

File No. 121047

Committee Item No. \_\_\_\_\_

Board Item No. 10

### COMMITTEE/BOARD OF SUPERVISORS

#### AGENDA PACKET CONTENTS LIST

Committee: \_\_\_\_\_

Date \_\_\_\_\_

Board of Supervisors Meeting

Date 11/6/2012

#### Cmte Board

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Completed by: Victor Young Date November 1, 2012

Completed by: \_\_\_\_\_ Date \_\_\_\_\_

An asterisked item represents the cover sheet to a document that exceeds 25 pages.  
The complete document can be found in the file.

01

[Real Property Lease Amendment - SRI Nine Market Square, LLC - 875 Stevenson Street - Renovation of the Property]

**Resolution authorizing the Fourth Amendment to Lease of 875 Stevenson Street floors 1, 3 and 4, terminating said lease with SRI Nine Market Square, LLC for the renovation of the property.**

WHEREAS, The Departments of Public Works, Treasurer-Tax Collector, Assessor-Recorder, ReproMail and General Services Agency have occupied space at 875 Stevenson Street on floors 1, 3 and 4 since the 1990's; and,

WHEREAS, The current Lease for 875 Stevenson Street's 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> floors ("Lease") terminates in May, 2015; and,

WHEREAS, The current owner of 875 Stevenson Street, SRI Nine Market Square, LLC, ("Landlord") plans to completely renovate the building and has sought from the City an agreement to call for an early termination of the Lease; and,

WHEREAS, The Real Estate Division has identified other locations which meet the needs of all City occupants of 875 Stevenson Street, and the Real Estate Division therefore negotiated a fair and reasonable early termination from the Lease through a Fourth Amendment to Lease ("Agreement"), considering all factors; and

WHEREAS, The Agreement will facilitate continued investment and revitalization of the Central Market area by private sector forces; and

WHEREAS, Such Agreement is subject to enactment of a resolution by the Board of Supervisors and the Mayor, in their respective sole and absolute direction, approving and authorizing such Agreement; now, therefore, be it

RESOLVED, That in accordance with the recommendation of the Director of Property, the Director of Property is hereby authorized to take all actions on behalf of the City and

1 County of San Francisco, as tenant, to terminate the Lease of the property commonly known  
2 as 875 Stevenson Street, San Francisco, California with Landlord (a copy of the Agreement is  
3 on file with the Clerk of the Board of Supervisors in File No. 121047, which is hereby declared  
4 to be a part of this resolution as if set forth fully herein) and on a form approved by the City  
5 Attorney; and, be it

6 FURTHER RESOLVED, That the Agreement shall call for the termination of the Lease  
7 by February 4, 2013, subject to the City's right to remain pursuant to conditions and financial  
8 penalties as stated in the Agreement; and be it

9 FURTHER RESOLVED, That the City shall receive as compensation from Landlord in  
10 consideration for the early termination of the Lease and timely vacation of the Premises of the  
11 Lease by February 4, 2013 a total sum of \$3,250,000 payable under the terms and conditions  
12 of the Agreement; and, be it

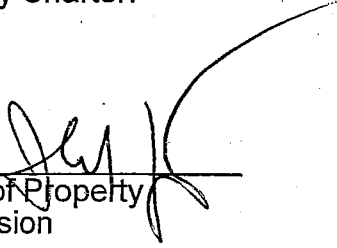
13 FURTHER RESOLVED, That the funds received from Landlord shall be applied  
14 toward the cost of moving City occupants of 875 Stevenson to new locations and toward  
15 incremental cost increases in rent at the new locations; and, be it

16 FURTHER RESOLVED, That all actions heretofore taken by the officers of the City  
17 with respect to such Agreement and Lease are hereby approved, confirmed and ratified; and,  
18 be it

19 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of  
20 Property to enter into any amendments or modifications to the Lease (including, without  
21 limitation, the exhibits) that the Director of Property determines, in consultation with the City  
22 Attorney, are in the best interest of the City, do not increase the rent or otherwise materially  
23 increase the obligations or liabilities of the City, are necessary or advisable to effectuate the  
24  
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1 purposes of the Lease or this resolution, and are in compliance with all applicable laws,  
2 including the City Charter.

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5 Acting Director of Property  
6 Real Estate Division



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*John Updike*  
*Acting Director of Real Estate*

October 23, 2012

Through Naomi Kelly, City Administrator

Honorable Board of Supervisors  
 City and County of San Francisco  
 City Hall, Room 244  
 1 Dr. Carlton B. Goodlett Place  
 San Francisco, California 94102

**Re: Fourth Amendment to Lease of 875 Stevenson and  
 Lease Agreement for 1155 Market Street and  
 Lease Agreement for 110 12<sup>th</sup> Street**

Dear Board Members:

Attached for your consideration is a proposed Resolution authorizing the acceptance of an early termination of the City's lease at 875 Stevenson Street, effective February 4, 2013. Also presented for separate consideration is a proposed Resolution authorizing the lease of eight (8) floors of 1155 Market Street, primarily to provide replacement space for those currently occupying space at 875 Stevenson Street, but also to address other space matters facing the City at this time. Finally, we submit another Resolution authorizing a lease at 110 12<sup>th</sup> Street for use by the City's Reproductions and Mail Services ("ReproMail"), also relocating from 875 Stevenson Street.

The City currently leases a portion of the first floor of 875 Stevenson Street, along with the entirety of the 3<sup>rd</sup> and 4<sup>th</sup> floors. That lease, as currently amended, provides the City space at 875 Stevenson until the end of May, 2015 for the 3<sup>rd</sup> and 4<sup>th</sup> floors, but we are on month-to-month holdover for the first floor presence which is our Reprographics/Mail Services operations. We occupy the space at a fixed rate of \$27.00/square foot per year, excluding janitorial, utilities and certain maintenance obligations which result in a cost to the City to occupy the space of approximately \$32/square foot per year. The City leases a total of 81,348 square feet at 875 Stevenson. Our present cost of occupancy at 875 Stevenson is therefore roughly \$2,603,136 per year or \$216,928 per month. Occupants at 875 Stevenson are:

- ReproMail
- Department of Public Works
- General Services Agency-Human Resources
- Treasurer-Tax Collector
- Assessor-Recorder

The City was approached this summer by the Landlord (Shorenstein) of 875 Stevenson (collectively branded as Market Square with 1355 Market Street, now home to Twitter, One Kings Lane and others), requesting the City consider leaving the property before the end of its term of occupancy. They desire to take advantage of the surging market in Civic Center and Central Market commercial

real estate, and to do so, need to vacate the entire building at Stevenson & 11<sup>th</sup> to refurbish it similar to what was successfully deployed at 1355 Market for Twitter and others.

The final negotiated exit payment and terms of the exit agreement (technically, a Fourth Amendment to Lease), followed intense but productive negotiations. The amount of compensation secured in the agreement, along with some additional flexibility granted to the City to depart by no later than March 4, 2013 (but at considerable financial impact to the City at any time after February 4, 2013), dovetail nicely with the entry agreements simultaneously negotiated elsewhere. The City's space planning efforts have the City geared up to execute our exit by no later than February 4, 2013 (to maximize the City's exit payment).

At approximately the same time this summer, the City rekindled negotiations with the ownership of 1155 Market Street, as the SFPUC commenced their exit from that property to 525 Golden Gate. A lease agreement has been negotiated at 1155 Market Street to meet our needs. Later this summer, the City finally located an acceptable new premises for ReproMail (of the Office of Contract Administration), at 110 12<sup>th</sup> Street, and have secured conceptually a lease agreement for that location.

The fiscal constraint was to orchestrate these agreements in such a way as to be expense neutral to the City over the course of the remainder of the current fiscal year, as well as the entirety of fiscal year 13-14. We are pleased to report that we have accomplished that goal in the legislation presented. Costs of renting space continue to rise throughout San Francisco, and given the 875 Stevenson lease was set to expire in May of 2015 (no renewal options remained), City staff knew this day was fast approaching to locate new space, more likely far more expensive space, to meet our space needs to 2020 and beyond. The notice from Shorenstein simply accelerated that timeline and provided the City an opportunity to make the change with a slightly reduced fiscal impact than we would have experienced in 2015.

The new lease at 1155 Market secures for the City initial access to floors 1-5 and 7-9 of the 11-story high-rise. The lease requires ownership to perform certain base building improvements and deliver to the City modest tenant improvements within a set budget. The tenant improvement package includes \$25/square foot of improvements delivered at the Landlord's expense, with an additional \$35/square foot of improvements delivered at the City's expense, amortized over the initial 10 year term of the lease at 8% interest. The current space plan Rough Order of Magnitude budget suggests the delivery of the necessary improvements may be somewhat less than the full \$60/square foot. However, for budget purposes staff is assuming full use of the tenant improvement allowance.

As previously mentioned, 1155 Market Street provides space for more than just those relocating from 875 Stevenson. We are accommodating a space need from the SFPUC to retain the 9<sup>th</sup> floor for their continued use. We are relocating the Mayor's Office on Disability from War Memorial to the ground floor of 1155 Market Street. In addition to the initial premises of 8 floors, the City has secured an option right to floors 6, 10 and 11. Exercise of those options is subject to further Board of Supervisor's approval. The lease agreement also includes a Right of First Offer to Purchase. Should ownership decide to sell the property, the City will have first opportunity to acquire.

The basic terms of the 1155 Market Street lease are:

- 10 year initial term, but City can exit after 5 years or after 92 months in the property by paying a modest termination fee.
- Initial year rate of \$31.67 per square foot (excluding janitorial and utilities – estimated at \$5.00/square foot per year), second year of \$39.14 per square foot and future years increasing at 3% per year.

The lease agreement at 110 12<sup>th</sup> Street calls for leasing the entirety of that property (also known as 101 South Van Ness), a 10,469 square foot building with secured parking area. The lease would commence February 1, 2013 and expire January 31, 2023, however the City would have on-going rights to terminate the lease without any penalty after the fifth year of the lease. The lease rate would be \$27,000/month (or \$30.95/square foot per year), increasing annually by 4%. The City would be responsible for utilities, janitorial expenses and the cost of an alarm system, which would likely be approximately \$4.00 to \$5.00/square foot per year. The landlord will provide all necessary improvements to the space to suit the City's needs.

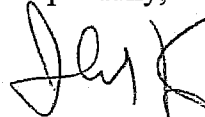
A comparison of existing lease expenses to new lease expenses is on the attached chart.

The Fourth Amendment to Lease at 875 Stevenson calls for the City to exit the property by February 4, 2013, which is the operative plan at this time. If successful in doing so, the City would be paid the sum of \$750,000 fifteen days after the approval of the new site agreements (to which staff is relocating), and the additional sum of \$2,500,000 fifteen days after vacating and surrendering the premises. Should the City be delayed in moving, there would be a reduction in the amount owed by the Landlord to the City, calculated on a per day basis. The move must absolutely be completed by no later than March 4, 2013, or the City would find itself in default of the lease as amended.

The Real Estate Division recommends approval of the Resolutions referenced herein. These agreements advance forward in time relocations that would otherwise be 100% fiscal burdens of the City in the near future with respect to ReproMail or in 2015 with respect to the other tenancies of 875 Stevenson. Accelerating these moves to take advantage of the availability of a funding source would appear to be the City's best course of action at this time.

If you have any questions in this regard, please contact me at 554-9860.

Respectfully,



John Updike  
Acting Director of Property

**Attachments**

c: Jaci Fong, Director of OCA  
Mohammed Nuru, Director of DPW  
Jose Cisneros, Treasurer-Tax Collector  
Phil Ting, Assessor  
Steve Nakajima, Director of GSA-HR  
Carla Johnson, Acting Director of Mayor's Office on Disability  
Michael Carlin, Assistant General Manager, SFPUC

**Comparison of Occupancy Expenses**

Existing Monthly Expense at 875 Stevenson	\$216,928	
First Year Monthly Expense at 1155 Market Street*	\$263,159	(1/15/2013-1/14/2014)
Second Year Monthly Expense at 1155 Market Street*	\$316,767	(1/15/2014-1/14/2015)
*excludes space to be occupied by Mayor's Office on Disability and SFPUC		
First Year Monthly Expense at 110 12 <sup>th</sup> Street	\$ 31,362	(2/1/2013-1/31/2014)
Second Year Monthly Expense at 110 12 <sup>th</sup> Street	\$ 32,616	(2/1/2014-1/31/2015)

New rent commences January 15, 2013 at 1155 Market Street  
 New rent commences February 1, 2013 at 110 12<sup>th</sup> Street  
 Prior rent at 875 Stevenson terminates February 4, 2013

New rent amount due January 15, 2013 through June 30, 2013:

\$263,159 x 5 = \$1,315,795	five months February, March, April, May and June at 1155 Market
\$263,159 / 2 = \$ 131,580	one half of January, 2013 at 1155 Market
\$ 31,362 x 5 = <u>\$ 156,810</u>	five months at 110 12 <sup>th</sup> Street
<b>\$1,604,185</b>	subtotal for FY12-13

New rent amount due July 1, 2013 through June 30, 2014

\$263,159 x 6.5 = \$1,710,533	July-January 15 at 1155 Market
\$316,767 x 5.5 = \$1,742,218	January 16 – June 30 at 1155 Market
\$ 31,362 x 7 = \$ 219,534	July 1 – January 31 at 110 12 <sup>th</sup> Street
\$ 32,616 x 5 = <u>\$ 163,080</u>	February 1 – June 30 at 110 12 <sup>th</sup> Street
<b>\$3,835,365</b>	subtotal for FY13-14

Impact of Amortization of improvements at 1155 Market Street (assuming full use of \$35/square foot available from Landlord over 86,117 square feet):

\$36,569 per month x 17.5 = <b>\$639,957</b>	Time period of 17.5 months from January 15, 2013 through June 30, 2014
--	--

Estimated Cost of physical moves, data/telephony, cubicles and FF&E: **\$900,000\***

\*excludes relocation and equipment calibration expenses associated with ReproMail, which has separate available funding source on Controller's Reserve.

Total new expense during period January 15, 2013 through June 30, 2014:

<b>\$1,604,185</b>
<b>\$3,835,365</b>
<b>\$ 639,957</b>
<b><u>\$ 900,000</u></b>
<b>\$6,979,507</b>

Expense of remaining at 875 Stevenson January 15, 2013 through June 30, 2014 (17.5 months), assuming lease was not terminated early: \$216,928 x 17.5 = **\$3,796,240**

Increase in expenses through 6/30/2014: \$6,979,507 - \$3,796,240 =	\$3,183,267
Payment due from Shorestein:	\$3,250,000



FOURTH AMENDMENT TO LEASE  
(Early Termination of Lease)

THIS FOURTH AMENDMENT TO LEASE ("Amendment") is executed as of the 25th day of October, 2012, between SRI NINE MARKET SQUARE LLC, a Delaware limited liability company ("Landlord"), and CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("Tenant").

RECITALS

A. Landlord (as successor-in-interest to Western Mart Co., L.P., a California limited partnership) and Tenant, are parties to that certain Office Lease dated as of June 16, 1994, as amended or clarified by First Amendment to Office Lease dated as of November 15, 1996, Lease Extension Letter Agreement dated March 31, 2003, Letter Agreement dated November 18, 2005, Third Amendment to Office Lease dated October 31, 2008, and Letter Agreement dated February 26, 2010 (collectively, as so amended, the "Lease"), pursuant to which Tenant leases from Landlord certain premises (the "Premises") on the 1st, 3rd and 4th floors of the building (the "Building") located at 875 Stevenson Street, San Francisco, California 94103. The Lease is currently scheduled to expire on May 31, 2015 (the "Expiration Date"). Capitalized terms not otherwise defined herein shall have the meanings given them in the Lease.

B. Landlord and Tenant desire to amend the Lease to terminate the Lease early in accordance with the terms set forth below.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Early Termination of Lease. The Lease shall expire as of 11:59 PM on the Termination Date (as defined in Paragraph 2 below), and all rights, obligations and duties of the parties under the Lease shall terminate effective as of the Termination Date as if it were the Expiration Date; provided, however, that:

(a) Tenant's obligation to comply with all covenants and agreements under the Lease shall continue through and including the date (the "Surrender Date") that is the later of the Termination Date or the date on which Tenant surrenders the Premises to Landlord in the condition required by this Amendment;

(b) Nothing contained herein is intended to release Landlord or Tenant from any rights, obligations or duties accruing under the Lease before the Surrender Date, or from any rights, obligations or duties under the Lease that survive the termination or expiration of the Lease;

(c) Tenant shall vacate and surrender the Premises to Landlord broom clean, vacant and free and clear of any subtenants or other occupants, and in the condition required by Section 20 of the Lease, on or before the Termination Date, and Tenant shall remove from the Premises all of City's Personal Property; provided, however, that (i) Tenant shall not be required to remove Tenant's furniture, equipment and other personal property (including the City's Personal Property located on the 4th floor of the Building) and trade fixtures from the 4th floor of the Building, and Landlord and Tenant agree that Landlord may remove and dispose of the same at no cost to Tenant, and (ii) Tenant shall not be required to remove any Alterations made by or on behalf of Tenant in the Premises; and

(d) if Tenant fails to vacate the Premises on or before the Termination Date in the condition required hereunder, Tenant's continued possession of the Premises shall be on the basis of a tenancy at sufferance without Landlord's consent at the holdover rent specified in Section 23.13 of the Lease.

2. Termination Date. The "Termination Date" shall be February 4, 2013.

3. Termination Fee. In consideration of Tenant's agreement to terminate the Lease early, Landlord shall pay Tenant a termination fee equal to Three Million Two Hundred Fifty Thousand and 00/100 Dollars (\$3,250,000.00) (the "Termination Fee"). Landlord shall pay a portion of the Termination Fee in the amount of Seven Hundred Fifty Thousand and 00/100 Dollars (\$750,000.00) to Tenant within fifteen (15) days after the later of the full execution of this Amendment and Landlord's receipt of approved legislation by the City and County of San Francisco approving this Amendment and the Tenant's final lease for Tenant's new premises to which Tenant is relocating from the Premises. Landlord shall pay the balance of the Termination Fee, less any amounts deducted from the Termination Fee pursuant to this Paragraph 3, within fifteen (15) days after Tenant shall have vacated and surrendered the Premises as provided herein. Notwithstanding anything to the contrary contained herein, in the event that Tenant fails to surrender the Premises in the condition required under the Lease and this Amendment by February 4, 2013, the Termination Fee shall be reduced as follows: (i) Ten Thousand and 00/100 Dollars (\$10,000.00) for each day after February 4, 2013 through and including February 10, 2013, and (ii) Twenty Thousand and 00/100 Dollars (\$20,000.00) for each day which Tenant remains in the Premises after February 10, 2013. The foregoing Termination Fee (or any reduction of the Termination Fee as described above) does not alter or impact the amount of any holdover rent due and payable from Tenant. By way of example, following Landlord's payment of the first \$750,000 of the Termination Fee, if Tenant remains in the Premises through February 12, 2013, the remaining Termination Fee due from Landlord shall be reduced to \$2,400,000 (\$2,500,000 less \$60,000 for February 5, 2013 through February 10, 2013 less \$40,000 for February 11, 2013 through February 12, 2013).

4. Remedies. If Tenant fails to deliver possession of the Premises to Landlord in the condition required hereby on or before the Termination Date, Landlord may pursue all remedies under the Lease (including Section 15.2 of the Lease) or at law or in equity. In addition, in the event that Tenant fails to deliver possession of the Premises to Landlord in the condition required hereby on or before March 1, 2013, Landlord may elect to declare this Amendment null and void, in which case the Lease shall continue as if this Amendment had not been entered into by the parties and Tenant shall return to Landlord, within five (5) days after Landlord's request, any portion of the Termination Fee paid by Landlord to Tenant.

5. Landlord's Renovation Work. Tenant acknowledges that Landlord will begin renovation work in the Premises and the Building as soon as January 2, 2013, which work is described on Exhibit A attached hereto (the "Renovation Work"). Tenant acknowledges and agrees that from January 2, 2013 through February 4, 2013, the Renovation Work may be performed by Landlord outside the Premises but within the Building at any time without prior notice to Tenant, and inside the Premises with not less than one (1) business day prior notice to Tenant. From January 2, 2013 through February 4, 2013, Landlord shall perform any extraordinarily noisy or disruptive Renovation Work which is to be performed inside the Premises after business hours or on weekends to the extent such procedures would be generally followed by managers of other comparable office buildings in San Francisco (except to the extent an emergency and/or legal requirements require otherwise, as reasonably determined by Landlord). The foregoing sentence does not apply to any Renovation Work to be performed outside the Premises but within the Building. Tenant acknowledges and agrees that after February 4, 2013, Landlord may perform any other work, in addition to the Renovation Work, outside the Premises but within the Building at any time without prior notice to Tenant. Notwithstanding anything herein to the contrary or anything set forth

in the Lease, any inconvenience suffered by Tenant in the Premises during the performance of the Renovation Work shall not subject Landlord to any liability for any loss or damage resulting therefrom or entitle Tenant to any credit, abatement or adjustment of holdover rent or other sums payable under the Lease. In no event shall such entry or the Renovation Work entitle Tenant to an abatement of holdover rent, constitute an eviction of Tenant, constructive or otherwise, or impose upon Landlord any liability whatsoever, including but not limited to liability for consequential damages or loss of business or profits by Tenant; provided, however, that if Tenant is unable to and does not use a material portion of the Premises for Tenant's business purposes as a result of Landlord's performance of the Renovation Work within the Premises, and such interference is within Landlord's reasonable control and continues for two (2) or more consecutive days after Landlord's receipt of Tenant's written notice thereof to Landlord, then Tenant shall be entitled to abatement of monthly Base Rent under the Lease, which abatement shall be based on the extent of Tenant's inability to use the Premises.

6. Real Estate Brokers. Landlord and Tenant each represent and warrant to the other that it has not authorized or employed, or acted by implication to authorize or employ, any other real estate broker or salesman to act for it in connection with this Amendment. Each party shall indemnify, defend and hold the other harmless from and against any and all claims by any real estate broker or salesman for a commission, finder's fee or other compensation as a result of such party's entering into this Amendment.

7. Authority. Each party represents that it has the authority to enter into this Amendment; provided, Tenant's executed and performance of this Amendment is subject to the prior approval by the Board of Supervisors of the City and County of San Francisco, in its sole discretion.

8. No Offer. Submission of this instrument for examination and signature by Tenant does not constitute an offer to amend the Lease, or a reservation of or option to amend the Lease, and is not effective as a lease amendment or otherwise until execution and delivery by both Landlord and Tenant.

9. Counterparts. This Amendment may be executed in counterparts, each of which shall constitute an original but all of which shall constitute one document.

10. Entire Agreement. This Amendment sets forth the entire understanding of the parties on the subject matter of this Agreement. There are no agreements between Landlord and Tenant relating to the Lease other than those set forth in writing and signed by the parties. Neither party has relied upon any understanding, representation or warranty not set forth herein, either oral or written, as an inducement to enter into this Agreement.

11. Lease in Full Force and Effect; Amendment Prevails. Except as amended hereby, the Lease remains unmodified and in full force and effect. To the extent the provisions of this Amendment conflict with the provisions of the Lease, this Amendment shall prevail.

12. Successors and Assigns. The provisions contained herein shall bind and inure to the benefit of the heirs, representatives, successors and assigns of the parties hereto, subject to the applicable provisions of the Lease.

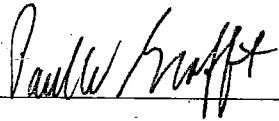
IN WITNESS WHEREOF, the parties have executed this Amendment as of the date and year first above written.

**LANDLORD:**

**TENANT:**

SRI NINE MARKET SQUARE LLC,  
a Delaware limited liability company

CITY AND COUNTY OF SAN FRANCISCO, a  
municipal corporation

By: 

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

Name: \_\_\_\_\_

Name: John Updike, Acting Director of Property

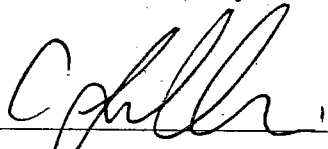
Title: Paul W. Grafft  
Vice President

Title: \_\_\_\_\_

Approved: Board of Supervisors Resolution  
No: \_\_\_\_\_

Adopted on: \_\_\_\_\_

**APPROVED AS TO FORM:**  
DENNIS J. HERRERA, City Attorney

By: 

Charles Sullivan, Deputy City Attorney

Exhibit A

Renovation Work

1. MEP safe off
2. Perform soft demolition work
3. Drill new skin anchors around, outside or within the perimeter of the Building
4. Commence work on window washing system outside or within the Building
5. Perform Hydro abatement of shear walls outside or within the Building



### THIRD AMENDMENT TO OFFICE LEASE

THIS THIRD AMENDMENT TO OFFICE LEASE ("Third Amendment"), dated as of October 31, 2008, is by and between WESTERN MART CO., L.P., a California limited partnership, as Landlord ("Landlord"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, as Tenant ("Tenant").

#### RECITALS

A. Landlord and Tenant have entered into that certain Office Lease dated June 16, 1994, as amended by that certain First Amendment to Office Lease dated November 15, 1996 and as further amended by that certain Letter Agreement dated March 31, 2003 ("Second Amendment") (as so amended, the "Original Lease"). The Original Lease covers floors one (1) through five (5) and a portion of the basement used for recycle bins and storage, consisting of approximately 158,442 rentable square feet in the aggregate as set forth in Exhibit D attached hereto ("Original Premises") of the building known as 875 Stevenson Street in San Francisco, California ("Building").

B. The parties now wish to amend the Original Lease to surrender a portion of the Original Premises, extend its term, and modify certain other terms and conditions contained therein.

C. Concurrently herewith, an affiliate of Landlord ("Landlord's Affiliate") as "buyer" and Tenant as "seller" are entering into a purchase and sale agreement for the alley commonly known as Stevenson Street located between the Building and 1355 Market Street (the "Stevenson Street Purchase Agreement").

#### AGREEMENT

NOW, THEREFORE, Landlord and Tenant hereby agree as follows:

1. **Defined Terms.** Unless otherwise specified, each capitalized term contained herein shall have the same meaning as set forth in the Original Lease. As used herein, the term "Lease" shall mean the Original Lease as amended by this Third Amendment.

2. **Surrender of Fifth Floor.** Tenant shall surrender to Landlord a portion of the Original Premises consisting of the fifth floor of the Building containing approximately 33,411 rentable square feet (the "Fifth Floor Premises"). The effective date of the surrender of the Fifth Floor Premises shall be the Effective Date, as defined in Paragraph 10 below (the "Fifth Floor Premises Surrender Date"). On the Effective Date, Tenant shall pay to Landlord a termination fee in the amount equal to \$179,241.30 (33,411 rsf of 5<sup>th</sup> Floor Premises /158,442 total rsf of Original Premises x \$850,000) multiplied by a fraction, obtained by dividing the number of months from the Fifth Floor Premises Surrender Date until May 31, 2010 by 30 months (the

"Termination Fee"). If the Fifth Floor Premises Surrender Date is on a day other than the first day of a calendar month, the first month in the calculation of the numerator of the fraction shall be prorated on the basis of actual days elapsed in such month. The Termination Fee may be paid through the escrow for the Stevenson Street Purchase (as defined in Paragraph 10 below). If applicable, the parties shall include as part of the closing statement prorations the Termination Fee and the Rent Credit (as defined in Paragraph 6(b) below) through the escrow closing for the Stevenson Street Purchase.

3. **Surrender of First Floor.**

(a) Tenant shall surrender to Landlord upon five (5) business days prior written notice from Tenant to Landlord, no earlier than the Effective Date and no later than July 1, 2009, subject to any extension as may be agreed to by the parties (the "A-R Surrender Date"), a portion of the Original Premises consisting of a portion of the first floor of the Building currently occupied by the Assessor-Recorder as shown in Exhibit C-1 attached hereto and containing approximately 10,664 of the total 24,604 rentable square feet on the first floor and such portion of the basement which contains Tenant's recycling bins and storage. On or before the A-R Surrender Date, Tenant, at Tenant's sole cost, shall relocate the Assessor-Recorder staff to other portions of the Premises and relocate the recycling bins and storage currently located in a portion of the basement to a location on the first floor as designated by Landlord and approved by Tenant in its reasonable discretion. The portion of the first floor of the Building that will continue to be leased by Tenant, which shall include the portion occupied by the recycling bins and storage, is referred to herein as the "Remaining First Floor Premises" and such portion may be further reconfigured as set forth below. The portion of the first floor of the Building that will be surrendered by Tenant at any time during the Term as set forth herein shall be referred to as the "Surrendered First Floor Premises". Landlord or Tenant shall have the right, within thirty (30) days after the A-R Surrender Date or Reproduction Reconfiguration Date (as defined below), as applicable, to cause the Remaining First Floor Premises to be remeasured in accordance with the BOMA standards specified in Section 2.1 of the Lease to confirm the final rentable area of the Remaining First Floor Premises.

