twenty (120) days after obtaining all necessary permits therefor and if the costs of such restoration are compensable by Landlord's insurance (an "**Insured Casualty**"), 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 existing Laws do not permit the restoration or if the costs of such restoration are not compensable by Landlord's insurance, either party may terminate this Lease by giving ninety (90) days' prior written notice to the other party. In case of Insured Casualty, there shall be an abatement or reduction of Maintenance Fees owed to Landlord, between the date of Insured Casualty and the date of completion of restoration if restoration takes place, or the earliest allowed date of termination if restoration does not take place and whether or not the Lease is terminated, based on the proportion to which the destruction renders the Premises unusable by Tenant for the ordinary conduct of business.

12.3. 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 its agents, employees,

contractors, invitees or other representatives and Tenant fails to cure such damage within a reasonable amount of time following written notice from Landlord, Maintenance Fees owed to Landlord shall not be reduced during the repair of such damage, Tenant shall have no right to terminate this Lease as provided in Section 12.1, 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.

12.4. 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 6.2 above, and neither Tenant or Landlord has opted to terminate this Lease as provided in Section 12.1.

12.5. 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.

13. EMINENT DOMAIN.

13.1. Effect on Rights and Obligations. If the whole or any substantial part of the Premises, or if the Property or any portion thereof which would leave the remainder of the Property unsuitable for the Permitted Uses, or if the land on which the Property is located or any material portion thereof, shall be taken or condemned for any public or quasi public use under governmental law, ordinance or regulation, or by right of eminent domain, or by private purchase in lieu thereof (each a "Taking"), then Landlord may, at its option, terminate this Lease and Maintenance Fees shall be abated during the unexpired portion of this Lease, effective when the physical taking of said Premises or said portion of the Property or land shall occur. However, if Landlord does not, in its sole discretion, opt to terminate this Lease in accordance with this Section 13, then this Lease shall remain in effect. Landlord shall maintain or terminate the leases of all other tenants in the Property who are similarly situated to Tenant consistent with its option with regard to Tenant. Notwithstanding the foregoing, if the whole of the Premises is subject to the Taking, or if the portion of the Premises not affected by the Taking is not in Tenant's business judgment reasonably suitable for Tenant's continued occupancy, Tenant may terminate this Lease as of the date of the Taking and be relieved of all obligations thereafter accruing under this Lease. If Tenant elects to terminate this Lease, Tenant must exercise its right to terminate by giving written notice to Landlord within 30 days after the Taking, as of the date of termination, which date shall not be earlier than 30 days nor later than 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 30-day period, this Lease shall continue in full force and effect, except that the Maintenance Fees owed to Landlord 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. Where only a portion of the Premises is subject to a Taking and neither Landlord nor Tenant terminates this Lease, Landlord shall promptly restore the remainder of the Premises into an architectural whole and functional condition and the Maintenance Fees for any portion of the Premises subject to (or rendered unusable by) the Taking shall be abated during the unexpired Term effective when the physical taking of said portion of the Premises shall occur. Provided that Landlord complies with the preceding sentence, the Taking shall not be construed to constitute an actual or constructive eviction of Tenant or a breach of any express or implied covenant of quiet enjoyment.

13.2. 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). Notwithstanding the foregoing, any portions of such award or proceeds which are specifically allocated by the condemning or purchasing party for the taking of or damage to trade fixtures of Tenant and moving and relocation costs shall be reserved specifically for Tenant.

14. DEFAULT.

14.1. Events of Default. The occurrence of any of the following events shall, at Landlord's option, constitute an "**Event of Default**:"

14.1.1 As to Tenant: (i) Tenant's failure to pay Maintenance Fees within ten business days after receipt of a written notice of such failure from Landlord to Tenant; (ii) Tenant's failure to comply with any other material term or provision of this Lease if such failure is not remedied within thirty (30) days after receipt of a written notice specifying the nature of the breach in reasonably sufficient detail; provided, however, if such default cannot reasonably be remedied within such thirty day period, then a default will not be deemed to occur until the occurrence of Tenant's failure to comply within the period of time that may be reasonably required to remedy the default, up to an aggregate of ninety days (90), provided Tenant commences curing such default within thirty (30) days and thereafter diligently proceeds to cure such default.

