



KENSINGTON FIRE PROTECTION DISTRICT

DATE: July 13, 2022

TO: Board of Directors Special Meeting
Kensington Fire Protection District

RE: Lease Agreement with Unitarian Universalist Church of Berkeley

SUBMITTED BY: Bill Hansell, General Manager

Recommended Action

Direct staff to execute a lease agreement with the Unitarian Universalist Church of Berkeley for the use of the parking lot off Craft Avenue, APN 505-302-017, pending approval of the Conditional Use Permit by the City of El Cerrito, and with approval as to form by the district's Counsel.

Background Info

For the duration of the Kensington Public Safety Building Seismic Renovation Project, a temporary fire station is required to service Kensington and El Cerrito. The district studied various potential locations and identified the parking lot off Craft Avenue, APN 505-302-017, owned by the Unitarian Universalist Church of Berkeley as the only viable location in terms of acceptable response time, site conditions, access, and dimensions.

In 2021, the Board approved hiring an architect and engineers to develop a site plan for the installation of a modular building and a pre-fabricated fire engine garage structure on the site, along with new utility connections, site drainage, accessibility requirements, and security fencing. Bid drawings were issued and a low-bidder was approved to do the work. The site is expected to be used for 24 months total, including site preparation time and end-of-lease parking lot restoration.

In order to meet the demolition start date of the Public Safety Building Seismic Renovation Project, the lease should begin no later than August 1st, 2022, which will accommodate the site preparation time needed for a move-in by the first week of October 2022. Please note that the preparation time has been abbreviated from 3-months down to 2-months due to the appeal of the Conditional Use Permit that was approved by the El Cerrito Planning Commission on June 15th, 2022. The appeal will be heard by the El Cerrito City Council on July 19th, 2022. Therefore, staff recommendation is to approve the lease pending the resolution of the Conditional Use Permit, so that the work can begin as soon as possible thereafter.

LEASE AGREEMENT

by and between

UNITARIAN UNIVERSALIST CHURCH OF BERKELEY

and

KENSINGTON FIRE PROTECTION DISTRICT

AUGUST 1, 2022

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DRAFT

This LEASE AGREEMENT (this "**Agreement**"), dated as of August 1, 2022 (the "**Effective Date**"), is entered into by and between Unitarian Universalist Church of Berkeley, a nonprofit public benefit corporation duly organized and operating under the laws of the State of California (the "**Landlord**") and the Kensington Fire Protection District, a fire protection district duly organized and existing under the laws of the State of California (the "**Tenant**"). Landlord and Tenant are hereafter collectively referred to as the "**Parties.**"

RECITALS

A. The Landlord is the owner of fee title to real property located at the end of Craft Ave, El Cerrito, CA and identified as APN 505-302-017 (the "**Property**").

B. The Tenant desires to lease from Landlord a portion of the Property consisting of the northwestern Parking Lot, adjacent to the entry from Craft Avenue, consisting of approximately 5,000 square feet (the "**Premises**"), as depicted in Exhibit A attached hereto and incorporated herein by this reference.

C. The Tenant desires to lease the Premises from the Landlord for installation of, and use as, a temporary fire station and garage shelter during the period in which the District's Station 65 is constructed (a period of approximately 24 months, including the temporary station preparation time and end-of-lease parking lot restoration, referred to as the "**Construction Period**"), and Landlord desires to lease the Premises to the Tenant for such use during the Construction Period.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Landlord and the Tenant hereby agree as of the Effective Date as follows.

ARTICLE I DEFINITIONS; DEMISE OF PROPERTY

1.1 Definitions. For purposes of this Agreement, the following terms shall have the meanings set forth in this Section. Additional definitions are set forth in the Recitals and the text of this Agreement.

- (a) "**Applicable Laws**" is defined in Section 4.8.
- (b) "**Rent**" is defined in Section 2.2.
- (c) "**Claims**" is defined in Section 4.9.
- (d) "**Commencement Date**" is defined in Section 2.1.
- (e) "**Construction Period**" is defined in Recital C.

- (f) **"Expiration Date"** is defined in Section 2.1.
- (g) **"Force Majeure"** is defined in Section 11.1.
- (h) **"Hazardous Materials"** is defined in Section 5.3.1.
- (i) **"Hazardous Materials Claims"** is defined in Section 5.2(c).
- (j) **"Hazardous Materials Laws"** is defined in Section 5.3.2.
- (k) **"Improvements"** is defined in Section 3.1.
- (l) **"Premises"** is defined in Recital B.
- (m) **"Property"** is defined in Recital A.
- (n) **"Term"** is defined in Section 2.1.

1.2 Incorporation of Recitals The Parties acknowledge the truth of the Recitals set forth above, and all such Recitals are hereby incorporated into this Agreement.

1.3 Creation of Lease. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises for the Term subject to the terms and conditions and for the purposes set forth in this Agreement.