(b) From and after the A-R Surrender Date, Landlord shall have the right by delivery of written notice to Tenant (the "First Floor Reconfiguration Notice") to reconfigure the Remaining First Floor Premises to the area shown as the shaded "DTIS" area in Exhibit C-2 attached hereto, or such alternative reconfiguration as may be agreed to by Landlord and Tenant, which area shall contain approximately 13,500 rentable square feet (subject to any additional reduction that is acceptable to Tenant in its sole discretion). Tenant shall, at Tenant's sole cost, surrender any area to be surrendered as part of the reconfiguration not more than ninety (90) days from the First Floor Reconfiguration Notice, or if the Landlord seeks to revise the configuration of the space from what is shown in Exhibit C-2, then ninety (90) days following the date the parties agree upon the reconfiguration (such reconfiguration date is referred to herein as the "Reproduction Reconfiguration Date"). Following the Reproduction Reconfiguration Date, Landlord shall have the right, but not the obligation, to construct new demising walls so as to separate the Remaining First Floor Premises from the Building's lobby. The actual, reasonable costs of constructing such demising walls, including but not limited to stubbing of plumbing and ducts and termination of wiring as required (without profit or markup to Landlord and excluding any finishes in the Building lobby), as set forth in a construction budget to be approved by



Tenant, which approval shall not be unreasonably withheld or delayed, shall be charged to Tenant upon completion as Additional Rent under the Lease; provided, in no event shall such costs exceed \$117,000. Landlord shall construct such demising walls in a manner so as to minimize the impact on Tenant's use of the Remaining First Floor Premises. Notwithstanding the foregoing, if the Reproduction Reconfiguration Date occurs from and after May 31, 2010, Landlord shall bear the actual reasonable costs of Tenant's surrender and any demising walls Landlord elects to construct.

(c) Tenant shall have the option to terminate the Lease with respect to the Remaining First Floor Premises without fee, cost or penalty, which termination shall be effective May 31, 2010. Tenant shall exercise such option by giving Landlord prior written notice of such termination at any time after the Effective Date but no later than September 1, 2009 (subject to any extensions as may be mutually agreed to by the parties). If Tenant fails to notify Landlord in writing of Tenant's intent to exercise its termination option on or prior to September 1, 2009 (as may be extended by mutual agreement of the parties), Tenant shall have no right to exercise its termination option pursuant to this Third Amendment.

(d) Regardless of whether Landlord has delivered the First Floor Reconfiguration Notice, Landlord shall have the option to terminate the Lease with respect to the Remaining First Floor Premises at any time during the remaining term of the Lease, including the Extension Term, with at least nine (9) months prior written notice to Tenant; provided, however, that Tenant shall not be required to surrender the Remaining First Floor Premises prior to May 31, 2010.

(e) Except as set forth in Section 20 of the Lease, Tenant shall not be obligated to pay any cost, fee or charge, including any termination fee, in connection with the Surrendered First Floor Premises.

(f) **Definition of Premises.** From and after the applicable surrender, reconfiguration or termination date, the term "Premises" shall include only those portions of the Building which continue to be leased by Tenant.

4. **Parking.** As of the date hereof, Tenant has the exclusive right to park cars in a total of twenty-five (25) designated spaces (consisting of five (5) spaces per floor leased by Tenant pursuant to the Lease). From and after the Effective Date (as defined below), Tenant's right to park cars in the twenty-five (25) designated spaces shall be reduced by five (5) spaces per full floor (and a pro rata portion for any partial floor) surrendered by Tenant pursuant to this Third Amendment as and when such floors or any portion thereof are surrendered. Accordingly, following the Fifth Floor Surrender Date, Tenant shall have the exclusive right to park cars in a total of twenty (20) designated spaces, which number shall be further reduced on a pro rata basis (based on one (1) space per every 5,000 rentable square feet surrendered with respect to the First Floor Premises) following the A-R Surrender Date and Reproduction Surrender Date, as applicable. Landlord, in its reasonable discretion, may designate the exact location of such spaces and may relocate them from time to time upon advance notice to Tenant.

5. **Condition of Premises upon Surrender.** Tenant shall surrender the Surrendered First Floor Premises, Fifth Floor Premises and Second Floor Premises to Landlord on or before

the applicable surrender, reconfiguration or termination date. Upon each such surrender, reconfiguration or termination, Tenant shall deliver the surrendered or terminated portion of the Premises to Landlord in the condition required under the Lease and otherwise in accordance with the Lease, including but not limited to Section 20 of the Lease. To the extent applicable with respect to a particular surrender or termination, Tenant shall deliver all keys to the Premises and notify Landlord in writing of all combinations on locks, safes and vaults, if any, in the Premises which Landlord does not require Tenant to remove. If Tenant fails to remove its personal property and any Alterations in accordance with the Lease, Landlord will have the right to remove the same and repair any damage caused by such removal at Tenant's expense.

6. **Extension of Term for Premises.** From and after the Effective Date, the term of the Lease for the Premises shall be extended for a period of five (5) years from June 1, 2010 to and including May 31, 2015 (the "Extension Term").

(a) **Rent.** As of the date hereof, Tenant shall continue to pay an Annual Base Rent of \$4,119,492.00 consisting of monthly payments of \$343,291.00 for the Original Premises pursuant to the Original Lease. From and after the Effective Date, the Annual Base Rent for the Premises, on a rentable square foot basis (as set forth in Exhibit D, which square footage will be adjusted on each applicable surrender date), shall be: (i) \$26 psf from the Effective Date to November 30, 2009; and (ii) \$27 psf from December 1, 2009 to May 31, 2015.

(b) **Rent Credit.** On the Effective Date, Tenant shall receive a rent credit (the "Rent Credit") in the amount of the greater of (i) \$144,781.00 (two months rent for the Fifth Floor Premises), or (ii) fifty percent (50%) of the rent paid by Tenant for the Fifth Floor Premises from March 1, 2008 to the earlier of the Effective Date or December 31, 2008.

7. **Second Floor Termination Option.**

(a) Landlord shall have the option to terminate the Lease with respect to the second floor of the Building ("Second Floor Premises") at any time during the term of the Lease, including the Extension Term, upon nine (9) months prior written notice to Tenant.

(b) Tenant shall have the option to terminate the Lease with respect to the Second Floor Premises without fee, cost or penalty, which termination shall be effective May 31, 2010. Tenant shall exercise such option by giving Landlord prior written notice of such termination at any time after the Effective Date but no later than September 1, 2009 (subject to any extensions as may be mutually agreed to by the parties). If Tenant fails to notify Landlord in writing of Tenant's intent to exercise its termination option on or prior to September 1, 2009 (as may be extended by mutual agreement of the parties), Tenant shall have no right to exercise its termination option pursuant to this Third Amendment.

8. **Third Floor Leasehold Improvements.** From and after the Effective Date, Tenant may relocate its occupants and Personal Property on the First Floor Premises to the third floor of the Building (the "Third Floor Premises") at its sole cost and expense in accordance with all applicable laws, rules and regulations. Any tenant improvements to the Third Floor Premises ("Tenant Improvements"), shall be performed by Landlord or its agents in accordance with the Work Letter attached hereto as Exhibit B.

9. **Common Areas.** The first paragraph of Section 2.2 of the Original Lease is hereby deleted and replaced with the following:

City shall have the non-exclusive right to use, together with other tenants in the Building, the main lobby on the first floor, elevators, stairways and other public areas of the building and the Property (collectively, the "Common Areas"), and the exclusive right to use the lobbies and corridors exclusively serving the Premises.

10. **Conditions Precedent.** The effectiveness of this Third Amendment is subject to the following conditions precedent (such date on which all of the following conditions precedent are satisfied or waived in writing by the parties is referred to herein as the "Effective Date"):

(a) The consummation of the purchase of the alley commonly known as Stevenson Street, San Francisco located between the Building and 1355 Market Street, San Francisco by Landlord's Affiliate as "buyer" from Tenant as "seller" ("Stevenson Street Purchase") shall have occurred pursuant to the terms of the Stevenson Street Purchase Agreement; provided, however, that it shall constitute a waiver of this condition if the failure to consummate the Stevenson Street Purchase is solely as a result of (i) Landlord's Affiliate's breach of the Stevenson Street Purchase Agreement or Landlord's Affiliate's failure to consummate the Stevenson Street Purchase notwithstanding the satisfaction of all of Buyer's Conditions Precedent (as defined in the Stevenson Street Purchase Agreement), or (ii) a Litigation Condition (as defined in the Stevenson Street Purchase Agreement) has occurred and such Litigation Condition was not an action or proceeding brought by the City or any official, department, or division thereof, provided Landlord is not obligated to give Tenant the Rent Credit until the Stevenson Street Purchase has occurred (unless such non-occurrence is due to a breach or failure identified in clause (i) above). Nothing contained herein shall limit Landlord's Affiliate's right, as buyer, to withhold its approval or consent to any matters to which buyer's consent or approval is required pursuant to the Stevenson Street Purchase Agreement, and Landlord's Affiliate's withholding of its approval or consent as set forth in the Stevenson Street Purchase Agreement shall not be deemed a breach of the Stevenson Street Purchase Agreement;

(b) The Board of Supervisors of the City and County of San Francisco shall have adopted a resolution approving the terms and conditions hereof and the terms and conditions of the Stevenson Street Purchase Agreement in its sole discretion; and

(c) Landlord's mortgage lender holding a note secured by a deed of trust on the Building shall have consented in writing to the terms and conditions hereof (the "Lender Approval Condition"), which consent shall be either unconditional or subject only to such conditions as Landlord deems acceptable in its sole discretion, and to the extent Tenant is affected by any such conditions, then such conditions shall also be subject to Tenant's approval in Tenant's sole discretion.

If the Effective Date has not occurred by March 2, 2009, or by such later date as may be agreed to by the parties in writing, then either party may terminate this Third Amendment by written notice to the other party and upon delivery of such notice this Third

Amendment shall be null and void and of no force or effect. Promptly following the Effective Date, the parties agree to sign a letter confirming the Effective Date.

11. **New City Provisions.** On the Effective Date, the provisions set forth in Exhibit A attached hereto shall be added to the Lease.

12. **Counterparts.** This Third Amendment may be executed in counterparts, each of which shall constitute an original but all of which shall constitute one document.

13. **Entire Agreement.** This Third Amendment sets forth the entire understanding of the parties on the subject matter of this Third Agreement. There are no agreements between Landlord and Tenant relating to the Lease other than those set forth in writing and signed by the parties. Neither party has relied upon any understanding, representation or warranty not set forth herein, either oral or written, as an inducement to enter into this Third Agreement.

14. **Lease in Full Force and Effect; Amendment Prevails.** Except as amended hereby, the Lease remains unmodified and in full force and effect. To the extent the provisions of this Third Amendment conflict with the provisions of the Lease, this Third Amendment shall prevail.

15. **Successors and Assigns.** The provisions contained herein shall bind and inure to the benefit of the heirs, representatives, successors and assigns of the parties hereto, subject to the applicable provisions of the Lease.

*[SIGNATURE PAGE FOLLOWS]*

Landlord and Tenant have full executed this Third Amendment as of the date first written above.

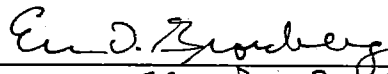
**LANDLORD:**

WESTERN MART CO., L.P.,  
a California limited partnership

By: SANFRAN TWO LLC,  
a Delaware limited liability company,  
its general partner

By: San Fran Two Manager LLC,  
a Delaware limited liability company,  
its manager

By: Western Mart Corp.,  
a Nevada corporation,  
its managing member

By:   
Name: ERIC D. GROSSBERG  
Title: VICE PRESIDENT

**TENANT:**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By:   
Director of Property

Approved: Board of Supervisors Resolution No. 516-08  
Adopted on 12/16/08

**APPROVED AS TO FORM:**

By:   
Deputy City Attorney

## Exhibit A

### City Provisions

#### 1. Resource-Efficient City Buildings and Pilot Projects

Landlord acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 707 relating to resource-efficient City buildings and resource-efficient pilot projects. Landlord hereby agrees that it shall comply with all applicable provisions of such code sections.

#### 2. Notification of Limitations on Contributions

Through its execution of this Lease, Landlord acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with City for the selling or leasing of any land or building to or from City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three (3) months has elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves.

#### 3. Preservative-Treated Wood Containing Arsenic

As of July 1, 2003, Landlord may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code, Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Landlord may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Landlord from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

#### 4. Building Occupancy Resumption Program.

The City's Department of Building Inspection ("DBI") has developed a Building Occupancy Resumption Program ("BORP") whereby private building owners can pre-certify private inspectors to provide building safety assessment evaluations following an earthquake or other catastrophic event. The purpose of BORP is to allow a quick and thorough evaluation of possible damage to a structure by qualified persons so as to permit the re-occupancy of a building at the earliest possible date following such a catastrophic event. To participate in BORP, building owners must submit and maintain a BORP plan, and enter into an agreement with qualified inspectors, approved by DBI. Upon approval, DBI will send the building owner verification of BORP participation and will place the building on DBI's BORP list. Additional information about BORP can be found on the DBI section of City's website at [http://www.sfgov.org/site/dbi\\_page.asp?id=11515](http://www.sfgov.org/site/dbi_page.asp?id=11515). Within fifteen (15) business days after the Effective Date and provided Tenant is leasing the Second Floor Premises and the Second Floor Premises is occupied by the City Controller's PPSD Division, Landlord shall submit a BORP

plan and enter into an agreement with a qualified inspector approved by the DBI. The City hereby acknowledges that Murphy Burr Curry Inc. Structural Engineers ("MBC") is a qualified inspector approved by the DBI and approves Landlord's engagement of MBC as its initial inspector. From and after DBI's initial approval and verification of Landlord's BORP participation and so long as Tenant continues to lease the Second Floor Premises and the Second Floor Premises is occupied by the City Controller's PPSD Division, Landlord agrees to use commercially reasonable efforts to maintain its participation in the BORP so long as Landlord may designate MBC or such other qualified inspector as its inspector.

## Exhibit B

### Work Letter

1. **Acceptance of Premises.** Tenant has accepted the Third Floor Premises in their "AS-IS" condition. Notwithstanding the foregoing, Landlord has agreed to perform the Work (as defined below in Paragraph 2(a)) as set forth in this Work Letter. City's acceptance of the Work upon Substantial Completion (as defined below in Paragraph 6) shall not limit Landlord's obligation to complete the Work, including punchlist items, except as set forth below.

2. **Plans and Working Drawings.**

(a) **Preparation, Delivery and Approval.** Subject to Tenant reimbursing Landlord, Landlord shall cause its architect to prepare, based on the space requirements Tenant previously gave to Landlord, design plans of the improvements to be installed in the Third Floor Premises and deliver the same to Tenant for its review and approval. Upon Tenant's approval of such plans, Tenant shall notify Landlord and Landlord shall cause its architect to prepare Working Drawings based on the approved plans and deliver the same to Tenant for its review and approval. Tenant shall notify Landlord whether it approves of the submitted plans or Working Drawings within five (5) business days after Tenant's receipt thereof. If Tenant disapproves of such plans and working drawings, then Tenant shall notify Landlord thereof specifying in reasonable detail the reasons for such disapproval, in which case the parties shall work with Landlord's architect to make the necessary changes and submit the revised plans or Working Drawings to Tenant for its review and approval. Tenant shall notify Landlord in writing whether it approves of the resubmitted plans or Working Drawings within five (5) business days after its receipt thereof. This process shall be repeated until the plans or Working Drawings have been finally approved by Landlord and Tenant. As used herein, "**Working Drawings**" shall mean the final plans and working drawings approved by Tenant and Landlord, as amended from time to time by any approved changes thereto, and "**Work**" shall mean all improvements to be constructed by Landlord in accordance with and as indicated on the Working Drawings. Landlord's submission of the Working Drawings shall not be a representation or warranty of Landlord that such drawings are adequate for any use or comply with any law, but shall merely be the consent of Landlord thereto. The parties agree to work diligently to complete Working Drawings acceptable to Landlord and Tenant, and that will keep the total cost of the Work, including the payment of the Construction Management Fee (as defined in Paragraph 7 below) and Costs (as defined in Paragraph 7 below), equal to or less than the amount mutually agreed to by the parties in writing prior to commencement of any Work, subject to any increases that are agreed to by Tenant's Director of Property in writing or as a result of any Change Orders (as defined in Paragraph 5 below)(the "Maximum Cost"). In no event shall Landlord be obligated to perform any of the Work prior to the Effective Date nor shall Landlord be obligated to perform the Work if Landlord and Tenant cannot agree on the plans, Working Drawings, Maximum Cost, or Construction Budget (as all may be amended pursuant to this Work Letter, collectively the "Construction Documents"). If the parties cannot agree on any Construction Document within sixty (60) days of Landlord's initial submission of any Construction Document, Landlord may elect not to proceed further with the Work and Tenant may perform



the Work at its sole cost and expense; provided, however, Landlord shall approve Tenant's plans and working drawings and contractors in writing prior to commencement of any work by Tenant. Landlord's inability to perform the Work due to Tenant's failure to approve the Construction Documents shall have no effect on the effectiveness of this Third Amendment. Landlord's approval of such Tenant's plans and working drawings and Tenant's construction documents (if applicable) shall not be unreasonably conditioned or withheld, provided that (1) they comply with all applicable laws, (2) the improvements depicted thereon do not adversely affect (in the reasonable discretion of Landlord or Landlord's engineers, as applicable) the Building's structure or any of the Building's systems (including the Building's restrooms or mechanical rooms), the exterior appearance of the Building, or the appearance of the Building's common areas or elevator lobby areas (if any), (3) such plans and working drawings are sufficiently detailed to allow construction of the improvements in a good and workmanlike manner, and (4) the improvements depicted thereon conform to the reasonable rules and regulations promulgated by Landlord for the construction of tenant improvements.

(b) **Construction Contract.** After the Working Drawings have been approved, Landlord shall select contractors and subcontractors reasonably approved by Tenant, and using a not-to-exceed price contract (the "Construction Contract") with a price that, when added to the Construction Management Fee and any other Costs payable by Tenant, will not to exceed the Maximum Cost. Tenant hereby approves Plant Construction Company, L.P. as the general contractor, subject to Landlord's right to select a different general contractor as reasonably approved by Tenant ("General Contractor"). Prior to finalizing the Construction Contract and commencement of construction of the Work, Landlord shall provide Tenant with the General Contractor's not-to-exceed price ("GMP") along with an initial construction budget (the "Construction Budget"). The Construction Budget shall set forth all of the costs of the Work and any other costs to be paid by Tenant hereunder as line items in specified cost categories. If Landlord discovers that the Work cannot be completed in strict conformity with the most recently-approved Construction Budget, Landlord shall promptly notify Tenant of such discovery and the reason for the change. In the event the GMP plus the Construction Management Fee and any other Costs are anticipated to exceed the Maximum Cost, the parties agree to meet and confer in order to value engineer and reduce costs or revise the Maximum Cost. Upon the parties' agreement of the GMP, Landlord shall cause General Contractor to attach a final Construction Budget not exceeding the GMP to the Construction Contract. After the Construction Contract has been entered into by Landlord and General Contractor, Landlord shall cause the Work to be performed in a good and professional manner in accordance with sound building practice and in accordance with the Working Drawings. All of the Work shall be performed in compliance with all applicable laws and building requirements, including but not limited to the Americans With Disabilities Act of 1990 and Title 24 of the California Code of Regulations. Tenant shall not have any obligation with respect to the Work other than as provided herein. Tenant has adopted a First Source Hiring Ordinance (Board of Supervisors Ordinance No. 264 98) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry level positions. Landlord shall include the applicable requirements of the First Source Hiring Ordinance in the Construction Contract.

3. **Permits.** Provided Tenant reimburses Landlord for all costs pursuant to this Work Letter, Landlord shall have the responsibility for obtaining all governmental permits and

approvals required to commence and complete the Work, and shall use diligent efforts to obtain such permits promptly following Tenant's approval of the Construction Documents. Landlord shall keep Tenant apprised of the status of permit approval and the progress of construction.

4. **Inspection.** From time to time during construction, Tenant shall have the right upon reasonable advance oral or written notice to Landlord to enter the Premises at reasonable times to inspect the Premises, provided such inspections do not unreasonably interfere with the construction. Landlord or its agents may accompany Tenant during any such inspection.

5. **Change Orders.** Tenant may initiate changes in the Work ("Change Orders"). Each such Change Order must receive the prior written approval of Landlord, such approval not to be unreasonably withheld or delayed; however, if such requested change would adversely affect (in the reasonable discretion of Landlord or Landlord's engineers, as applicable) (1) the Building's structure or the Building's systems (including the Building's restrooms or mechanical rooms), (2) the exterior appearance of the Building, or (3) the appearance of the Building's common areas or elevator lobby areas (if any), Landlord may withhold its consent in its sole and absolute discretion. If changes to the Construction Budget are required due to Change Orders, the parties agree to work in good faith to value engineer the project and revisions and if necessary, reduce the Work, so as to prevent any increase in the Construction Budget and if such increase is necessary to accommodate the Change Order, then Tenant shall approve a revised Construction Budget to accommodate such Change Order. If Tenant fails to approve a revised Construction Budget as needed due to the Change Order, Landlord shall have the right to cease construction of the particular Work for which Tenant has not approved an increase, but shall complete the remainder of the Work to the extent possible in keeping with the approved Construction Budget and so long as Tenant promptly reimburses Landlord for such costs. The most recently approved Construction Budget shall supersede all previously approved budgets. Landlord shall not be responsible for any cost overruns except to the extent such overruns are caused by Landlord.

6. **Walk-Through; Punchlist.** When the Work in the Third Floor Premises is Substantially Completed, Landlord will notify Tenant and within three (3) business days thereafter, Landlord's representative and Tenant's representative shall conduct a walk-through of the Third Floor Premises and identify any necessary touch-up work, repairs and completion items that are necessary for final completion of the Work. Neither Landlord's representative nor Tenant's representative shall unreasonably withhold his or her agreement on punchlist items. Landlord shall use reasonable efforts to cause the contractor performing the Work to complete all punchlist items within thirty (30) days after agreement thereon; however, (i) Landlord shall not be obligated to engage overtime labor in order to complete such items, and (ii) Landlord shall continue to use reasonable diligence to cause the contractor performing the Work to complete such items even if not completed within thirty (30) days. As used herein "**Substantial Completion**," "**Substantially Completed**," and any derivations thereof mean the Work has been performed in substantial accordance with the Working Drawings, as reasonably determined by Landlord's architect or engineer, so as to enable Tenant to occupy the Third Floor Premises and to conduct its business therein, and Landlord obtains a temporary certificate of occupancy for the Third Floor Premises if required by the City and County of San Francisco in its regulatory capacity. The Work shall be deemed Complete when Landlord obtains a final certificate of occupancy for the Third Floor Premises and the punchlist work has been completed. Subject to

Tenant's approval of the Construction Documents, Landlord shall use commercially reasonable efforts to cause its contractors to commence construction of the Work within five (5) business days after the later of the approval of all required permits for construction of the Work or the Effective Date, and shall diligently pursue construction to completion (provided Tenant has satisfied its obligations to reimburse Landlord for Costs as set forth below), all in accordance with the construction schedule attached to the Construction Contract.

7. **Costs.** Tenant shall bear the actual, reasonable cost of performing the Work depicted on the Working Drawings, including pre-construction costs, permits, other soft costs and Landlord's cost for its third-party consultants to review the Working Drawings or any reports ("Costs"); provided such Costs do not exceed the Maximum Cost. In consideration for Landlord's management and supervision for services performed in connection with the Work, Tenant shall also pay to Landlord a construction management fee ("Construction Management Fee") equal to 5% of the Costs, payable concurrently with each progress payment by Tenant pursuant to Paragraph 7(a) below.

a. **Progress Payments.** Tenant shall make monthly progress payments for the cost of the Work. Funds will be disbursed by Tenant to Landlord on or about the tenth (10th) day of each month ("Payment Date") in amounts equal to 100% of the amount of costs associated with the Work which Landlord has submitted to Tenant pursuant to the procedure below, plus the Construction Management Fee applicable to such costs. At least thirty (30) days before the Payment Date, Landlord shall submit to Tenant an itemized application for payment for work completed in accordance with the Construction Budget. Such applications may not include requests for payment of amounts Landlord does not intend to pay to Contractor because of a dispute or otherwise. Landlord shall promptly apply all such payments from Tenant to the payment of the invoice or invoices to which the payment relates. If Tenant does not make any payment due and owing by Tenant by the Payment Date, (i) Landlord shall have the right to cease construction of the Work and shall not be obligated to continue the Work until Landlord receives the required payment from Tenant; (ii) Landlord shall have the right to collect from Tenant any late charges or interest payable to third party service providers to the extent such charges or interest are caused by Tenant's failure to pay invoices by the Payment Date as required following the timely delivery of such invoices by Landlord; and (iii) Landlord shall have all other remedies provided in the Lease or at law or equity. Tenant agrees to indemnify, defend and hold harmless Landlord, from and against any and all claims, actions, losses, liabilities, damages, costs or expenses (including, without limitation, reasonable attorneys' fees) arising out of Tenant's improper failure to pay for the Work as required hereunder.

b. **Required Documentation of Costs.** Landlord shall deliver to Tenant with each application for payment pursuant to Paragraph 7(a) above (i) copies of all invoices received by Landlord from any contractor or supplier of materials or services in connection with the Work, (ii) satisfactory evidence of payment of such invoices, including unconditional lien waivers, or if such invoices have not been paid, conditional lien waivers, all such lien waivers being in the form prescribed by California Civil Code Section 3262, executed by each subcontractor and material supplier intended to be paid out of the particular disbursement and covering all labor, services, equipment and materials performed or supplied by the particular subcontractor or material supplier since the last previous disbursement, and (iii) such additional supporting data

which substantiates the payment as Tenant may reasonably require, such as copies of invoices or requisitions from subcontractors and material suppliers.

8. **Construction Representatives.** Landlord's and Tenant's representatives for coordination of construction and approval of change orders will be as follows, provided that either party may change its representative upon written notice to the other:

Landlord's Representative: Western Mart Co., L.P.  
1355 Market Street, 4<sup>th</sup> Floor  
San Francisco, CA 94103  
Fax No. 864-0550  
Attn: Linda Corso

Tenant's Representative: Real Estate Department  
25 Van Ness Avenue, Ste. 400  
San Francisco, CA 94102  
Fax No. 552-9216  
Attn: Amy Brown, Director of Property  
[Re: 875 Stevenson St. Lease]

9. **Miscellaneous.**

a. **Prevailing Wages.** Landlord agrees that any person performing labor in the construction of the Work shall be paid not less than the prevailing rate of wages pursuant to the California Prevailing Wage Law and the San Francisco Charter and Administrative Code, and that Landlord shall include, in any contract for such construction, a requirement that all persons performing labor under such contract shall be paid not less than such prevailing rate of wages for the labor so performed. Accordingly, in the performance of the Work, Landlord shall comply with all the provisions of subsection (b) of San Francisco Charter Section A7.204 and Section 6.22(E) of the San Francisco Administrative Code.

b. **Tropical Hardwood and Virgin Redwood Ban.** Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, neither Landlord nor any of its contractors shall provide any items to Tenant in the construction of the Work which are tropical hardwood, tropical hardwood wood products, virgin redwood, or virgin redwood wood products.

c. **Approvals.** Landlord understands and agrees that Tenant is entering into this Work Letter in its proprietary capacity and not as a regulatory agency with certain police powers. Notwithstanding anything to the contrary herein, no approval by Tenant of the plans for the Work nor any other approval by Tenant under this Lease shall be deemed to constitute approval of any governmental or regulatory authority with jurisdiction over the Premises. All approvals or other determinations of Tenant as tenant hereunder may be made by Tenant's Director of Property unless otherwise specified herein.

