


Office of the City Manager

CONSENT CALENDAR

July 13, 2004

To: Honorable Mayor and
Members of the City Council

From:  Phil Kamlarz, City Manager

Subject: Sublease Agreement: 2809 Telegraph Avenue

RECOMMENDATION

Adopt first reading of an Ordinance authorizing the City Manager to execute a sublease agreement with Internet-Journals, Inc. (dba as The Berkeley Electronic Press and bepress) for office space, located at 2809 Telegraph Avenue, Suite 202.

FISCAL IMPACTS OF RECOMMENDATION

The lease payment for 2809 Telegraph Avenue is made from the 850-5412-463-5010-03CB71 (Building Purchases & Management Fund. The City will continue to pay the current rent of approximately \$6,144/mo to the owner of the property through 12/14/06, the lease end. This sublease income of \$3,000/mo will be deposited in the above fund.

Sublease revenue is estimated with a minimum 4% annual rent increase commencing in the second year. Revenue for the sublease period (two-year and three-month) 2004 - 2006 is approximately \$85,489 and will partially offset the remaining City rent due of approximately \$177,000. Sublease revenue will be entered into account 850-5412-463-5010-03CB71 (Building Purchases & Management Fund). CMS #KVHC1

CURRENT SITUATION AND ITS EFFECTS

Currently the City leases a 3,726 square foot office at 2809 Telegraph in Berkeley from Philip O'Hay. The rent on the five-year lease, ending December 14, 2006, is \$6,144 a month and is budgeted from 850-5412-463-5010-03CB71. The property is surplus to City needs and is a drain on resources.

City Charter Article VIII, Section 44 (7) requires that the leasing of public property shall be by City Ordinance.

BACKGROUND

The Department of Health and Human Services entered into a five-year lease for approximately 3,726 square feet of administrative office space on December 15, 2001. This space became available in April 2004 after the Mental Health Division administrative staff moved into 1947 Center Street. A request to the owner, Philip O' Hay, that Mental Health Division service providers and their clients use the space was refused. City staff attempted to rent the site using

advertising in the Chronicle, Daily Planet and Craig's List. Mailers on availability of the property were also sent to the largest employers in Berkeley. Marketing discussions were held with Realtors Michael Korman and John Norheim and the vacancy was posted on the Public Works Real Estate portion of the City's web site.

From these discussions and marketing attempts it became clear that finding a tenant for the space would be difficult. There is currently over 200,000 square feet of vacant office and retail space available in Berkeley. A prominent realtor's sign has been on the property since April advertising another vacancy in the same building. Our advertising efforts produced three inquiries but only one viable tenant for the property. Their offer was only about half of what the City is paying.

RATIONALE FOR RECOMMENDATION

An agent prominent in the Berkeley market and the owner's agent both stated that the market value for this property was approximately \$4700/month but conceded that it could go vacant for six months or more while a tenant is found. There would also be an additional expense for the real estate commission.

The lease term expires on December 14, 2006. Considering the time for additional marketing of the property and approval of consultant marketing, an immediate sublease is the best choice to maximize revenue.

ALTERNATIVE ACTIONS CONSIDERED

Two alternative actions were considered. Staff proposed continued HHS use as a mental health clinic but the owner rejected that use. Using a broker to market the property did not seem economically advantageous due to additional costs and delays. The immediate availability and quality of the subject tenant makes bepress the best choice for this sublease.

CONTACT PERSON

Rene Cardinaux, Director of Public Works.....	981-6300
Hallie Llamas, Real Property Administrator.....	981-6334
William Foley, Real Property Agent.....	981-6337

Approved:



Rene Cardinaux, Director of Public Works

Attachments:

1: Lease

ADOPT FIRST READING OF AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A SUBLEASE AGREEMENT WITH INTERNET-JOURNALS, INC. (DBA AS THE BERKELEY ELECTRONIC PRESS AND BEPRESS) FOR OFFICE SPACE, LOCATED AT 2809 TELEGRAPH AVENUE, SUITE 202.

