



Office of the City Manager

CONSENT CALENDAR  
October 23, 2007

To: Honorable Mayor and Members of the City Council

From: *PK* Phil Kamlarz, City Manager

Submitted by: Debra Pryor, Fire Chief

Subject: Lease: 1013 Pardee Street No. 105

RECOMMENDATION

Adopt first reading of an Ordinance authorizing a new one year lease from October 1, 2007 to September 30, 2008 for an existing warehouse at 1013 Pardee Street, No. 105 (alternate address of 2700 10<sup>th</sup> Street) for the storage of fire and police equipment, emergency supplies and equipment.

FISCAL IMPACTS OF RECOMMENDATION

The requested funding will come from Bond Measure Q, Budget Code 656-6402-420.50-10. Funds are included in the FY 2008 Adopted Budget. Monthly cost is \$11,524.38 with an annual total cost of \$138,292.56.

CURRENT SITUATION AND ITS EFFECTS

Currently the Berkeley Fire Department uses the warehouse for storage of emergency equipment and supplies. The city has no other available space for storage of this equipment. The above ground portable firefighting water system equipment will begin arriving during the next 12 months so the storage space is critical. The City has acquired property for a City-owned warehouse site, and construction of this new warehouse should start within a year. At the end of this lease there will either be a new lease or it will revert to month-to-month rent depending on the time line for completion of the new warehouse.

BACKGROUND

Measure Q was passed by the voters in 2000 and provided for the purchase of trucks, equipment and supplies for an above ground, portable firefighting water system. The measure provided that a portion of the funds could be used to provide space for the storage of equipment and supplies so that they would be easily available for deployment in the event of a disaster. While awaiting construction of the new City-owned warehouse, the lease of this warehouse space will provide the necessary protected indoor storage for emergency equipment and supplies.

RATIONALE FOR RECOMMENDATION

The City has no other available space for storage of emergency equipment and supplies. Above ground portable firefighting water system equipment will begin arriving soon, so storage space is critical.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

David Orth, Deputy Fire Chief, 981-5501

Attachments:

1: Ordinance

Exhibit A: Lease – 1013 Pardee Street No. 105

ORDINANCE NO. -N.S.

AUTHORIZING A LEASE AGREEMENT WITH JUPITER INVESTMENTS, LLC FOR REAL PROPERTY LOCATED AT 1013 PARDEE STREET, NO. 105 FOR STORAGE OF FIRE AND POLICE EQUIPMENT AND EMERGENCY SUPPLIES AND EQUIPMENT

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

Section 1. FINDINGS:

The Council finds as follows:

- a. Measure Q, passed by the voters in 2000, provided for the purchase of an above ground, portable firefighting system.
- b. The Measure provided that a portion of the funds could be used to provide space for the storage of equipment and supplies so they would be easily available for deployment in the event of a disaster.
- c. The lease of this warehouse space for an additional year provides the necessary protected indoor storage for emergency equipment and supplies.
- d. The City has acquired property for a City-owned warehouse site, and construction of this new warehouse should start within a year.
- e. At the end of this lease there will either be a new lease or it will revert to month-to-month rent depending on the time for completion of the new warehouse.

Section 2. AUTHORIZATION FOR CITY MANAGER TO ENTER INTO LEASE AT 1013 PARDEE STREET NO.105.

The City Manager is hereby authorized to enter into a one-year lease agreement with the option for a month-to-month rent extension with Jupiter Investments, LLC for real property located at 1013 Pardee Street No. 105. 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 Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

COMMERCIAL LEASE AND DEPOSIT RECEIPT

RECEIVED FROM: City of Berkeley Department of Fire & Emergency Services hereinafter referred to as LESSEE, the sum of \$11,145.44 evidenced by (On Account) as a deposit which upon acceptance of this lease, shall belong to Jupiter Investments, LLC through their Agent, Marshall & Co. Property Management, Inc., Marshall Jainchill, Broker (hereinafter referred to as LESSOR), and shall be applied as follows:

	<u>Charge</u>	<u>Received</u>	<u>Amt. Due</u>
Rent for the period from <u>10/01/07</u> to <u>10/31/07</u>	\$11,524.38	\$	\$11,524.38
Security Deposit	\$11,524.38	\$11,145.44	\$ 378.94
Common Area Maintenance (to be calculated)	\$	\$	\$
Other	\$	\$	\$
TOTAL	\$23,048.76	\$11,145.44	\$11,903.32

In the event that this lease is not accepted by the Lessor within 3 business days, the total deposit shall be refunded.