14.1.2 As to Landlord: Landlord's failure to perform any obligation under this Lease if such failure is not remedied within thirty (30) days after receipt of a written notice from Tenant to Landlord specifying the nature of the breach in reasonably sufficient detail; provided, however, if such breach cannot reasonably be remedied within such thirty (30) day period, then a default will not be deemed to occur until the occurrence of Landlord's failure to perform within the period of time that may be reasonably required to remedy the breach, up to an aggregate of ninety (90) days, provided Landlord commences curing such breach within thirty (30) days and thereafter diligently proceeds to cure such breach. Notwithstanding the foregoing, if Landlord's failure to perform any obligation under this Lease renders the Premises wholly or partially

unusable by Tenant for the ordinary conduct of business for more than two (2) consecutive business days, then Landlord shall remedy such failure within five (5) business days after receiving written notice from Tenant to Landlord and Tenant shall be entitled to an abatement of Maintenance Fees owed to Landlord, to be prorated on the basis of a 30-day month, for the number of days such failure is not remedied after Landlord receives written notice from Tenant. For the avoidance of doubt, the abatement of rent provided for under this Section shall not be Tenant's sole remedy for Landlord's failure to perform Lease obligations.

14.2. Remedies.

14.2.1 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 following reasonable written notice, 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.

14.3. 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 Maintenance Fees nor any endorsement on any check or letter accompanying any check or payment of Maintenance Fees shall be deemed an accord and satisfaction of full payment thereof; and Landlord may accept such payment without prejudice to Landlord's right to recover the balance of such Maintenance Fees or to pursue other remedies.

15. ASSIGNMENT AND SUBLETTING.

15.1. 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 approval shall not be unreasonably withheld, conditioned, or delayed. Upon the assignment of the Lease by Tenant, the Tenant will have no further obligation under the Lease.

15.2. Joint Possession not a Sublease. Landlord and Tenant acknowledge and agree that the JOA shall not constitute a sublease or assignment under this Section 15.

16. NON-DISCRIMINATION AGAINST PERSONS WITH DISABILITIES

16.1. 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 benefits, services or activities of the City.

16.2. 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 be solely responsible for complying therewith.

17. CITY NON-DISCRIMINATION ORDINANCE

17.1. 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:

17.1.1 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.

17.1.2 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.

18. NUCLEAR FREE BERKELEY

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

19. OPPRESSIVE STATES

19.1. 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

19.2. For purposes of this lease, the Tibet Autonomous Region and the provinces of Abo, Kham, and U-Tsang shall be deemed oppressive states.

19.3. Tenant's failure to comply with this section following thirty (30) days' written notice from Landlord shall constitute a default of this lease and Landlord may terminate this lease pursuant to Section 14. 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.

20. BERKELEY LIVING WAGE ORDINANCE

20.1. 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.

20.2. 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 an Event of Default. The City shall (i) handle such records and documents in accordance with any and all applicable requirements under the Health Insurance Portability and Accountability Act and other legal and health care regulatory requirements and (ii) not disclose Tenant's Confidential Information, except as expressly permitted in this Lease or otherwise required by law.

The term "Confidential Information" shall include non-public information about the Tenant's business or activities that is proprietary and/or confidential, including, without limitation, all business, financial, technical, and other information of a party marked or designated as "confidential" (or some similar designation) or that, by its nature or the circumstances

