



Office of the City Manager

12

CONSENT CALENDAR
December 3, 2024

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Terrence Davis, Director, Public Works

Subject: Lease Amendment: We Wield The Hammer at 2440 Durant Avenue in the Telegraph-Channing Mall and Garage

RECOMMENDATION

Adopt first reading of an Ordinance authorizing the City Manager to execute a Lease Amendment with We Wield The Hammer, a 501c3 organization, to use and occupy 2440 Durant Avenue for a five (5) year lease term with option to extend for one additional five (5) year term. This Lease Amendment modifies the Lease Commencement Date, Rent Commencement Date and increases months of rent abatement from six (6) to nine (9) months.

FISCAL IMPACTS OF RECOMMENDATION

The original lease of 2440 Durant Avenue to We Wield The Hammer was approved by Ordinance 7,897 on February 13, 2024. That lease anticipated total revenue of \$62,615 for the initial five (5) year term for the 620 square foot retail space and use of building common areas. The initial monthly price per square foot is \$1.75 with an annual adjustment of 3% beginning the second year of the lease. This Lease Amendment, if approved, will reduce total anticipated revenue to \$58,275 a difference of \$4,340.

CURRENT SITUATION AND ITS EFFECTS

Concurrent with the City Council Hearing dates for the original lease, Telegraph-Channing Mall and Garage, the City owned property where 2440 Durant is located, began experiencing plumbing and sewage issues. Over the next several months these issues escalated from impacting one tenant to, directly and indirectly (sewage odors), impacting all tenants. We Wield The Hammer's space was impacted by the issue from January to September of 2024. The City cut cement and removed soil from trenches cut diagonally across the entire store, outside the shop's entrance, and along the building's main hallway and elevator lobby. The volume of debris, open trenches, and concentration of odors inside the shop made it impossible for the tenant to complete improvements; additionally, there was not enough room to store fixtures and materials in the space.

Ultimately a new sewer lateral had to be installed, trench filled and repaved. That work was completed by the City in September 2024, less than a month before WWTH's approved Rent Commencement Date. That date was set predicated on the previous six

(6) months being a rent abatement period to allow the tenant time to complete improvements to their space. The City negotiated the following compromise with the tenant:

- Lease Commencement Date changes from April 1, 2024 to September 1, 2024;
- Rent Abatement Period changes from six months to nine (9) months;
- Rent Commencement Date changes from October 1, 2024 to July 1, 2025; and
- Expiration Date of the initial term of the lease changes from March 31, 2029 to August 31, 2029.

These changes both benefit the tenant and the City. Karen Smith, representative of We Wield The Hammer agreed to these amendments. Except for the amendments agreed to herein, the Lease effective as of March 14, 2024 remains in full force and effect.

BACKGROUND

Finding tenants for the Telegraph-Channing Mall is challenging due to the building's age, limited street frontage and lack of direct access to pedestrians. By amending this lease, the City is able to retain a tenant that is less dependent on UC Berkeley's student population and able to draw customers from the larger region year around. Staff anticipates other student-dependent businesses in the Mall will benefit from ongoing tenancy at this location.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

We Wield The Hammer is a women and minority-owned, unique, and financially qualified business and ideal tenant for the Telegraph-Channing Mall and Garage. These lease adjustments represent a compromise acceptable to both tenant and landlord.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Dionne Early, Community Development Project Coordinator – Real Property, (510) 981-6453

Attachments:

1: Ordinance

Exhibit A: Lease Amendment

Exhibit B: Original Lease Agreement with Amendments

ORDINANCE NO. -N.S.

LEASE AMENDMENT: WE WIELD THE HAMMER AT 2440 DURANT AVENUE IN
THE TELEGRAPH-CHANNING MALL AND GARAGE

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

Section 1. FINDINGS:

The City owns the Telegraph-Channing Mall and Garage, and We Wield The Hammer, a 501c3 nonprofit organization, seeks to lease 2440 Durant Avenue at the premises for purpose of operating a retail business offering specialized classes and related materials to the public. This Lease Amendment only modifies Exhibit B to Lease, *Agreement Specifying Term of Lease* as follows:

- a. Lease Commencement Date changes from April 1, 2024 to September 1, 2024;
- b. Rent Abatement Period changes from six months to nine (9) months;
- c. Rent Commencement Date changes from October 1, 2024 to July 1, 2025; and
- d. Expiration Date of the initial term of the lease changes from March 31, 2029 to August 31, 2029.