ARTICLE II TERM OF LEASE; RENT; UTILITIES

2.1 Term. The term of this Agreement (the **"Term"**) shall commence on or about August 1, 2021 (the **"Commencement Date"**) and continue until the end of the Construction Period, unless terminated earlier pursuant to the provisions hereof (the **"Expiration Date"**). Notwithstanding anything herein to the contrary, the Tenant shall provide the Landlord with thirty (30) days written notice of its intention to vacate the Premises and terminate this Agreement prior to the end of the Construction Period.

2.2 Rent. The Tenant shall pay to the Landlord rent for the Premises (**"Rent"**) during the Term, payable in installments of One Thousand Three Hundred Dollars (\$1,300.00) per month. On or before the Commencement Date, the Tenant shall pay Rent to the Landlord in an amount equal to the monthly installment (or if the first month is a partial month, a portion of the monthly installment prorated on a daily basis). Thereafter, the Tenant shall pay each installment payment of Rent in advance on the first day of the month to the Landlord at the address shown in Section 11.4.2 or such other place as the Landlord may designate in writing. After the twelfth month of rent is paid, the monthly installment shall increase by the prior

month's Consumer Price Index for the San Francisco-Oakland-Hayward, CA area and remain at that amount until the end of the lease.

2.3 Utilities. The Tenant shall pay all charges for water, sewer, gas, electricity, telephone and other services and utilities used by the Tenant on the Premises during the term of this Agreement unless otherwise expressly agreed in writing by the Landlord. In the event that any utility or service provided to the Premises is not separately metered, the Landlord shall pay the amount due and separately invoice the Tenant for Tenant's share of the charges which shall be calculated by the Landlord by determining the average utility costs for the last two years and the Tenant paying the amount in excess of such average utility costs. The Tenant shall pay such amounts within fifteen (15) days of invoice.

ARTICLE III ALTERATIONS AND IMPROVEMENTS

3.1 Alterations and Improvements. The Tenant, at Tenant's expense, shall have the right following Landlord's consent to remodel, redecorate, and make additions, improvements and replacements of and to all or any part of the Premises, as shown in **Exhibit B**, and from time to time as the Tenant may deem desirable, provided the same are made in a workmanlike manner and utilizing good quality materials. Notwithstanding anything herein to the contrary, without the prior written consent of the Landlord, the Tenant shall have the right to place and install personal property, trade fixtures, equipment and other temporary installations (including but not limited to prefabricated buildings and other structures) in and upon the Premises, and fasten the same to the Premises, as shall be necessary, in the Tenant's discretion, to operate a temporary fire station and garage shelter. All personal property, equipment, machinery, trade fixtures and temporary installations, whether acquired by Tenant at the Commencement Date or placed or installed on the Premises by the Tenant thereafter, shall remain the Tenant's property free and clear of any claim by the Landlord. The Tenant shall have the right to remove the same at any time during the term of this Agreement provided that all damage to the Premises caused by such removal shall be repaired by the Tenant at Tenant's expense. Prior to the conclusion of the lease, the Tenant shall restore the asphalt surface of the parking lot, including paint striping for parking spaces, after removing all temporary structures, foundation work, and temporary utility connections.

ARTICLE IV MANAGEMENT, USE AND OPERATION OF THE PROPERTY

4.1 Permitted Uses. The Tenant may use the Premises for a temporary fire station and garage shelter as described herein and for no other purposes without the prior written consent of the Landlord. The Tenant shall not use or permit the Premises to be used in whole or in part during the Term for any purpose other than as permitted pursuant to this Agreement or by the Tenant's written consent.

4.2 Drainage. The Tenant shall drain Black (i.e., sewage) and grey (i.e., dishwashing and showers) into a new sanitary lateral connection, installed by the Tenant's contractor, to meet the requirements of the local Sanitary District. The Tenant shall drain storm water per the civil engineer's determination shown on the construction site plan, as approved in the permit issued by the City of El Cerrito.

4.3 Not Used.

4.4 Nondiscrimination. The Tenant herein covenants by and for the himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this Agreement is made and accepted upon and subject to the following conditions: that there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the Tenant himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

4.5 Maintenance and Inspection of the Premises.

4.5.1 Maintenance. At the Tenant's expense throughout the Term, the Tenant shall operate, maintain and manage the Premises including all landscaping and improvements thereon in good order and repair in compliance with all local, state and federal laws, statutes and regulations relating to the use, occupancy or operation of the Premises. The Tenant shall keep and maintain all portions of the Premises in a clean and orderly condition, free of accumulation of dirt, rubbish, and graffiti.