surrounding its disclosure, should reasonably be regarded as confidential. Landlord hereby agrees to (i) use the Confidential Information of the Tenant solely for the purpose of performing its obligations under this Agreement; (ii) hold the Tenant's Confidential Information in strict confidence, and; (iii) not disclose such Confidential Information or any part thereof, to any person, except those officers, employees, agents or professional advisors (or those of its Affiliates) with a strict "need to know" in order for the Landlord to perform its obligations hereunder, provided that such officers, employees, agents or professional advisors shall prior to any disclosure, have agreed by signed writing or otherwise to be bound by confidentiality obligations no less strict than those described herein. Confidential Information shall not include (i) any information already rightfully in the public domain at the time of its disclosure or subsequently released into the public domain by the Tenant; (ii) any information already rightfully in the possession of the Landlord at the time of its disclosure by the Tenant without an obligation to maintain its confidentiality; (iii) any information that is independently developed by the Landlord without use of or reference to any Confidential Information of the Tenant, in either case such fact being proven through documentary evidence; (iv) information obtained by the Landlord from a third Party not in breach of any confidentiality obligations to the Tenant (v) information required to be disclosed by law, a court order or competent government authority, provided that in such case the Landlord shall, to the extent permitted by law, promptly inform the Tenant of such requirement of disclosure such that the Tenant has an opportunity to object to the production or disclosure by seeking a protective order.

Landlord acknowledges that the Tenant considers its Confidential Information to contain confidential, proprietary, trade secret information of the Tenant and that any unauthorized use or disclosure of such information would cause the Tenant irreparable harm for which its remedies at law would be inadequate. Accordingly, Landlord acknowledges and agrees that the Tenant will be entitled in addition to any other remedies available to it at law or in equity, to seek the issuance of injunctive relief, enjoin any breach or threatened breach of the Landlord's obligations hereunder with respect to the Confidential Information of the Tenant, in addition to such further injunctive relief as any court of competent jurisdiction may deem just and proper.

20.3. 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 Premises.

20.4. If Tenant fails to comply with the requirements of this the LWO and this Lease, the City shall have the rights and remedies described in this Section 20, in addition to any rights and remedies provided by law or equity.

20.5. Tenant's failure to comply with this Section 20 shall constitute an Event of Default. 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.

21. BERKELEY EQUAL BENEFITS ORDINANCE

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

21.2. 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. Failure to do so shall be a considered an Event of Default. The City shall (i) handle such records in accordance with any and all applicable requirements under the Health Insurance Portability and Accountability Act and other legal and health care regulatory requirements and (ii) not disclose Tenant's Confidential Information, except as expressly permitted in this Lease or required by law.

21.3. If Tenant fails to comply with the requirements of this Section 21, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

21.4. Tenant's failure to comply with this Section 21 shall constitute an Event of Default. 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 21. 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.

22. SANCTUARY CITY CONTRACTING ORDINANCE

22.1. 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:
 1. 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;

2. 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:
1. The City's computer-network health and performance tools;
 2. 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.

23. CONFLICT OF INTEREST PROHIBITED

23.1. In accordance with California Government Code Section 1090, Berkeley City Charter Section 36 and B.M.C. Chapter 3.64, neither Tenant nor any employee, officer, director, partner or member of Tenant, or immediate family member of any of the preceding, shall have served as an elected officer, an employee, or a committee or commission member of Landlord, who has directly or indirectly influenced the making of this Lease.

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

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

24. RIGHT OF FIRST REFUSAL

24.1. First Refusal Notice. If, during the Term, Landlord desires to sell or otherwise dispose of the Property, except as part of an Excluded Transaction (a "**Proposed Transfer**"), Tenant shall have a right of first refusal to purchase the Property in accordance with this Section 24 ("**ROFR**"), and Landlord shall not consummate the sale unless Landlord shall first deliver to Tenant a notice (the "**First Refusal Notice**") setting forth: (a) the identity of the proposed purchaser (the "**Offeree**"); (b) the sale price and each of the material terms of the proposed

transaction, including but not limited to financial terms, use restrictions, or other covenants (the "**Purchase Terms**"); and (c) the proposed closing date of the Proposed Transfer (the "**Closing Date**").

24.2. Response Period. Tenant shall, for sixty (60) days following receipt of the First Refusal Notice, have the exclusive right to purchase the Premises on terms and conditions set forth in the First Refusal Notice ("**ROFR Response Period**"). If Tenant notifies Landlord in writing of its decision to exercise its right of first refusal on or before 5:00 p.m. on the last day of the ROFR Response Period, then Tenant shall be bound to purchase from Landlord, and Landlord shall be bound to sell to Tenant, the Property on the Purchase Terms.