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

Section 1. The City Council finds as follows:

- a. Currently 2809 Telegraph Avenue suite 202 is leased by the City of Berkeley until December 14, 2006 but is surplus to City needs.
- b. After advertising locally in the Chronicle, Daily Planet and Craig's List, staff received one qualified application. Based on a review of market rents in the area and consultation with prominent area brokers the most economic way to dispose of the surplus space is to rent the site to the only available acceptable tenant. A rental rate of \$3,000 a month was negotiated with Internet-Journals, Inc (dba The Berkeley Electronic Press and bepress).
- c. Only one potential tenant is available now and acceptable to the owner. This tenant, bepress, is the best choice for sublessee.
- d. The remaining lease term ends on December 14, 2006. The tenant will pay base rent plus an annual CPI adjustment based on the greater of 1) monthly rent in effect immediately preceding the adjustment date plus four percent (4%), or 2) the monthly rent as adjusted for an increase, if any, in the CPI.

Section 2. The City Manager is hereby authorized to execute a sublease agreement with Internet-Journals, Inc (dba The Berkeley Electronic Press and bepress) at 2809 Telegraph Avenue suite 202 for office space. The sublease shall be on substantially the terms set forth in Attachment 1.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the glass case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen (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.

SUBLEASE

This sublease is made on _____, _____, between the CITY OF BERKELEY ("Sublessor"), a Charter City organized and existing under the laws of the State of California and Internet-Journals, Inc. (dba as The Berkeley Electronic Press and bepress) ("Tenant"), a sublessee, who agree as follows:

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

A. Sublessor is the lessee of the real property at 2809 Telegraph Avenue Suite 202, Berkeley, California, ("premises") as further described in Exhibit A, attached to and made a part of this sublease.

B. Tenant is willing to sublease the premises from Sublessor pursuant to the provisions stated in this sublease.

C. Tenant wishes to sublease the premises for the purpose of operating administrative office.

D. Tenant has examined the premises and is fully informed of the condition thereof.

1. DESCRIPTION OF PREMISES

Sublessor- subleases to Tenant and Tenant subleases from Sublessor the premises described above.

2. TERM

The term of this sublease shall commence on the effective date of the ordinance which authorizes this sublease unless the ordinance provides otherwise and shall be for a period from the effective date of this sublease until December 14, 2006.

3. RENT

Tenant shall pay to Sublessor as monthly rent, without deduction, setoff, prior notice, or demand, the sum of \$3,000.00 per month in advance on the first day of each month, commencing on the date the term commences, and continuing during the term. Monthly rent for the first month or portion of it shall be paid on the day the term commences. Monthly rent for any partial month shall be prorated at the rate of 1/30th of the monthly rent per day. All rent shall be paid to Sublessor at the address to which notices to Sublessor are given.

4. PERIODIC RENT INCREASES

a. The monthly rent shall be increased at the commencement of the second year of the term and each year thereafter ("the adjustment date") to the greater of: 1) the monthly

rent in effect immediately preceding the adjustment date plus four percent (4%); or 2) the monthly rent as adjusted for the change in the Consumer Price Index (CPI), as calculated below.

b. The base for computing the CPI adjustment is the Consumer Price Index for all Urban Consumers (base years 1982-1984 = 100) for San Francisco-Oakland-San Jose, published by the U.S. Department of Labor, Bureau of Labor Statistics ("Index"), which is in effect on the date of the commencement of the term ("Beginning Index"). The Index published most immediately preceding the adjustment date in question ("Extension Index") is to be used in determining the amount of the CPI adjustment. If the Extension Index has increased over the Beginning Index, the CPI adjustment shall be calculated by multiplying the monthly rent by a fraction consisting of the Extension Index as the numerator and the Beginning Index as the denominator. If the Index is discontinued or revised during the term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

5. SECURITY DEPOSIT

a. As security for the full and faithful performance by Tenant of each and every term, provision, covenant, and condition of this sublease, Tenant shall deposit with Sublessor cash in an amount equal to one month's payment of rent. Such security shall be deposited on or before the effective date of the ordinance authorizing this sublease.