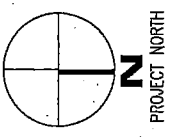
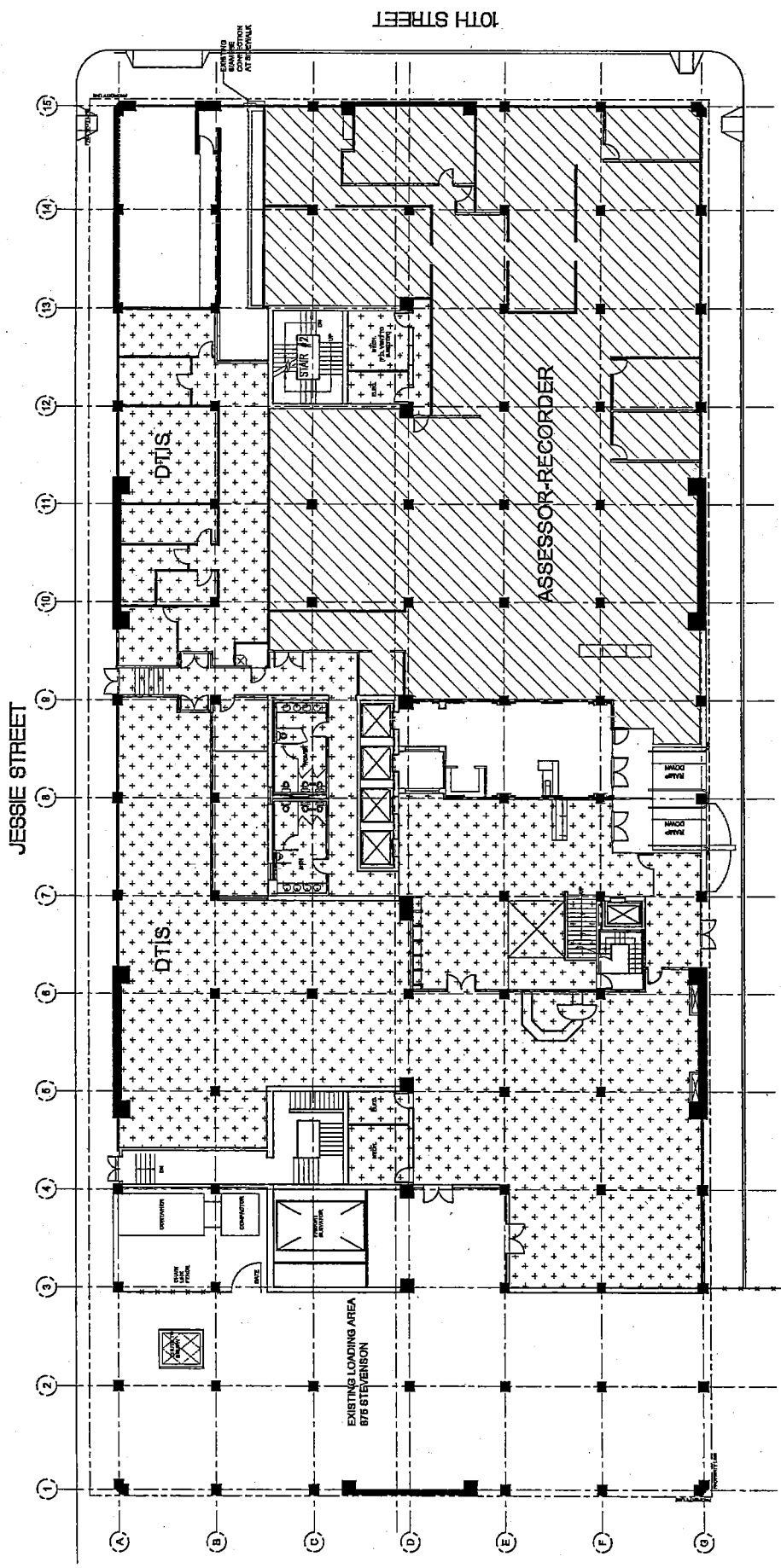
**Exhibit C-1**

**Remaining First Floor Premises – Existing DTIS**

**Exhibit C-2**

**Remaining First Floor Premises – DTIS Reconfiguration**

**EXHIBIT C-1  
REMAINING FIRST FLOOR PREMISES - EXISTING DTIS**



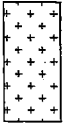

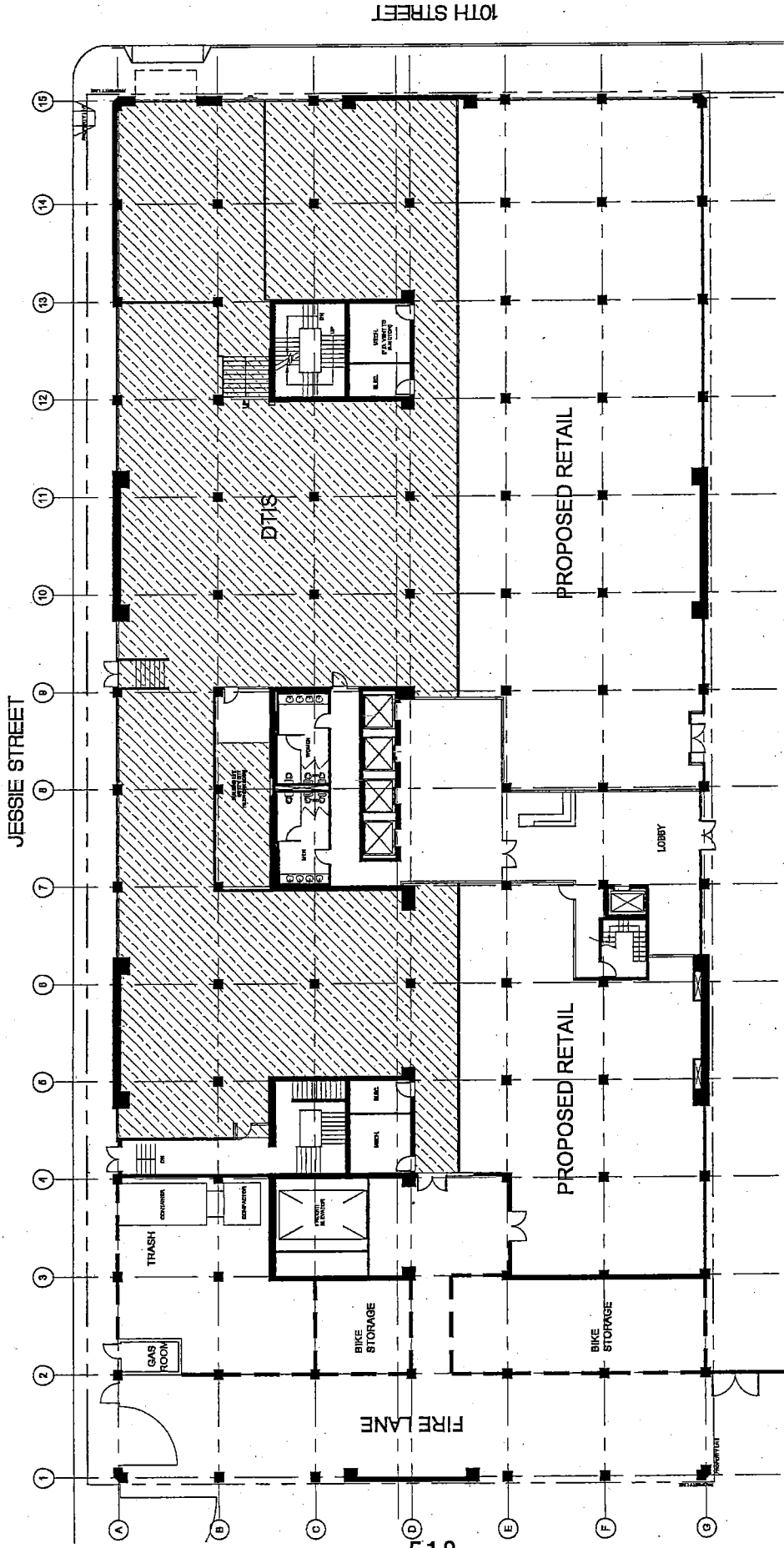
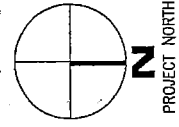
	EXISTING DTIS - 13,940 RSF
	EXISTING ASSESSOR-RECORDER - 10,664 RSF
	TOTAL - 24,604 RSF

EXHIBIT C-2  
 REMAINING FIRST FLOOR PREMISES - DTIS RECONFIGURATION



10TH STREET

JESSIE STREET





**Exhibit D**

**Original Premises**

<b>PREMISES</b>	<b>SQUARE FOOTAGE</b>
Basement	551
First Floor	24,604
Second Floor	33,054
Third Floor	33,411
Fourth Floor	33,411
Fifth Floor	33,411
<b>Total Original Premises</b>	<b>158,442</b>





March 31, 2003

Western Mart Co., L.P.  
 San Francisco Mart  
 1355 Market Street, Suite 294  
 San Francisco, CA 94103

RE: Lease Extension for 875 Stevenson Street, San Francisco, California

Ladies and Gentlemen:

Reference is made to that certain Office Lease dated as of June 16, 1994, by and between the City and County of San Francisco ("Tenant") and Western Mart Co., a California general partnership dba San Francisco Mart, predecessor-in-interest to Western Mart Co., L.P., a California limited partnership dba San Francisco Mart ("Landlord"), as amended by that certain First Amendment to Office Lease dated as of November 15, 1996, by and between Tenant and Landlord (collectively, the "Lease"). Tenant leases 158,442 square feet of space on floors 1 through 5 of the building located at 875 Stevenson Street in San Francisco, California (the "Premises").

Pursuant to the terms of the Lease, and based on the adoption of a resolution approving the following terms by the Board of Supervisors of the City and County of San Francisco (the "Board of Supervisors"), Tenant hereby extends the term of the Lease for a period of seven (7) years and six (6) months, commencing retroactively as of December 1, 2002, and expiring on May 31, 2010 (the "Extended Term"), subject to an early termination right effective at the end of the fifth year of the Extended Term, as described below.

Tenant acknowledges that, as a result of the mediation process heretofore conducted by Tenant and Landlord, the rent payable under the Lease for the first five (5) years of the Extended Term would have been \$3,485,724 per year, payable in equal monthly installments of \$290,477.00 per month (\$22.00 per square foot, per year), however, the rent schedule shown below is the result of negotiations with Landlord to minimize the financial effects on Tenant of satisfying its rental obligations for the Extended Term during the first two (2) years of the Extended Term. Landlord agrees to defer receipt of One Million Five Hundred Eighty-Four Thousand Four Hundred Twenty and No/Dollars (\$1,584,420.00) in rent in Years 1 and 2 of the Extended Term, with interest on the deferred amount accruing at the rate of four percent (4%) per year compounded monthly (the "Deferred Rent"). The Deferred Rent is intended to be recovered by Landlord by the end of the Extended Term in accordance with the rent schedule shown below. The rent schedule below also reflects a cumulative eight and one-half percent (8.5%) Consumer Price Index adjustment at the commencement of the sixth year of the Extended Term (or 1.65% compounded annually from December 1, 2002).

Subject to the terms of Section 23.24 of the Lease (Controller's Certification of Funds), Tenant agrees to pay rent during the Extended Term as follows:

Year	\$/Square Foot	\$/Month	\$/Year
1: 12/1/02-11/30/03	17.00	224,459.50*	2,693,514.00
2: 12/1/03-11/30/04	17.00	224,459.50	2,693,514.00

Year	\$/Square Foot	\$/Month	\$/Year
3: 12/1/04-11/30/05	22.00	290,477.00	3,485,724.00
4: 12/1/05-11/30/06	24.00	316,884.00	3,802,608.00
5: 12/1/06-11/30/07	26.00	343,291.00	4,119,492.00
6: 12/1/07-11/30/08	26.00	343,291.00	4,119,492.00
7: 12/1/08-11/30/09	26.00	343,291.00	4,119,492.00
8: 12/1/09-05/31/10	27.00	356,494.50	2,138,967.00

\*Commencing as of December 1, 2002, Tenant has paid Landlord rent in an amount that exceeds the reduced monthly rent payable in Year 1 of the Extended Term shown in the rent schedule above, and continued to do so pending the approval of the Lease extension terms by the Board of Supervisors, subject to sufficient appropriations for such payments as certified by Tenant's Controller. In the first month after approval of the Lease extension terms by the Board of Supervisors, Landlord shall credit Tenant the difference between the rent paid by Tenant since December 1, 2002, at the rate of \$262,304.40 per month, and the rent payable in such first month after approval of the Lease extension terms by the Board of Supervisors, at the rate of \$224,459.50 per month. Accordingly, assuming this Lease extension is effective on or before April 1, 2003, Tenant shall receive a rent credit in the amount of \$151,379.60 against the rent due and owing on April 1, 2003, and assuming this Lease extension is effective after April 1, 2003, but on or before May 1, 2003, Tenant shall receive a rent credit in the amount of \$189,224.50 against the rent due and owing on May 1, 2003.

Tenant may terminate the Lease (the "Early Termination Option), effective at the end of the fifth (5<sup>th</sup>) year of the Lease (November 30, 2007, the "Early Termination Date"), upon Tenant's satisfaction of all of the following conditions:

(i): Written Notice: Tenant shall provide twelve (12) months prior written notice to Landlord (by November 30, 2006) of Tenant's exercise of the Early Termination Option. Enclosed with the written notice shall be a copy of the resolution of the Board of Supervisors which approves the exercise of the Early Termination Option and confirms that the funds for the payment of the early termination fee (referred to in (iii) below) have been duly appropriated.

(ii): Relocation: On or before the Early Termination Date, Tenant shall relocate into a building either purchased by Tenant or constructed by or for Tenant after the date hereof. Tenant acknowledges that it may not exercise the Early Termination Option in order to relocate any of its employees from the Premises into another space leased from any other building owner.

(iii): Early Termination Fee: No later than the Early Termination Date, Tenant shall pay to Landlord an early termination fee in the amount of Eight Hundred Fifty Thousand and No Dollars (\$850,000.00), which amount is equivalent to the portion of the Deferred Rent that would have been recovered by Landlord out of the rent payable during Years 6, 7 and the six (6) month period of Year 8 of the Extended Term.

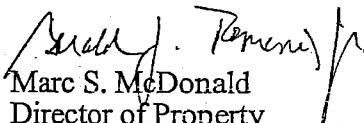
In the event Tenant fails to comply with all of the foregoing conditions, the Lease shall continue in full force and effect until May 31, 2010.

Pursuant to the terms of the Lease, Tenant has exercised all of its extension options and has no further options to extend the term of the Lease beyond May 31, 2010.

The Early Termination Option, and the conditions to the exercise of the Early Termination Option, are rights and obligations independent from Tenant's legally mandated right to terminate the Lease without penalty at any time during the Extended Term if the Board of Supervisors fails to appropriate sufficient funds to pay rent, all as more specifically set forth in Section 23.24 of the Lease, provided that in the event Tenant terminates the Lease early for any reason other than a default by Landlord, City shall pay to Landlord on or before the effective date of termination, an amount equal to the amount of the Deferred Rent outstanding at the time of such termination.

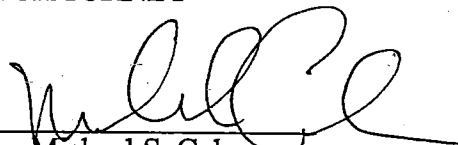
All other terms and conditions of the Lease shall remain unmodified and in full force and effect. Please indicate your agreement with the terms of this letter by signing below.

Sincerely,

  
for Marc S. McDonald  
Director of Property

APPROVED AS TO FORM:


DENNIS J. HERRERA,  
CITY ATTORNEY

By:   
Michael S. Cohen  
Deputy City Attorney

ACKNOWLEDGED AND AGREED:

LANDLORD:

Western Mart Co., L.P.,  
a California limited partnership  
dba San Francisco Mart

By: 

Name: ERIC D. GROSSBERG

Its: AUTHORIZED SIGNATORY

Date: MARCH 31, 2003

cc: Eric D. Grossberg, The ADCO Group  
Thomas Larsen, Esq., Howard, Rice, et al  
E. Venessa Henlon, Esq., Deputy City Attorney



## FIRST AMENDMENT TO OFFICE LEASE

THIS FIRST AMENDMENT TO OFFICE LEASE ("First Amendment"), dated as of November 15, 1996, is by and between WESTERN MART CO., L.P., a California limited partnership, d/b/a San Francisco Mart, as Landlord ("Landlord"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Tenant").

### RECITALS

A. Landlord and City have entered into that certain Office Lease dated June 16, 1994, regarding the building known as "Mart II" at 875 Stevenson Street in San Francisco, California (the "Original Lease").

B. The parties now wish to amend the Original Lease to expand the Premises covered thereby, extend its term, and modify certain other terms and conditions contained therein.

### AGREEMENT

NOW, THEREFORE, Landlord and City hereby agree as follows:

1. **Defined Terms.** Unless otherwise specified, each capitalized term contained herein shall have the same meaning as set forth in the Original Lease. As used herein, the term "Lease" shall mean the Original Lease as amended by this First Amendment.

2. **Additional Premises.** Landlord leases to City and City leases from Landlord, subject to the provisions of the Lease, in addition to those Premises defined in the Original Lease, those premises in the Building shown on the floor plan attached hereto as Exhibit A (the "Additional Premises"), which Additional Premises constitute the fifth floor of the Building and contain a rentable area of approximately 32,727 square feet. The term "Premises" is hereby amended to include such Additional Premises. As used herein, the term "rentable area" has the same meaning as set forth in Section 2.1 of the Lease.

City shall have the right, within thirty (30) days following its acceptance of the Additional Premises, to cause the Additional Premises to be remeasured in accordance with the BOMA standards specified in Section 2.1 of the Lease to confirm the final rentable area of the Additional Premises. If as a result of such remeasurement the Additional Premises contain more or less than 32,727 total rentable square feet and Landlord reasonably agrees with such determination, the Base Rent (as set forth in Section 5 below) of the Additional Premises shall be adjusted accordingly. Landlord and City agree to enter into an amendment of the Lease confirming any such adjustment. In the event Landlord disagrees with such determination, Landlord and City shall use their best efforts to meet and confer with one another in an attempt to

agree upon the proper measurement of the Additional Premises within thirty (30) days after City notifies Landlord of its remeasurement of the Additional Premises. If following the expiration of such 30-day period, Landlord and City are still unable to agree, Landlord and City shall jointly select an independent consultant to remeasure the space, and the determination of such consultant shall be binding upon the parties. Landlord and City shall share equally the cost of such consultant.

3. **Parking.** Beginning on the Additional Premises Commencement Date (as defined below), City shall have the exclusive right to park in an additional five (5) marked reserved spaces (two of which shall be located in the basement parking facilities of the Building and three of which shall be located under the overhang on the east side of the Building), pursuant to Section 2.3 of the Lease, in addition to the 20 designated reserved spaces pursuant to the Original Lease. Landlord, in its reasonable discretion, may designate the exact location of such additional spaces and may relocate them from time to time upon advance notice to City.

4. **Term of Lease.** The final two sentences of Section 3.1 of the Lease are hereby deleted in their entirety and the following language is substituted in place thereof:

“The Additional Premises are leased for an initial term (“Initial Term”) commencing on the date (the “Additional Premises Commencement Date”) that Landlord delivers the Additional Premises to City with the Fifth Floor Leasehold Improvements having been Substantially Completed, as defined in and in accordance with the provisions of the work letter attached to the First Amendment to this Lease as Exhibit B (the “Additional Premises Work Letter”). The Initial Term of this Lease with respect to the entire Premises (as defined in Section 2 of the First Amendment to this Lease) shall expire on the sixth (6th) anniversary of the Additional Premises Commencement Date, provided that City shall have the right to extend the Initial Term of this Lease pursuant to Section 9 of the First Amendment to this Lease. The word “Term” as used herein shall refer to the Initial Term and any Extended Terms if City exercises any of the Extension Options provided in Section 9 of the First Amendment to this Lease.”

5. **Fifth Floor Leasehold Improvements.** Landlord, acting through its general contractor approved by City, shall construct the Additional Premises, perform the work to the Additional Premises and the Building and make the installations in the Additional Premises pursuant to the terms and conditions of the Additional Premises Work Letter. All work and installations performed pursuant to the Additional Premises Work Letter are referred to as the “Fifth Floor Leasehold Improvements.”

6. **Delay In Delivery of Possession of Additional Premises.** Landlord shall use its reasonable and diligent efforts to deliver possession of the Additional Premises with all of the Fifth Floor Leasehold Improvements Substantially Completed pursuant to the Additional Premises Work Letter by December 31, 1996. However, if despite using such efforts Landlord is unable to deliver possession of the Additional Premises as provided above, then, subject to the provisions of the following paragraph, the validity of the Lease and the obligations of City



hereunder shall not be affected by such inability to deliver possession, except that City's obligations to pay Base Rent or any other charges with respect to the Additional Premises shall not commence until such time as Landlord has delivered the Additional Premises as required hereunder.

If Landlord is unable to deliver the Additional Premises to City with the Leasehold Improvements Substantially Completed on or before March 1, 1997, subject to extensions of such date as a result of Unavoidable Delays or Tenant Delays, as such terms are defined below, then City may at its option terminate its obligation to lease the Additional Premises pursuant to this First Amendment upon written notice to Landlord given prior to actual delivery of the Additional Premises to City, and neither party shall have any further rights or obligations hereunder with respect to the Additional Premises.

For purposes of this First Amendment, the term "Unavoidable Delays" shall mean any delays by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, inability to obtain labor or materials after diligent and timely efforts, enemy action, civil commotion, protests, riots, demonstrations, or by any other reason without fault and beyond the reasonable control of Landlord. In the event of any such delays, Landlord shall give prompt written notice to City of the occurrence of such event and the projected delay in performance and thereafter shall keep City regularly informed of the status of such Unavoidable Delay.

For purposes of this First Amendment, the term "Tenant Delays" shall mean any delay in the construction of the Fifth Floor Leasehold Improvements due solely and directly to: (a) City Change Orders, as defined in the Additional Premises Work Letter, (b) City's delay in revising its plans and specifications for the telecommunications, data and computer cabling as provided in subparagraph 2d of the Additional Premises Work Letter (beyond the period granted therefor), and (c) City's failure to make disbursements to Landlord in accordance with subparagraph 4b of the Additional Premises Work Letter (beyond the period granted therefor).

If the Additional Premises Commencement Date occurs on a date other than December 31, 1996, then promptly after the actual date is determined, Landlord shall deliver to City a notice confirming such actual Additional Premises Commencement Date, but Landlord's failure to do so shall not affect the obligations of the parties hereunder.

## 7. Rent.

(a) Notwithstanding any other provisions of the Lease, the parties agree that the annual Base Rent for the Premises, excluding the Additional Premises, during the Initial Term thereof shall be: \$150,747 per month for the period through January 26, 1999; \$162,093 per month for the period from January 27, 1999 to and including November 30, 2000; and \$172,224 per month for the period from December 1, 2000 to and including the Expiration Date.

(b) The annual Base Rent for the Additional Premises during the Initial Term thereof shall be: \$43,636 per month for the period from the Additional Premises

Commencement Date to and including November 30, 2000; and \$46,363.25 per month for the period from December 1, 2000 to and including the Expiration Date.

(c) As used in the Lease, the term "Rent" or "Base Rent" shall include Base Rent for the Additional Premises as set forth in this Section 7.

**8. Payment of Rent for Additional Premises.** Beginning on the Additional Premises Commencement Date, City shall pay to Landlord during the Initial Term the annual Base Rent for the Additional Premises specified in Section 7 above. City agrees to pay such Base Rent for the first eighteen (18) months of the Initial Term, less the sum of \$37,050 (which sum represents a rent discount and shall not be payable to Landlord in the future), in advance on the Additional Premises Commencement Date. In the event the Lease terminates for any reason prior to the end of such 18 month period (including a mutually agreed-upon termination), Landlord shall immediately refund to City any Rent previously paid for any period of time subsequent to such date of termination. The Base Rent for the Additional Premises, beginning with the nineteenth (19<sup>th</sup>) month of the Initial Term, shall be payable in equal consecutive monthly payments on or before the first day of each month, in advance, at the address specified for Landlord in or pursuant to the Lease. City shall pay such Base Rent without any prior demand and without any deduction or offset except as otherwise expressly provided in the Lease. If the Additional Premises Commencement Date occurs on a date other than the first day of a calendar month or the Expiration Date occurs on a date other than the last day of a calendar month, then the monthly payment of Base Rent for such fractional month shall be prorated on the basis of a thirty (30) day month.

**9. Extension Options.**

(a) Section 3.4 of the Lease is hereby deleted in its entirety and the provisions of this Section 9 shall govern City's option(s) to extend the Initial Term of the Lease.

(b) City shall have the following options to extend the Initial Term of the Lease (each an "Extension Option" and collectively the "Extension Options") for the additional terms set forth below (each an "Extended Term" and collectively the "Extended Terms"), subject to the terms and conditions hereof; provided that (i) City may exercise any or all Extension Options only with respect to all of the Premises and not with respect to any portion thereof, and (ii) City may exercise any or all Extension Options in any sequence it desires:

(i) City shall have the option to extend the Term of the Lease for one (1) six-month period (the "6-Month Extended Term");

(ii) City shall have the option to extend the Term of the Lease for two (2) one-year periods (each a "1-Year Extended Term" and collectively the "1-Year Extended Terms"); and

(iii) City shall have the option to extend the Term of the Lease for one (1) five-year period (the "5-Year Extended Term").

(c) City may exercise an Extension Option by delivering to Landlord written notice thereof not less than one-hundred eighty (180) days prior to the expiration of the then current term; provided, however, that if City is in material default under the Lease on the applicable exercise date and City fails to cure such default in accordance with the terms of the Lease, Landlord may reject such exercise by giving written notice to City.

(d) Each Extension Option shall be upon all of the terms and conditions contained in the Lease, except that (i) the Rent shall be adjusted to ninety-five percent (95%) of the Prevailing Market Rate as provided in (e) and (f) below (provided that in no event shall the Rent be reduced below the Rent in effect just prior to commencement of such Extended Term), (ii) Tenant shall have no right to exercise any Extension Option previously exercised, and (iii) Landlord shall not be obligated to construct or provide any allowance for tenant improvements.

(e) At the commencement of the each Extended Term, the Rent shall be adjusted to equal ninety-five percent (95%) of the Prevailing Market Rate for space of comparable size and location to the Premises then being offered for rent in other buildings similar in age, location and quality to the Premises, situated within the Civic Center area of San Francisco, for the same term as the applicable Extended Term and on an "as-is" basis; provided, however, in no event shall the Rent be reduced below the Rent in effect just year prior to commencement of such Extended Term. As used herein, the term "Prevailing Market Rate" shall mean the fair market rental per annum that the specific space constituting the Premises and used as office space would command on the open market for the period constituting the applicable Extended Term. The Prevailing Market Rate shall take into account, among other things, (i) such periodic increases as may be part of the Prevailing Market Rate for the applicable Extended Term, (ii) the length of the applicable Extended Term, (iii) the rate charged for similar space in comparable buildings in the Civic Center area, (iv) the level of services and utilities provided by Landlord, and (v) any additional rental and all other payments and escalations payable hereunder.

(f) Landlord initially shall determine the Prevailing Market Rate for the Premises within one hundred and forty (140) calendar days prior to the commencement of the applicable Extended Term. If, as a result of such determination, Landlord concludes that the Rent for the Extended Term is to be no greater than the Rent in effect just prior to the Extended Term, then such determination shall be conclusive. Otherwise, if City disputes Landlord's determination of the Prevailing Market Rate, City shall so notify Landlord within ten (10) business days following Landlord's notice to City of the Prevailing Market Rate and shall continue to pay Rent at the then current rate until such dispute is resolved. Such dispute shall be resolved as follows:

(i) Within thirty (30) calendar days following Landlord's notice to City of the Prevailing Market Rate, Landlord and City shall meet no less than two (2) times, at a mutually agreeable time and place, to attempt in good faith to resolve any such disagreement. If Landlord and City are unable to reach agreement on the Prevailing Market Rate during such thirty (30) day period, then within ten (10) business days after the expiration of such period, Landlord and

City shall simultaneously submit to each other their sealed written good faith estimates of the Prevailing Market Rate (the "Estimated Prevailing Market Rate"). If the higher of such estimates is not more than one hundred five percent (105%) of the lower of such estimates, the Prevailing Market Rate shall be the average of the Estimated Prevailing Market Rates. If otherwise, the determination of the Prevailing Market Rate shall be determined by appraisal in accordance with (ii) below.

(ii) If Landlord and City have not reached agreement as to the Prevailing Market Rate pursuant to (i) above, they shall each select one appraiser having the qualifications set forth in (iv) below to determine the Prevailing Market Rate, which determination shall be made and submitted to the other party within twenty (20) business days after the expiration of the ten (10) day period referenced in the second sentence of (i) above.

(iii) If only one appraisal is submitted within the requisite time period, it shall be deemed to be the Prevailing Market Rate. If both appraisals are submitted within such time period, and if the two appraisals so submitted differ by less than ten percent (10%) of the higher of the two, then the average of the two shall be the Prevailing Market Rate. If the two appraisals differ by more than ten percent (10%) of the higher of the two, then the two appraisers shall immediately select a third appraiser who will within thirty (30) calendar days of his or her selection make a determination of the Prevailing Market Rate and submit such determination to Landlord and City. This third appraisal will then be averaged with the closer of the two previous appraisals and the result shall be the Prevailing Market Rate. If the two appraisers selected by Landlord and City cannot agree on a third appraiser, the third appraiser shall be selected by the then-sitting Presiding Judge of the Superior Court for the City and County of San Francisco. In no event, however, shall Rent for any Extended Term be less than the Rent in effect just prior to the commencement thereof.

(iv) All appraisers specified herein shall be members of the American Institute of Real Estate Appraisers (MAI) with not less than five (5) years' experience appraising leases of commercial properties similar to the Premises in the Civic Center area. Each appraiser will make its own separate, independent determination of the Prevailing Market Rate. The appraisers may share and have access to objective information in preparing their appraisals, but will independently determine the appropriate assumptions to make based upon the Lease and each appraiser's own assessment of the commercial leasing market. None of the appraisers shall have access to the appraisals of the others (except for the sharing of objective information contained therein) until all appraisals are submitted. Landlord and City shall pay the cost of the appraiser selected by such party and one-half of the cost of the third appraiser plus one-half of any other reasonable costs approved by the parties in advance incurred in the appraisal process. The decision of the appraiser(s) on the issue of Prevailing Market Rate shall be binding on Landlord and City as Rent for the applicable Extended Term.