Lessee hereby offers to lease from Lessor the premises situated in the City of Berkeley, County of Alameda State of California, described as 1013 Pardee Street # 105 consisting of approximately 13,170 square feet Upon the following TERMS and CONDITIONS:

1. **TERM:** The term hereof shall commence on October 1, 2007, and expires on September 30, 2008
2. **RENT:** The total rent shall be \$138,292.56 (One hundred thirty eight thousand two hundred ninety two and 56/100 Dollars), subject to paragraph 27, payable as follows: \$11,524.38 (Eleven thousand five hundred twenty four and 38/100 Dollars) per month, rent due and payable on the 1st (First) of each and every month.  
All rents, CAM and utility charges shall be paid to: Marshall & Co. Trust 2 at the following address: Marshall & Co. Property Management, Inc. 1525 East Francisco Blvd. Suite 1, San Rafael, CA 94901.
- 2a. There will be a **late charge** of 6% (Six Percent) on all rents received more than 10 (Ten) days late. Tenant agrees to pay \$50.00 (Fifty and 00/100 Dollars) for each dishonored check.
- 2b. **ADDITIONAL RENT.** Tenant shall pay, as additional rent ("Additional Rent") all sums of money or charges required to be paid by Tenant under this Lease in addition to Monthly Rent and late charges, whether or not designated as "Additional Rent". All monetary obligations due under this Lease/Rental Agreement are construed as "Rent" and/or "Additional Rent" including but not limited to as applicable base rent, late charges, taxes and/or insurance, CAM "Common Area Maintenance", and property damage in excess of normal wear and tear. If such amounts or charges are not paid at the time provided in this Lease, they shall nevertheless be collectible as Additional Rent. Nothing contained in this Lease shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable under this Lease, or limit any other remedy of Landlord.
3. **USE:** The premises are to be used for the operation of Storage of trucks, emergency supplies and equipment and for no other purpose, without prior written consent of Lessor. Lessee shall not conduct or permit sale by auction.
4. **USES PROHIBITED:** Lessee shall not use any portion of the premises for purposes other than those specified hereinabove, and no use shall be made or permitted to be made upon the premises, nor acts done, which will increase the existing rate of insurance upon the property. Should any increase result, Lessee shall pay for such increase, or any cancellation of insurance policies, and Lessee shall immediately discontinue such use. Failure to discontinue such use will be a breach of this lease.
5. **ASSIGNMENT AND SUBLETTING:** Lessee shall not assign this lease or sublet any portion of the premises without prior written consent of the Lessor. Any such assignment or subletting without consent shall be void and, at the option of the Lessor, may terminate this lease. In either event Lessee remains responsible for the remainder of the Lease. In any event if there is an assignment or subletting the rental under this lease shall at the option of the Lessor be adjusted immediately to market rate, provided however that in no event shall the rental be at any time less than that provided for by this lease. If there is a dispute as to market rate the matter shall be submitted to non-binding arbitration under rules of

the American Arbitration Association. However, this provision shall not have the effect of waiving Lessee's rights to pursue such dispute in a court of competent jurisdiction. The rate finally determined shall be retroactive to the date of the assignment or subletting and pending determination of the dispute the rent shall be paid at the rent provided for by the lease. Any increase over existing rent provided in the lease shall be shared equally between landlord and Lessee.