b. If Tenant defaults in respect to any of the terms, provisions, covenants and conditions of this sublease, including but not limited to the payment of rent, Sublessor may use the security deposit or any portion of it to cure the default or compensate the Sublessor for all damage sustained by Sublessor resulting from Tenant's default. If Sublessor so uses any portion of the security deposit, Tenant will restore the security deposit to its original amount within ten (10) days after written demand from Sublessor.

c. Sublessor will not be required to keep the security deposit separate from its own funds and Tenant shall not be entitled to interest on the security deposit. The security deposit will not be a limitation on Sublessor's damages or other rights under this sublease, or a payment of liquidated damages, or an advance payment of the rent. If Tenant pays the rent and performs all of its other obligations under this sublease, Sublessor shall return the unused portion of the security deposit to Tenant within sixty (60) days after the end of the term; however, if Sublessor has evidence that the security deposit has been assigned to an assignee of the Tenant, Sublessor shall return the security deposit to the assignee. Sublessor may deliver the security deposit to a purchaser of the premises and be discharged from further liability with respect to it.

6. LATE CHARGES

Tenant acknowledges that late payment by Tenant to Sublessor of rent and other sums due hereunder will cause Sublessor to incur costs not contemplated by this sublease, the exact amount of which will be extremely difficult to ascertain. Therefore, if any installment of rent or any other sum due from Tenant is not received by Sublessor within ten (10) days after

such amount is due, then, without any requirement for notice to Tenant, Tenant shall pay to Sublessor a late charge equal to ten percent (10%) of such overdue amount. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Sublessor will incur by reason of late payment by Tenant. Acceptance of such late charge by Sublessor shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Sublessor from exercising any of the other rights and remedies available to it.

7. USE OF PREMISES; OPERATION

a. Tenant will use the premises for the purpose of administrative office space and agrees to continuously and uninterruptedly occupy and use the entire subleased premises for said purpose and to maintain adequate personnel for the efficient service of clients or customers. Tenant shall not use nor permit the use of the whole or any part of the premises for any other purpose without the Sublessor's prior written consent.

b. Business may be conducted with the public on the subleased premises at any time on any day, provided that, to do business after 10:00 p.m. on any day Tenant shall have obtained a permit therefor.

8. TAXES AND ASSESSMENTS

a. Tenant recognizes and understands that this sublease may create a possessory interest subject to property taxation and assessment and utility taxation, and that the Tenant will be responsible for the payment of any property taxes and assessments, and utility taxes levied on such interest.

b. Tenant shall pay all taxes on its personal property, fixtures and on its subleasehold or possessory interest in the subleased premises and any other assessment which may be lawfully levied.

9. UTILITIES

Tenant agrees to pay any and all charges for electricity, gas, heat, cooling, telephone, sewer use, water, refuse collection and other utilities used in the premises. Tenant shall arrange for refuse collection services by the City of Berkeley.

10. MAINTENANCE AND REPAIR

a. Tenant is responsible for ensuring that the premises meet all applicable City of Berkeley codes prior to occupancy under this sublease.

b. Tenant shall keep and maintain in good order, condition and repair (except for reasonable wear and tear) all portions of the premises including without limitation, all fixtures, interior walls, floors, ceilings, plumbing, glass, roof, heating, ventilating and sewage facilities serving the subleased premises, landscaping, and the sidewalk adjacent to the premises.

c. Tenant shall make all required repairs upon demand by Sublessor. Failure to make such repairs within thirty (30) days of the Sublessor's demand shall constitute a default by Tenant.