4.5.2 Inspection. At any time during the Term, the Landlord and its agents may enter the Premises from time to time with reasonable notice to the Tenant and during normal business hours, except in the case of emergency in which case no notice shall be required, to inspect the Premises to confirm that it is being properly maintained as required herein, to post notices of non-responsibility and similar notices, and to discharge the Tenant's obligations hereunder when the Tenant has failed to do so within a reasonable time after written notice from the Landlord. Following its inspection, the Landlord may deliver to the Tenant written notification of any portions of the Premises which the Landlord has determined are not being properly maintained, and the Tenant shall promptly prepare and deliver to the Landlord the Tenant's proposed plan for remedying the indicated deficiencies.

4.6 Landlord's Right to Perform Tenant Obligations. If following notice and the expiration of any applicable cure period as set forth in Section 10.2.1, the Tenant fails to perform its obligations to maintain the Premises in accordance with the standards set forth in this Agreement, the Landlord shall have the right, but not the obligation, to perform such work upon delivery of written notice to the Tenant, and the Tenant shall reimburse the Landlord for all expenditures the Landlord incurs in connection with such work. The Landlord's election to undertake such obligation shall not operate as a waiver of any other right or remedy the Landlord may have pursuant to this Agreement.

4.7 Tenant Not Obligated to Perform Repairs. The Tenant shall not be obligated to make any repairs, alterations, additions, improvements or betterments to the Premises during the term of this Agreement; provided that the Tenant shall pay for the Improvements as set forth in Section 3.1.

4.8 Compliance with Laws. The Tenant, at its sole cost and expense, shall comply with all applicable provisions of all statutes, laws, rules, regulations, administrative codes, ordinances, decrees, orders, decisions, injunctions, awards judgments, permits and licenses of or from governmental authorities (collectively, "**Applicable Laws**") pertaining to the use, operation, and management of the Premises. The Tenant shall not itself use the Premises for any unlawful purpose or perform, permit or suffer any act of omission or commission upon or about the Property or the Premises which would result in a nuisance or a violation of law. The Tenant shall use its best efforts to not permit any permittees, licensees, guests or invitees to use the Premises for any unlawful purpose or perform, permit or suffer any act of omission or commission upon or about the Property or the Premises which would result in a nuisance or a violation of law.

4.9 Tenant Right to Contest. The Tenant shall have the right to contest by appropriate proceedings, in the name of the Tenant, and without cost or expense to the Landlord, the validity or application of any Applicable Law. If compliance with any Applicable Law may legally be delayed pending the contesting of any such proceeding without the incurrence of any lien, charge or liability against the Premises or Tenant's interest therein, and without subjecting the Landlord to any liability, civil or criminal, for failure so to comply therewith, the Tenant may delay compliance therewith until the final determination of such proceeding. The Tenant shall indemnify, defend, protect and hold the Landlord harmless from and against all liabilities, losses, damages, fines, deficiencies, penalties, claims, demands, suits, actions, causes of action, legal or administrative proceedings, judgments, costs and expenses (collectively, collectively "**Claims**") arising as a result of or in connection with any such contest brought by the Tenant.

ARTICLE V
CONDITION OF THE PREMISES; ENVIRONMENTAL MATTERS

5.1 Condition of the Premises.

5.1.1 AS-IS Condition. The Tenant will lease the Premises in its "AS IS" condition as such condition exists as of the Commencement Date.

5.1.2 No Representations. The Tenant acknowledges that except as expressly set forth herein, the Landlord makes no representations or warranties expressed or implied regarding the condition of the Premises or the fitness or suitability thereof for the Tenant's purposes, including but not limited to, the condition of the soil, its geology, topography, the presence or absence of fill, the presence or absence of Hazardous Materials, drainage, flood zone designation, or compliance with Hazardous Materials Laws, and no patent or latent defect or deficiency in the condition of the Premises shall affect the rights of the Tenant or the Landlord hereunder. The Tenant shall rely solely on its own independent investigation and judgment as to all matters relating to the Land. The Tenant acknowledges and agrees that prior to the Effective Date it has made such investigations of the Premises, including without limitation such inquiries of governmental agencies, soils testing, tests and inspections as Tenant deemed necessary to determine the condition of the Property, and has approved all such characteristics and conditions and shall lease the Property in its condition as of the Effective Date "AS-IS" "WHERE-IS" AND WITH ALL FAULTS. The Tenant further acknowledges that the Landlord has made available all data and information on the Property available to the Landlord, but without warranty or representation by the Landlord as to the completeness, correctness or validity of such data and information, except as otherwise set forth in this Agreement.

5.2 Tenant's Covenants regarding Hazardous Materials. The Tenant hereby covenants and agrees that throughout the Term:

(a) The Premises, and the use and operation thereof, shall be in compliance with all Hazardous Materials Laws, and the Tenant shall not cause or permit the Premises or any portion thereof to be in violation of any Hazardous Materials Laws.