**6. ORDINANCE AND STATUTES:** Lessee shall comply with all statutes, ordinances and requirements of all municipal, State and Federal authorities now in force, or which may hereafter be in force, pertaining to the premises, occasioned by or affecting the use hereof by Lessee. The commencement or pendency of any State or Federal court abatement proceeding arising out of Lessee's use and/or occupancy of the premises shall, at the option of the Lessor, be deemed a breach hereof. Lessee shall not be responsible for seismic retrofitting of the building, asbestos abatement, American Disabilities Act (ADA) requirements not related to Lessee's space, and hazardous waste liability not caused by Lessee.

**7. MAINTENANCE, REPAIRS, ALTERATION:** Lessee acknowledges that the premises are in good order and repair, unless otherwise indicated herein. Lessee shall, at his own expense and at all times, maintain the premises in good and safe condition, including doors, windows, plate glass, wiring, plumbing, air conditioning and heating installations and any other system or equipment upon the premises and shall surrender the same, at termination hereof, in as good condition as received, normal wear and tear excepted. Lessee shall be responsible for all repairs required, excepting the roof and exterior walls. All improvements by Lessee must be in accordance with building codes and must be approved by Lessor, including alterations or removal of any walls, partitions, wiring electric circuits, light fixtures and plumbing. Prior to the end of the lease anything removed or altered must be replaced at Lessee's expense. No roof penetrations are permitted, except under the following conditions: 1. Lessee delivers to Lessor plans for any roof installation or penetration for Lessors written approval; 2. Roof work to be done by a licensed roofing contractor, subject to the approval of the Lessors. Should Lessee fail to abide by the above conditions, this will be considered a violation and breach of the lease and at Lessors option declare the lease null and void. Further Lessor reserves the right to remove any such work or equipment at Lessees expense. Lessee shall be liable for any damage that may occur as a result of Lessees action. Lessee will be responsible for the general maintenance of the outside area adjacent to the leased premises.

**8. TRADE FIXTURES:** Any and all improvements made to the premises during the term hereof, including wiring and lighting, shall belong to the Lessor, except trade fixtures of the Lessee. Lessee may, upon termination hereof, remove all his trade fixtures, but shall repair or pay for all repairs necessary for damages to the premises occasioned by removal.

**9. SIGNS:** Signs shall be permitted only on the front of the space occupied by Lessee, excluding the overhangs. Lessor has reserved the exclusive right to the roof and sidewalls. Lessee shall not place any sign without written consent of Lessor and the City where building is located.

**10. ENTRY AND INSPECTION:** Lessee shall permit Lessor or Lessor's agents to enter upon the premises at reasonable times and upon reasonable notice, for the purpose of inspecting the same, and will permit Lessor at any time within sixty (60) days prior to the expiration of this lease, to place upon the premises any usual "To Let" or "For Lease" signs, and permit persons desiring to lease the same to inspect the premises thereafter.

**11. INDEMNIFICATION OF LESSOR:** Lessor shall not be liable for any damage or injury to Lessee, or any other person, or to any property, occurring on the premises or any part thereof, and Lessee agrees to hold Lessor harmless from any claims for damages. Except, however, that Lessor shall hold Lessee harmless from all claims of liability for damage or injury resulting from the acts or omissions of Lessor or its authorized representatives.

**12. POSSESSION:** If Lessor is unable to deliver possession of the premises at the commencement hereof, Lessor shall not be liable or any damage caused thereby, nor shall this lease be void or voidable, but Lessee shall not be liable for any rent until possession is delivered. Lessee may terminate this lease if possession is not delivered within 3 days of the commencement of the term thereof.

**13a. INSURANCE:** LESSEE, at his expense, shall maintain plate glass, public liability and property damage insurance insuring lessee and lessor with minimum coverage as follows: \$1,000,000 combined single limit bodily injury and property damage. Lessee shall provide Lessor with Certificate of Insurance showing Lessor as additional insured within 30 days of execution of this lease. The certificate shall provide for a ten day written notice to Lessor in the event of

cancellation or material change of coverage. To the maximum extent permitted by insurance policies, which may be owned by Lessor or Lessee, lessee and lessor, for the benefit of each other, waive any and all rights of subrogation, which might otherwise exist, to the extent permitted by law.