11. IMPROVEMENTS

a. Tenant shall not erect additions or structures nor make nor cause to be made any alterations, improvements, additions, or fixtures that affect the exterior or interior of the premises, nor shall Tenant mark, paint, drill or in any way deface any floors, walls, ceilings, or partitions of the premises without first providing thirty (30) days' written notice to Sublessor. If Sublessor raises no objections within thirty (30) days after receipt of such notice, Tenant may proceed.

b. Tenant shall require all contractors to provide a labor and materials bond for the full amount of the contract. Tenant shall pay, when due, all sums of money that may be due or become due for any labor, services, materials, supplies or equipment furnished to or for Tenant, in, at, upon or about the subleased premises and which may be secured by any mechanic's, materialmen's or other lien against the premises or Sublessor's interest therein.

c. All alterations, improvements or additions that are now or in the future attached permanently to the premises shall be the property of Sublessor and remain with the premises at the termination of this sublease, except that Sublessor can elect within thirty (30) days of the termination of the sublease to require Tenant, at its cost, to remove any alterations, improvements or additions Tenant has made to the premises.

12. INDEMNIFICATION

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

13. INSURANCE

a. Tenant at its cost shall maintain public liability and property damage insurance with a single combined liability limit of \$1,000,000 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 preceding indemnity provisions. All insurance shall name the City of Berkeley, its officers, agents, volunteers and employees as additional insureds and shall provide primary coverage with respect to the City.

b. If the insurance referred to above is written on a Claims Made Form, then following termination of this sublease, 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 sublease.

c. Tenant at its cost shall maintain on all its personal property, tenant's improvements, and alterations, in on, or about the premises, a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements. This coverage shall be considered primary, and 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.

d. If Tenant employs any person, it shall carry workers' compensation and employer's liability insurance and shall provide a certificate of insurance to the Sublessor. 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 Sublessor; provide for a waiver of any right of subrogation against Sublessor to the extent permitted by law; and be approved as to form and sufficiency by the Sublessor's Risk Manager.

e. Tenant shall forward all insurance documents to Real Property Administrator, City of Berkeley Public Works Department, 1947 Center Street Suite 400, Fourth Floor, Berkeley, California, 94704.

14. COMPLIANCE WITH LAW AND SAFETY

a. Tenant shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the Tenant's activities, including all provisions of the Occupational Safety and Health Act of 1979 and all amendments thereto, and all applicable federal, state, municipal, and local safety regulations. All Tenant's activities must be in accordance with these laws, ordinances, codes, and regulations.

b. If a death, serious personal injury, or substantial property damage occurs in, on, or about the premises, Tenant shall immediately notify the Sublessor's Risk Management Office by telephone. If any accident occurs on the premises, Tenant shall promptly submit a written report to Sublessor, in such form as Sublessor may require. This report shall include the following information: 1) name and address of the injured or deceased person(s), (2) name and address of Tenant's contractor, if any, (3) name and address of Tenant's liability insurance carrier, and (4) a detailed description of the accident.

c. If a release of hazardous materials or hazardous waste that cannot be controlled occurs on the premises, Tenant shall immediately notify the City of Berkeley Police Department and the City's Emergency and Toxics Management Office. Tenant shall not store hazardous materials or hazardous waste on the premises without a proper permit from the City.

15. NON-DISCRIMINATION AGAINST PERSONS WITH DISABILITIES

a. If Tenant provides any aid, service or benefit to others on the City's behalf, Tenant shall, in the provision of such aid, service or benefit, observe and comply with all applicable provisions of Title II of the Americans with Disabilities Act of 1990 and any amendments thereto. Tenant shall further observe and comply with all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination against individuals with disabilities or ensuring that individuals with disabilities are not excluded from participating in or receiving benefits, services or activities of the City.

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

16. CITY NON-DISCRIMINATION ORDINANCE

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

a. The Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

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

17. NUCLEAR FREE BERKELEY

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

18. OPPRESSIVE STATES

a. In accordance with Resolution No. 59,853-N.S., Tenant certifies that it has no contractual relations with, and agrees during the term of this Sublease to forego contractual relations to provide personal services to or to purchase, sell, sublease or distribute commodities in the conduct of business with, the following entities:

- (1) The governing regime in any Oppressive State.
- (2) Any business or corporation organized under the authority of the governing regime of any Oppressive State.
- (3) Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of its contract with the City), for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

b. For purposes of this sublease, the Tibet Autonomous Region and the provinces of Amdo, Kham, and U-Tsang shall be deemed oppressive states.

c. Tenant's failure to comply with this section shall constitute a default of this sublease and Sublessor may terminate this sublease pursuant to Section 26. In the event that the City terminates this sublease due to a default under this provision, City may deem Tenant a non-responsible bidder for five (5) years from the date this sublease is terminated.