In no event, however, shall Rent for any Extended Term be less than the Rent in effect just prior to the commencement thereof. In the event the Rent per annum for the applicable Extended Term, as determined in accordance with this subsection (f), is greater than the Rent in effect just prior to the Extended Term, City shall remit the amount so underpaid for the Extended Term within thirty (30) days from the date of final determination of Rent payable during the Extended Term.

(g) Landlord acknowledges and agrees that City's notice of its intent to exercise any Extension Option shall be subject to enactment of a resolution by the Board of Supervisors and the Mayor, in their respective sole and absolute discretion, approving and authorizing such exercise at the Prevailing Market Rate determined in accordance with the provisions hereof, within sixty (60) days after the date such notice of exercise is given and the Prevailing Market Rate is determined.

#### **10. Bicycle Storage Facilities.**

Article 1.5 of the San Francisco Planning Code ("Code") requires the provision of bicycle storage at all City leased properties at no cost to Landlord and if funds are available. In the event public and/or private donations, grants or other funds become available, at any time during the Lease or any extension thereof, Landlord shall cooperate in good faith with City, but at no cost to Landlord, to reasonably accommodate such bicycle storage and to amend this Lease to reflect such storage. Any parking revenue from garage spaces lost to accommodate this requirement shall be paid by City. In the event of storage locker installation, the storage lockers shall be considered a trade fixture and City shall have the right to remove such lockers at Lease termination provided City repairs any damage, restoring the area to its original condition. Class 2 bicycle racks shall not be considered a permanent building improvement and shall be removed at Lease termination.

#### **11. Conditions Precedent.**

(a) As soon as practicable after the execution of this First Amendment, the parties shall seek from the Planning Department of City a written determination confirming that the extension of the Initial Term and the granting of the Extension Options described herein and City's continued occupancy or use of the Premises as office space during such Initial Term and any Extended Term does not constitute an office development or a change in use for conversion of the Premises requiring project authorization and/or various fees or other requirements under the San Francisco Planning Code. The parties agree to use their best efforts and to cooperate with each other to obtain such a determination.

(b) The effectiveness of this First Amendment additionally is subject to the condition precedent that Bankers Trust Company consents in writing to the terms and conditions hereof, including City's advance payment of Base Rent for the Additional Premises for the first eighteen (18) months of the Initial Term thereof in accordance with Section 8 above.

12. **Counterparts.** This First Amendment may be executed in counterparts, each of which shall constitute an original but all of which shall constitute one document.


13. **Lease in Full Force and Effect; Amendment Prevails.** Except as amended hereby, the Lease remains unmodified and in full force and effect. To the extent the provisions of this First Amendment (including the Additional Premises Work Letter) conflict with the provisions of the Lease, this First Amendment shall prevail.

Landlord and City have executed this First Amendment as of the date first written above.

**LANDLORD:**

WESTERN MART CO., L.P.,  
a California limited partnership,  
d/b/a San Francisco Mart


By: Western Mart Corp., General Partner

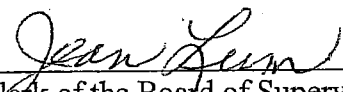
By: 

Its: \_\_\_\_\_

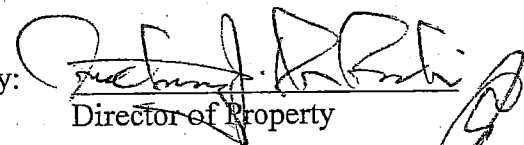
**CITY:**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By:   
Mayor

By:   
ACTING Clerk of the Board of Supervisors

**RECOMMENDED:**

By:   
Director of Property

**APPROVED AS TO FORM:**  
LOUISE H. RENNE, City Attorney

By:   
Deputy City Attorney

**MORTGAGEE CONSENT**

The undersigned, Banker's Trust Company, owner and holder of that certain Mortgage, as defined in the Subordination, Non-Disturbance and Attornment Agreement by and between City and the undersigned dated May 2, 1995, hereby acknowledges and consents to the terms and conditions of the foregoing First Amendment to Office Lease, including without limitation the provisions of Section 8 above providing for City's advance payment of Base Rent for the Additional Premises for the first eighteen (18) months of the Initial Term thereof.

BANKERS TRUST COMPANY,  
a New York banking corporation

By:

*[Signature]*

Its:

Managing Director

Dated:

November 18, 1996

**EXHIBIT A**  
**A. ADDITIONAL PREMISES FLOOR PLAN**



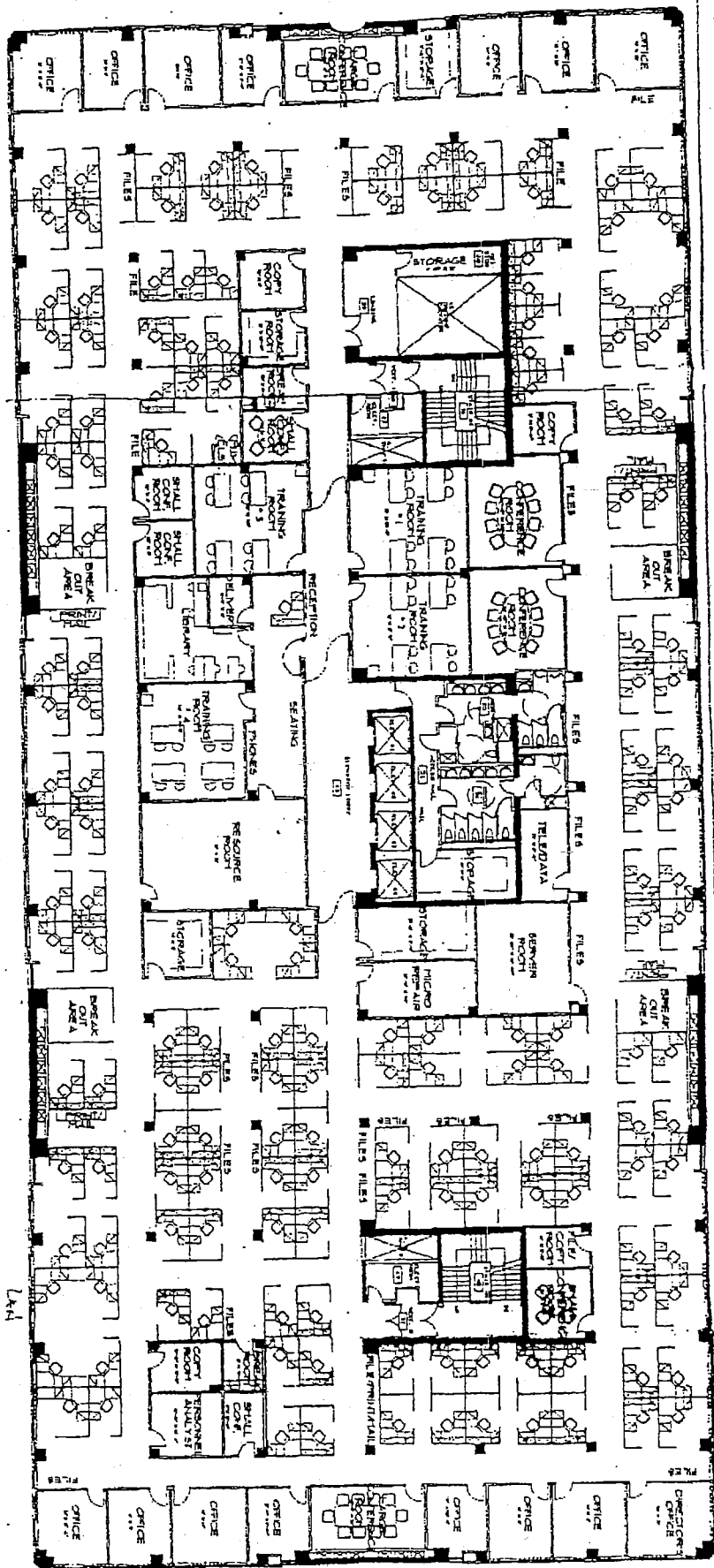
**KOMOROVS - TOMHEY**  
**ARCHITECTS**

315 WEST WASHINGTON STREET, SUITE 200, MILWAUKEE, WI 53233

510 W. PLYMOUTH STREET, SUITE 200, MILWAUKEE, WI 53233



**PART I: SHANNON  
 PRELIMINARY PLAN**



**SUMMARY TABLE**

- OFFICE
- TRAINING ROOM
- RECEPTION
- SEATING
- TELEDATA
- SERVER ROOM
- COPY ROOM
- STORAGE
- FILES
- BREAK OUT AREA
- LAV

NO.	AREA	NO.	NO.	NO.	NO.
1	OFFICE	2	3	4	5
6	TRAINING ROOM	7	8	9	10
11	RECEPTION	12	13	14	15
16	SEATING	17	18	19	20
21	TELEDATA	22	23	24	25
26	SERVER ROOM	27	28	29	30
31	COPY ROOM	32	33	34	35
36	STORAGE	37	38	39	40
41	FILES	42	43	44	45
46	BREAK OUT AREA	47	48	49	50
51	LAV	52	53	54	55
56	STAIRS	57	58	59	60
61	ELEVATOR	62	63	64	65
66	RESTROOM	67	68	69	70
71	MEETING ROOM	72	73	74	75
76	RECEPTION	77	78	79	80
81	TRAINING ROOM	82	83	84	85
86	FILES	87	88	89	90
91	OFFICE	92	93	94	95
96	OFFICE	97	98	99	100
101	OFFICE	102	103	104	105
106	OFFICE	107	108	109	110
111	OFFICE	112	113	114	115
116	OFFICE	117	118	119	120
121	OFFICE	122	123	124	125
126	OFFICE	127	128	129	130
131	OFFICE	132	133	134	135
136	OFFICE	137	138	139	140
141	OFFICE	142	143	144	145
146	OFFICE	147	148	149	150
151	OFFICE	152	153	154	155
156	OFFICE	157	158	159	160
161	OFFICE	162	163	164	165
166	OFFICE	167	168	169	170
171	OFFICE	172	173	174	175
176	OFFICE	177	178	179	180
181	OFFICE	182	183	184	185
186	OFFICE	187	188	189	190
191	OFFICE	192	193	194	195
196	OFFICE	197	198	199	200



## ADDITIONAL PREMISES WORK LETTER

This Additional Premises Work Letter ("Work Letter") is made a part of that certain First Amendment to Office Lease dated as of November 15, 1996 ("First Amendment"), executed concurrently herewith, by and between Western Mart Co., L.P., a California limited partnership, d/b/a San Francisco Mart, as Landlord, and the City and County of San Francisco, as Tenant, which First Amendment amends that certain Office Lease between Landlord and Tenant dated June 16, 1994 ("Original Lease"). Unless otherwise specified, all capitalized terms contained herein shall have the same meanings as set forth in the Original Lease, as amended by the First Amendment.

Landlord, at its sole cost and expense (except as otherwise specifically set forth herein), and through BBI Construction, its general contractor approved by City (the "Contractor"), shall furnish and install within the Additional Premises the improvements shown on the Construction Documents finally approved by City pursuant to Paragraph 1 below (the "Fifth Floor Leasehold Improvements") in accordance with the provisions of this Work Letter. The Fifth Floor Leasehold Improvements consist of certain Tenant Improvement Work and Base Building Work, as such terms are hereinafter defined.

### **1. Plans and Specifications.**

**a. Construction Documents.** Landlord has submitted to City working drawings, plans, specifications, general conditions and supplementary general conditions, information for bidders, bid proposal and addenda, all developed to set forth in detail all aspects of the design, function and construction of the Fifth Floor Leasehold Improvements which expand in greater detail the representations of the schematic design phase drawings for the Fifth Floor Leasehold Improvements ("Schematics") and fix and describe the size and character of the Fifth Floor Leasehold Improvements, including without limitation architectural, structural, mechanical, electrical, fire and life safety systems, materials and such other elements as may be appropriate, together with fully developed floor plans, interior elevations, reflected ceiling plans, wall and building sections (collectively, the "Construction Documents"). Such Construction Documents have been approved by City in accordance with Paragraph 1c below.

**b. Preparation of Plans and Specifications.** Landlord has hired Komorous-Towey Architect (who City hereby approves) to complete City's space plans and working drawings with respect to the Fifth Floor Leasehold Improvements. Landlord's architect shall consult and hold periodic meetings with City and its architectural consultants and space planners as needed. Landlord shall be responsible for providing, at its cost, architectural, mechanical, electrical, engineering, furniture layout, panel system design, data and telecom wiring, and all other required working drawings for the Additional Premises, as well as all plans and drawings relating to the Building core and code compliance work, including work required under the Americans with Disabilities Act (ADA), if any, as required by the City's occupancy. These costs shall be included in the Allowance, as defined below.

**c. City's Approval.** The parties acknowledge and agree that the Schematics dated September 17, 1996, and the Construction Documents have been approved by City.

**d. Payment.** City shall be responsible for paying City's reasonable share of the costs of preparing the Schematics and Construction Documents relating to the Tenant Improvement Work. Such costs shall be subject to City's approval and included as line items in the Construction Budget in accordance with Paragraph 4 below. Landlord shall evidence such costs by invoices and other substantiation as City may reasonably require. City's share shall be deducted from the Allowance (as defined in Paragraph 3 below), subject to City's prior approval of such costs.

**e. Changes to Construction Documents.** If following City's approval of the Construction Documents, City requests any change, addition or alteration thereto relating to the design or specifications of the Tenant Improvement Work, as defined in Paragraph 3c below ("City Change Order"), Landlord shall cause the architect or engineer, as applicable, to prepare plans with respect to such change, addition or alteration. As soon as reasonably possible after City's request, Landlord shall provide City with such plans and notify City of the reasonable estimated cost that would be incurred by reason of such change, addition or alteration and the delay in completion of the Fifth Floor Leasehold Improvements, if any, caused by such City Change Order. City may modify, approve or disapprove any such change, alteration or modification based upon the information provided by Contractor. Any such City Change Order shall be subject to Landlord's approval, which approval shall not be unreasonably withheld or delayed. If City approves the final plans prepared by Landlord for the City Change Order within three (3) days of receipt from Landlord, including the cost thereof and the delay caused thereby, then Landlord's Contractor shall proceed with such Change Order. If City does not approve such City Change Order within the above-mentioned three (3) day period, construction of the Additional Premises shall proceed in accordance with the original completed and approved Construction Documents. City shall pay for the reasonable cost of the preparation of plans and specifications relating to any City Change Order actually incurred by Landlord, as evidenced by invoices and other substantiation as City may reasonably require, within fifteen (15) days of Landlord's presentment of said invoices.

**f. Design and Construction Coordination: Appointment of Representatives.** City and Landlord shall each designate and maintain at all times during the design and construction period a project representative ("Representative"), each of whom shall be authorized to confer and attend meetings and represent such party on any matter relating to this Work Letter. Landlord and City shall not make any requests to, and shall not give any instructions or authorizations to, any other employee or agent of the other party, including without limitation, the other party's architect, engineers, consultants-and contractors or any of their agents or employees, with regard to matters associated with this Work Letter; provided, however, that City's Representative may communicate directly with Landlord's Architect and Landlord's Architect shall be responsible for ensuring that Landlord is kept apprised of such communications. The initial Representatives shall be:

City: Representative: Steve Legnitto  
Landlord: Representative Linda J. Corso

Each party may at any time and from time to time change its Representative or Alternate by written notice to the other-party. Each party's Representative or Alternate shall be available during ordinary business hours so that questions and problems may be quickly resolved and so that the Fifth Floor Leasehold Improvements may be completed economically and in accordance with the Construction Schedule. All approvals made by City's Representative or Alternate shall be made in writing.

## **2. Construction.**

**a. Permits.** Landlord shall have the responsibility for obtaining all governmental permits and approvals required to commence and complete the Fifth Floor Leasehold Improvements and other work to be performed by Landlord or its Contractor under this Work Letter, and promptly upon receipt thereof shall deliver copies of all such permits and approvals to City. Landlord shall have the responsibility of calling for all inspections and approvals by City's Department of Building Inspection.

**b. Construction Work to be Performed by Landlord.** Following approval of the Construction Documents, Landlord shall cause the Fifth Floor Leasehold Improvements and all other work to the Building and the Building Systems required for City's use and occupancy of the Additional Premises to be constructed and installed in a good and professional manner in accordance with sound building practice and in conformity with the Construction Documents (as revised in accordance herewith) and the terms of this Work Letter. City shall not have any obligation with respect to any such work other than as specifically provided herein. Landlord shall cause Contractor to request clarification of the Construction Documents from City in the event of any discrepancy therein or any discrepancy relating to the Tenant Improvements. Landlord shall cause Contractor to commence construction of the Fifth Floor Leasehold Improvements as soon as reasonably possible after issuance of all required permits for construction in accordance with the Construction Documents, and shall diligently continue construction to completion, all in accordance with the schedule ("Construction Schedule") attached as Exhibit 1. The Construction Schedule, as prepared by Landlord and approved by City, shows the dates projected by Landlord for commencing and completing the construction of each element of the Fifth Floor Leasehold Improvements.

**c. General Conditions.** The construction of all Fifth Floor Leasehold Improvements shall be subject to the following terms and conditions:

i. All of the work shall be performed in compliance with all applicable federal, state and local laws, codes, regulations and building requirements (collectively, "Laws") bearing on construction of the Fifth Floor Leasehold Improvements and all other work to the Building and Building Systems required for City's use and occupancy of the Additional Premises;

ii. Without limiting the foregoing, the construction of the Fifth Floor Leasehold Improvements shall fully comply with all applicable accessibility Laws,

including, without limitation, the Americans With Disabilities Act and Title 24 of the California Code of Regulations as in effect at the time of construction; and

iii. Landlord and/or its Contractor shall be responsible for all required insurance for all work to be performed by Landlord or its Contractor under this Work Letter.

**d. Installation Work to be Performed by City.** City or its consultants and/or contractors shall, at City's cost, perform surveys and develop plans and specifications for installation of telecommunications, data and computer cabling for City's occupancy of the Additional Premises. All such work shall be performed in accordance with the provisions of subsections 2(c)(i) and (ii) above. City shall provide Landlord and Contractor with such plans and specifications, and City's contractor and Contractor shall coordinate such work with the construction of the Fifth Floor Leasehold Improvements. Landlord shall have the right to disapprove City's plans and specifications within four (4) days of submittal by City if, in Landlord's reasonable business judgement, such plans and specifications would have a material adverse effect on the Building structure or systems, in which event City shall promptly modify its plans and specifications. Landlord agrees to cause Contractor to cooperate reasonably with City and its consultants, contractors and subcontractors during all surveying work and the installation of such telecommunications, data and computer cabling. The foregoing obligation shall include, without limitation, an obligation to give City and its consultants, contractors and subcontractors access and entry to the Additional Premises and sufficient opportunity and time during each work day without separate charge therefor, to enable City to install such telecommunications, data and computer cabling; provided, however, that (i) such access and entry shall not unreasonably interfere with the construction of the Fifth Floor Leasehold Improvements; (ii) City shall cooperate and cause its contractors and subcontractors to cooperate with Contractor and its subcontractors; and (iii) City shall indemnify and hold Landlord harmless from and against any and all claims, costs and expenses, including without limitation, reasonable attorneys' fees, incurred by Landlord to the extent such claims, costs and expenses arise directly from City's entry on the Additional Premises. Such access shall include reasonable access to the elevator in the Building designated for freight use on a non-exclusive basis during normal business hours. Landlord understands that the conduit for the telecommunications, data and computer cabling shall be included in the Construction Documents and installed by Contractor. Upon termination of the Lease, City shall not remove such conduit, but may, at its sole option, remove the telecommunications, data and computer cabling and the switches and electronic components relating thereto in compliance with the terms set forth in the Lease.

In the event that City, its consultants, contractors or subcontractors encounter any asbestos containing materials ("ACM") in the Building in connection with the installation of City's telecommunications, data and computer cabling, Landlord agrees promptly to cause performance and to be responsible, in Landlord's reasonable discretion and in compliance with applicable Laws, for all work relating to the containment, removal and disposal of such ACM as necessary for such installation and agrees to bear all costs thereof. In addition, in the event that Contractor encounters any ACM in the construction of the Fifth Floor Leasehold Improvements, any costs related to the containment, removal and disposal of such ACM shall not be charged against the Allowance or otherwise be the responsibility of City.

e. **Cooperation.** Landlord and City shall cooperate at all times with each other in bringing about the timely completion of the Fifth Floor Leasehold Improvements. Landlord shall not allow any disputes arising during the construction of the Fifth Floor Leasehold Improvements to interfere with the expeditious completion of the Fifth Floor Leasehold Improvements.

### 3. Payment for Work: Allowance

a. **Base Building Work Paid by Landlord.** As used in this Work Letter, the term "Base Building Work" shall mean:

i. **Accessibility Improvements.** The costs required to bring the Additional Premises and all paths of travel to and from the Additional Premises, including but not limited to the lobbies, drinking fountains, elevators, elevator vestibules and signage therein, stairs, stair vestibules and restrooms, into full compliance with all applicable disabled accessibility Laws, including, without limitation, the Americans With Disabilities Act and Title 24 of the California Code of Regulations.

ii. **Building System Improvements.** The costs for heating, ventilating, air conditioning (which items Landlord shall only be required to stub to the Additional Premises in accordance with (iii) below), plumbing, electrical, security, fire protection, life safety and other mechanical and electrical systems (collectively, "Building Systems") required for City's use and occupancy of the Additional Premises under applicable Laws, including but not limited to seismic, sprinkler, or other fire and life safety improvements.

iii. **Base Building Improvements.** The costs necessary to or for (i) the initial demolition of existing improvements in the Additional Premises, (ii) the installation of rest rooms in the Additional Premises, (iii) the construction of demising walls and other improvements in connection with the elevator lobby contained in the Additional Premises, (iv) heating and air conditioning supply ducts stubbed to the Additional Premises, (v) code required fire sprinkler system as required for B-2 office occupancy for new work in existing buildings ("B-2 Standards"), (vi) the build out of telephone and electrical rooms with telephone service and electrical power terminated at panel boards in the telephone and electrical rooms of the Additional Premises, and (vii) telecommunications, data and computer cabling sleeves stubbed through the slab in the telephone rooms in the Additional Premises.

Base Building Work shall not include drywall covering or related finishing of the interior of the perimeter walls of the Additional Premises. Landlord shall be solely responsible for all costs related to the Base Building Work and no costs associated therewith shall be deducted or paid from the Allowance (as hereafter defined).

b. **Telecommunications and Data Functions.** City shall be solely responsible for all costs related to the telecommunications and data functions work described in Paragraph 2d above.

**c. Allowance: Tenant Improvement Work.** Subject to the foregoing provisions of this Paragraph 3, Landlord shall pay for the cost of constructing and installing the Tenant Improvement Work up to a total sum of \$944,173.95 based upon a rate of \$28.85 per rentable square foot in the Additional Premises, which amount shall be adjusted if the Additional Premises are remeasured (the "Allowance"). In the event that the actual costs to construct and install the Tenant Improvement Work (including increased costs resulting from City Change Orders) plus any amounts payable to Contractor if savings are realized in connection such work exceed the amount of the Allowance, City shall pay such excess. City shall not be responsible for, and the Allowance shall exclude, any review, supervision, administration or management fees of any person or entity, any overhead or other general expenses of Landlord or any affiliated person or entity.

As used in this Work Letter and the Lease, "Tenant Improvement Work" and "Tenant Improvements" shall mean the construction and performance of all work to the Additional Premises, exclusive of the Base Building Work, for City's use and occupancy of the Additional Premises as specified in the Construction Documents, which work shall be designed by Landlord in consultation with City. Tenant Improvement Work also shall include consultation services for the selection of a furniture panel system for the Additional Premises and the services of a moving consultant in connection with City's move into the Additional Premises (with respect to which services Landlord makes no warranty to City, and Landlord shall not be liable to City if City is dissatisfied for any reason with respect to such services).

#### **4. City's Approval of Costs.**

**a. Approval of Construction Budget.** Prior to commencement of construction of the Fifth Floor Leasehold Improvements, Landlord shall provide City with an initial construction budget for the Tenant Improvement Work for its approval. The Tenant Improvement Work shall include costs based on a detailed construction budget prepared by Landlord and approved by City, as such construction budget may be approved and revised in accordance with this paragraph ("Construction Budget"). The Construction Budget and any revisions thereto shall include a line item cost breakdown and a cost schedule of plans and specifications based upon actual bids and a schedule of estimated monthly disbursements. The Construction Budget shall set forth all costs of the Tenant Improvement Work and any other costs to be paid by City hereunder as line items in cost categories of the budget. If the Fifth Floor Leasehold Improvements cannot be completed in strict conformity with the most recently approved Construction Budget, Landlord shall promptly submit to City for its approval a revised budget and shall identify to City changes in line items and the reasons for the changes. If further changes are required, Landlord shall seek City's approval, following the same procedures. No costs shall be included in the Allowance, and City shall not be obligated to pay any costs in excess of the Allowance, unless and until it approves the Construction Budget and any revisions thereto. City shall have the right to approve or disapprove any Construction Budget or revisions thereto in its reasonable judgement, including without limitation disapproval based on the fact that if approved City's share of the Tenant Improvement Work costs (exclusive of the Allowance) would exceed the amount appropriated therefor and approved by City's Board of Supervisors. No such approval or disapproval shall be unreasonably withheld or delayed. The most recently approved Construction Budget shall supersede all previously approved budgets.

**b. Progress Payments.** After the Allowance has been exhausted in full and provided that the conditions set forth in Paragraph 4c below have been met, City shall make monthly progress payments for the cost of the Tenant Improvement Work. Funds will be disbursed by City to Landlord on or about the tenth (10th) day of each month in amounts equal to ninety percent (90%) of the amount of costs associated with the Tenant Improvement Work which City and Landlord have determined is owing to Contractor; provided, however, that such amount shall not exceed ninety percent (90%) of the line item cost breakdown set forth in the Construction Budget for such items. At least ten (10) days before the date established for each progress payment, Landlord shall submit to City an itemized application for payment for work completed in accordance with the Construction Budget. Such applications may not include requests for payment of amounts Landlord does not intend to pay to Contractor because of a dispute or otherwise. Landlord shall promptly apply all such payments from City to the payment of the invoice or invoices to which the payment relates.

**c. Required Documentation of Costs.** Both prior to and following the exhaustion of the Allowance, Landlord shall promptly deliver to City and each application for payment pursuant to Paragraph 4b shall include (i) copies of all invoices received by Landlord from Contractor in connection with the construction of the Fifth Floor Leasehold Improvements, (ii) satisfactory evidence of payment of such invoices, including unconditional lien waivers, or if such invoices have not been paid, conditional lien waivers, all such lien waivers being in the form prescribed by California Civil Code Section 3262, executed by each subcontractor and material supplier intended to be paid out of the particular disbursement and covering all labor, services, equipment and materials performed or supplied by the particular subcontractor or material supplier since the last previous disbursement (collectively, "Lien Waivers"), and (iii) such additional supporting data which substantiates the Contractor's right to payment as City may reasonably require, such as copies of invoices or requisitions from subcontractors and material suppliers.

**d. Payment of Retention.** City shall disburse to Landlord the remaining ten percent (10%) withheld from the cost of the Tenant Improvement Work upon: (i) expiration of the lien period and the absence of any unreleased mechanics' liens or stop notices; (ii) Substantial Completion of the Fifth Floor Leasehold Improvements; and (iii) delivery of unconditional Lien Waivers upon final payment, together with such other proof as City may reasonably require that all of the costs and expenses of the Fifth Floor Leasehold Improvements have been paid. Notwithstanding the foregoing, City shall disburse to Landlord any portion of such remaining ten percent (10%) due to a subcontractor or material supplier when City, in its reasonable judgement, determines all of the following have occurred: (i) completion of all aspects of such subcontractor or material supplier's work relating to the Fifth Floor Leasehold Improvements; (ii) expiration of the lien period and the absence of any unreleased mechanics' liens or stop notices relating to such subcontractor or material supplier's work; and (iii) delivery of unconditional Lien Waivers upon final payment from each such subcontractor or material supplier, together with such other proof as City may reasonably require that all of the costs and expenses relating to such subcontractor or material supplier's work have been paid.

**e. No Waiver of Conditions.** Each waiver by City of a condition of payment must be expressly made by City in writing. If City makes a payment before fulfillment of one or more required conditions, that payment alone shall not be a waiver of such conditions, and City reserves the right to require their fulfillment before making any subsequent payments. If all

conditions are not satisfied, City, acting in its reasonable judgement, may make payment as to certain items or categories of costs and not others.