**13b. INSURANCE - PAYMENT OF PREMIUM INCREASE:** (a) After the term of this Lease has commenced, Lessee shall not be responsible for paying Lessee's Share of any increase in the property insurance premium for the premises specified by the Lessor's insurance carrier as being caused by the use, acts or omissions of any other Lessee of the premises, or by the nature of such other Lessee's occupancy which create an extraordinary or unusual risk.

(b) Lessee shall pay the entirety of any increase in the property insurance premium for the premises over what it was immediately prior to the commencement of the terms of this lease if the increase is specified by the Lessor's insurance carrier as being caused by the nature of the Lessee's occupancy or any act or omission of Lessee. In no event, however, shall Lessee be responsible for any portion of the premium cost attribution to liability insurance coverage in excess of \$1,000,000 procured under paragraph 13.

(c) Lessee shall pay such premium increases to Lessor within 30 days after receipt of Lessee of a copy of the premium statement or other satisfactory evidence of the amount due. If the term of this Lease shall not expire concurrently with the expiration of the period covered by such insurance, Lessee's liability for premium increases shall be prorated on an annual basis.

(d) In the event that the lessee fails to pay the increase, then lessor at his option will pay such increase and collect this amount from lessee.

**14. ABANDONMENT OF PREMISES:** Lessee shall not vacate or abandon the premises at any time during the term hereof, and if Lessee shall abandon or vacate the premises this shall constitute a breach of the lease subject to the conditions stated in paragraph 18. Further, if Lessee is dispossessed by process of law, or otherwise, any personal property belonging to the Lessee left upon the premises shall be deemed to be abandoned, at the option of the Lessor.

**15. CONDEMNATION:** If any part of the premises shall be taken or condemned for public use, and a part thereof remains which is susceptible of occupation hereunder, this lease shall, as to the part taken, terminate as of the date the condemnor acquires possession, and thereafter Lessee shall be required to pay such proportion of the rent for the remaining term as the value of the premises remaining bears to the total value of the premises at the date of the condemnation; provided however, that Lessor or Lessee may at their option, terminate this lease as of the date the condemnor acquires possession. In the event that the demised premises are condemned in whole or that such portion is condemned that the remainder is not susceptible for use hereunder, this lease shall terminate upon the date upon which the condemnor acquires possession. All sums which may be payable on account of any condemnation shall belong to the Lessor, and Lessee shall not be entitled to any part thereof, provided however, that Lessee shall be entitled to retain any amount awarded to him for his trade fixtures or moving expenses.

**16. DESTRUCTION OF PREMISES:** In the event of a partial destruction of premises during the term hereof, from any cause, Lessor shall forthwith repair the same, provided that such repairs can be made within sixty (60) days under existing governmental laws and regulations, but such partial destruction shall not terminate this lease, except that Lessee shall be entitled to a proportionate reduction of rent while such repairs are being made, based upon the extent to which the making of such repair shall interfere with the business of the Lessee on the premises. If such repairs cannot be made within sixty (60) days, Lessor, at his option, may make the same within a reasonable time, this lease continuing in effect with the rent proportionately abated as aforesaid, and in the event that Lessor shall not elect to make such repairs which cannot be made within sixty (60) days, this lease may be terminated at the option of either party.

In the event that the building in which the demised premises may be situated is destroyed to an extent of not less than one-third of the replacement costs thereof, Lessor may elect to terminate this lease whether the demised premises be injured or not. A total destruction of the building, which the premises may be situated, shall terminate this lease.

In the event of any dispute between Lessor and Lessee with respect to the provision hereof, Lessor and Lessee shall first attempt to settle the matter by non-binding arbitration in such a manner as the parties may agree upon, or if they cannot agree, in accordance with the rules of the American Arbitration Association. However, this provision shall not have the effect of waiving Lessee's rights to pursue such dispute in a court of competent jurisdiction.