(b) The Tenant shall not permit the Premises or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials nor shall the Tenant permit the presence or release of Hazardous Materials in, on, under, about or from the Premises with the exception of materials customarily used in operation, use or maintenance of a temporary fire station and garage facilities, provided such materials are used, stored and disposed of in compliance with Hazardous Materials Laws.

(c) Upon receiving knowledge of the same, the Tenant shall immediately

advise the Landlord in writing of: (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Tenant, the Premises or the Property pursuant to any applicable Hazardous Materials Laws; (ii) any and all complaints, claims, citations, demands, inquiries, reports, or notices made or threatened by any third party against the Tenant, the Premises or the Property relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials; (iii) the presence or release of any Hazardous Materials in, on, under, about or from the Premises or the Property; or (iv) Tenant's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property classified as "Border Zone Property" under the provisions of California Health and Safety Code, Sections 25220 *et seq.*, or any regulation adopted in connection therewith, that may in any way affect the Property pursuant to any Hazardous Materials Laws or cause it or any part thereof to be designated as Border Zone Property. The matters set forth in the foregoing clauses (i) through (iv) are hereinafter referred to as, "**Hazardous Materials Claims.**"

(d) Without the Landlord's prior written consent, which shall not be unreasonably withheld, the Tenant shall not take any remedial action in response to the presence of any Hazardous Materials in, on, under, or about the Premises or the Property (other than in emergency situations or as required by governmental agencies having jurisdiction in which case the Landlord agrees to provide its consent), nor enter into any settlement agreement, consent decree, or other compromise with respect to any Hazardous Materials Claim.

5.3 Definitions.

5.3.1 Hazardous Materials. As used herein, "**Hazardous Materials**" means any substance, material, or waste which is or becomes regulated by any local, state or federal authority, agency or governmental body, including any material or substance which is: (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter- Presley-Tanner Hazardous Substance Account Act); (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) friable asbestos; (vii) polychlorinated biphenyls; (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20; (ix) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317);

(x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901, *et seq.* (42 U.S.C. §6903); or (xi) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, *et seq.*, as the foregoing statutes and regulations now exist or may hereafter be amended.

5.3.2 Hazardous Materials Laws. As used herein "**Hazardous Materials Laws**" means all federal, state and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials, including without limitation, the laws, statutes and regulations cited in the preceding Section 5.3.1, as any of the foregoing may be amended from time to time.

ARTICLE VI INSURANCE

6.1 Insurance Requirements. The Tenant shall procure, at its sole expense, and maintain in full force and effect during the Term, a policy or policies of comprehensive general liability insurance naming the Landlord as additional insured and/or loss payee and covering against claims for bodily and personal injury, death and property damage caused by or occurring in conjunction with the operation of the Premises with a policy limit of at least One Million Dollars (\$1,000,000) per occurrence. The Tenant shall provide the Landlord with current Certificates of Insurance evidencing Tenant's compliance with this Section 6.1 prior to the expiration of such policy or policies. In addition, the Tenant shall be responsible, at its sole expense, for extended coverage insurance on all of its personal property, including removable trade fixtures, located in the Premises. (**Exhibit C**).

If the Tenant undertakes the construction of any improvements pursuant to Section 3.1, the Tenant shall ensure that its general contractor carries liability, property damage, workers' compensation, and builder's risk insurance throughout construction thereof, naming the Landlord as additional insured and otherwise in compliance with all requirements set forth in this Section 6.1.

ARTICLE VII DAMAGE AND DESTRUCTION

7.1 Damage or Destruction. In the event of any damage to or destruction of the Premises during the Term, the Landlord shall elect by written notice delivered to the Tenant within sixty (60) days following the date of the occurrence of the damage to either remove the Premises or restore the Premises as nearly as possible to its condition immediately prior to such damage or destruction, subject to any restrictions imposed by changes in any Applicable Law. If the Landlord elects to restore the Premises, the Landlord shall commence diligently and continuously to carry out such restoration to full completion as soon as possible

and shall commence restoration of the Premises within ninety (90) days following the date of occurrence of the damage. Upon the occurrence of damage or destruction, all insurance proceeds paid in respect of such damage or destruction shall be applied to the payment of the costs of the restoration of the Premises. If the Landlord elects to restore the Premises, the Landlord shall confer with the Tenant regarding the design and plans for such restoration of the Premises.

If the Landlord does not elect to restore the Premises and the Landlord does not exercise its right to terminate this Agreement pursuant to Section 10.3 within one hundred twenty (120) days following the date of the occurrence of the damage, this Agreement shall terminate.

7.2 Notice Required. In the event of material damage to or destruction of the Premises, or any part thereof, the Tenant shall promptly give the Landlord notice of such occurrence and take all actions reasonably required to protect against hazards caused by such damage or destruction. For purposes of this Section 7.2, damage or destruction shall be deemed to be material if the estimated cost to repair equals or exceeds Fifty Thousand Dollars (\$50,000).