**f. City's Cure Right.** If Landlord does not make timely payment to Contractor or any of its subcontractors or material suppliers and has no bona fide, good faith dispute relating to such payment, upon five (5) days' prior written notice to Landlord City may, but shall not be obligated to, advance City's funds directly to such Contractor or its subcontractors or material suppliers to pay the cost of the Fifth Floor Leasehold Improvements, and any such advance shall be payable to City by Landlord immediately upon demand, with interest at a rate of the lesser of twelve percent (12%) per annum or the maximum rate permitted by law.

## 5. Substantial Completion

**a. Construction Schedule.** Landlord shall cause Contractor to complete the Fifth Floor Leasehold Improvements in accordance with the Construction Schedule, with a target date for Substantial Completion occurring on or before December 31, 1996. When construction progress so permits, but not less than fifteen (15) days in advance of completion, Landlord shall notify City of the approximate date on which the Fifth Floor Leasehold Improvements will be Substantially Completed. Landlord shall notify City when the Fifth Floor Leasehold Improvements are in fact Substantially Completed and the Additional Premises are ready for occupancy by City, and City or its representatives shall be permitted to accompany Landlord or its architect on an inspection of the Additional Premises on such date or other mutually agreeable date soon thereafter.

**b. Substantial Completion.** The Additional Premises Commencement Date shall occur on the date of Substantial Completion of the Fifth Floor Leasehold Improvements in accordance with the terms of this Work Letter and the Lease. The Fifth Floor Leasehold Improvements shall be deemed to be "Substantially Completed" and "Substantial Completion" shall be deemed to have occurred for purposes hereof on the date when (i) all necessary inspections required for occupancy of the Additional Premises have been completed and signed off as approved by the appropriate governmental authority, (ii) a temporary Certificate of Occupancy with respect to City's occupancy of the Additional Premises has been issued by the appropriate governmental authority, and (iii) Landlord's architect reasonably determines and certifies in writing to City that the Fifth Floor Leasehold Improvements have been Substantially Completed in accordance with the Construction Documents to the extent necessary to enable City to occupy the Additional Premises and to conduct its normal business operations therein without unreasonable impairment or interference, but subject to "punchlist" items, the completion of which will not unreasonably interfere with City's normal business operations therein. Landlord shall cause Contractor to diligently pursue to completion all such details. Notwithstanding the foregoing, City shall have the right to present to Landlord within thirty (30) days after acceptance of the Additional Premises, or as soon thereafter as practicable, a written punchlist consisting of any items that have not been finished in accordance with the Construction Documents and the terms of this Work Letter. Landlord shall complete all defective or incomplete items identified in such punchlist promptly, and in any event within thirty (30) days after the delivery of such list. City's failure to include any item on such list shall not alter Landlord's responsibility hereunder to complete all Fifth Floor Leasehold Improvements in accordance with the Construction Documents and the provisions hereof, nor constitute a waiver of any latent defects.



c. **Furniture Panel System.** City acknowledges and agrees that it shall be responsible for the selection, ordering, delivery and installation of furniture panel systems in the Additional Premises. Such selection, ordering, delivery and installation shall not be a condition precedent to the Substantial Completion of the Fifth Floor Leasehold Improvements. City further agrees that if, after December 31, 1996, any condition precedent to Substantial Completion has not been satisfied solely because of City's failure to select, order, cause delivery of or install the furniture panel systems, then, notwithstanding any other provision of this Work Letter or the First Amendment, such condition precedent shall be deemed satisfied and, provided all other condition precedents have been satisfied or are deemed satisfied, the Fifth Floor Leasehold Improvements shall be deemed Substantially Completed for all purposes hereunder and under the First Amendment. Notwithstanding the foregoing, the parties acknowledge that Landlord has requested that no delivery or installation of the furniture panel system and no physical move into the Additional Premises take place from January 17, 1997 through January 23, 1997; the parties agree that, to the extent that the delivery or installation of the furniture panel system or City's physical move into the Additional Premises is delayed solely as a result of such request, City's obligation to pay rent for the Additional Premises during such time period (if any) shall be abated for the number of days of such delay (but in no event to exceed six (6) days).

**6. Delays in Construction.** In the event of an Unavoidable Delay, as defined herein, Landlord shall give prompt written notice to City of the occurrence of such event and the projected delay in performance and thereafter shall keep City regularly informed of the status of such Unavoidable Delay. For purposes hereof, "Unavoidable Delays" shall mean any delays by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, inability to obtain labor or materials after diligent and timely efforts, enemy action, civil commotion, protests, riots, demonstrations, or by any other reason without fault and beyond the reasonable control of Landlord.

## **7. General Provisions.**

a. **Notices.** Except as may be otherwise specifically provided herein, any notice given under this Work Letter shall be in writing and given by delivering the notice in person, by commercial courier or by sending it by first class mail, certified mail with a return receipt requested, or Express Mail, return receipt requested, with postage prepaid, and addressed to the parties as follows:

City: Real Estate Department  
25 Van Ness Avenue, Ste. 400  
San Francisco, CA 94102  
Fax No. 552-9216  
Attn: Steve Legnitto

Landlord: San Francisco Mart  
c/o The ADCO Group  
1355 Market Street  
San Francisco, CA 94103  
Fax No. 861-3914  
Attn: Linda Corso

or such other address as a party may designate to the others as its new address for such purpose by notice given to the others in accordance with the provisions of this paragraph. Any notice hereunder shall be deemed to have been given and received two (2) days after the date when it is mailed if sent by first class, certified mail, one day after the date when it is mailed if sent by U.S. Express Mail, or upon the date personal delivery is made. Neither party may give official or binding notice by facsimile, but facsimile notice will be official and binding if a facsimile notice is signed by the recipient and returned by facsimile to the sender.

**b. Prevailing Wages for Construction Work.** Landlord agrees that any person performing labor in the construction of the Fifth Floor Leasehold Improvements or other construction work which Landlord is obligated to provide under this Work Letter shall be paid not less than the highest prevailing rate of wages and that Landlord shall include, in any contract for construction of the such work, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Landlord further agrees that, as to the construction of the Fifth Floor Leasehold Improvements and other work under this Work Letter, Landlord shall comply with all the provisions of subsection (b) of San Francisco Charter Section A7.204 and Sections 6.33 through 6.45 of the San Francisco Administrative Code.

**c. Tropical Hardwood Ban.** Except as expressly permitted by the application of Sections 12I.3.b and 12I.4.b of the San Francisco Administrative Code, neither Landlord nor any of its contractors shall provide any items to City in the construction of the Fifth Floor Leasehold Improvements or otherwise in the performance of this Lease which are tropical hardwoods or tropical hardwood products. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood product. In the event Landlord fails to comply in good faith with any of the provisions of Section 12I of the San Francisco Administrative Code, Landlord shall be liable for liquidated damages for each violation in any amount equal to Landlord's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greatest. Landlord acknowledges and agrees that the liquidated damages assessed shall be payable to the City and County of San Francisco upon demand and may be set off against any monies due to Landlord from any contract with the City and County of San Francisco.

**d. Days.** Unless otherwise provided herein, all periods specified by a number of days shall refer to business days. Saturdays, Sundays and recognized City holidays shall not constitute business days.

**e. Approvals.** Landlord understands and agrees that City is entering into the First Amendment and this Work Letter in its proprietary capacity and not as a regulatory agency with certain police powers. Notwithstanding anything to the contrary herein, no approval by City as

Tenant hereunder of any plans for the Fifth Floor Leasehold Improvements nor any other approvals by City hereunder, shall be deemed to constitute approval by any governmental regulatory authority with jurisdiction over the Additional Premises. All approvals or other determinations of City as Tenant hereunder may be made by City's Director of Property unless otherwise specified herein.

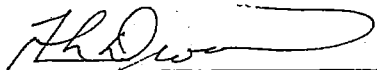
**f. Time of Essence.** Time is of the essence with respect to all provisions of this Work Letter in which a definite time for performance is specified.

The parties have executed this Work Letter as of the date of the First Amendment to Office Lease.

**LANDLORD:**

WESTERN MART CO., L.P.,  
a California limited partnership,  
c/b/a San Francisco Mart

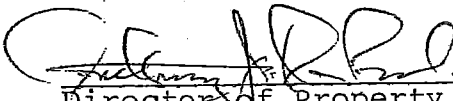
By: Western Mart Corp., General Partner

By: 

Its: \_\_\_\_\_

**CITY:**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

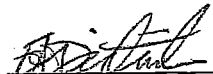
  
Director of Property

By:   
Mayor

By:   
ACTING Clerk of the Board of Supervisors

**APPROVED AS TO FORM:**

LOUISE H. RENNE, City Attorney

By:   
Deputy



OFFICE LEASE

between

WESTERN MART CO.,  
a California general partnership,  
d/b/a San Francisco Mart,  
as Landlord

and

CITY AND COUNTY OF SAN FRANCISCO,  
as Tenant

For the lease of

875 Stevenson Street  
San Francisco, California

June 16, 1994

OFFICE LEASE

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OFFICE LEASE

THIS OFFICE LEASE (this "Lease"), dated for reference purposes only as of June 16, 1994, is by and between WESTERN MART CO., a California general partnership, d/b/a San Francisco Mart, as Landlord ("Landlord"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Tenant").

Landlord and City hereby agree as follows:

1 BASIC LEASE INFORMATION

The following is a summary of basic lease information (the "Basic Lease Information"). Each item below shall be deemed to incorporate all of the terms in this Lease pertaining to such item. In the event of any conflict between the information in this Section and any more specific provision of this Lease, the more specific provision shall control.

Lease Reference Date:	June 16, 1994
Landlord:	WESTERN MART CO., a California general partnership, d/b/a San Francisco Mart
Tenant:	CITY AND COUNTY OF SAN FRANCISCO
Building (Section 2.1):	875 Stevenson Street, San Francisco, California, also known as "Mart II"
Premises (Section 2.1):	A portion of floor 1 and all of floors 2, 3 and 4
Rentable Area of Premises (Section 2.1):	Approximately 118,000 rentable square feet [SUBJECT TO FINAL MEASUREMENT IN ACCORDANCE WITH BOMA STANDARDS]
Parking (Section 2.3):	Landlord shall provide 20 parking spaces in the Building basement parking garage at no charge. Other parking spaces in the garage will be available for City use at a monthly or hourly market rate.

Storage Space (Section 2.4): Landlord shall make available 3,000 square feet of storage area in the Building at no charge.

Initial Term (Article 3): Estimated commencement date: February 1, 1995, subject to the provisions of Article 3.

Expiration date:  
Earlier of three years from the Commencement Date or April 30, 1998.

Extension Options  
(Section 3.4):

City has two options to extend for periods of 6 months each, exercisable by City by notice to Landlord given not less than 60 days prior to the end of the term to be extended, on the same terms as in this Lease including Rent.

In addition to the 6-month extension options, City has a continuous option to extend the term with respect to the entire Premises, or any designated portion, for an additional 5 year term, at 95% of the then Prevailing Market Rate, by notice to Landlord given not less than 180 days prior to the expiration of the Initial Term or any 6-month Extension Term.

Base Rent (Article 4):

Annual Base Rent: \$1,755,840  
(\$14.88 per sq. ft.)

Monthly payments: \$146,320  
(\$1.24 per sq. ft.)

City will pay Base Rent for the first 18 months of the Initial Term in advance on the Commencement Date subject to the provisions of Article 4.



Use (Section 5.1):

General office and administration of certain City Hall business and other specified uses.

Leasehold Improvements  
(Article 6 and Work Letter):

Landlord to provide "turn key" build-out for City's occupancy. City is responsible for certain specialized tenant improvements exceeding the tenant improvement allowance, as more particularly described on Exhibit E attached, exclusive of Landlord required code related work and base building improvements.

Utilities and Services  
(Article 9):

Landlord to provide all utilities except electricity. Landlord to provide all standard office building services except janitorial and security services within the Premises.

Notice Address of Landlord:  
(Section 23.1):

San Francisco Mart  
C/O The ADCO Group  
1355 Market Street  
San Francisco, CA 94103  
Fax No.: 861-3914

With copies to:

Alvin Dworman  
The Adco Group  
645 Fifth Avenue  
New York, NY 10022

Mark D. Lubin  
Stein Lubin & Lerner  
600 Montgomery Street  
14th Floor  
San Francisco, CA 94111

Key Contact for Landlord:

David Dworman

Telephone No.:

431-7008

Notice Address for Tenant  
(Section 23.1):

Real Estate Department  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102  
Attn: Anthony J. DeLucchi,  
Director of  
Property  
Fax No.: (415) 554-9216

with a copy to:

Department of Public Works  
Bureau of Architecture  
30 Van Ness Avenue, 4th Floor  
San Francisco, CA 94102  
Attn: Tony Irons  
Fax No.: (415) 557-4701

and to:

Office of the City Attorney  
Fox Plaza  
1390 Market Street, 6th Floor  
San Francisco, CA 94102  
Attn: Jesse Smith  
Deputy City Attorney  
Fax No.: (415) 554-3808

Key Contact for Tenant:

Steve Legnitto

Telephone No.:

(415) 554-9871

Alternate Contact  
for Tenant:

Tony Irons

Telephone No.:

557-4693

Brokers (Section 23.7):

None

Other Noteworthy Provisions:

During the first 18 months of  
the Initial Term, City shall  
have the continuous right to  
lease one half or more of the  
fifth floor any and all other  
full floor in the Building  
that becomes available for  
lease, on the same terms as  
this Lease. (Section 22.1).

2 PREMISES

2.1 Lease Premises. Landlord leases to City and City  
leases from Landlord, subject to the provisions of this Lease,  
those premises in the building identified in the Basic Lease  
Information (the "Building") and shown on the floor plans

attached hereto as Exhibit A (the "Premises"). The Premises contain the rentable area and are located on the floors of the Building specified in the Basic Lease Information. As used herein, the term "rentable area" shall mean that measurement of interior floor area computed in accordance with the "Standard Method for Measuring Floor Area in Office Buildings, the American National Standard" (ANSI Z65.1 1980, reaffirmed 1989), adopted by BOMA. The Building, land upon which the Building is located and all other improvements on or appurtenances to such land are referred to collectively as the "Property."

City shall have the right, within thirty (30) days following its acceptance of the Premises, to cause the Premises to be remeasured in accordance with the BOMA standards specified above to confirm the final rentable area of the Premises. If as a result of such remeasurement the Premises contain more or less than the total rentable square feet specified in the Basic Lease Information, and Landlord reasonably agrees with such determination, the Base Rent (as defined in Article 4 below) shall be adjusted accordingly. Landlord and City agree to enter into an amendment to this Lease confirming any such adjustment. In the event Landlord disagrees with such determination, Landlord and City shall use their best efforts to meet and confer with one another in an attempt to agree upon the proper measurement of the Premises within thirty (30) days after City notifies Landlord of its remeasurement of the Premises. If following the expiration of such 30-day period, Landlord and City are still unable to agree, Landlord and City shall jointly select an independent consultant to remeasure the space, and the determination of such consultant shall be binding upon the parties. Landlord and City shall share equally the cost of such consultant.

2.2 Common Areas; Access. City shall have the non-exclusive right to use, together with other tenants in the Building, the stairways and other public areas of the Building and the Property (collectively, the "Common Areas"), and the exclusive right to use the lobbies, corridors and elevators in or serving the Premises and right of access to and from the Premises by the main entrance to the Premises from Stevenson Street. Three (3) elevators in the Building shall be exclusively dedicated to serve the Premises, except that one of such elevators may be converted to non-exclusive service during Mart Weeks (as defined in Section 2.3 below) and during such periods that the elevator servicing the Building exclusive of the Premises is not operative.

The public shall have access to the Premises on each City business day from 7:30 a.m. to 5:30 p.m. and during such other hours and days as are required for the administration of City Hall public business consistent with the uses permitted hereunder. City personnel holding monthly parking passes shall

have access to the parking areas serving the Premises on a twenty four (24) hours per day, three hundred sixty five (365) days per year basis. City personnel and their invitees shall have access to the Premises on a twenty-four (24) hours per day, three hundred sixty five (365) days per year basis. Except as expressly set forth in this Section 2.2, City personnel shall have no access to the other floors or common areas of the Building.

2.3 Parking. During the Term of this Lease, City shall have the exclusive right to park in twenty (20) marked reserved spaces in the basement parking facilities of the Building at the locations shown on the attached Exhibit A-1. There shall be no charge for any portion of the reserved parking facilities. In the event City's ability to use the reserved parking spaces is impaired for any reason for more than fourteen (14) consecutive business days and such failure materially impairs City's ability to carry on its business in the Premises, then, unless Landlord provides City with an equivalent number of alternate parking spaces within Civic Center area, City shall have the right to terminate this Lease upon ten (10) days' written notice to Landlord. In addition to the reserved spaces, Landlord shall use reasonable efforts to make available to City other parking spaces in the Building's basement parking facilities at the monthly or hourly market rate. Landlord and City acknowledge and agree that for approximately ten (10) business days each January and July during what are commonly referred to as the "Mart Weeks" of the regional furniture industry, there may be limited parking availability in the garage serving the Building, but that during such weeks City's reserved parking spaces will be accessible to the garage from the Tenth Street entrance, which access will not be materially impaired at any time. Landlord shall use its best efforts without incurring substantial extraordinary expenses to minimize disruptions to City during Mart Weeks.

2.4 Storage Space. During the Term of this Lease, City shall have the exclusive right to use 3,000 square feet of storage space in the Building at a location approved by City, which approval shall not be unreasonably withheld. There shall be no charge for any portion of the storage space.

### 3 TERM

3.1 Term of Lease. The Premises are leased for an initial term (the "Initial Term") commencing on the date specified in the Basic Lease Information as the estimated commencement date (the "Estimated Commencement Date"), or such later or earlier date that Landlord delivers the Premises to City with the Leasehold Improvements having been Substantially Completed (as defined in the attached Work Letter) by Landlord and accepted by City's Director of Property in accordance with Article 6 [Leasehold

Improvements] hereof and the attached Work Letter. City's acceptance of the Premises upon Substantial Completion of the Leasehold Improvements shall not be unreasonably withheld or delayed. The Term of this Lease shall end on the earlier to occur of (i) that date which is three years from the Commencement Date, or (ii) April 30, 1998, provided that City shall have the right to extend the Initial Term pursuant to Section 3.4 [Extension Options], below. The word "Term" as used herein shall refer to the Initial Term and any Extended Terms if City exercises any of the Extension Options as provided hereinbelow.

3.2 Commencement Date and Expiration Date. The dates on which the Term commences and terminates pursuant hereto are referred to respectively as the "Commencement Date" and the "Expiration Date." If the Commencement Date occurs on a date other than the Estimated Commencement Date, then promptly thereafter Landlord shall deliver to City a notice substantially in the form of Exhibit B attached hereto, confirming the actual Commencement Date, but Landlord's failure to do so shall not affect the commencement of the Initial Term.

3.3 Delay in Delivery of Possession; Termination Right. Landlord acknowledges that City is entering into this Lease in reliance on Landlord's assurance to complete the construction of the Premises in a timely manner in accordance with the provisions of this Lease and the Work Letter, so that City can proceed expeditiously with the seismic retrofit of City Hall. Landlord shall use reasonable and diligent efforts to deliver possession of the Premises with all of the Leasehold Improvements Substantially Completed and accepted by City's Director of Property pursuant to Article 6 [Leasehold Improvements] and the Work Letter by the Estimated Commencement Date and shall use its best efforts to deliver possession of the Premises with all of the Leasehold Improvements Substantially Completed by March 31, 1995. However, if despite using such efforts Landlord is unable to deliver possession of the Premises as provided above, then, subject to the provisions of this Section below, the validity of this Lease shall not be affected by such inability to deliver possession, except that City's obligations to pay Base Rent or any other charges shall not commence until such time as Landlord has delivered the Premises as required hereunder.

Notwithstanding anything herein or in the Work Letter to the contrary and without limiting City's right to collect liquidated damages as provided in the Work Letter, if Landlord is unable to deliver the Premises to City with the Leasehold Improvements Substantially Completed on or before May 31, 1995, without any extension of such date whatsoever due to Unavoidable Delays, Tenant Delays (as such terms are defined in the Work Letter) or any other type of delay, then City may at its option terminate this Lease upon written notice to Landlord given at any

time prior to actual delivery of the Premises to City, without any further liability hereunder and without limiting its right to collect liquidated damages specified in the Work Letter, and Landlord shall pay to City all costs which City has paid for construction of the Tenant Improvement Work pursuant to Paragraph 4 of the Work Letter. In the event City elects to so terminate, Landlord shall have no further obligation or liability to City and shall not be liable for any damages other than as set forth in the preceding sentence and liquidated damages pursuant to Paragraph 6c of the Work Letter which accrue prior to the date of termination.

3.4 Extension Option(s). City shall have the right to extend the Initial Term of this Lease (collectively, the "Extension Options") for the additional terms set forth below (collectively the "Extended Terms") as follows.

(a) 6-Month Extension Options. City shall have an option to extend the Initial Term in order to facilitate the pending seismic retrofit of City Hall for any full floor of the Premises for two (2) additional terms (the "6-Month Extended Terms"), the first of which shall be a six (6) month term commencing upon the expiration of the Initial Term and the second of which shall be a six (6) month term commencing upon the expiration of the first 6-Month Extended Term (such options are referred to herein as the "6-Month Extension Options"). Each of the 6-Month Extension Options shall be at the same Rent provided in this Lease and upon all of the other terms and conditions contained in this Lease. City may exercise the 6-Month Extension Options, if at all, by giving written notice to Landlord no later than sixty (60) days prior to expiration of the term to be extended; provided, however, if City is in material default hereunder on the date of giving such notice and fails to cure such default as provided herein, Landlord may reject such exercise by delivering written notice thereof to City promptly after such failure to cure. In the event that City desires to exercise any 6-Month Extension Option for reasons other than to facilitate the seismic retrofit of City Hall, Landlord may waive in writing such purpose as a precondition and allow City to exercise such option in Landlord's sole discretion.

(b) 5-Year Extension Option. City shall have an option to extend the Initial Term or any 6-Month Extended Term with respect to all or any portion of the Premises for an additional term of five (5) years (the "5-Year Extended Term"), commencing upon the expiration of the term to be extended (such option is referred to herein as the "5-Year Extension Option"). The 5-Year Extension Option shall be upon all of the terms and conditions contained in this Lease, except that (i) the Rent shall be adjusted to ninety-five percent (95%) of the Prevailing Market Rate as provided in this Section below, (ii) Landlord

shall not be obligated to construct or provide any allowance for tenant improvements, and (iii) if City exercises the 5-Year Extension Option as to only a portion of the Premises, Landlord may proportionately reduce the number of parking-spaces provided to City pursuant to Section 2.3 above and may reasonably reduce elevator service to the Premises. City may exercise the 5-Year Extension Option, if at all, by giving written notice to Landlord of its intent to exercise no later than one hundred eighty (180) days prior to expiration of the term to be extended; provided, however, if City is in material default hereunder on the date of giving such notice and fails to cure such default as provided herein, Landlord may reject such exercise by delivering written notice thereof to City promptly after such failure to cure. Landlord acknowledges and agrees that City's notice of its intent to exercise the 5-Year Extension Option shall be subject to enactment of a resolution by the Board of Supervisors and the Mayor, in their respective sole and absolute discretion, approving and authorizing such exercise at the Prevailing Market Rate determined in accordance with the provisions hereof, within sixty (60) days after the date such notice of exercise is given and the Prevailing Market Rate is determined. City's exercise of the 5-Year Extension Option with respect to any portion of the Premises shall not limit City's ability to exercise the 5-Year Extension Option with respect to any other portions of the Premises from time to time during the remaining Term of this Lease, in accordance with the provisions hereof. In addition, notwithstanding anything to the contrary herein, City's exercise of the 5-Year Extension Option with respect to any portion of the Premises shall not limit City's right to exercise at any later time either or both of the 6-Month Extension Options with respect to the balance of the Premises, in accordance with the provisions hereof. Notwithstanding the foregoing, it shall be a condition precedent to City's right to exercise the 5-Year Extension Option that Landlord shall have first received from the Planning Department of City a written determination confirming that City's continued occupancy or use of the Premises as office space during the 5-Year Extended Term does not constitute an office development or a change in use for conversion of the Premises requiring project authorization and/or various fees or other requirements under the San Francisco Planning Code and that any applicable appeals period related to such determination shall have expired; provided, however, that such expiration may occur after the date City exercises the 5-Year Extension Option. The parties agree to use their best efforts and to cooperate with each other in good faith to obtain such a determination prior to the date that the aforesaid option must be exercised. However, if such efforts are unsuccessful, then any such purported exercise of the 5-Year Extension Option shall be null and void and this Lease shall then expire upon the expiration of its then current term.

At the commencement of the 5-Year Extended Term, the Rent shall be adjusted to equal ninety-five percent (95%) of the Prevailing Market Rate for space of comparable size and location to the Premises then being offered for rent in other buildings similar in age, location and quality to the Premises, situated within the Civic Center area of San Francisco, for a five (5) year term and on an "as-is" basis; provided, however, in no event shall the Rent be reduced below the Rent for the lease year prior to commencement of such Extended Term. As used herein, the term "Prevailing Market Rate" shall mean the fair market rental per annum that the specific space constituting the Premises and used as office space would command on the open market for the period constituting the 5-Year Extended Term. The Prevailing Market Rate shall take into account, among other things, (i) such periodic increases as may be part of the Prevailing Market Rate for the 5-Year Extended Term, (ii) the length of the 5-Year Extended Term, (iii) the rate charged for similar space in comparable buildings in the Civic Center area, (iv) the level of services and utilities provided by Landlord, and (v) any additional rental and all other payments and escalations payable hereunder.

If City disputes Landlord's determination of the Prevailing Market Rate, City shall so notify Landlord within ten (10) business days following Landlord's notice to City of the Prevailing Market Rate and shall continue to pay Rent at the rate set forth in Article 4 below until such dispute is resolved. Such dispute shall be resolved as follows:

(i) Within thirty (30) days following Landlord's notice to City of the Prevailing Market Rate, Landlord and City shall meet no less than two (2) times, at a mutually agreeable time and place, to attempt in good faith to resolve any such disagreement. If Landlord and City are unable to reach agreement on the Prevailing Market Rate during such thirty (30) period, then within ten (10) days after the expiration of such period, Landlord and City shall simultaneously submit to each other their sealed written good faith estimates of the Prevailing Market Rate (the "Estimated Prevailing Market Rate"). If the higher of such estimates is not more than one hundred five percent (105%) of the lower of such estimates, the Prevailing Market Rate shall be the average of the Estimated Prevailing Market Rates. If otherwise, the determination of the Prevailing Market Rate shall be determined by appraisal in accordance with Subsection (ii) below.

(ii) If within the time period set forth in subsection (i) above, Landlord and City cannot reach agreement as to the Prevailing Market Rate, they shall each select one appraiser having the qualifications set forth in Section 3.4(iv) below to determine the Prevailing Market Rate within twenty (20) days after the expiration of the aforesaid ten (10) day period.



Each such appraiser shall arrive at a determination of the Prevailing Market Rate and submit his or her conclusions to Landlord and City within thirty (30) days of the expiration of the thirty (30) day consultation period described in subsection (i) above.

(iii) If only one appraisal is submitted within the requisite time period, it shall be deemed to be the Prevailing Market Rate. If both appraisals are submitted within such time period, and if the two appraisals so submitted differ by less than ten percent (10%) of the higher of the two, then the average of the two shall be the Prevailing Market Rate. If the two appraisals differ by more than ten percent (10%) of the higher of the two, then the two appraisers shall immediately select a third appraiser who will within thirty (30) days of his or her selection make a determination of the Prevailing Market Rate and submit such determination to Landlord and City. This third appraisal will then be averaged with the closer of the two previous appraisals and the result shall be the Prevailing Market Rate. If the two appraisers selected by Landlord and City cannot agree on a third appraiser, the third appraiser shall be selected by the then-sitting Presiding Judge of the Superior Court for the City and County of San Francisco.

(iv) All appraisers specified herein shall be members of the American Institute of Real Estate Appraisers (MAI) with not less than five (5) years' experience appraising leases of commercial properties similar to the Premises in the Civic Center area. Landlord and City shall pay the cost of the appraiser selected by such party and one-half of the cost of the third appraiser plus one-half of any other costs incurred in the arbitration. The decision of the appraiser(s) on the issue of Prevailing Market Rate shall be binding on Landlord and City as Rent for the 5-Year Extended Term but shall be subject to approval by City's Board of Supervisors and the Mayor as provided above. In the event the Rent for the 5-Year Extended Term, as determined in accordance with this Section 3.4, is greater than the Rent for the lease year prior to the 5-Year Extended Term, City shall remit the amount so underpaid within thirty (30) days from the date of final determination of Rent payable during the 5-Year Extended Term.