**17. INSOLVENCY:** In the event that a receiver shall be appointed to take over the business of the Lessee, or in the event that the Lessee shall make a general assignment for the benefit of creditors or Lessee shall take or suffer any action under any insolvency or bankruptcy act, the same shall constitute breach of this lease by Lessee.

**18. REMEDIES OF OWNER ON DEFAULT:** In the event of any breach of this lease by Lessee, Lessor, besides other rights and remedies he may have, shall have the immediate right of re-entry and may remove all persons and property from the premises as provided by law. Such property may be moved and stored in a public warehouse or elsewhere at the cost of, and for the account of the Lessee. Should Lessor elect to re-enter, or should he take possession pursuant to legal proceedings or any notice provided by law, he may either terminate this lease or may from time to time, without terminating this lease, relet said premises, or any part thereof, for such term or terms (which may be for a term extending beyond the term of this lease) and at such rental or rentals and upon such other terms and conditions as Lessor, in his sole discretion, may deem advisable with the right to alter or repair the premises upon such reletting. In such event, Lessee shall be immediately liable to pay to Lessor, in addition to any other amounts due hereunder: (a) the cost and expense of such reletting and such alterations or repairs, and any amount by which the rest reserved herein for the period of such reletting, but not beyond the term hereof exceeds the amount agreed to be paid as rent for such period; or: (b) at the option of the Lessor, rents received by the Lessor from such reletting shall be applied first to the repayment of indebtedness other than rent due hereunder, second to costs and expenses of reletting and alterations or repairs and third to the payment of rent due and unpaid hereunder, and the residue, if any, shall be held by Lessor and applied in payment of future rent as the same may become due and payable. Lessee shall be credited only with rent actually received by Lessor. Lessee shall, in such event, pay any deficiency between the amount due from Lessee to Lessor and the amount credited.

No such re-entry or taking possession by Lessor shall be construed as an election to terminate this lease unless written notice of such intention is given, or unless termination is decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, Lessor may at any time thereafter elect to terminate this lease on account of such previous breach. Should Lessor at any time terminate this lease for any breach, in addition to any other remedy he may have, he may recover from Lessee all damages he may incur by reason of such breach, including the cost of recovering the premises, and including the worth at the time of such termination, or at the time of an award if suit be instituted to enforce this provisions, of the amount by which the unpaid rent for the balance of the term exceeds the amount of the rental loss for the balance of the term which the Lessee proves could be reasonably avoided. However, such remedies shall not be duplicative of any remedies exercised by Lessor prior to termination of the lease.

**19. UTILITIES:** Lessee agrees that he shall be responsible for the payment of all utilities, including water (pro-rata if common service), gas, electricity, heat and other services delivered to the premises, except as stated in paragraph 22, pro-ration. Then in the event that Lessee uses an amount greater than normal, Lessee shall pay the difference promptly.

**20. WASTE:** Lessee shall not commit any waste upon said premises, or any nuisance or act, which may disturb the quiet enjoyment of any other tenant in the building.

**21. STORAGE:** No outside storage of inventory or any other property shall be permitted, nor any construction, repairs or assembly be permitted, except as provided under section 3 of this lease.

**22. MULTIPLE TENANT BUILDING:** Lessee agrees that it will abide by, keep and observe all reasonable rules and regulations which Lessor may make from time to time for the management, safety, care and cleanliness of the building and grounds, the parking of vehicles and preservation of good order therein as well as for the convenience of other occupants and tenants of the building. Overnight parking and storage of vehicles, trailers, boats, etc. is prohibited, except as provided under section 3 of this lease.

Further, Lessee will promptly pay its pro-rata share as reasonably determined by Lessor, of any maintenance or repair of such portion of the premises or such portion of the property of which the premises are a part, which are common areas or used by Lessee and other occupants thereof. This includes, but is not limited to water, sewage, exterior lighting, landscaping, parking lot maintenance and garbage service, if provided. Lessor shall provide Lessee with verification of such charges. The violation of any of such rules and regulations, or the failure to pay such pro-rata share of costs, shall be deemed a material breach of this Lease by Lessee.