19. BERKELEY LIVING WAGE ORDINANCE

a. Tenant agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance. If Tenant employs six (6) or more part-time, full-time or stipend employees, and generates \$350,000 or more in annual gross receipts, Tenant will be required to provide all eligible employees with City mandated minimum compensation during the term of this sublease, as defined in B.M.C. Chapter 13.27, and well as comply with the terms enumerated herein.

b. Tenant shall be required to maintain all reasonable records and documents that would establish whether Tenant is subject to Berkeley's Living Wage Ordinance (LWO). If Tenant is subject to the LWO, as defined therein, Tenant shall be further required to maintain monthly records of those employees located on the subleased premises. These records shall include the total number of hours worked, the number of hours spent providing service on the subleased 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 sublease. The records described in this Section shall be made available upon the City's request. The failure to produce these records upon demand shall be considered a default, subject to the provisions contained in sections 25 and 26 herein.

c. If Tenant is subject to the LWO, Tenant shall include the requirements of the ordinance, as defined in B.M.C. Chapter 13.27, in any and all subleases in which Tenant enters with regard to the subject premises. Subtenants shall be required to comply with this ordinance with regard to any employees who spend 25% or more of their compensated time on the subleased property.

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

Tenant's failure to comply with this Section shall constitute default of the sublease, upon which City may terminate this sublease pursuant to Section 26.

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.

20. BERKELEY EQUAL BENEFITS ORDINANCE

a. Tenant hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Tenant is currently subject to the Berkeley Equal Benefits Ordinance, Tenant will be required to provide all eligible employees with City mandated equal benefits during the term of this sublease, as defined in B.M.C. Chapter 13.29, as well as comply with the terms enumerated herein.

b. If Tenant is currently or becomes subject to the 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 a default, subject to the provisions of Sections 25 and 26 of this sublease.

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

Tenant's failure to comply with this Section shall constitute default of the sublease, upon which City may terminate this sublease pursuant to Section 26.

In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Tenant's failure to provide its

employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Tenant's breach.

21. 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.

22. SIGNS

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

23. DAMAGE OR DESTRUCTION

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

24. EMINENT DOMAIN

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

Tenant in accordance with this sublease.

25. DEFAULT BY TENANT

a. The occurrence of any of the following shall constitute a default by Tenant:

1. Failure to pay rent when due, if the failure continues for 10 days after notice has been given to Tenant.
2. Abandonment and vacation of the premises (failure to occupy and operate the premises for 14 consecutive days shall be deemed an abandonment and vacation).
3. Failure to perform any other provision of this sublease if the failure to perform is not cured within 30 days after notice has been given to Tenant. If the default cannot reasonably be cured within 30 days, Tenant shall not be in default of this sublease if Tenant commences to cure the default within the 30-day period and diligently and in good faith continues to cure the default.

b. Notices given under this paragraph shall specify the alleged default and the applicable sublease provisions, and shall demand that Tenant perform the provisions of this sublease or pay the rent that is in arrears, as the case may be, within the applicable period of time, or quit the premises. No such notice shall be deemed a forfeiture or a termination of this sublease unless Sublessor so elects in the notice. The purpose of the notice requirements set forth in this section is to extend the notice requirements of the unlawful detainer statutes of California.

26. SUBLESSOR'S REMEDIES

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

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

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

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

i. The worth, at the time of award, of the unpaid rent that had been earned at the time of termination of this sublease;

ii. The worth, at the time of award, of the amount by which the unpaid rent that would have been earned after the date of termination of this sublease until the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided;

iii. The worth, at the time of award, of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided; and

iv. Any other amount, and court costs, necessary to compensate Sublessor for all detriment proximately caused by Tenant's default.