#### 4 RENT

Beginning on the Commencement Date, City shall pay to Landlord during the Term the annual Base Rent specified in the Basic Lease Information ("Base Rent" or "Rent"). City agrees to pay Base Rent for the first eighteen (18) months of the Initial Term in advance on the Commencement Date. In the event the Lease terminates prior to the end of such 18 month period, Landlord shall immediately refund to City any Rent previously paid for any

period of time subsequent to such date of termination. City acknowledges that the foregoing sentence does not by itself create any right of City to terminate this Lease. The monthly Base Rent for the nineteenth (19th) month of the Initial Term and subsequent months of the Term, shall be payable when due, in equal consecutive monthly payments on or before the first day of each month, in advance, at the address specified for Landlord in the Basic Lease Information, or such other place as Landlord may designate in writing upon not less than thirty (30) days' advance notice. City shall pay the Base Rent without any prior demand and without any deductions or setoff except as otherwise expressly provided in this Lease. If the Commencement Date occurs on a day other than the first day of a calendar month or the Expiration Date occurs on a day other than the last day of a calendar month, then the monthly payment of the Base Rent for such fractional month shall be prorated based on a thirty (30) day month.

4.1 Late Charges. City recognizes that late payment of any Rent will result in administrative expense to Landlord, the extent of which additional expense is extremely difficult and economically impractical to ascertain. City therefore agrees that if any Rent remains unpaid ten (10) business days (excepting the first monthly payment of Rent after the beginning of each new fiscal year for City, in which instance City shall have twenty (20) business days) after delivery of written notice thereof by Landlord to City, the amount of such unpaid Rent shall be increased by a late charge to be paid to Landlord by City in an amount equal to three percent (3%) of the amount due. City agrees that such amount is a reasonable estimate of the loss and expense to be suffered by Landlord as a result of such late payment by City and may be charged by Landlord to defray such loss and expense. The provisions of this Section 4.1 shall not be construed to grant City a grace period and shall in no way relieve City of the obligation to pay any amount of Rent on or before the date on which it becomes due, nor do the terms of this Section in any way affect Landlord's remedies pursuant to Section 15 in the event any Rent is unpaid after the date due.

## 5 USE

5.1 Permitted Use. City may use the Premises for general office uses and those City Hall uses and functions listed on the attached Exhibit C, and activities reasonably related to the performance thereof, and for no other use without the prior written consent of Landlord, which shall not be unreasonably withheld. City agrees that in no event shall it be permitted to use the Premises for (i) the Mayor's office; (ii) offices for the Board of Supervisors, or (iii) the Police Department or Health Department, other than solely for administrative and management functions.

5.2 Observance of Rules and Regulations. City shall observe Landlord's reasonable rules and regulations for the Building subject to the provisions hereof. City acknowledges and agrees to the current Building rules and regulations attached hereto as Exhibit D (the "Rules and Regulations"). Landlord may make reasonable additions or modifications thereto, which shall be binding upon City upon Landlord's delivery to City of a copy thereof, provided that such additions or modifications shall not reduce Landlord's obligations hereunder nor interfere with City's business in the Premises, and such additions or modifications must be applicable to the other Building tenants. Landlord shall administer the Rules and Regulations in a fair and nondiscriminatory manner and use reasonable efforts to cause other Building tenants to comply with them. City shall be entitled upon request to any waiver or special dispensation granted by Landlord to any other tenant in the Building with respect to the Rules and Regulations.

5.3 Interference with Access. If City's use of any of the Premises or access thereto is interrupted as a result of the Premises, the Common Areas or any other portion of the Building being rendered unsafe for human occupancy due to Landlord's failure to comply with its obligations under this Lease or for any other reason other than (i) City's default hereunder, (ii) increases in vehicular and pedestrian traffic during Mart Weeks which do not materially interfere with City's ability to use the Premises for the conduct of City's business, or (iii) acts of God, then Landlord shall immediately undertake all necessary steps to correct such condition. In the event such condition continues for five (5) days and materially impairs City's ability to carry on its business in the Premises, the Rent payable hereunder shall be abated based on the extent to which such default interferes with City's ability to carry on its business at the Premises. If any such default by Landlord shall continue for thirty (30) days or more after City's use is interrupted and materially impairs City's ability to carry on its business in the Premises, then City shall have the right, without limiting any of its other rights to terminate this Lease, unless Landlord supplies City with evidence reasonably satisfactory to City that City's normal and safe use will be restored within sixty (60) days of the date City's use was interrupted, and such use is actually restored within such 60-day period.

## 6 LEASEHOLD IMPROVEMENTS

Landlord, acting through its general contractor approved by City, shall construct the Premises, perform the work to the Premises and the Building and make the installations in the Premises pursuant to the terms and conditions of the Work Letter attached hereto as Exhibit E (the "Work Letter"). All work and installations performed pursuant to the Work Letter are referred

to as "the Leasehold Improvement Work" and "Leasehold Improvements."

## 7 ALTERATIONS

7.1 Alterations by City. City shall not make or permit any alterations, installations, additions or improvements (collectively, "Alterations") to the Premises without first obtaining Landlord's written consent, which consent Landlord shall not unreasonably withhold or delay but which may be subject to reasonable and customary conditions relating to the proposed Alterations. However, the installation of furnishings, fixtures, equipment or decorative improvements, none of which affect the Building Systems or structural integrity of the Building, and the repainting and recarpeting of the Premises, shall not constitute Alterations requiring Landlord's consent. Any Alterations permitted hereunder shall be made at City's cost in compliance with applicable laws, rules and regulations. Landlord shall, without cost to itself, cooperate with City in securing building and other permits and authorizations needed in connection with any permitted Alterations. Landlord shall not be entitled to any construction or other administrative fee in connection with any Alteration. City shall not be required to remove any Alterations upon the expiration or sooner termination of this Lease unless Landlord requires City to remove such Alterations as a condition to its consent given in writing at the time of its consent. In no event shall City be required to remove any telecommunications, data or computer cabling upon expiration or sooner termination of this Lease.

7.2 Title to Improvements. Except for City's Personal Property (as defined in the next Section) and the Tenant Improvements constructed pursuant to the Work Letter, all appurtenances, fixtures, improvements, equipment, additions and other property permanently installed in the Premises as of the Commencement Date or during the Term shall be and remain Landlord's property. City may not remove such property unless Landlord consents thereto or requires such removal as a condition of its consent pursuant to Section 7.1 above.

7.3 City's Personal Property. All furniture, furnishings, equipment, trade fixtures and articles of movable personal property installed in the Premises by or for the account of City and that can be removed without structural damage to the Premises (collectively, "City's Personal Property") shall be and remain City's property. Without limiting the foregoing, the parties agree that any telecommunications switches installed on City's behalf are City's Personal Property. At any time during the Term City may remove any of City's Personal Property provided City shall repair any damage to the Premises resulting therefrom. Upon the expiration or earlier termination of this Lease, City

shall remove City's Personal Property from the Premises in accordance with Section 20.1 [Surrender of Premises] below. Landlord acknowledges that some of City's Personal Property may be financed by third party lenders or otherwise-subjected to a security interest, or owned by an equipment company and leased to City. Landlord, upon City's reasonable request, shall execute and deliver any document required by any supplier, lessor, or lender in connection with the installation in the Premises of any items of City's Personal Property, pursuant to which Landlord waives any rights it may have or acquire with respect to City's Personal Property, so long as the supplier, lessor or lender agrees that it (i) will remove such property from the Premises within 30 days after the Expiration Date (but if it does not remove the City's Personal Property within such time it shall have waived any rights it may have had to the City's Personal Property, and (ii) will repair any damage caused by the removal of the City's Personal Property. Landlord shall recognize the rights of a supplier, lessor or lender who has an interest in any items of City's Personal Property to enter the Premises and remove such property at any time during the Term or within 30 days after the Expiration Date during normal business hours and upon not less than two (2) business days' prior notice to Landlord.

## 8 REPAIRS AND MAINTENANCE

8.1 Landlord's Repairs. Landlord shall repair and maintain, at its cost and in good and proper working order, condition and repair, the exterior and structural portions of the Building, including, without limitation, the roof, foundation, bearing and exterior walls and subflooring, elevators serving the Premises, and the heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security and other mechanical, electrical and communications systems of the Building (collectively, the "Building Systems") and the Common Areas. Without limiting the foregoing, Landlord shall maintain the Building in its current clean and attractive manner and shall use reasonable efforts to not permit any other tenants of the Building to disturb or interfere with City's use of the Premises or permit to be done in or about the Building anything that is illegal, is dangerous to persons or property or constitutes a nuisance.

8.2 City's Repairs. Subject to Landlord's warranty under Section 10.1 [Premises Compliance], any construction warranties or guarantees given in the construction of the Leasehold Improvements, and Landlord's repair and maintenance obligations hereunder, City shall repair and maintain at its cost the interior portions of the Premises and shall keep the Premises in good working order and in a safe and sanitary condition, except for ordinary wear and tear and damage by casualty. City shall

make any such required repairs and replacements that Landlord specifies in writing (i) at City's cost, (ii) by contractors or mechanics selected by City and reasonably approved by Landlord, (iii) so that same shall be at least substantially equal in quality, value and utility to the original work or installation prior to damage thereof, (iv) in a manner and using equipment and materials that will not materially interfere with or impair the operations, use or occupation of the Building or the Building Systems, and (v) in compliance with all applicable laws, including, without limitation, any applicable bidding requirements under City's Charter and Administrative Code.

8.3 Liens. City shall keep the Premises free from liens arising out of any work performed, material furnished or obligations incurred by City during the Term. Landlord shall have the right to post on the Premises any notices permitted or required by law or that are needed for the protection of Landlord, the Premises, or the Building, from mechanics' and materialmen's liens. City shall give Landlord at least ten (10) days' prior written notice of commencement of any repair or construction by City on the Premises.

## 9 UTILITIES AND SERVICES

9.1 Landlord's Provision of Utilities and Services. Landlord shall furnish to the Premises heating, air conditioning and ventilation, elevator service and water in accordance with the standards specified in the attached Exhibit F. Without limiting Landlord's obligations hereunder, Landlord shall furnish all utilities and services required under this Lease in a manner consistent with such utilities and services normally provided in other first class office buildings. City shall be entitled to install supplemental air conditioning units for equipment and computer rooms, which Landlord agrees City may operate on a twenty four (24) hours a day, three hundred sixty five (365) day per year basis; provided, however, that if as a result of City's equipment and computer rooms Landlord is required to operate the chiller and/or boiler prior to 7:30 a.m. or after 5:30 p.m., City shall pay to Landlord, as additional Rent, the sum of sixty-five dollars (\$65.00) per hour for each hour that Landlord is required to run the chiller and/or boiler. Landlord shall not charge City any tenant hook-up, installation or similar fees. City may obtain after hours heating or air conditioning at sixty-five dollars (\$65.00) per hour by notifying Landlord prior to 3 p.m. each weekday, or by 3 p.m. the Friday prior to a weekend if City requires such heating or air conditioning on such weekend.

9.2 Electricity. City shall be responsible for arranging and paying for electric current in amounts required for its uses in the Premises. City shall also be responsible for installing meters for City's use of electricity in the Premises.

9.3 Security Service. Landlord shall provide at its cost security for the Building in accordance with the specifications contained in Exhibit G attached hereto. City shall have the right to provide at its cost such additional security for the Premises as City may determine appropriate, and Landlord agrees to cooperate reasonably with City in coordinating such additional security with the Building security provided by Landlord. Landlord and City agree that Landlord's security guards shall not enter the Premises, except in the event of an emergency. Landlord shall cause its Building security to notify City's security immediately in the event that Landlord's security becomes aware of any known or suspected security problem relating to the Premises.

9.4 Janitorial Service. City shall provide, at its cost, janitorial service required for its use of the Premises. Landlord shall provide, at its cost, janitorial service for the Common Areas in accordance with the specifications contained in Exhibit H attached hereto. City shall pay to Landlord, as additional Rent, its reasonable pro rata share of the actual cost of operating the Building trash compactor, based upon the increased volume of garbage due to City's occupancy.

9.5 Disruption in Essential Utilities or Services Provided by Landlord. In the event of any failure, stoppage or interruption of any utilities or services to be furnished by Landlord hereunder, Landlord shall diligently attempt to restore service as promptly as possible and shall keep City apprised of its efforts. In the event Landlord is unable to supply any of the Building's sanitary, electrical, heating, air conditioning, water or other essential services serving the Premises (collectively, "Essential Services") and such inability of Landlord materially impairs City's ability to carry on its business in the Premises for a period of twenty four (24) or more consecutive hours if such failure is in the reasonable control of Landlord or a period of three (3) or more consecutive business days if such failure is not within the reasonable control of Landlord, then the Rent shall be abated based on the extent such inability of Landlord materially impairs City's ability to carry on its business in the Premises, or, alternatively at City's election, City shall have the option to provide such services and offset the reasonable cost thereof against the Rent next due under this Lease. Such abatement, or right to provide the services and offset against Rent, shall continue until the Essential Services have been restored so that the lack of any remaining services no longer materially impairs City's ability to carry on its business in the Premises. Landlord shall use its best efforts to restore disrupted Essential Services as soon as possible. However, if such failure to provide any Essential Services continues for any reason for thirty (30) days and such failure materially interferes with City's ability to carry on its

business in the Premises, then City may, without limiting any of its other rights or remedies hereunder or at law or in equity, terminate this Lease upon written notice to Landlord, unless Landlord supplies City with evidence reasonably satisfactory to City that such Essential Services will be restored within sixty (60) days of the date such services were interrupted, and such services are actually restored within such 60-day period. City shall not be entitled to any abatement of Rent or right to terminate if Landlord's inability to supply Essential Services to City is due directly and exclusively to the acts, omissions or negligence of City or its Agents.

## 10 COMPLIANCE WITH LAWS

10.1 Premises and Building Compliance. Landlord represents and warrants to the best of Landlord's knowledge to City, and covenants with City, that as of the Commencement Date the Premises and the Building (including, without limitation, the Common Areas and Building Systems serving the Premises) will be in full compliance with all then current earthquake, life safety and handicap accessibility laws including, without limitation, the Americans with Disabilities Act of 1990, and all other applicable laws, rules, regulations and governmental requirements, and there will not be any material physical or mechanical defects in the Premises or the Building Systems that would materially adversely affect City's intended use of the Premises. Landlord shall at all times during the Term maintain, at its cost, the Common Areas and the Building Systems serving the Premises in compliance with applicable laws, rules, regulations and requirements.

10.2 City's Compliance with Laws. City shall use the Premises during the Term in compliance with applicable laws, rules, regulations and requirements, requirements of any board of fire underwriters or other similar body now or hereafter constituted, and any direction or occupancy certificate issued pursuant to any law by any public officer or officers, except that City shall not be required to make any structural or non-structural alterations in order to comply therewith unless such alterations are necessary solely because of City's unique use of the Premises or any Alterations to the Premises made by City.

10.3 City's Compliance with Insurance Requirements. City shall not conduct any use in or about the Premises that would: (a) invalidate or be in conflict with any fire or other casualty insurance policies covering the Building or any property located therein, (b) result in a refusal by fire insurance companies of good standing to insure the Building or any such property in amounts reasonably satisfactory to Landlord or the holder of any mortgage or deed of trust encumbering the Building, (c) cause an increase in the fire insurance premium for the Building unless



City agrees to pay such increase, or (d) subject Landlord to any liability or responsibility for injury to any person or property by reason solely of any business operation being conducted by City in the Premises; provided, however, Landlord shall provide City with reasonable prior written notice of any applicable insurance requirements and no such insurance requirements shall materially and adversely interfere with City's business in the Premises.

## 11 SUBORDINATION

This Lease is and shall be subject and subordinate to the following (each an "Encumbrance"): (a) any reciprocal easement agreements and ground leases or other underlying leases that may now exist or hereafter be executed affecting the Property, or any portion thereof, and (b) the lien of any mortgage or deed of trust that may now exist or hereafter be executed in any amount for which any part of the Property, any ground leases or underlying leases, or Landlord's interest or estate therein, is specified as security; provided, however, that as a condition to any such Encumbrance, the holder of the Encumbrance and Landlord shall, at City's request, enter into a subordination and nondisturbance agreement with City in a recordable form then commercially reasonable. Notwithstanding the foregoing, Landlord shall have the right to subordinate or cause to be subordinated to this Lease any Encumbrance. In the event that any ground lease or underlying lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, City shall pay subsequent Rent and attorn to and become the tenant of such successor Landlord, at the option of such successor-in-interest, provided that City has received proper written notice of such succession and the name and address of the successor landlord, and further provided that, in the case of any Encumbrance hereafter executed, as a condition to such attornment the holder of such Encumbrance shall, at City's request, agree that so long a City is not in default hereunder, such holder shall recognize this Lease and shall not disturb City in its possession of the Premises for any reason other than one that would entitle Landlord to terminate this Lease or otherwise dispossess City of the Premises in accordance with the terms hereof. The provisions of this Article shall be self-operative and no further instrument shall be required other than as provided herein. City agrees, however, to execute upon request by Landlord and in a recordable form then commercially reasonable, any additional documents evidencing the priority or subordination of this Lease with respect to any such Encumbrance as provided herein.

As a condition to City's obligations under this Lease, Landlord shall provide to City, within fifteen days of execution of this Lease, an executed non-disturbance and attornment

agreement from all of the holders of any existing Encumbrance(s). Such agreement(s) shall be in a form reasonably acceptable to City and to Landlord's lender. Notwithstanding anything to the contrary set forth herein, this Lease shall not be subordinate to that certain Short Form Deed of Trust and Assignment of Rents recorded October 26, 1990 as document number E-810760, Book F-240, Page 339, Records of the City and County of San Francisco (the "1990 Deed of Trust") or any other mortgage or deed of trust now or hereafter entered into which secures a debt not financed by a third party institutional lender unrelated to Landlord. As a condition to City's obligations under this Lease, Landlord shall provide to City, within fifteen days of execution of this Lease, an executed subordination agreement in a form reasonably acceptable to City subordinating the 1990 Deed of Trust to this Lease.

## 12 DAMAGE AND DESTRUCTION

If the Premises, the Building or any Building Systems are damaged by fire or other casualty, Landlord shall repair the same without delay (and if Landlord is then carrying insurance on the Tenant Improvements or if City at its sole option makes funds available to Landlord, Landlord shall also repair the Tenant Improvements), provided that such repairs can be made under applicable laws within ninety (90) days after the date of such damage, or one hundred twenty (120) days after the date of such damage in the event that Landlord is also repairing the Tenant Improvements (the "Repair Period"). In such event, this Lease shall remain in full force and effect, except that City shall be entitled to an abatement of Rent while such repairs are being made. Such abatement in Rent shall be based upon the extent to which such damage and the making of such repairs interfere with City's business in the Premises. Landlord's repairs shall not include, and the Rent shall not be abated as a result of, any damage by fire or other cause to City's Personal Property or any damage caused directly and exclusively by the negligence or willful misconduct of City or its Agents.

Within twenty (20) days after the date of such damage, Landlord shall notify City whether or not, in Landlord's reasonable judgment made in good faith, such repairs can be made within the Repair Period. If such repairs cannot be made within the Repair Period, then either party hereto may, by written notice to the other given within thirty (30) days after the date of such damage, terminate this Lease as of the date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by Landlord; provided, however, that in the event Landlord elects to terminate City may, at its sole option and by written notice to Landlord within thirty (30) days after receipt of Landlord's notice of termination, elect to repair the damage and keep the Lease in

effect. In the event that City so elects, the Rent due hereunder shall be abated as provided above and any proceeds of insurance from any policy carried by Landlord payable in connection with such damage shall be paid to and shall belong to City. In case of termination, the Rent shall be reduced by a proportionate amount based upon the extent to which such damage interferes with the conduct of City's business in the Premises, and City shall pay such reduced Rent up to the date of termination. Landlord shall immediately refund to City any Rent previously paid for any period of time subsequent to such date of termination.

Notwithstanding the foregoing, in the event that more than forty percent (40%) of the rentable area of the Premises are damaged or destroyed, City may terminate this Lease by written notice to Landlord within thirty (30) days of the date of such damage.

The parties intend that the provisions of this Section govern fully their rights and obligations in the event of damage or destruction, and Landlord and City each hereby waives and releases any right to terminate this Lease in whole or in part under Section 1932, subdivision 2, and Section 1933, subdivision 4, of the Civil Code of California or under any similar law, statute or ordinance now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

### 13 EMINENT DOMAIN

#### 13.1 Definitions.

(a) "Taking" means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under law. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

(b) "Date of Taking" means the earlier of (i) the date upon which title to the portion of the Property taken passes to and vests in the condemnor or (ii) the date on which Tenant is dispossessed.

(c) "Award" means all compensation, sums or anything or value paid, awarded or received for a Taking, whether pursuant to judgment, agreement, settlement or otherwise.

13.2 General. If during the Term or during the period between the execution of this Lease and the Commencement Date, there is any Taking of all or any part of the Premises or any interest in this Lease, the rights and obligations of the parties hereunder shall be determined pursuant to this Section. City and

Landlord intend that the provisions hereof govern fully in the event of a Taking and accordingly, the parties each hereby waive any right to terminate this Lease in whole or in part under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

13.3 Total Taking; Automatic Termination. If there is a total Taking of the Premises, then this Lease shall terminate as of the Date of Taking.

13.4 Partial Taking; Election to Terminate.

(a) If there is a Taking of any portion (but less than all) of the Premises, then this Lease shall terminate in its entirety if all of the following exist: (A) the partial Taking, in City's reasonable judgment, renders the remaining portion of the Premises untenable or unsuitable for continued use by City for its intended purposes or otherwise materially adversely affect City's business in the Premises, (B) the condition rendering the Premises untenable or unsuitable either is not curable or is curable but Landlord is unwilling or unable to cure such condition, and (C) City elects to terminate.

(b) In the case of a partial taking of a substantial portion of the Building, City and Landlord shall each have the right to terminate this Lease by written notice to the other within thirty (30) days after such date, provided that as a condition to City's right to terminate the portion of the Building taken shall in City's reasonable judgment, render the Premises unsuitable for continued use by City for its intended purposes.

(c) Either party electing to terminate under the provisions of this Article 13 shall do so by giving written notice to the other party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth day after such written notice is given or the Date of Taking.

13.5 Rent; Award. Upon termination of this Lease pursuant to an election under Section 13.4 above, then: (i) City's obligation to pay Rent shall continue up until the date of termination, and thereafter shall cease, except that Rent shall be reduced as provided in Section 13.6 below for any period during which this Lease continues in effect after the Date of Taking, and (ii) Landlord shall be entitled to the entire Award in connection therewith, except that City shall receive any Award made specifically for City's relocation expenses or the interruption of or damage to City's business or damage to City's Personal Property.

13.6 Partial Taking; Continuation of Lease. If there is a partial Taking of the Premises under circumstances where this Lease is not terminated in its entirety under Section 13.4 above, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the parties shall be as follows: (a) Rent shall be reduced by an amount that is in the same ratio to the Rent as the area of the Premises taken bears to the area of the Premises prior to the Date of Taking, and (b) Landlord shall be entitled to the entire Award in connection therewith, provided that City shall receive any Award made specifically for City's relocation expenses or the interruption of or damage to City's business or damage to City's Personal Property.

13.7 Temporary Takings. Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to the Premises for a limited period of time not in excess of sixty (60) consecutive days, this Lease shall remain unaffected thereby, and City shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. In the event of such temporary Taking, City shall be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by City for the period of the Taking.

#### 14 ASSIGNMENT AND SUBLETTING

14.1 Landlord's Consent Required. City shall not transfer, assign, sublet, enter into license or concession agreements, or hypothecate this Lease or City's interest in and to the Premises or permit the use of the Premises for any purpose other than those permitted pursuant to Section 5 above or by any party other than City in whatever part (collectively, "Assignment") without first obtaining Landlord's consent and otherwise complying with all the terms and conditions of this Section 14. Such consent may be granted or withheld by Landlord in Landlord's reasonable discretion. Any Assignment without Landlord's consent shall be void and shall constitute an Event of Default under this Lease. Neither this Lease nor any interest herein shall be assignable as to the interest of City by operation of law without the consent of Landlord.

14.2 Notice to Landlord. If City desires at any time to enter into an Assignment of this Lease, City shall first give written notice to Landlord of its desire to do so, which notice shall contain (a) the name of the proposed assignee, subtenant or occupant (collectively, "Assignee"), (b) the nature of the proposed Assignee's business to be carried on in the Premises, (c) the terms and provisions of the proposed Assignment, and (d) such financial information, operating histories and statements of

prior experience in such business concerning the proposed Assignee as Landlord may reasonably request within five (5) days of Landlord's receipt of City's notice. City further acknowledges that the use of the Premises shall be limited to those uses permitted pursuant to Section 5 hereof.

14.3 Consent. At any time within thirty (30) days after Landlord's receipt of the notice and the additional information specified in Section 14.2 above, Landlord may, by written notice to City and in its reasonable discretion, elect to consent or disapprove the Assignment. If Landlord fails to consent or disapprove the Assignment within such time period, Landlord shall be deemed to have consented to the Assignment.

14.4 Form of Assignment. Each Assignment to which Landlord has consented shall be by an instrument in form reasonably satisfactory to Landlord and shall be executed by the Assignor and the Assignee; and each Assignee shall agree in writing for the benefit of Landlord to assume, to be bound by, and to perform the terms, covenants and conditions of this Lease to be done, kept and performed by City that apply to the portion of the Premises which is the subject of the Assignment. No Assignment to which Landlord has consented shall be effective until an executed copy of such instrument of Assignment has been delivered to Landlord.

14.5 Consideration. Fifty percent (50%) of any sums or other economic consideration received by City as a result of any sublease which exceed, in the aggregate, the total sums which City is obligated to pay to Landlord under this Lease (prorated to reflect obligations allocable to that portion of the Premises subject to any such sublease) shall be payable to Landlord as additional Rent under this Lease without affecting or reducing any other obligation of City under this Lease.

14.6 Snack Counter. Notwithstanding anything to the contrary contained in this Section 14 or elsewhere in this Lease, City may sublet up to eight hundred (800) square feet of the Premises for the operation of a coffee and snack counter in City's employee lounge, and shall not be obligated to pay any sums relating to such sublease to Landlord pursuant to Section 14.5 above. City acknowledges, however, that the Premises are not equipped for cooking and do not contain a waste line. City agrees that in no event shall said subtenant cook any foods or beverages on the Premises except by use of a non-commercial microwave oven. City shall be solely responsible for any additional extermination services within the sublet Premises that may be necessary in connection with the employee lounge.

15 DEFAULT; REMEDIES

15.1 Events of Default by City. Any of the following shall constitute an event of default by City hereunder:

(a) City's failure to make any timely payment of Rent and shall fail to cure such nonpayment within five (5) business days after receipt of written notice thereof from Landlord; provided that for the first two (2) monthly payments of Rent at the beginning of the Term and for the first monthly payment of Rent after the beginning of each new fiscal year for City, City shall have twenty (20) days to cure any such nonpayment after the payment of Rent is due;

(b) City's abandonment of the Premises for in excess of twenty (20) consecutive days; or

(c) City's failure to perform any other covenant or obligation of City hereunder (not involving the payment of money) and failure to cure such non-performance within thirty (30) days, provided that if more than thirty (30) days are reasonably required for such cure, no event of default shall occur if City commences such cure within such period and diligently prosecutes such cure to completion within six (6) months.

15.2 Landlord's Remedies. Upon the occurrence of any event of default by City that is not cured within the applicable grace period as provided above, Landlord shall have all rights and remedies available pursuant to law or granted hereunder, including the following:

(a) The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate City's right to possession of the Premises and to recover 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 rental loss for the same period that City proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2.

(b) The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows Landlord to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, for so long as Landlord does not terminate City's right to possession, if City has the right to sublet or assign, subject only to reasonable limitations.

(c) All covenants and agreements to be performed by City under this Lease shall be at its sole cost and expense and without any abatement of Rent, unless otherwise specified in this Lease. If City shall fail to pay any sum of money, other than Rent, required to be paid by it pursuant to this Lease or shall fail to perform any other act to be performed by City under this Lease and such failure shall have become an Event of Default under Section 15.1 above, Landlord may upon thirty (30) days' prior written notice to City, but shall not be obligated so to do, and without waiving or releasing City from any obligations of City, make any such payments or perform any such other act on City's part to be made or performed as provided in this Lease. City shall pay to Landlord all actual and reasonable out of pocket costs incurred by Landlord hereunder within thirty (30) days of Landlord's presentation of invoices or other documentation of such costs as reasonably required by City. All such sums shall be deemed additional Rent.

15.3 Landlord's Default. If Landlord fails to perform any of its obligations under this Lease, then City may cure such default at Landlord's expense if such default continues after thirty (30) days from the date City gives notice to Landlord of City's intention to perform such cure. However, in the case of a default which for causes beyond Landlord's control (excluding any financial inability to perform) cannot with due diligence be cured within such 30-day period, such 30-day period shall be extended if Landlord, promptly upon receipt of City's notice, advises City of Landlord's intention to take all steps required to cure such default, and Landlord promptly commences such cure and diligently prosecutes the same to completion. Subject to the other provisions of this Lease relating to abatement of Rent, if Landlord fails to cure any default within the cure period provided above, then, whether or not City elects to cure Landlord's default as provided herein, the Base Rent and any other charges hereunder shall be abated based on the extent to which such default materially interferes with City's ability to carry on its business at the Premises. Notwithstanding the foregoing, if any such default by Landlord continues for sixty (60) days and materially impairs City's ability to carry on its business in the Premises, then City shall have the right to terminate this Lease upon written notice to Landlord within thirty (30) days after the expiration of such 60-day period. City's rights hereunder and under Sections 3.3 [Delay in Delivery of Possession], 5.3 [Interference with Access], and 9.4 [Disruption in Essential Services], shall not limit in any way any of its other rights and remedies hereunder or at law or in equity.