**23. KEYS:** Should Lessee change and/or add any lock(s) to the premises a duplicate key(s) shall be given to Lessor. Further, Lessee shall return all keys to Lessor or his agent upon vacating these premises. If Lessee fails to return keys, Lessor will have a locksmith re-key the locks at Lessees expense.

**24. TAXES:** Lessee shall be liable for all taxes levied against personal property, trade fixtures and other property placed by Lessee in or on or about the demised premises. However, any increases in real property taxes that are the result of reevaluations due to ownership changes will be borne by Lessor.

**25. SECURITY OF DEPOSIT:** The security deposit set forth above shall secure the performance of the Lessees obligations hereunder. Lessor may, but shall not be obligated to apply all or portions of said deposit on account of Lessees obligations hereunder. The security deposit is to be returned to Lessee at the end of the lease provided all the terms and conditions have been met. Should any violation of the lease occur such as non-payment of rent, damage to premises or failure to clean the premises, then all or part of said security deposit will be applied towards payment for any or all of the above mentioned acts. Lessee shall not have the right to apply the Security Deposit in payment of the last month's rent. It is agreed that the amount of the Security Deposit held by Lessor shall be adjusted annually to reflect the annual increases in rent, with the Security Deposit becoming equal to the new monthly rent.

**26. RENT ADJUSTMENT:** Beginning on the first anniversary of this lease and each anniversary thereafter, Lessor will automatically adjust the monthly rent by comparing the last published index of the CPI\* preceding the commencement of this lease, with the latest index published preceding the adjustment date. The monthly rent specified for the first year of the lease will be adjusted by the amount that these indexes fluctuate. In no event will the rent for any month be less than the rent for the preceding month. In no event, will the annual CPI Increase be less than 3% greater than the previous years rent.

In the future, should the name of the CPI change, or the index published on other than stated above, it shall be converted to that stated basis for the purpose of this lease.

\*CPI CONSUMER PRICE INDEXES, PACIFIC CITIES AND U.S. CITY AVERAGE, ALL ITEMS INDEXES, ALL URBAN CONSUMERS SAN FRANCISCO - OAKLAND, as published by the Bureau of Labor Statistics, San Francisco, CA 94102.

**27. HOLDING OVER:** Any holding over after the expiration of this lease, with the consent of the Lessor, shall be construed as a month-to-month tenancy at a rental of 125% over the last month's rent, per month, otherwise in accordance with the terms hereof, as applicable. Either Lessee or Lessor may terminate this month-to-month tenancy by giving 60 days notice in writing to the other party. Further, Lessee shall pay to Lessor the amount equal to one months rent as additional security deposit subject to paragraph 26.

**28. WAIVER:** No failure of Lessor to enforce any term hereof shall be deemed to be a waiver.

**29. NOTICES:** Any notice which either party may or is required to give, shall be given by mailing the same, postage prepaid by registered mail, to Lessee at the premises, or Lessor at the address shown below, or at such other places as may be designated by the parties from time to time.

**30. HEIRS, ASSIGNS, SUCCESSORS:** This lease is binding upon and inures to the benefit of the heirs, assigns and successors in interest to the parties.

**31. TIME:** Time is of the essence of this lease.

**32. STRUCTURE:** Tenant agrees not to hang or support anything, either temporarily or permanently, from any part of the roof or ceiling structure. The cost of any repairs to the roof or ceiling structure because of Tenant's failure to comply with this condition will be the responsibility of the Tenant.