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

c. Appointment of Receiver. If Tenant is in default of this sublease Sublessor shall have the right to have a receiver appointed to collect rent and conduct Tenant's business. Neither the filing of a petition for the appointment of a receiver nor the appointment itself shall constitute an election by Sublessor to terminate this sublease.

d. Sublessor's Right to Cure. Sublessor, at any time after Tenant commits a default, can cure the default at Tenant's cost. If Sublessor at any time, by reason of Tenant's default, pays any sum or does any act that requires the payment of any sum, the sum paid by Sublessor shall be due immediately from Tenant to Sublessor at the time the sum is paid, and if paid at a later date shall bear interest at the maximum rate an individual is permitted by law to charge from the date the sum is paid by Sublessor until Sublessor is reimbursed by Tenant. The sum, together with interest on it, shall be additional rent.

27. ASSIGNMENT AND SUBLETTING

Tenant shall not voluntarily assign or encumber its interest in this sublease or in the premises, or sublease all or any part of the premises, or allow any other person or entity (except Tenant's authorized representative) to occupy or use all or any part of the premises, without first obtaining Sublessor's consent. Any assignments, encumbrance, or sublease without Sublessor's consent shall be voidable and, at Sublessor's election, shall constitute a default. No consent to any assignment, encumbrance, or sublease shall constitute a further waiver of the provisions of this paragraph.

28. ENTRY

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

29. NOTICES

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

To the Sublessor: Real Property Administrator
 City of Berkeley Public Works Department
 1947 Center Street, Suite 400
 Berkeley, California, 94704

To the Tenant: Berkeley Electronic Press

Greg Tanunbaum, President
2809 Telegraph Avenue Suite 202
Berkeley, California, 94704

30. WAIVER

No delay or omission in the exercise of any right or remedy of Sublessor on any default by Tenant shall impair such a right or remedy or be construed as a waiver. The receipt and acceptance by Sublessor of delinquent rent shall not constitute a waiver of any other default; it shall constitute only a waiver of timely payment for the particular rent payment involved. Any waiver by Sublessor of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of the sublease.

No act or conduct of Sublessor, including, without limitation, the acceptance of the keys to the premises, shall constitute an acceptance of the surrender of the premises by Tenant before the expiration of the term. Only a notice from Sublessor to Tenant shall constitute acceptance of the surrender of the premises and accomplish a termination of the sublease.

Sublessor's consent to or approval of any act by Tenant requiring Sublessor's consent or approval shall not be deemed to waive or render unnecessary Sublessor's consent to or approval of any subsequent act by Tenant.

31. EXCUSABLE DELAYS

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

32. OPTION TO RENEW

There is no option to renew.

33. HOLDING OVER

If Tenant remains in possession of the premises with Landlord's consent after the expiration of the term of this lease without having exercised any option to renew this lease, or after the termination of any such option period, such possession by Tenant shall be construed to be a tenancy from month-to-month, terminable on thirty (30) days' notice given at any time by either party. All provisions of this lease, except those pertaining to term and rent, shall apply to the month-to-month tenancy. Starting December 15, 2006 rent will increase to \$9,000 per month.

34. SURRENDER OF PREMISES, REMOVAL OF PERSONAL PROPERTY

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

35. TERMS BINDING ON SUCCESSORS

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

36. TIME OF ESSENCE

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

37. COVENANTS AND CONDITIONS

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

38. GOVERNING LAW

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

39. ENTIRE AGREEMENT, AMENDMENTS

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

40. CONSENT OF PARTIES

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

41. 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.

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///

IN WITNESS WHEREOF, Sublessor and Tenant have executed this sublease as of the date written on the first paragraph of this sublease.