7.3 Landlord's Right to Terminate. Notwithstanding any contrary provision of this Article VII, the Landlord shall have the option to terminate this Agreement and be relieved of the obligation to restore the Premises where all or substantially all of the Premises are substantially damaged or destroyed and such damage or destruction resulted from a cause not insured against by the Tenant and/or the Landlord nor required to be insured against by the Tenant and/or the Landlord under this Agreement.

ARTICLE XIII MORTGAGES

8.1 Non-Subordination of Fee. Nothing in this Agreement shall be construed as an agreement by the Landlord to subordinate its fee interest in the Property. Except as expressly set forth in this Agreement, the Tenant shall not mortgage its interest in the Premises without the Landlord's prior written approval. Notwithstanding anything to the contrary, the Landlord shall have no obligation to encumber or otherwise subordinate its fee interest in the Property or approve any mortgage of the Tenant's leasehold estate.

ARTICLE IX ASSIGNMENT, TRANSFER, SUBLETTING; NONDISTURBANCE AND ATTORNMENT

9.1 Restrictions on Transfer, Assignment and Encumbrance. The Tenant shall have no right to sell, transfer, sublet, assign, encumber, hypothecate or otherwise convey ("**Transfer**") its leasehold interest hereunder or any portion of its interest in the Premises or this Agreement voluntarily, involuntarily, by operation of law, or

otherwise, without the Landlord's prior written consent. No voluntary or involuntary assignee, subtenant, or successor in interest of the Tenant shall acquire any rights or powers under this Agreement absent such consent.

9.2 No Involuntary Transfers. Without limiting any other restrictions on transfer contained in this Agreement, no interest of the Tenant in this Agreement, the Premises or part thereof shall be assignable or transferable: (i) pursuant to any voluntary or involuntary proceeding under federal or state bankruptcy or insolvency law; (ii) pursuant to any assignment of the Tenant's assets for the benefit of its creditors; or (iii) pursuant to any order of attachment, garnishment, receivership, or similar action.

9.3 Assumption Agreement and Release. No permitted Transfer shall be effective until any curable default hereunder shall have been cured and there shall have been delivered to the Landlord an assumption agreement, executed by the transferor and the proposed transferee, whereby such transferee expressly assumes such obligations as arise and/or accrue at any time after such Transfer takes place; and whereby such transferee assumes liability for the obligations of this Agreement.

9.4 Sale by Landlord. Nothing contained in this Agreement shall be deemed in any way to limit, restrict or otherwise affect the right of the Landlord to sell, transfer, assign or convey all or any portion of the right, title and estate of the Landlord in the Property and in this Agreement; provided, however, that in each such instance any such sale, transfer, assignment or conveyance shall be subject to this Agreement, and the Tenant's other rights arising out of this Agreement shall not be affected or disturbed in any way by any such sale, transfer, assignment or conveyance. At such time as the Landlord shall sell, transfer, assign or convey the entire right, title and estate of the Landlord in the Property and in this Agreement, all obligations and liability on the part of the Landlord arising under this Agreement after the effective date of such sale, transfer, assignment or conveyance shall terminate as to the Landlord, and thereupon all such liabilities and obligations shall be binding upon the transferee.

9.5 Non-disturbance. Provided that the Tenant is not in default under this Agreement, the Tenant's possession, use and enjoyment of the Premises shall not be interfered with, disturbed or diminished, or otherwise affected in any manner as a result of any act or omission of the Landlord, any exercise of any remedies by the Landlord hereunder, or in the event of foreclosure by any lender of the Landlord. The Tenant shall also ensure that its possession, uses and enjoyment of the Premises does not interfere with, disturb or diminish or otherwise affect in any manner any other tenants on the Property.

ARTICLE X DEFAULT, REMEDIES AND TERMINATION

10.1 Event of Default. The Tenant shall be in default under this Agreement upon the occurrence of any of the following ("**Events of Default**"):

(a) Payment of Rent. The Tenant at any time is in default hereunder as to payment of Rent and such default continues for fifteen (15) days;

(b) Other Monetary Obligations. The Tenant at any time is in default hereunder as to any monetary obligation, and such default continues for thirty (30) days after the date upon which the Landlord shall have given the Tenant a Notice of Default (as defined in Section 10.2.1):

(c) Insurance. The Tenant fails to obtain and maintain any insurance required pursuant to Section 6.1 of this Agreement, and the Tenant fails to cure such default within fifteen (15) days following receipt of Notice of Default;

(d) Abandonment. The Tenant abandons the Premises and ceases to use it for the purposes authorized hereby for a period of ninety (90) days or more or as established pursuant to Section 1951.3 of the California Civil Code except when prevented by Force Majeure;

(e) Transfer. A voluntary or involuntary Transfer of all or any portion of the Tenant's interest in this Agreement occurs in violation of the provisions of Article IX;