Section 2. AUTHORIZATION FOR CITY MANAGER TO ENTER INTO LEASE AMENDMENT AT 2440 DURANT AVENUE, BERKELEY, CA.

The City Manager is hereby authorized to enter into a five-year amended lease agreement with the option for a five-year extension with We Wield The Hammer for real property located at 2440 Durant Avenue, a ground floor retail space in the City of Berkeley Telegraph-Channing Mall and Garage. 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.

Exhibits

- A: Lease Amendment Agreement
- B: Original Lease with Amendments

LEASE AMENDMENT FOR TELEGRAPH-CHANNING MALL

This lease amendment (“**Amendment**”) is made on _____ between the CITY OF BERKELEY ("**Landlord**"), a Charter City organized and existing under the laws of the State of California and We Wield The Hammer ("**Tenant**"), a 501c3 nonprofit organization, who agree as follows:

This lease is made with reference to the following facts and objectives:

A. Landlord is the owner of the real property at 2431 Channing Way, Berkeley, California, ("**premises**") commonly referred to as Telegraph-Channing Mall and Garage as further described in Exhibit A, attached to and made a part of this lease.

B. Tenant entered into a lease (“**Lease**”) with Landlord on February 13, 2024. Tenant is occupying and conducting business at 2440 Durant Avenue located on the ground floor of the premises and identified in Exhibit A, attached to and made part of this lease.

C. Landlord has negotiated with Tenant to modify Exhibit B to the lease, *AGREEMENT SPECIFYING TERM OF LEASE* as follows:

- a. Lease Commencement Date changes from April 1, 2024 to September 1, 2024;
- b. Rent Abatement Period changes from six months to nine (9) months resulting in a Rent Commencement Date changing from October 1, 2024 to July 1, 2025; and
- c. Expiration Date of the initial term of the lease changes from March 31, 2029 to August 31, 2029.

1. **Exhibit B. AGREEMENT SPECIFYING TERM OF LEASE**, is deleted in its entirety and replaced by Exhibit B. AGREEMENT SPECIFYING TERM OF LEASE (REVISED), attached to and made part of this lease.

D. Landlord and Tenant agree that the impact of changes made to Exhibit B to the lease will reduce the anticipated revenue/rent from \$62,615 to \$58,275 a difference of \$4,340 for the initial five (5) year term.

1. Exhibit C. **PAYMENTS**, is deleted in its entirety and replaced by Exhibit C. **PAYMENTS (REVISED)**, attached to and made part of this lease.

Effect: Except for the amendment agreed to herein, the Lease effective as of March 14, 2024 remains in full force and effect.

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

LANDLORD
CITY OF BERKELEY

By: _____
City Manager

THIS LEASE HAS BEEN
APPROVED AS TO FORM
BY THE CITY ATTORNEY
OF THE CITY OF BERKELEY
6/2004

REGISTERED BY:

City Auditor

ATTEST:

Deputy City Clerk

TENANT:
WE WIELD THE HAMMER
A 501c3 NONPROFIT ORGANIZATION

Signature: _____
By: KAREN SMITH _____

City of Berkeley Business License No.

Exhibit B
AGREEMENT SPECIFYING TERM OF LEASE (REVISED)

Attached to and made part of the Lease dated the 13th day of February, 2024, by and between the CITY OF BERKELEY, a municipal corporation, as Landlord, and WE WIELD THE HAMMER, A 501c3 NONPROFIT ORGANIZATION as Tenant ("**Tenant**").