Approved as to form:

CITY OF BERKELEY

City Attorney

By _____
City Manager

Registered by:

Attest:

City Auditor

City Clerk

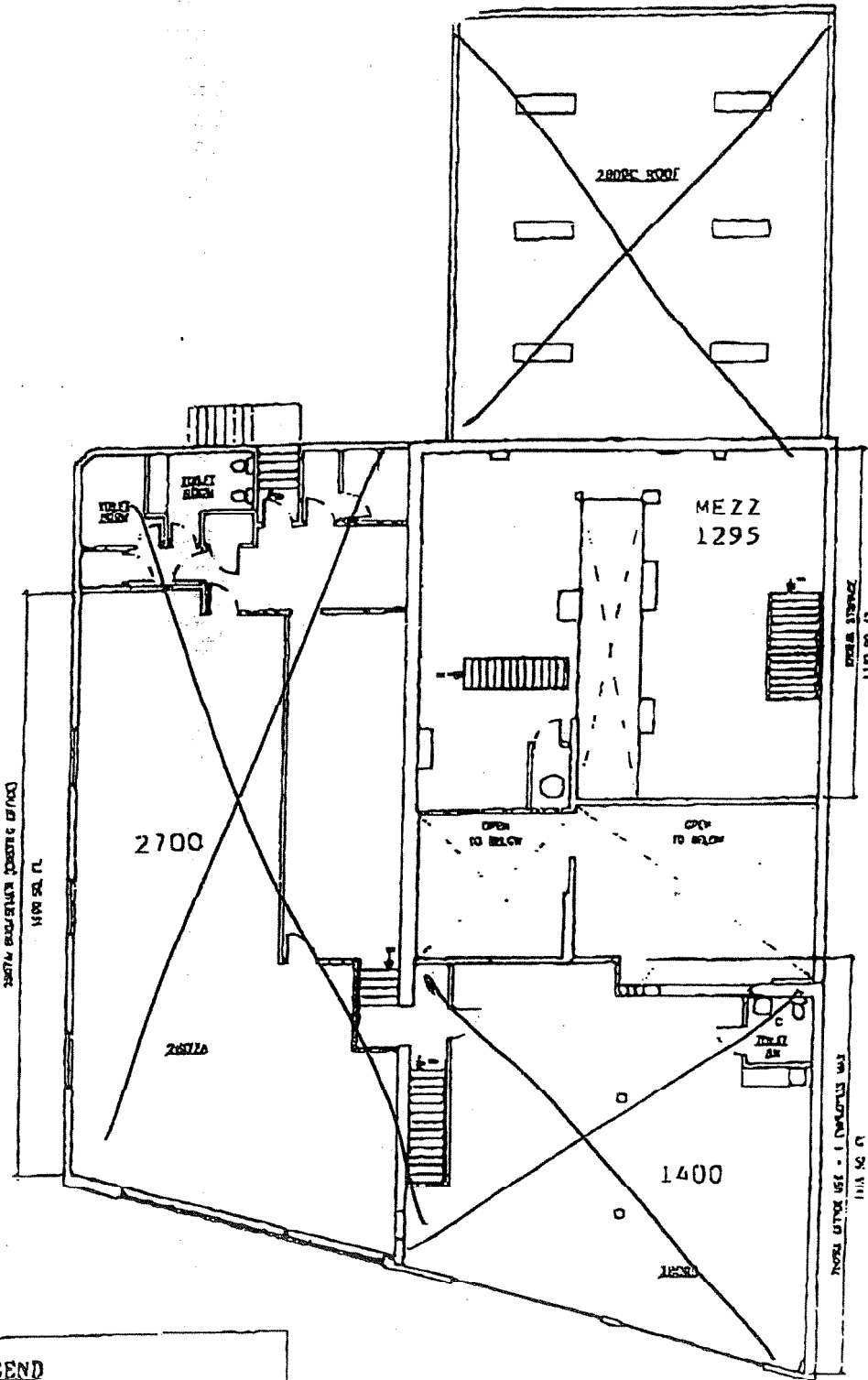
TENANT

Signature

Title

City of Berkeley Business License No.

EXHIBIT A



LEGEND	
	(E) WALL TO REMAIN
	(R) WALL TO BE REMOVED
	(N) 1-HR RATED WALL SEE 4/AS.
	(N) NON-RATED WALL
	EMERGENCY BATTERY PACK DIRECTIONAL EXIT SIGN

SECOND FLOOR PLAN ②