24.3. Waiver of ROFR. If Tenant shall either: (a) deliver written notice of rejection of the First Refusal Notice to Landlord; or (b) fail to deliver written notice of acceptance of the First Refusal Notice within the ROFR Response Period, Tenant's ROFR hereunder shall conclusively be deemed to be waived with respect to the sale disclosed in the First Refusal Notice and Landlord shall be free, for a period of one (1) year from the end of the ROFR Response Period, to complete the Proposed Transfer to the Offeree or to any other third party on the Purchase Terms, and the Offeree or such other third party shall acquire the Property free and clear of the Tenant's ROFR (which shall be extinguished, null, void, and of no further force or effect upon such sale). In addition, if as of the Closing Date, Tenant has failed to complete its purchase of the Property due to any act or omission by Tenant, including but not limited to any failure to deliver funds or otherwise meet the Purchase Terms, then Tenant's ROFR shall be extinguished, null, void, and of no further force or effect as to any future sale, transfer, or disposition of the Property.

24.4. Excluded Transactions. Notwithstanding anything to the contrary contained in this Section 24, Tenant's right of first refusal shall not apply to the following transactions (the "**Excluded Transactions**"):

- (a) any condemnation of all or part of the Property;
- (b) any transfer, conveyance, covenant, or restriction by Landlord to change or limit the use of the Property for any public purpose.

24.5. Lease Termination. Upon the completion of such any purchase pursuant to this Section 24, this Lease and all obligations and liabilities of Landlord and Tenant hereunder shall terminate, except for those obligations which by their terms survive the termination hereof.

25. MISCELLANEOUS.

25.1. General.

25.1.1 Integration. This Lease, together with all exhibits and attachments hereto, the separate lease between Landlord and BFC, and the JOA, set 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 therein.

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

25.1.3 Attorneys' Fees. If any action is commenced which arises out of or related to this Lease, the prevailing party shall be entitled to recover from the other party such sums as the court may adjudge to be reasonable attorneys' fees, expert fees, and expenses in the action, in addition to costs and expenses otherwise allowed by Law. In all other situations, including any matter arising out of or relating to any bankruptcy or other voluntary or involuntary proceeding, in or out of court, for the adjustment of debtor-creditor relationships, Tenant agrees to pay all of Landlord's costs and expenses, including attorneys' fees and expert fees, which may be incurred in enforcing or protecting Landlord's rights or interests.

25.1.4 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.

25.1.5 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.

25.1.6 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.

25.1.7 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.

25.1.8 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 15, Tenant.

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

25.1.10 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.

25.1.11 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.

25.2. 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.

25.3. Fixtures and Signs. Tenant may (i) make any lawful and proper minor alterations to the Premises; (ii) attach fixtures and interior signs in and on the Premises; and attach signage on the exterior of Building ("**Tenant Fixtures**"). Any signs referring to the name of the Premises shall include the term "Ann Chandler" consistent with the requirements of Section 1.3. Any Tenant Fixtures will remain the property of Tenant and may be removed from the Premises by Tenant at any time during the Term. All alterations and Tenant Fixtures are subject to Landlord's approval, which shall not be unreasonably withheld, conditioned, or delayed, and must comply with existing code requirements. All Tenant Fixtures shall be at Tenant's sole cost and expense. Installations and removals of Tenant Fixtures 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. All signs on the Premises shall conform to the provisions of Berkeley Municipal Code Chapter 20.04. Tenant shall be responsible for all fees, costs and expenses associated with installation and removal of Tenant Fixtures. 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 thirty (30) days after receipt of such invoice.

25.4. 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.

25.5. Prior Possession. Prior to the Commencement Date, Tenant has the right to (i) undertake Tenant Improvements, and (ii) store supplies and equipment in the Premises.

25.6. 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.

25.7. Limitation of Liability. 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.

25.8. 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, or sent by facsimile (immediately followed by one of the preceding methods), 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.

25.9. 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 (individually and collectively, "**Commission**") 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 based upon any statement, representation or agreement of Tenant.

25.10. 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.