**33. ESTOPPEL:** (a) Lessee shall at any time upon not less than 10 days prior written notice from Lessor execute, acknowledge and deliver to Lessor a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease as so modified, is in full force and effect) and the date to which the rent and other charges are paid in advance, in any, an (ii) acknowledging that there are not, to Lessee's knowledge, any uncured defaults on the part of Lessor hereunder, so specifying such defaults if any are claimed, such that any such statement may be conclusively relied upon by any respective purchaser or encumbrancer of the Premises.

(b) At Lessor's option, Lessee's failure to deliver such statement within such time shall be a material breach of this Lease or shall be conclusive upon Lessee (i) that if this Lease is in full force and effect, without modification except as may be represented by Lessor, (ii) that there are no uncured defaults in Lessor's performance, and (iii) that not more than

on month's rent has been paid in advance or such failure may be considered by Lessor as a default by Lessee under this lease.

**34. COMMON AREA MAINTENANCE:** The current CAM charges pertaining to paragraph #22 (Above) is billed on a quarterly basis.

**35. TENANT IMPROVEMENTS:** All future tenant improvements undertaken by Lessee with the approval of Lessor will be done to code under the supervision of a licensed contractor. Any and all tenant improvements must have the expressed permission of Lessor.

**36. SAFETY:** Lessee to meet all safety, city and fire codes and must comply with these codes at all times, the intent being to satisfy all city and fire department rules and regulation.

**37. HAZARDOUS MATERIALS:** Lessee agrees to comply with the latest E.P.A. laws in terms of Lessee's disposal of all hazardous materials, including but not limited to such applicable liquids, and all flammable substances are to be stored in a fire-safe locker, or container which is approved by the Fire Department. Lessee must be equipped with a dust collection system that meets all above-referenced codes, if applicable.

**38. PARKING LOT:** Lessee is assigned -0- parking space.

**39. LESSEE TERMINATION OF LEASE:** In the event that the Landlord and Lessee agree to an early termination of their lease prior to the expiration date, then the Lessee agrees to the following terms and conditions:

1. Lessee agrees to pay for the Broker's leasing commission involved in obtaining a new Lessee, specifically for the remaining term of the lease, which the Lessee is terminating. Broker commission shall be 6% of the remaining term of the lease, and the Lessee shall pay it in full to the Broker, upon the ratification of the new lease.
2. Lessee also agrees to pay for all advertising costs and signage costs incurred in obtaining the new Lessee.

**40. WATER:** Under the provisions of this Lease, Lessor is furnishing water to tenants of the premises and Lessee shall reimburse to Lessor as referred to in paragraph 22 herein. In the event any public utility company imposes restrictions on the quantity of water, Lessee agrees to abide by any such regulations enacted, and agrees to use all necessary conservation methods in order to meet any restrictive use. Furthermore, in such event, the Lessor shall have the right to install separate measuring devices on each individual service in order to determine that Lessee is using only its' allotted share of water.

**41. SUBORDINATION, NONDISTURBANCE AND ATTORNMENT:** This lease is and shall always be subordinate to any ground lease or to any first mortgage or deed of trust that is now or may at anytime be placed on the Premises or any part of them or the building of which the Premises for a part, and Lessee agrees to execute and deliver to Lessor without cost, within (10) ten days following Lessor's written request, any instrument that may be deemed necessary to further effect the subordination of this Lease to any ground lease or first mortgage or deed of trust; provided, however, , if this lease becomes subordinate to any interest indicated herein, then this Lease shall not terminate if Lessee is not in default and Lessee shall attorn to the new owner as if a party of this Lease, notwithstanding any rule of law to the contrary or the absence of privity of contract.

**42. ADDITIONAL TERMS AND CONDITIONS:** None.

Lessee  
City of Berkeley  
Department of Fire & Emergency Services

Lessor  
Jupiter Investments, LLC

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

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Marshall Jainchill, Broker  
Marshall & Co. Property Management, Inc.

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

Agent for Owner

1013 Pardee Street #105  
Berkeley, CA 94710  
Phone (510) 981-3473

3060 Kerner Blvd., Ste. A  
San Rafael, CA 94901  
Phone (415) 455-1111 Fax (415) 455-1110