(f) Non-Monetary Obligations. The Tenant defaults in the performance of any term, provision, covenant or agreement contained in this Agreement other than an obligation enumerated in this Section 10.1, and unless a shorter cure period is specified for such default, the default continues for thirty (30) days after the date upon which the Landlord shall have given written notice of the default to the Tenant; provided however, if the default is of a nature that it cannot be cured within thirty (30) days, an Event of Default shall not arise hereunder if the Tenant commences to cure the default within thirty (30) days and thereafter pursues the curing of such default with due diligence and in good faith to completion and in no event later than one hundred eighty (180) days after receipt of a Notice of Default;

(g) Bankruptcy. The Tenant files a voluntary petition in bankruptcy or files any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or seeks or consents to or acquiesces in the appointment of any trustee, receiver or liquidator of the Tenant or of all or any substantial part of its property, or of any or all of the royalties, revenues, rents, issues or profits thereof, or makes any general assignment for

the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due;

(h) Reorganization. A court of competent jurisdiction enters an order, judgment or decree approving a petition filed against the Tenant seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, and such order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days from the first date of entry thereof, or any trustee receiver or liquidator of the Tenant or of all or any substantial part of its property, or of any or all of the royalties, revenues, rents, issues or profits thereof is appointed without the consent or acquiescence of the Tenant and such appointment remains unvacated and unstayed for an aggregate of sixty (60) days, such sixty (60) day period to be extended in all cases during any period of a bona fide appeal diligently pursued by Tenant; and

(i) Attachment. A writ of execution or attachment or any similar process is issued or levied against all or any part of the interest of the Tenant in the Premises and such execution, attachment or similar process is not released, bonded, satisfied, or vacated or stayed within sixty (60) days after its entry or levy, such sixty (60) day period to be extended during any period of a bona fide appeal diligently pursued by Tenant.

10.2 Notice and Opportunity to Cure.

10.2.1 Notice of Default. Upon the occurrence of a default hereunder, the non-defaulting party shall deliver a notice to the nonperforming party (the "**Notice of Default**"), stating the nature of the obligation which such nonperforming party has failed to perform, and stating the applicable period of time, if any, permitted to cure the default.

10.2.2 Failure to Give Notice: No Waiver. Failure to give, or delay in giving, the Notice of Default shall not constitute a waiver of any obligation, requirement or covenant required to be performed hereunder. No failure or delay by either party in asserting any rights and remedies as to any breach shall operate as a waiver of any breach or of any such rights or remedies. Delay by either party in asserting any of its rights and remedies shall not deprive such party of the right to institute and maintain any action or proceeding which it may deem appropriate to protect, assert or enforce any such rights or remedies.

10.3 Remedies Upon Default.

10.3.1 Landlord's Remedies. Upon the occurrence of any Event of Default and in addition to any and all other rights or remedies of the Landlord hereunder and/or provided by law, the Landlord shall have the right to terminate this

Agreement and/or the Tenant's possessory rights hereunder, in accordance with applicable law to re-enter the Premises and take possession thereof, and except as otherwise provided herein, to remove all persons and property thereupon, and to store such property at the Tenant's risk and for the Tenant's account, and the Tenant shall have no further claim thereon or hereunder. The Landlord's re-entry or taking of possession of the Premises shall not be construed as an election on the Landlord's part to terminate this Agreement unless the Landlord shall have given written notice of such intention to the Tenant. In no event shall this Agreement be treated as an asset of the Tenant after any final adjudication in bankruptcy except at the Landlord's option so to treat the same but no trustee, receiver, or liquidator of the Tenant shall have any right to disaffirm this Agreement.

10.3.2 Remedies Upon Abandonment. If the Tenant should default under this Agreement and abandon the Premises, the Landlord may, at its option, enforce all of its rights and remedies under this Agreement, including the right to recover Rent as it becomes due hereunder.

10.3.3 Landlord Right to Continue Lease. In the event of any default under this Agreement by the Tenant (and regardless of whether or not the Tenant has abandoned the Premises), this Agreement shall not terminate (except by an exercise of the Landlord's right to terminate under Section 10.3.1) unless the Landlord makes such election by the giving of any notice (including, without limitation, any notice preliminary or prerequisite to the bringing of legal proceedings in unlawful detainer) to terminate the Tenant's right to possession. For so long as this Agreement continues in effect, the Landlord may enforce all of the Landlord's rights and remedies under this Agreement, including, without limitation, the right to *recover* all Rent and other monetary payments as they become due hereunder. For the purposes of this Agreement, the following shall not constitute termination of the Tenant's right to possession: (a) acts of maintenance or preservation or efforts to relet the Premises; or (b) the appointment of a receiver upon initiative of the Landlord to protect the Landlord's interest under this Agreement.