25.11. 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 any obligations resulting from any JOA shall only hold over to the extent the JOA is still in effect. This section shall not be construed as Landlord's permission for Tenant to hold over. Acceptance of Maintenance Fees by Landlord following expiration or termination shall not constitute a renewal of this Lease or extension of the Initial Term or the Renewal Term, as the case may be, 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 Maintenance Fees of two thousand dollars (\$2,000) per month. 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.

25.12. Surrender. Upon the expiration or other termination of this Lease or Tenant's right to possession of the Premises, Tenant shall peaceably and quietly leave and surrender to Landlord the Premises, along with appurtenances and fixtures at the Premises (except Tenant Fixtures), all in good condition, ordinary wear and tear, damage by casualty, condemnation, acts of God, and Landlord's failure to make repairs required of Landlord excepted.

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

25.14. Covenants and Conditions. Each provision to be performed by Tenant or Landlord hereunder shall be deemed to be both a covenant and a condition.

25.15. Intentionally Omitted.

25.16. Accessibility; Disability Laws. To Landlord's actual knowledge, the Premises have not undergone an inspection by a Certified Access Specialist.

"A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises. "

Since compliance with the ADA and other federal and state disability laws (collectively, "**Disability Laws**") is dependent upon Tenant's specific use of the Premises, Landlord makes no warranty or representation as to whether or not the Premises comply with Disability Laws, except as otherwise expressly provided in this Lease. In the event that Tenant's specific and particular use of the Premises, as distinguished from uses generally associated with those permitted under Section 5, requires modifications or additions to the Premises in order to be in compliance with Disability Laws, Landlord agrees to make any such necessary modifications and/or additions at Tenant's sole cost and expense.

25.17. OFAC Compliance. Tenant represents and warrants to Landlord that Tenant is not a party with whom Landlord is prohibited from doing business pursuant to the regulations of the Office of Foreign Assets Control ("**OFAC**") of the U.S. Department of the Treasury, including those parties named on OFAC's Specially Designated Nationals and Blocked Persons List. Tenant is currently in compliance with, and shall at all times during the term of this Lease remain in compliance with, the regulations of OFAC and any other governmental requirement relating thereto. In the event of any violation of this section, Landlord shall be entitled to immediately terminate this Lease and take such other actions as are permitted or required to be taken under law or in equity. TENANT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LANDLORD FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, RISKS, LIABILITIES AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COSTS) INCURRED BY LANDLORD ARISING FROM OR RELATED TO ANY BREACH OF THE FOREGOING CERTIFICATIONS. These indemnity obligations shall survive the expiration or earlier termination of this Lease.

[SIGNATURES FOLLOW ON NEXT PAGE]

Internal

IN WITNESS WHEREOF, the parties have executed this Lease as of the Effective Date.

TENANT:

LIFELONG MEDIAL CARE, a non-profit corporation,

By: _____

Print Name: David B. Vliet

Its: Chief Executive Officer

--AND--

LANDLORD:

CITY OF BERKELEY, a California municipal corporation

By: _____

Print Name: Dee Williams-Ridley

Its: City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBIT A-1
Legal Description of Property

APN: 56-1066-1

All those certain lots, pieces or parcels of land situate, lying and being in the City of Berkeley, County of Alameda, State of California, described as follows:

Beginning at the point of intersection of the Southern line of University Avenue with the Eastern line of 6th Street, as said Avenue and Street are shown on the Map hereinafter referred to; running thence Easterly along said line of University Avenue One Hundred and Forty-Seven feet; thence at right angles Southerly One Hundred feet; thence at right angles Westerly One Hundred Forty-Seven feet to the point of intersection thereof with said Eastern line of 6th Street; thence Northerly along said line of 6th Street One Hundred feet to the point of beginning.

Being all of Lots Numbered 1, 2, 3, and the Western Three feet of Lot Numbered 4, in Block Numbered 96, as said Lots and Block are delineated and so designated upon that certain Map entitled, "Map of the Sisterna Tract, Berkeley" – filed May 15, 1880 in Liber 7 of Maps, at page 43, in the office of the County Recorder of Alameda County.