## 16 INDEMNITIES



16.1 City's Indemnity. City shall indemnify, defend and hold harmless ("Indemnify") Landlord and its Agents (as defined in Section 23.5 below), from and against any and all claims, costs and expenses, including, without limitation, reasonable attorneys' fees, (collectively, "Claims"), incurred as a result of (a) City's use of the Premises, (b) any default by City in the performance of any of its obligations under this Lease, or (c) any negligent acts or omissions of City or its Agents, in, on or about the Premises or the Property; provided, however, City shall not be obligated to Indemnify Landlord or its Agents to the extent any Claim arises out of the active negligence or willful misconduct of Landlord or its Agents. In any action or proceeding brought against Landlord or its Agents by reason of any Claim Indemnified by City hereunder, City may, at its sole option, elect to defend such Claim by attorneys in City's Office of the City Attorney, by other attorneys selected by City, or both, provided that City shall have accepted the Claim Indemnified without any reservation of rights against Landlord. In the event that City has so reserved rights against Landlord, Landlord shall have the right to consent to any attorneys other than those in the Office of the City Attorney selected by City, which consent shall not be unreasonably withheld. City shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that Landlord shall have the right, but not the obligation, to participate in the defense of any such Claim at its sole cost. City's obligations under this Section shall survive the termination of the Lease.

16.2 Landlord's Indemnity. Landlord shall Indemnify City and its Agents against any and all Claims incurred as a result of (a) any default by Landlord in the performance of any of its obligations under this Lease or any breach of any representations or warranties made by Landlord hereunder, or (b) any negligent acts or omissions of Landlord or its Agents in, on or about the Premises or the Property; provided, however, Landlord shall not be obligated to Indemnify City or its Agents to the extent any Claim arises out of the active negligence or willful misconduct of City or its Agents. In any action or proceeding brought against City or its Agents by reason of any Claim Indemnified by Landlord hereunder, Landlord may, at its sole option, elect to defend such Claim by attorneys selected by Landlord, provided that Landlord shall have accepted the Claim Indemnified without any reservation of rights against City. In the event that Landlord has so reserved rights against City, City shall have the right to consent to any such attorneys selected by Landlord, which consent shall not be unreasonably withheld. Landlord shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that City shall have the right, but not the obligation, to participate in the defense of any such Claim at its sole cost.

Landlord's obligations under this Section shall survive the termination of the Lease.

## 17 INSURANCE

17.1 City's Self-Insurance. Landlord acknowledges that City maintains a program of self-insurance and agrees that City shall not be required to carry any third-party comprehensive general liability insurance or other insurance with respect to this Lease. City assumes the risk of damage to any of City's Personal Property, except for damage caused by the negligence or willful misconduct of Landlord or its Agents.

17.2 Landlord's Insurance. At all times during the Term, Landlord shall keep the Building (excluding the land upon which it is located) insured against damage and destruction by fire, vandalism, malicious mischief, sprinkler damage and other perils customarily covered under an all risk insurance policy in an amount equal to one hundred percent of the full insurance replacement value (replacement cost new, including, debris removal and demolition) thereof. Landlord shall, prior to the Commencement Date and thereafter within thirty (30) days prior to the expiration of such policy, provide to City an original certificate of insurance issued by the insurance carrier, evidencing the insurance required above. The certificate shall expressly provide that the policy is not cancelable or subject to reduction of coverage or otherwise be subject to modification except after thirty (30) days prior written notice to City. Landlord hereby releases City and waives any claims against City and its Agents for loss or damage to the Premises, Building or Property, including personal property, fixtures, improvements or alterations, to the extent such claims are covered by any property insurance policy carried by Landlord.

## 18 ACCESS BY LANDLORD

Landlord reserves for itself and any designated Agent the right to enter the Premises at all reasonable times and, except in cases of emergency (in which event Landlord shall give any reasonable notice), after giving City at least twenty four (24) hours' advance written or oral notice, for the purpose of (i) inspecting the Premises, (ii) supplying any service to be provided by Landlord hereunder, (iii) showing the Premises to any prospective purchasers, mortgagees or, during the last six (6) months of the Term of this Lease, tenants, (iv) posting notices of non-responsibility, and (v) altering, improving or repairing the Premises and any portion of the Building, and Landlord may for that purpose erect, use and maintain necessary structures in and through the Premises where reasonably required by the character of the work to be performed, provided that the entrance to the Premises shall not be blocked thereby, and further

provided that City's use shall not be materially interfered with.

#### 19 ESTOPPEL CERTIFICATES

Either party, from time to time during the Term upon not less than ten (10) days' prior written notice from the other party, shall execute, acknowledge and deliver to the other party, or such persons or entities designated by such other party, a certificate stating: (a) the Commencement Date and Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (c) that there are no defaults under this Lease (or if so, specifying the same), (d) the date to which Rent has been paid, and (e) any other information that may be reasonably required.

#### 20 SURRENDER OF PREMISES

Upon the expiration or sooner termination of this Lease, City shall surrender the Premises to Landlord in good order and condition, reasonable use and wear and damage by fire or other casualty excepted. Within ten (10) days after the Expiration Date, City shall remove from the Premises all of City's Personal Property and any Alterations City desires or is required to remove from the Premises pursuant to the provisions of Section 7.1 [Alterations by City] above. City shall repair or pay the cost of repairing any damage to the Premises or the Building resulting from such removal. Except as provided pursuant to Section 7.1 hereof, City shall not be required to demolish or remove from the Premises any of the Leasehold Improvements, except that City shall have the right to remove those Tenant Improvements identified in the Work Letter as belonging to City. City's obligations under this Section shall survive the expiration or earlier termination of this Lease.

#### 21 HAZARDOUS MATERIALS

21.1 Definitions. As used herein, the following terms shall have the meanings hereinafter set forth:

(a) "Environmental Laws" shall mean any federal, state, local or administrative law, rule, regulation, order or requirement relating to industrial hygiene, environmental conditions or Hazardous Material, whether now in effect or hereafter adopted.

(b) "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local

governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 et seq.), or pursuant to Section 25316 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of the Building or are naturally occurring substances on or about the Property; and petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.

(c) "Release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside the Building, or in, on, under or about the Property.

21.2 Landlord's Representations and Covenants. Landlord represents and warrants to City that, to the best of Landlord's knowledge based upon inspections of the Building and the plans and drawings relating thereto and on inquiries of architects and engineers of the Building and Landlord's agents and employees, the following statements are true and correct and will be true and correct as of the Commencement Date: (a) the Property is not in violation of any Environmental Laws; (b) the Property is not now, nor has it been, used for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Material, except for the use of such substances in such limited quantities as are customarily used in offices, which limited use has been and is in compliance with Environmental Laws; (c) the Property does not consist of any landfill or contain any underground storage tanks, nor does the Property consist of any building materials that contain asbestos or any other Hazardous Material; (d) there has been and is no Release of any Hazardous Material in the Building or in, on, under or about the Property; and (e) the Property is not subject to any claim by any governmental regulatory agency or third party related to the Release of any Hazardous Material, and there is no inquiry by any governmental agency (including, without limitation, the California Department of Toxic Substances Control or the Regional Water Quality Control Board) with respect to the presence of Hazardous Material in the Building or in, on, under or about the Property, or the migration of Hazardous Material from or to other real property. Subject to City's obligations under this Section below, Landlord shall maintain the Property throughout the Term in compliance with all Environmental Laws that could affect the

health, safety and welfare of City's employees or City's use, occupancy or enjoyment of the Premises for their intended purposes.

21.3 Landlord's Environmental Indemnity. Without limiting Landlord's Indemnity in Section 16.2 above, Landlord shall Indemnify City and its Agents against any and all Claims arising during or after the Term of this Lease (a) as a result of any breach of any of Landlord's representations, warranties or covenants in the preceding Section, or (b) in connection with any presence or Release of Hazardous Material (i) in the Building, (ii) on or under the Property, or (iii) about the Property if caused by Landlord or its Agents, unless City or its Agents caused such Release.

21.4 City's Covenants. Neither City nor its Agents shall cause any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or the Property, or transported to or from the Premises or the Property, in violation of any Environmental Laws, provided that City may use such substances in such limited amounts as are customarily used in offices so long as such use is in compliance with all applicable Environmental Laws.

21.5 City's Environmental Indemnity. If City breaches its obligations contained in the preceding Section, or if City or its Agents cause the Release of Hazardous Material from, in, on or about the Premises or the Property, then City shall Indemnify Landlord against any and all Claims arising during or after the Term of this Lease as a result of such Release, except to the extent Landlord or its Agents is responsible for the Release. The foregoing Indemnity shall not include any Claims resulting from the non-negligent aggravation by City, its Agents or Invitees of physical conditions of the Premises, or other parts of the Property, existing prior to City's occupancy, except in the event that Alterations or repairs undertaken by City are the cause of such aggravation.

## 22 SPECIAL PROVISIONS

22.1 Right of First Offer to Lease. During the first eighteen (18) months of the Initial Term (the "Offer Term"), Landlord shall not lease all or any available portion consisting of at least one-half of the fifth (5th) floor of the Building or any other available full floor of the Building (the "First Offer Space") without first offering the same for lease to City (the "Right of First Offer"). For purposes hereof, space shall be deemed "available" if it is not under lease to any other tenant, including any tenant whose term has expired and has no option to renew in its original lease.

(a) At any time during the Offer Term that any of the First Offer Space becomes available and provided City is not then in default under this Lease, Landlord shall notify City in writing (the "First Offer Notice") of the availability of such First Offer Space.

(b) If City, within ten (10) business days after receipt of the First Offer Notice, indicates in writing its agreement to lease the First Offer Space described in the First Offer Notice, then such space shall be included in the Premises and leased to City for the remainder of the Term, at the same rental rate per rentable square foot and including a tenant improvement allowance of nine dollars (\$9.00) per rentable square foot, reduced, however, by multiplying such amount by a fraction, the numerator of which shall be the number of months left in the Initial Term at the time of City's acceptance of the First Offer Space and the denominator of which shall be thirty-six and otherwise on the terms and conditions contained in this Lease. The Base Rent payable under this Lease shall be increased by the amount of Rent payable in connection with the First Offer Space. Upon commencement of the lease of such space, the parties hereto shall promptly execute an amendment to this Lease stating the terms and conditions of the addition of the First Offer Space to the Premises. Notwithstanding the foregoing, City's exercise of its Right of First Offer with respect to any First Offer Space shall be subject to approval thereof by the Board of Supervisors and the Mayor, in their respective sole discretion, within forty-five (45) days after such exercise.

(c) If City does not indicate within ten (10) business days after receipt of the First Offer Notice its agreement to lease the First Offer Space or any portion thereof described in such notice, Landlord thereafter shall have the right to lease the First Offer Space or portion thereof described in such notice to any third party at any rent or other terms more or less favorable to Landlord than those provided herein, as determined by Landlord in its sole discretion. If Landlord leases the First Offer Space or portion thereof to a third party and such space subsequently becomes available during the Term, the provisions of this Section shall apply to any determination by Landlord to release such space.

(d) Notwithstanding the foregoing, it shall be a condition precedent to City's acceptance of the First Offer Space that (i) City's acceptance of such space is for purposes of facilitating the pending seismic retrofit of City Hall (which condition Landlord may waive in writing in its sole discretion), and (ii) Landlord does not reasonably believe (which belief must be supported by reasonable evidence) that City's occupancy of the First Offer Space as office space would constitute an office development or change in use for conversion of the Premises

requiring project authorization and/or various fees or other requirements under the San Francisco Planning Code (a "Conversion"). City's acceptance of the First Offer Space shall be effective unless Landlord delivers written notice to City that one of the foregoing preconditions has not been met within ten (10) days of City's acceptance of such space. If Landlord reasonably believes that City's occupancy of the First Offer Space would constitute a Conversion, the parties agree to use their best efforts and to cooperate with each other in good faith to obtain a determination to the contrary from the Planning Department of City within thirty (30) days of Landlord's notice. However, if such efforts are unsuccessful, then any such purported acceptance of the First Offer Space shall be null and void.

(e) Landlord shall not grant a right of first refusal to any party on any space with respect to which City is entitled to receive a First Offer Notice pursuant hereto.

22.2 Option to Expand. During the first sixty (60) days after full execution of this Lease, City shall have the option to lease all or any portion comprising at least one half of the rentable square feet of the fifth (5th) floor of the Building ("Option Space").

(a) At any time during such sixty (60) day period, provided City is not then in default under this Lease, City may indicate its intent to lease all or a portion of the Option Space in writing to Landlord ("Option Notice"). Landlord shall relocate any tenant then occupying the Option Space, build out the Option Space in accordance with City's program requirements and deliver the Option Space to City as soon as possible but in no event later than June 30, 1995. Landlord and City shall cooperate with each other and agree to use reasonable and diligent efforts to facilitate the speedy space planning and build out of the Option Space. The Option Space so leased by City shall be included in the Premises and leased to City for the remainder of the Term, at the same rental rate per rentable square foot and including a tenant improvement allowance of nine dollars (\$9.00) per rentable square foot and otherwise on the terms and conditions contained in this Lease. The Base Rent payable under this Lease shall be increased by the amount of Rent payable in connection with the Option Space, and the initial payment of eighteen months Rent shall include the amount of Rent which is due for such Option Space during the first eighteen month period of the Term starting from the Commencement Date. Upon commencement of the lease of such space, the parties hereto shall promptly execute an amendment to this Lease stating the terms and conditions of the addition of the Option Space to the Premises.

(b) Landlord shall not grant any expansion rights to any third party on any of the Option Space prior to expiration of the first sixty (60) days after execution of this Lease.

22.3 Limitation of Landlord's Liability. City agrees that the liability of Landlord (including all partners, both general and limited, of any partnership and the officers, directors and shareholders of any corporation) under this Lease shall be limited to its interest in the Building, the Property and the building located at 1355 Market Street in San Francisco, together with the land upon which such building is located and all other improvements and appurtenances thereto. The Building, the Property and said property located at 1355 Market Street are hereinafter collectively referred to as the "Mart Properties". Any judgments rendered against Landlord shall be satisfied solely from its interest in the Mart Properties. City's sole recourse for the enforcement of any claim against Landlord shall be to obtain a judgment against Landlord, and thereafter to levy against Landlord's interest in the Mart Properties. Notwithstanding anything to the contrary set forth herein, in the event that Landlord increases the amount of debt which is secured by the Mart Properties such that its unencumbered equity interest in the Mart Properties falls below Ten Million Dollars (\$10,000,000), then Landlord shall be personally liable and the provisions of this Section 22.3 shall be of no force or effect, but only to the extent of such decrease. Upon City's request, Landlord shall provide City with evidence reasonably satisfactory to City regarding the ownership of the Mart Properties and any mortgages, deeds of trust or other security interests encumbering the Mart Properties. The foregoing provisions are not intended to relieve Landlord from the performance of any of Landlord's obligations under this Lease, but only to limit the personal liability of Landlord (including all partners, both general and limited, of any partnership and the officers, directors and shareholders of any corporation) in case of recovery of a judgment against Landlord.

## 23 GENERAL PROVISIONS

23.1 Notices. Except as otherwise specifically provided in this Lease, any notice given under this Lease shall be in writing and given by delivering the notice in person or by commercial courier, or by sending it by first-class mail, certified mail, return receipt requested, or Express Mail, return receipt requested, with postage prepaid, to: (a) City at Tenant's address set forth in the Basic Lease Information; or (b) Landlord at Landlord's address set forth in the Basic Lease Information; or (c) such other address as either Landlord or City may designate as its new address for such purpose by notice given to the other in accordance with this Section. For the convenience of the parties, copies of notices may also be given by telefacsimile to



the facsimile number listed in the Basic Lease Information for such party or such other numbers as may be provided from time to time. Any notice hereunder shall be deemed to have been given and received two (2) days after the date when it is mailed if sent by first-class, certified mail, one day after the date when it is mailed if sent by Express Mail, or upon the date personal delivery is made. For convenience of the parties, copies of notices may also be given by telefacsimile to the telephone number set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither party may give official or binding notice by facsimile.

23.2 No Implied Waiver. No failure by either party to insist upon the strict performance of any obligation of the other party under this Lease or to exercise any right, power or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such term, covenant or condition. No acceptance of full or partial Rent by Landlord while City is in default hereunder shall constitute a waiver of such default by Landlord. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of Landlord or City given in one instance under the terms of this Lease shall not relieve the other party of any obligation to secure the consent to any other or future instance under the terms of the Lease.

23.3 Amendments. Neither this Lease nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. No waiver of any breach shall affect or alter this Lease, but each and every term, covenant and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof.

23.4 Authority. Landlord represents and warrants to City that the execution of this Lease by Landlord has been duly authorized and does not violate any provision of any agreement to which Landlord or the Property is subject. City represents and warrants to Landlord that the execution of this Lease by City has been duly authorized pursuant to Board of Supervisors Resolution No. 254-94, and does not violate any provision of City's Charter or any resolution or agreement to which City is subject.

23.5 Parties and Their Agents; Approvals. If applicable, the word "Landlord" as used herein shall include the plural as

well as the singular. As used herein, the term "Agents" when used with respect to either party shall include the agents, employees, officers, directors, partners and contractors of such party. All approvals, consents or other determinations permitted or required by City hereunder shall be made by or through City's Director of Property unless otherwise provided in this Lease, subject to applicable law.

23.6 Interpretation of Lease. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the parties, without any presumption against the party responsible for drafting any part of this Lease. Except as otherwise specifically provided herein, wherever in this Lease Landlord or City is required or requested to give its consent or approval to any matter or action by the other, such consent or approval shall not be unreasonably withheld or delayed and the reasons for disapproval of consent shall be stated in reasonable detail in writing. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Lease, whether or not language of non-limitation, such as "without limitation" or similar words, are used.

23.7 Successors and Assigns. Subject to the provisions of Section 14 relating to assignment and subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of Landlord and City and, except as otherwise provided herein, their personal representatives and successors and assigns. There are no third-party beneficiaries to this Lease.

23.8 Brokers. Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease contemplated herein, except for the broker, if any, identified in the Basic Lease Information, whose commission, if any is due, shall be the sole responsibility of Landlord pursuant to a separate written agreement between Landlord and such broker, and

City shall have no liability therefor. In the event that any other broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes his claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Claims incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

23.9 Severability. If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the full extent permitted by law.

23.10 Governing Law. This Lease shall be construed and enforced in accordance with the laws of the State of California.

23.11 Entire Agreement. The parties intend that this Lease (including all of the attached exhibits, which are made a part of this Lease) shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous written or oral agreements or understandings. The parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts hereof and changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease.

23.12 Attorneys' Fees. In the event that either Landlord or City fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Agreement, reasonable fees of attorneys of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

23.13  Holding Over . Should City hold over in possession of the Premises after the expiration of the Term with Landlord's consent, such holding over shall not be deemed to extend the Term or renew this Lease, but such tenancy thereafter shall continue as a month-to-month tenancy. Such tenancy shall be on all the terms and conditions set forth in this Lease and at the monthly rental in effect during the last month of the Term of the Lease or such other rental as Landlord and City may mutually agree in writing as a condition to Landlord's consent to such holding over, and City shall continue as a month-to-month tenant until the tenancy shall be terminated by Landlord giving City or City giving Landlord at least thirty (30) days' prior written notice of termination. Should City hold over without Landlord's consent, the rent payable by City during the period of such holding over shall be one hundred twenty percent (120%) of the monthly rental in effect during the last month of the Term of this Lease, and such holding over shall not constitute a renewal of this Lease or a month-to-month tenancy, but shall be a tenancy at sufferance only.

23.14  Cumulative Remedies . All rights and remedies of either party hereto set forth in this Lease shall be cumulative, except as may otherwise be provided herein.

23.15  Time of Essence . Time is of the essence with respect to all provisions of this Lease in which a definite time for performance is specified.

23.16  Survival of Indemnities . Termination of this Lease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease, nor shall it effect any provision of this Lease that expressly states it shall survive termination hereof.

23.17  Signs . City may erect or post signs on or about the Premises subject to Landlord's prior approval as provided below. Landlord reserves the right to review the placement, design, and plan for any such sign prior to its erection or posting and agrees that the approval thereof shall not be unreasonably withheld or delayed; provided, however, that in no event shall City erect or post any signs in the windows of the Premises that are visible from the exterior of the Building.

23.18  Quiet Enjoyment and Title . Landlord covenants and represents that it has full right, power and authority to grant the leasehold estate hereunder, and covenants that City, upon paying the Rent hereunder and performing the covenants hereof, shall peaceably and quietly have, hold and enjoy the Premises and all appurtenances during the full Term of this Lease as against all persons or entities claiming by and through Landlord or on

account of any action, inaction or agreement of Landlord or its Agents. Without limiting the provisions of Section 16.2 (Indemnities), Landlord agrees to Indemnify City and its Agents against Claims arising out of any assertion that would interfere with City's right to quiet enjoyment as provided in this Section.

23.19 UMB. Landlord represents and warrants to City that the Building in which the Premises are located is not an unreinforced masonry building.

23.20 Bankruptcy. Landlord represents and warrants to City that Landlord has neither filed nor been the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Landlord's knowledge, no such filing is threatened. Landlord and City agree that City's leasehold estate created hereby includes, without limitation, all rights to receive and enjoy all services, facilities and amenities of the Premises and the Building as provided herein, and that if any of such services, facilities or amenities are terminated, or materially limited or restricted on account of any such case or proceeding, or for any other reason, City shall have the right to (i) contract directly with any third-party provider of such services, facilities or amenities to obtain the same, and (ii) offset against the Base Rent or other charges payable hereunder any and all reasonable costs and expenses incurred by City in obtaining such services, facilities or amenities.

23.21 Transfer of Landlord's Interest. Landlord shall have the right to transfer its interest in the Real Property, the Building or this Lease to any person or entity. In the event of any such transfer, Landlord shall be relieved, upon notice to City of the name and address of Landlord's successor, of any obligations accruing hereunder from and after the date of such transfer and upon delivering to City an express assumption by the transferee of all of Landlord's obligations hereunder, provided that such transferee is a financially responsible person or entity.

23.22 Non-Liability of City Officials, Employees and Agents. Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee or agent of City shall be personally liable to Landlord, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Landlord, its successors and assigns, or for any obligation of City under this Lease.

23.23 MacBride Principles - Northern Ireland. The City and County of San Francisco urges companies doing business in

Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Landlord acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

23.24 Controller's Certification of Funds. The terms of this Lease shall be governed by and subject to the budget and fiscal provisions of the Charter of the City and County of San Francisco. Notwithstanding anything to the contrary contained in this Lease, there shall be no obligation for the payment or expenditure of money by City under this Agreement unless the Controller of the City and County of San Francisco first certifies, pursuant to Section 6.302 of the Charter of the City and County of San Francisco, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure. Without limiting the foregoing, if in any fiscal year of City after the fiscal year in which the Term of this Lease commences, sufficient funds for the payment of Rent and any other payments required under this Lease are not appropriated for any reason, then City may terminate this Lease, without penalty, liability or expense of any kind to City, as of the last date on which sufficient funds are appropriated. City shall use its reasonable efforts to give Landlord reasonable advance notice of such termination. City agrees that it will not fail to appropriate sufficient funds for the payment of Rent and any other payments required hereunder for the purpose of appropriating funds for the rental of similar space in another non-City building in which the City will conduct the operations then being conducted by City in the Premises. City represents and warrants to Landlord that, as of the date of this Lease, City has appropriated sufficient funds to pay the first eighteen (18) months' prepaid Rent, and to meet City's anticipated obligations in connection with the Tenant Improvement Work in accordance with that certain Resolution of the Board of Supervisors No. 254-94.

23.25 Prevailing Wages for Construction Work. Landlord agrees that any person performing labor in the construction of the Leasehold Improvements or other improvements to the Premises which Landlord provides under this Lease shall be paid not less than the highest prevailing rate of wages and that Landlord shall include, in any contract for construction of such improvements, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Landlord further agrees that, as to the construction of such improvements under this Lease, Landlord shall comply with all the provisions of subsection (b) of San

Francisco Charter Section 7.204 and Sections 6.33 through 6.45 of the San Francisco Administrative Code that relate to payment of prevailing wages.

23.26 Tropical Hardwood Ban. (a) Except as expressly permitted by the application of Sections 12I.3.b and 12I.4.b of the San Francisco Administrative Code, neither Landlord nor any of its contractors shall provide any items to City in the construction of the Leasehold Improvements or otherwise in the performance of this Lease which are tropical hardwoods or tropical hardwood products. (b) The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood product. (c) In the event Landlord fails to comply in good faith with any of the provisions of Section 12I of the San Francisco Administrative Code, Landlord shall be liable for liquidated damages for each violation in any amount equal to Landlord's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greatest. Landlord acknowledges and agrees that the liquidated damages assessed shall be payable to the City and County of San Francisco upon demand and may be set off against any monies due to Landlord from any contract with the City and County of San Francisco.

23.27 Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

23.28 Effective Date. The date on which this Lease shall become effective (the "Effective Date") is the date upon which this Lease is duly executed by the parties hereto.

23.29 Acceptance of Lease by Landlord. This Lease shall be null and void unless Landlord accepts it and returns to City's Director of Property three (3) fully executed counterparts hereof on or before 3:00 p.m. San Francisco Time on June 16, 1994.

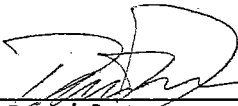
NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, LANDLORD ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY HERETO UNLESS AND UNTIL A RESOLUTION OF CITY'S BOARD OF SUPERVISORS HAS BEEN DULY ENACTED APPROVING THIS LEASE AND AUTHORIZING CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ENACTMENT OF SUCH A RESOLUTION, AND THIS LEASE SHALL BE NULL AND VOID UNLESS CITY'S MAYOR AND BOARD OF SUPERVISORS APPROVE THIS LEASE, IN THEIR RESPECTIVE SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO

IMPLY THAT SUCH RESOLUTION WILL BE ENACTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

Landlord and City have executed this Lease as of the date first written above.