10.3.4 Right to Injunction: Specific Performance. In the event of a default by the Tenant under this Agreement, the Landlord shall have the right to commence an action against the Tenant for damages, injunction and/or specific performance. The Tenant's failure, for any reason, to comply with a court-ordered injunction or order for specific performance shall constitute a breach under this Agreement.

10.3.5 Right to Receiver. Following the occurrence of an Event of Default, if the Tenant fails after receipt of a Notice of Default to cure the default within the time period set forth in this Agreement, the Landlord, at its option, may have a receiver appointed to take possession of the Tenant's interest in the Premises with power in the receiver (a) to administer the Tenant's interest in the Premises, (b) to

collect all funds available in connection with the operation of the Premises, and (c) to perform all other acts consistent with the Tenant's obligations under this Agreement, as the court deems proper.

10.4 Remedies Cumulative. No remedy specified in Article X shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy provided hereunder or now or hereafter existing at law or in equity or by statute, and every power and remedy provided by this Agreement may be exercised from time to time and as often as occasion may arise or as may be deemed expedient, subject to any limitations set forth herein.

10.5 No Election of Remedies. The rights given in Article X to receive, collect or sue for any rent or rents, moneys or payments, or to enforce the terms, provisions and conditions of this Agreement, or to prevent the breach or nonobservance thereof, or the exercise of any such right or of any other right or remedy hereunder or otherwise granted or arising, shall not in any way affect or impair or toll the right or power of the Landlord upon the conditions and subject to the provisions in this Agreement to terminate the Tenant's right of possession because of any default in or breach of any of the covenants, provisions or conditions of this Agreement beyond the applicable cure period.

10.6 Survival of Obligations. Nothing herein shall be deemed to affect the right of the Landlord under Article VI of this Agreement to indemnification for liability arising prior to the termination of this Agreement for personal injuries or property damage, nor shall anything herein be deemed to affect the right of the Landlord to equitable relief where such relief is appropriate. No expiration or termination of the Term by operation of law, or otherwise, and no repossession of the Improvements or any part thereof shall relieve the Tenant of its previously accrued liabilities and obligations hereunder, all of which shall survive such expiration, termination or repossession.

ARTICLE XI GENERAL PROVISIONS

11.1 Force Majeure: Extension of Times of Performance. Subject to the limitations set forth below, performance by either Party shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended where delays are due to: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, governmental restrictions or priority, litigation, including court delays, unusually severe weather, acts or omissions of the other Party, acts or failures to act of any public or governmental agency or entity (other than the Parties which shall not excuse delay in performance), or any other cause beyond the affected Party's reasonable control (collectively, "**Force Majeure**"). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of

the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of the commencement of the cause and such extension is not rejected in writing by the other Party within ten (10) days of receipt of the notice. Neither Party shall unreasonably withhold consent to an extension of time pursuant to this Section 11.1.

Times of performance under this Agreement may also be extended in writing by the mutual agreement of the Landlord and the Tenant (acting in the discretion of its Fire Chief unless he or she determines in his or her discretion to refer such matter to the Board of Directors of the Tenant). Each Party expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Effective Date.

11.2 Representations of Landlord and Tenant.

11.2.1 The Tenant hereby represents and warrants that all of the following are true and correct as of the Effective Date:

(a) The Tenant has taken all requisite action in connection with the execution of this Agreement and the undertaking of the obligations set forth herein. This Agreement constitutes the legally valid and binding obligation of the Tenant, enforceable against the Tenant in accordance with its terms, except as it may be affected by bankruptcy, insolvency or similar laws or by legal or equitable principles relating to or limiting the rights of contracting parties generally; and

(b) The execution of this Agreement and the acceptance of the obligations set forth herein do not violate any court order or ruling binding upon the Tenant or any provision of any indenture, agreement or other instrument to which Tenant is a party or may be bound. Neither the entry into nor the performance of this Agreement will violate, be in conflict with or constitute a default under any charter, bylaw, partnership agreement, trust agreement, mortgage, deed of trust, indenture, contract, judgment, order or other agreement, charge, right or interest applicable to the Tenant.

11.2.2 Landlord hereby represents and warrants that all of the following are true and correct as of the Effective Date:

(a) The Landlord has taken all requisite action in connection with the execution of this Agreement and the undertaking of the obligations set forth herein. This Agreement constitutes the legally valid and binding obligation of the Landlord, enforceable against the Landlord in accordance with its terms, except as it may be affected by bankruptcy, insolvency or similar laws or by legal or equitable principles relating to or limiting the rights of contracting parties generally; and

(b) The execution of this Agreement and the acceptance of the obligations set forth herein do not violate any court order or ruling binding upon

the Landlord or any provision of any indenture, agreement or other instrument to which the Landlord is a party or may be bound. Neither the entry into nor the performance of this Agreement will violate, be in conflict with or constitute a default under any charter, bylaw, partnership agreement, trust agreement, mortgage, deed of trust, indenture, contract, judgment, order or other agreement, charge, right or interest applicable to the Landlord.