Internal

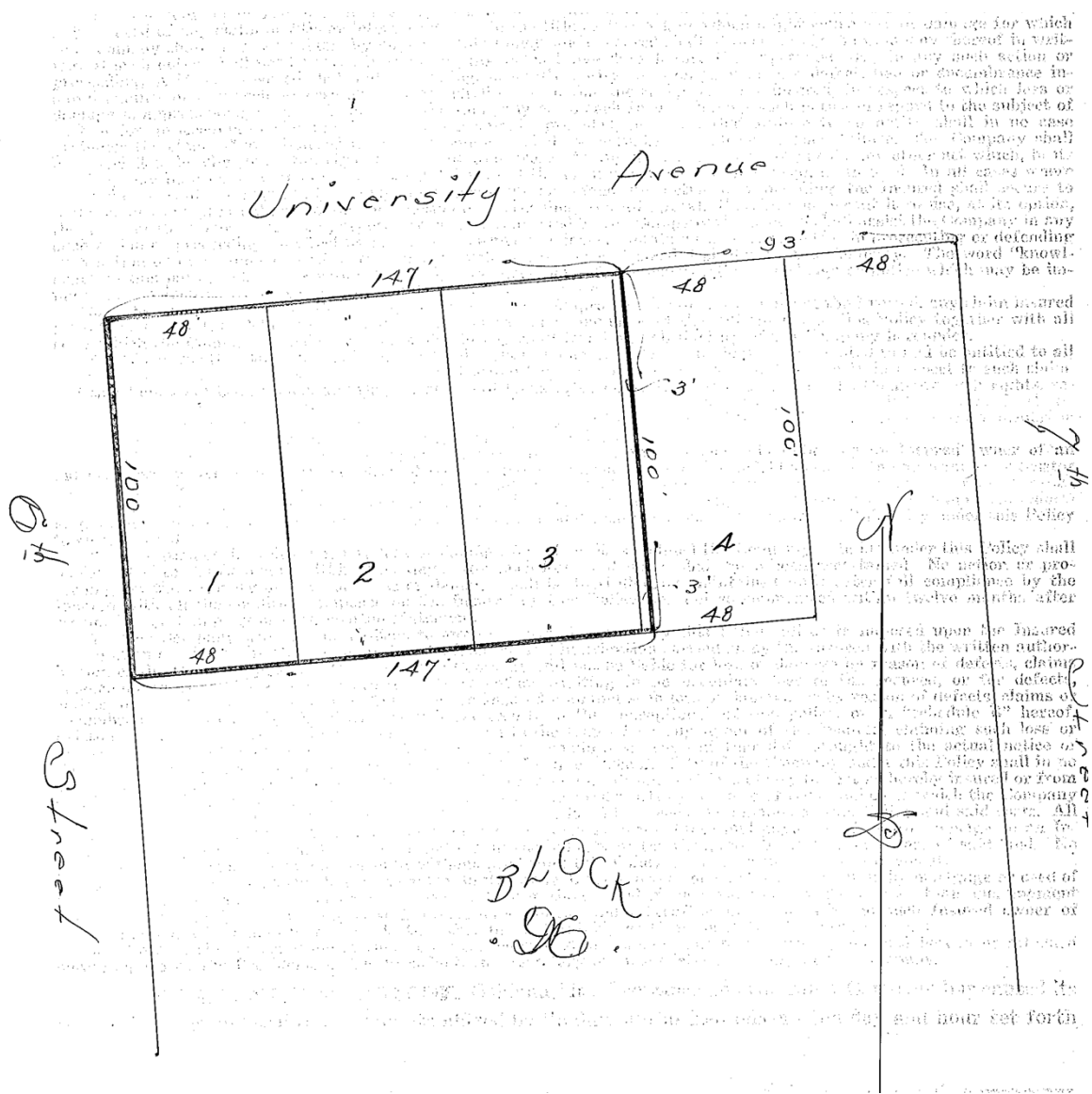


EXHIBIT A-2

Depiction of Premises

EXHIBIT B

May 20, 2022 Building Inspection Report by E. A. Davidovits & Co., Inc