Landlord and Tenant do hereby confirm and acknowledge the following dates:

- a. Lease Commencement Date is September 1, 2024 [DATE MUST BE AT LEAST 30 DAYS AFTER APPROVAL OF ORDINANCE – Lease effective date March 14, 2024]
- b. Rent Commencement Date is July 1, 2025.
- c. Expiration Date of the initial term of the Lease is August 31, 2029 subject to extension as provided in the Lease.

This Agreement shall be binding on the parties hereto, their successor and assigns and all subtenants of Tenant and any other party claiming under or through Tenant. The Lease is in full force and effect as of the date hereof in accordance with its terms, and Tenant is in possession of the Premises. Landlord has fulfilled all of its obligations under the Lease that were required to be fulfilled by Landlord on or prior to the Rent Commencement Date and Tenant has no claim or right of set-off against any Rent (as defined in the Lease) under the Lease.

This Agreement was entered into as of the 17th day of October, 2024.

ATTEST/WITNESS:

LANDLORD:

CITY OF BERKELEY, a municipal corporation

By: _____

Its: City Manager

By: _____

Its: City Attorney

By: _____

Its: City Auditor

ATTEST/WITNESS:

TENANT:

WE WIELD THE HAMMER
a 501c3 NON-PROFIT ORGANIZATION

By: _____

KAREN SMITH

Exhibit C
PAYMENT (REVISED)

RENT PAYMENT SCHEDULE: We Weld the Hammer 2440 Durant@TCM						
	YEAR	1	2	3	4	5
SEPTEMBER	1	\$ -	\$ 1,117.55	\$ 1,151.08	\$ 1,185.61	\$ 1,221.18
OCTOBER	2	\$ -	\$ 1,117.55	\$ 1,151.08	\$ 1,185.61	\$ 1,221.18
NOVEMBER	3	\$ -	\$ 1,117.55	\$ 1,151.08	\$ 1,185.61	\$ 1,221.18
DECEMBER	4	\$ -	\$ 1,117.55	\$ 1,151.08	\$ 1,185.61	\$ 1,221.18
JANUARY	5	\$ -	\$ 1,117.55	\$ 1,151.08	\$ 1,185.61	\$ 1,221.18
FEBRUARY	6	\$ -	\$ 1,117.55	\$ 1,151.08	\$ 1,185.61	\$ 1,221.18
MARCH	7	\$ -	\$ 1,117.55	\$ 1,151.08	\$ 1,185.61	\$ 1,221.18
APRIL	8	\$ -	\$ 1,117.55	\$ 1,151.08	\$ 1,185.61	\$ 1,221.18
MAY	9	\$ -	\$ 1,117.55	\$ 1,151.08	\$ 1,185.61	\$ 1,221.18
JUNE	10	\$ -	\$ 1,117.55	\$ 1,151.08	\$ 1,185.61	\$ 1,221.18
JULY	11	\$ 1,085.00	\$ 1,117.55	\$ 1,151.08	\$ 1,185.61	\$ 1,221.18
AUGUST	12	\$ 1,085.00	\$ 1,117.55	\$ 1,151.08	\$ 1,185.61	\$ 1,221.18
ANNUAL TOTAL:		\$ 2,170.00	\$ 13,410.60	\$ 13,812.92	\$ 14,227.31	\$ 14,654.12
				<i>9 MONTH RENT ABATEMENT:</i>	<i>\$ 9,765.00</i>	
				INITIAL TERM TOTAL:	\$ 58,274.95	
PREMISES AREA (SQFT):			620			
MONTHLY RATE PER SQFT:			\$ 1.75			
INITIAL MONTHLY RENT:			\$ 1,085.00			
ANNUAL INCREASE:			3.00%			
LEASE START DATE:			September 1, 2024			
INITIAL TERM:			60 MONTHS			
INITIAL TERM TERMINATION DATE:			August 31, 2029			
NOTIFY LANDLORD FOR OPTION BY:			March 1, 2029			
OPTION START DATE:			September 1, 2028			
OPTION TERM:			60 MONTHS			
OPTION TERMINATION DATE:			August 31, 2033			