11.3 Miscellaneous.

11.3.1 Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

11.3.2 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section 11.4.2. All such notices shall be sent by:

- (i) personal delivery, in which case notice is effective upon delivery;
- (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;
- (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service; or
- (iv) email transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by email shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

Tenant: Kensington Fire Protection District
217 Arlington Ave
Kensington CA 94707
Attn: Bill Hansell, General Manager
Tel: 510-527-8395
Email: bhansell@kensingtonfire.org

With copy to: Meyers Nave
1999 Harrison St, 9th Fl
Oakland CA 94612
Attn: John Bakker, General Counsel
Tel: 510-808-2000
Email: jbakker@meyersnave.com

Landlord: Unitarian Universalist Church of Berkeley
1 Lawson Rd
Kensington CA 94707
Attn: Tess Snook O'Riva, Executive Director
Email: ed@uucb.org

11.3.3 Captions: Construction. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree that since both Parties have participated in the negotiation and drafting of this Agreement with the advice of counsel, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

11.3.4 Successors and Assigns. Subject to the restrictions on transfer set forth in Article IX, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any permitted successor and assign of such Party who has acquired an interest in compliance with this Agreement as if in every case so expressed.

11.3.5 Short Form of Lease. The Parties contemplate that this Agreement should not and shall not be filed for record, but in lieu thereof, at the request of either Party, a memorandum of lease shall be executed by the Parties and recorded in the Official Records of Contra Costa County.

11.3.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement shall be filed in the Superior Court of Contra Costa County, California or in the Federal District Court for the Northern District of California.

11.3.7 Attorney's Fees. If either Party commences an action against the other to enforce any obligation contained herein, or to interpret any provision hereof, the prevailing party shall be entitled to recover from the other Party reasonable counsel fees, costs and necessary disbursements, as determined by the court having jurisdiction over the action.

11.3.8 Indemnity Includes Defense Costs. In any case where either Party is obligated under an express provision of this Agreement, to indemnify and to save the other Party harmless from any damage or liability, the same shall be deemed to include defense of the indemnitee by the indemnitor, such defense to be through legal counsel reasonably acceptable to the indemnitee.

11.3.9 No Third-Party Beneficiaries: Disclaimer of Partnership, Lender/Borrower Relationship. Nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the Parties any rights or remedies hereunder. The relationship of the parties under this Agreement is solely that of landlord and tenant, and it is expressly understood and agreed that the Landlord does not as a result of this Agreement in any way or for any purpose become a partner of the Tenant or a joint venturer with the Tenant in the conduct of the Tenant's business or otherwise. This Agreement is not intended to, and shall not be construed to, create the relationship of principal and agent, partnership, joint venture, or association as between the Landlord and the Tenant. It is further expressly understood and agreed that this Agreement is not intended to, and shall not be construed to create the relationship of lender and borrower, and the Landlord does not, solely as a result of this Agreement, become a lender to the Tenant.

11.3.10 Entire Agreement. This Agreement, together with Exhibit A, Exhibit B, and Exhibit C, which by this reference are hereby incorporated herein, contains the entire agreement between the Parties relative to the transactions covered hereby. All previous correspondence, communications, discussions, agreements, understandings or proposals and acceptances thereof between the Parties or their representatives, whether oral or written, are deemed to have been integrated into and superseded by this Agreement and are of no further force and effect except as expressly provided in this Agreement.

11.3.11 Waiver:Modification. No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any subsequent breach of the same or any other covenant or provision hereof. No waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the waiving party. This Agreement may be

amended or modified only by a written instrument executed by the Parties.

11.3.12 Time is of the Essence. Time is of the essence of this Agreement and of each provision hereof.

11.3.13 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

11.3.14 Action by the Parties. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the Tenant in its capacity as tenant hereunder is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the Fire Chief or by any person who shall have been designated by the Fire Chief, without further approval by the Board of Directors of the Tenant unless the Fire Chief determines in his or her discretion that such matter requires consideration by such Board of Directors.

11.3.15 Non-Liability of Officials, Employees and Agents. No member, official, employee or agent of the Tenant or the Tenant shall be personally liable to Landlord or its successors in interest in the event of any default or breach by the Tenant or for any amount which may become due to the Landlord or the Tenant's permitted successors in interest pursuant to this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the Effective Date.

LANDLORD:
Unitarian Universalist Church of Berkeley

TENANT:
Kensington Fire Protection District,
A fire protection district.

By: _____

By: _____

APPROVED AS TO FORM:

By: _____

General Counsel

Exhibit A

DEPICTION OF PREMISES

DRAFT



Exhibit B

ALTERATIONS AND IMPROVEMENTS

DRAFT

Exhibit C

CERTIFICATES OF INSURANCE

DRAFT