LANDLORD:

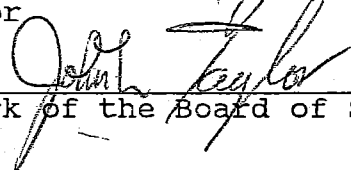
WESTERN MART CO., a California general partnership, d/b/a San Francisco Mart

By:   
David Dworman  
Executive Director

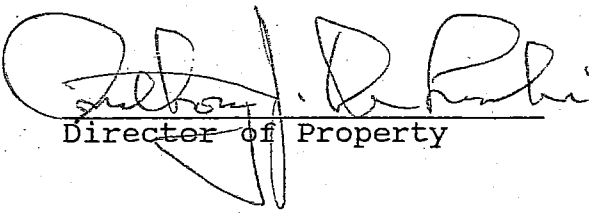
CITY:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

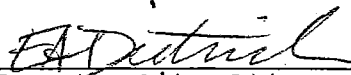
  
Mayor

  
Clerk of the Board of Supervisors

RECOMMENDED:

  
Director of Property

APPROVED AS TO FORM:  
LOUISE H. RENNE, City Attorney

By:   
Deputy City Attorney



OFFICE LEASE

EXHIBIT A

FLOOR PLANS  
CONSISTING OF 5 PAGES

relocate\8751se.3  
June 16, 1994



**KOMOROUS - TOWER**  
**ARCHITECTS INC.**  
1200 JAMES STREET • SUITE 100 • OAKLAND, CA 94612  
TEL: 415-764-1000



**DESIGN CENTER**  
**ARCHITECTS & ENGINEERS**  
1000 MARKET STREET, SUITE 100  
SAN FRANCISCO, CA 94102  
TEL: 415-398-1000

**SAN FRANCISCO**  
**MARKET**  
475 DEPARTMENT STREET, SUITE 1000  
SAN FRANCISCO, CALIFORNIA

**A2.0**  
**P. 000000**

MECHANICAL ROOM

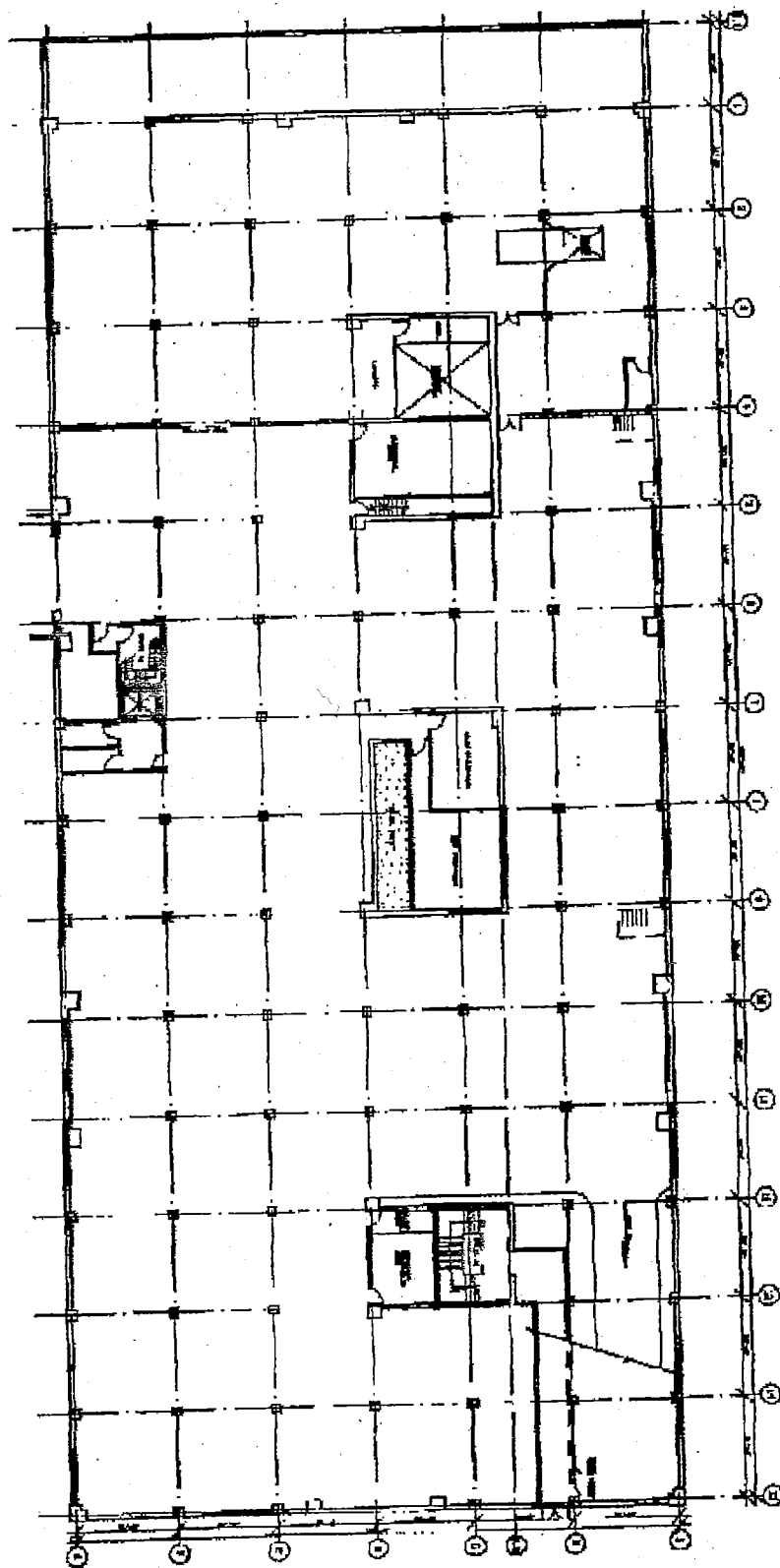
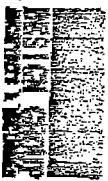


Exhibit A

Page 1 of 5



**KOMONOVUS - TOWNEY**  
**ARCHITECTS INC.**  
1010 BAY STREET, SUITE 200  
SAN FRANCISCO, CALIFORNIA 94133  
TEL: 415-774-1100



**DESIGN GROUP**  
1010 BAY STREET, SUITE 200  
SAN FRANCISCO, CALIFORNIA 94133  
TEL: 415-774-1100

**GAM PARCIBRO MART 2**  
1010 BAY STREET, SUITE 200  
SAN FRANCISCO, CALIFORNIA 94133  
TEL: 415-774-1100



**A2.1**  
**P.002A21**

MECHANICAL ROOM PLAN

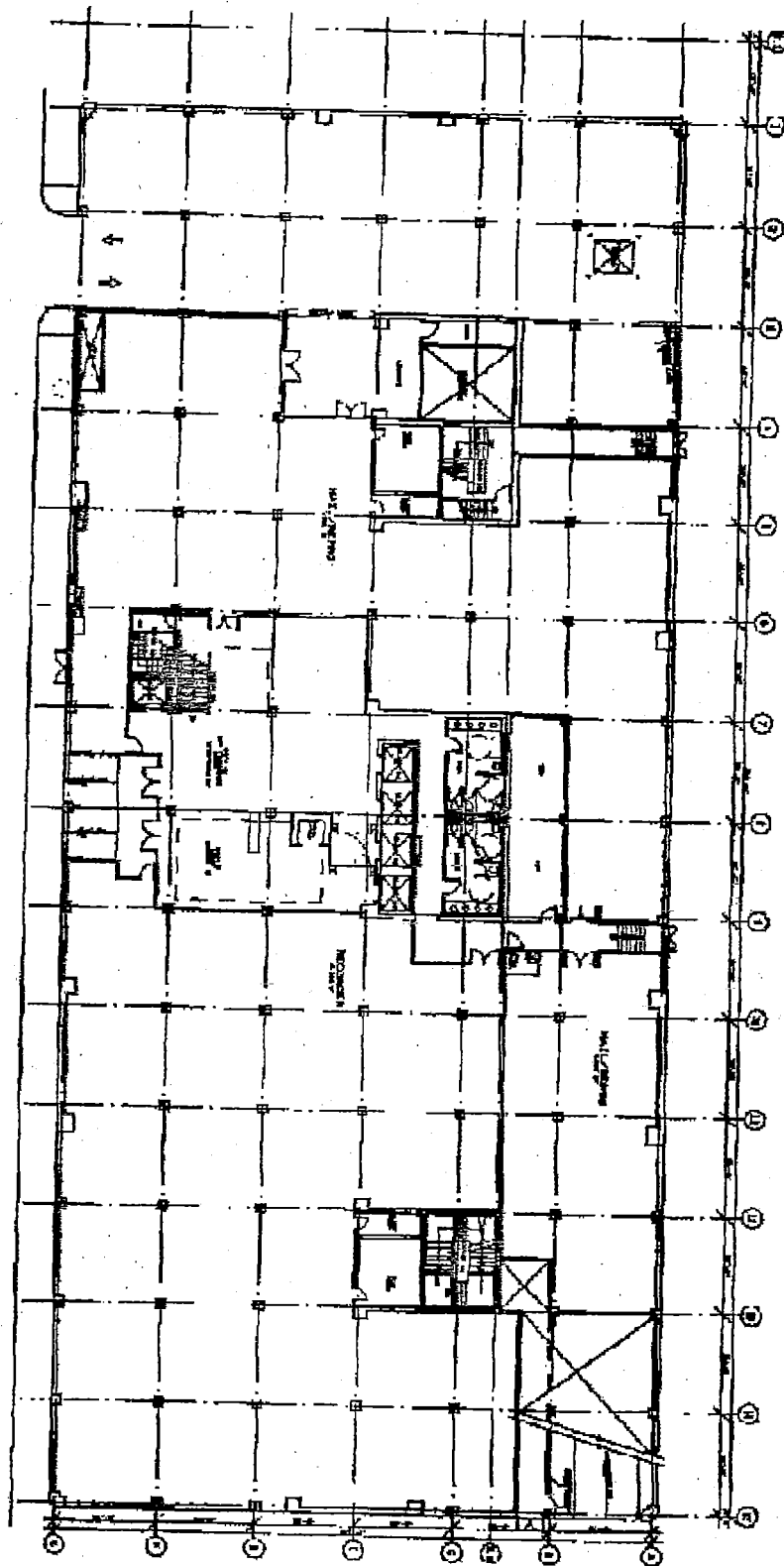
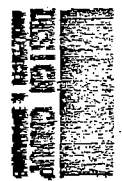


Exhibit A

Page 2 of 5



**KONNOUDS - TOWERY**  
**ARCHITECTS**



**JENSEN GROUP**

**SAN FRANCISCO**  
SAN FRANCISCO, CALIFORNIA

**A2.2**  
P. 03/24/92

STAIRS - DOWN STAIR

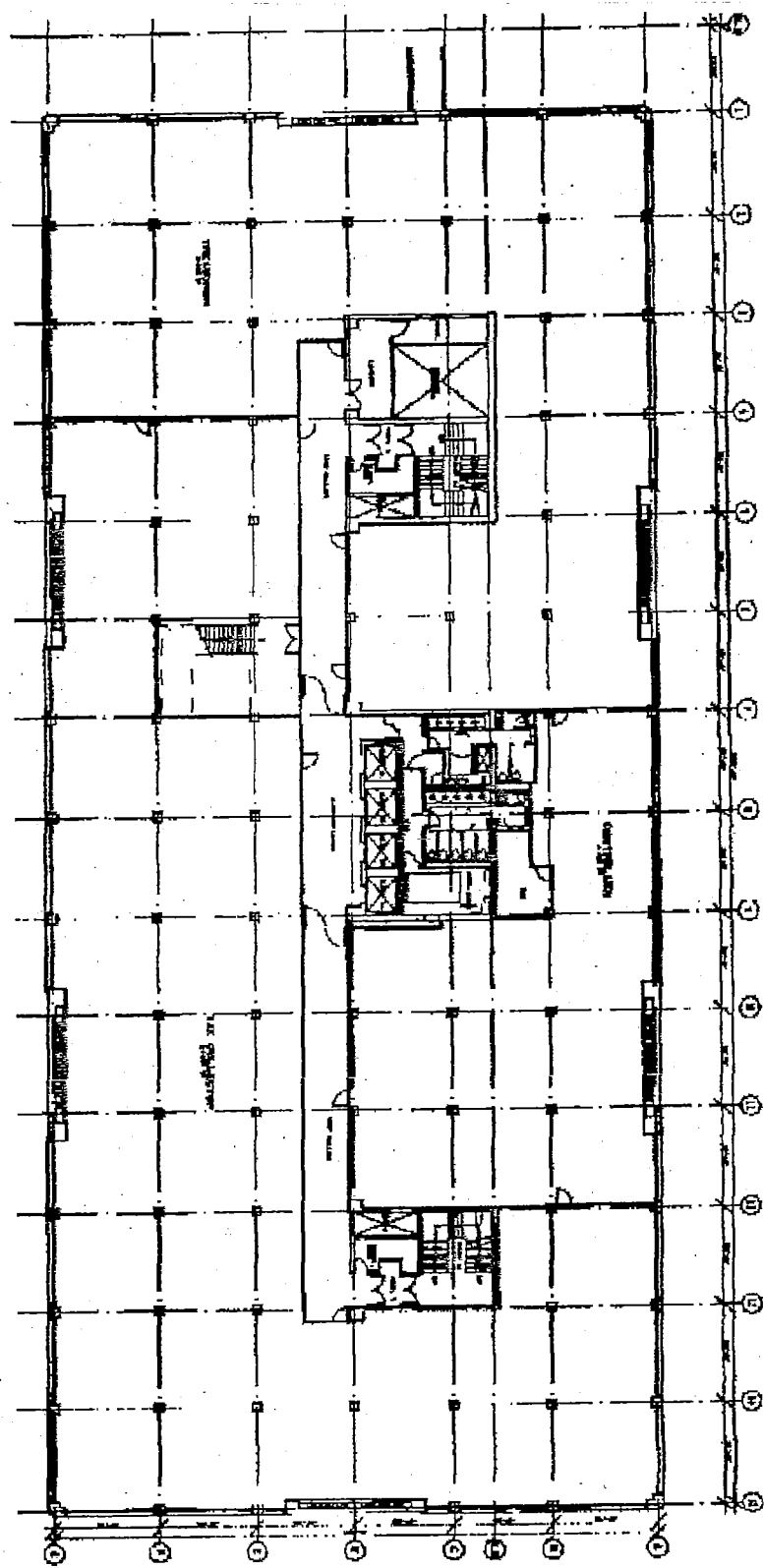


Exhibit A

Page 3 of 5



**KOMONOUS-TOWERY**  
**ARCHITECTS**  
1001 Bayshore Blvd., Suite 200  
San Francisco, CA 94133  
Tel: 415-774-1100



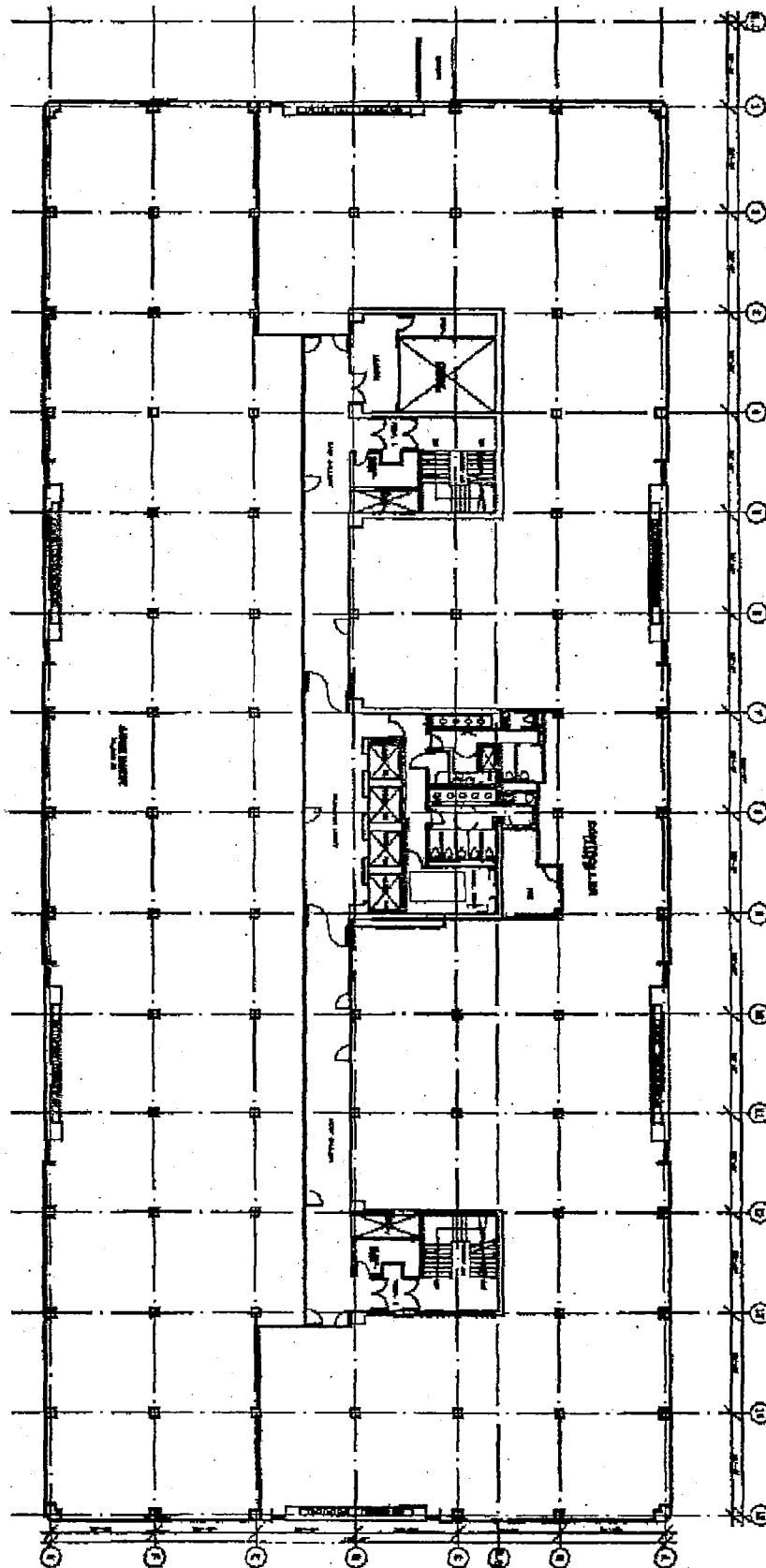
**DESIGN GROUP**  
**ARCHITECTS & ENGINEERS**  
1001 Bayshore Blvd., Suite 200  
San Francisco, CA 94133  
Tel: 415-774-1100

**SAN FRANCISCO**  
975 STEINBOCK BLVD. SAN FRANCISCO, CALIFORNIA 94102



**A2.3**  
**P 8032128**

**MECHANICAL FLOOR PLAN**





**KOMOROUS - TOWEY**  
**ARCHITECTS**



**DESIGN GROUP**

**SAN FRANCISCO MART 2**

**875 STEINBOCK SAN FRANCISCO, CALIFORNIA**

**A2.4**  
**P 1032124**

**CONCRETE FLOOR PLAN**

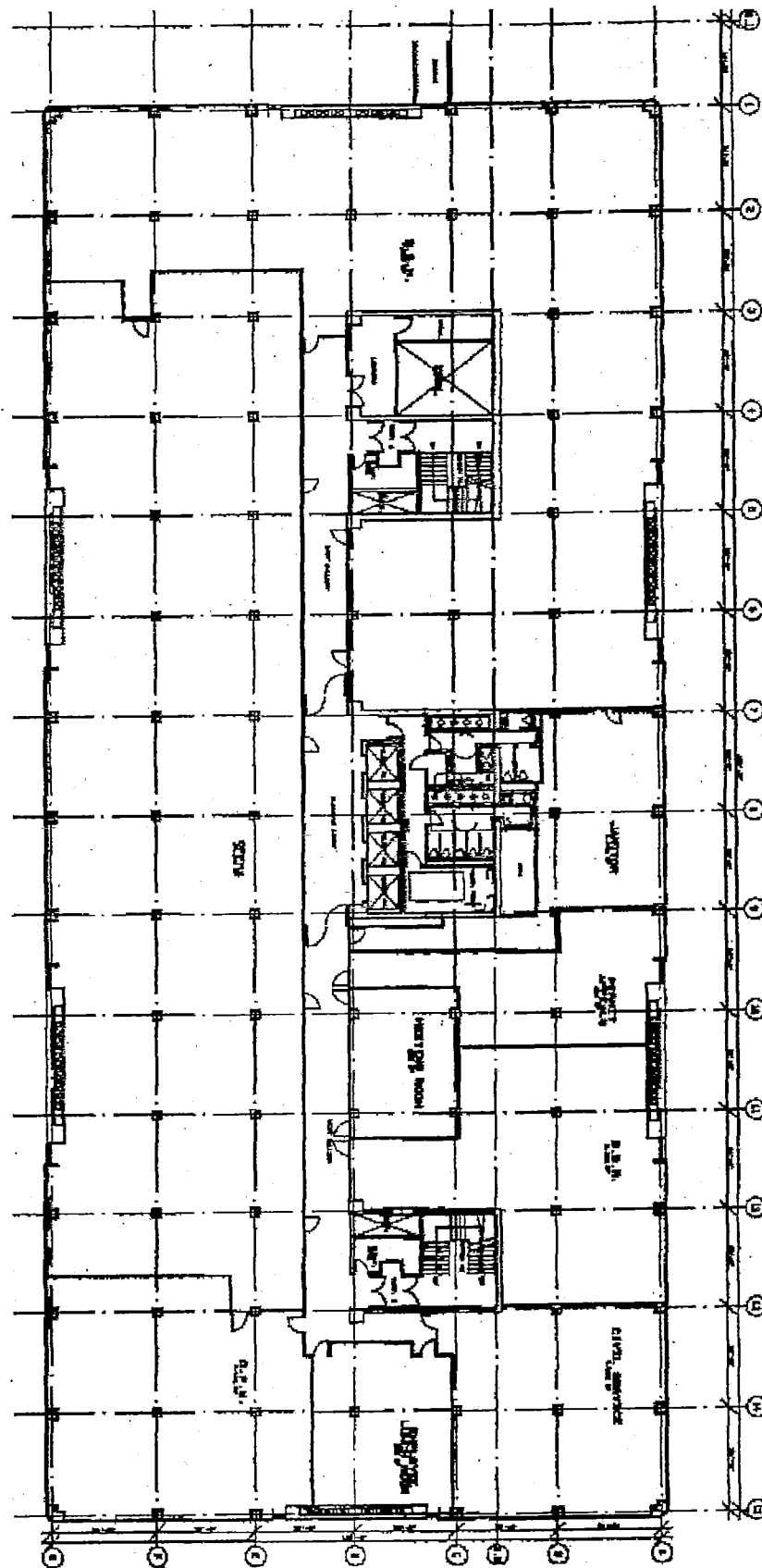
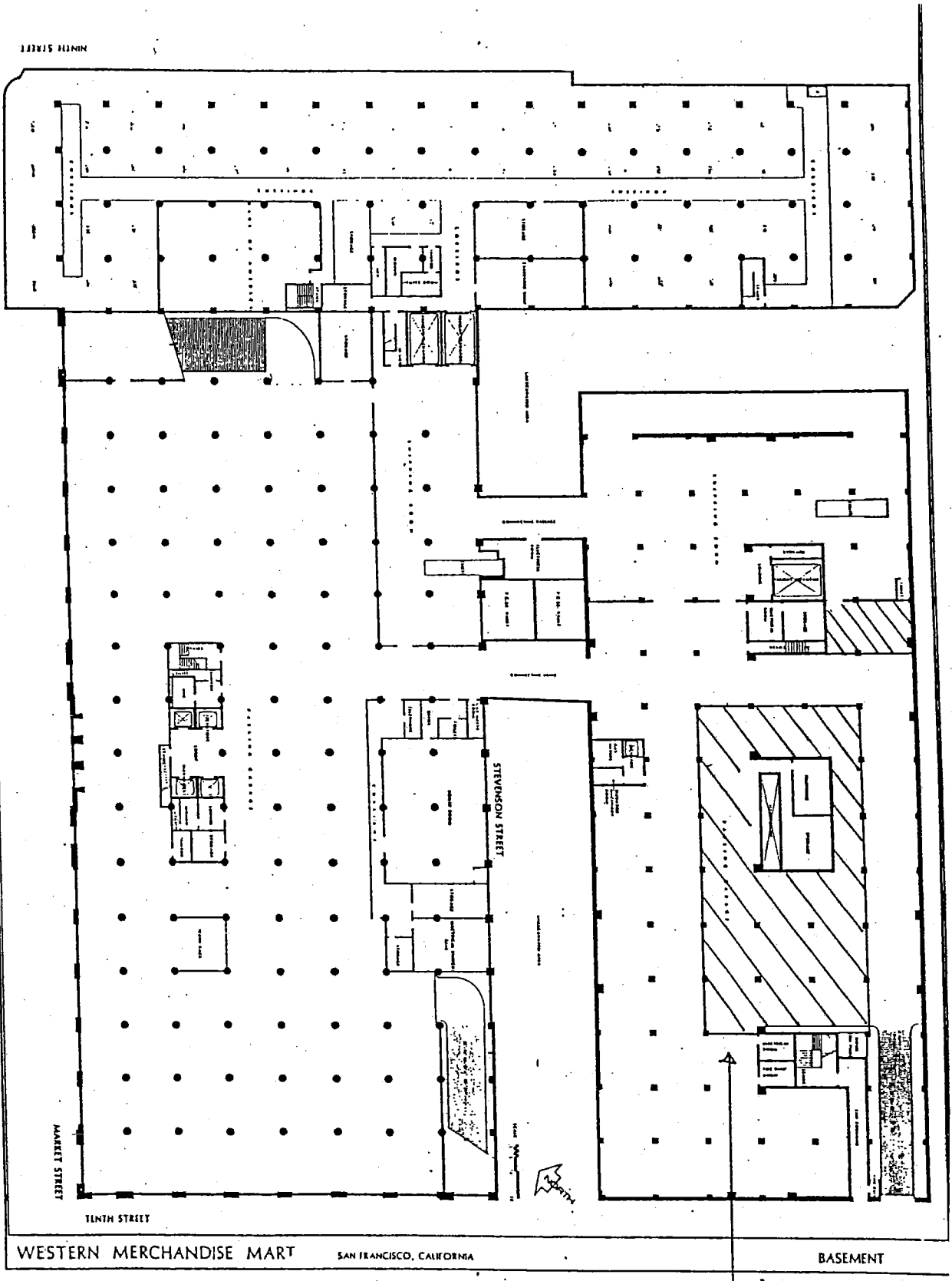


Exhibit A-1  
Parking for City of San Francisco



WESTERN MERCHANDISE MART

SAN FRANCISCO, CALIFORNIA

BASEMENT

Twenty Assigned  
Parking Spaces in  
Crosshatched Area

EXHIBIT A-1

EXHIBIT B

[Date]

Mr. Anthony J. DeLucchi  
Director of Property  
Real Estate Department  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102

RE: Acknowledgement of Commencement Date, Lease Between  
\_\_\_\_\_ (Landlord), and the CITY AND  
COUNTY OF SAN FRANCISCO (Tenant), for premises known as  
\_\_\_\_\_ located at  
\_\_\_\_\_

Dear Mr. DeLucchi:

This letter will confirm that for all purposes of the Lease,  
the Commencement Date (as defined in Section 3.2 of the Lease) is  
\_\_\_\_\_, 199\_.

Please acknowledge your acceptance of this letter by signing  
and returning a copy of this letter.

Very truly yours,

\_\_\_\_\_  
By \_\_\_\_\_  
Title \_\_\_\_\_

Accepted and Agreed:

By \_\_\_\_\_  
Director of Property  
Dated \_\_\_\_\_



EXHIBIT C

PERMITTED CITY DEPARTMENTS  
AND OTHER USES

Chief Administrative Officer

Assessor

Treasurer

Tax Collector

Recorder

Registrar of Voters

Controller

Public Utilities Commission

Department of Public Works

Purchaser

Civil Service Administration

City Attorney

Permit Appeals

Meeting Rooms

Assessment Appeals

Law Library

Employee Lounge and Sandwich and Snack Counter

Department of Parking and Traffic

Department of Electricity and Telecommunications

Department of Health-- administrative offices

Mail Room

relocate\8751se.3  
June 16, 1994

EXHIBIT D  
RULES AND REGULATIONS

1. No sign, placard, picture, advertisement, name or notice shall be inscribed, displayed, printed or affixed on or to any part of the outside of the building or premises other than the standard sign installed by Tenant at the time Tenant occupies the Premises without prior written consent of the Landlord.
2. All approved signs or lettering on doors or walls shall be printed, painted, affixed or inscribed at the expense of Tenant by a person approved by Landlord.
3. Tenant shall not place anything or allow anything to be placed near the glass of any window, door, partition or wall which may appear unsightly from outside the Premises. No awnings or other projections shall be attached to the outside walls of the Building without the prior written consent of the Landlord. No curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with, any window or door of the Premises without prior written consent of Landlord.
4. The Premises shall not be used for manufacturing of or for the storage of merchandise except as such storage may be incidental to the use of Premises for permitted purposes. No Tenant shall occupy or permit any portion of the Premises to be occupied for any manufacture or sale of liquor, narcotics, or tobacco in any form, or as a barber shop or manicure shop. The Premises shall not be used for lodging or sleeping or for any illegal purposes.
5. The sidewalks, halls, passages, exits, entrances, elevators, and stairways shall not be obstructed by any of the Tenants or used by them for any purpose other than for ingress to and egress from their respective Premises. No Tenant and no employee or invitees of any Tenant shall go upon the roof of the building.
6. The toilets and wash basins and other plumbing fixtures shall not be used by Tenant, its agents, employees, contractors, and invitees for any purpose other than those for which they were constructed, and no sweepings, rubbish, rags or other foreign substances shall be thrown therein.
7. Tenant shall not lay linoleum, tile, carpet or other similar floor covering so that same shall be affixed to floor of the Premises in any manner except by a paste or other material, which may be easily removed with water, the use of cement or other similar adhesive materials being expressly prohibited. The method of affixing any such linoleum, tile, carpet or other similar floor covering shall be subject to the approval of the Landlord. The expense of repairing any damage resulting from a violation of this rule shall be borne by Tenant.
8. Electric wires, telephones, telegraphs or other electric apparatus other than those installed by Landlord at the time Tenant occupies the Premises shall not be installed in the Premises except with the approval and under the direction of the Landlord, and no such installation is to be made without first obtaining written permission from the Landlord to do such work. The location of telephones, call boxes and any other equipment affixed to the Premises shall be subject to the approval of the Landlord. Any installation of electric wires, telephones, telegraphs or other electric apparatus made without permission shall be removed by Tenant at Tenant's own expense.

9. No furniture, freight or equipment of any kind shall be brought into the building without prior notice to the Landlord and all moving of the same into or out of the Building shall be done at such time and in such manner as Landlord shall designate. Landlord shall have the right to prescribe the weight, size and position of all safes and other heavy equipment brought into the Building and also the times and manner of moving the same in and out of the building. At Landlord's request, Tenant shall provide engineering reports on the structural safety of installation of heavy objects and shall remove same if Landlord is not reasonably satisfied with respect to all aspects thereof. Safes or other heavy objects shall be placed as directed by Landlord to properly distribute the weight.
10. Tenant shall not cause any unnecessary labor by reason of its carelessness or indifference in the preservation of good order and cleanliness.
11. Tenant shall not use, keep or permit to be used or kept noxious gas or substance in the Premises, or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the Building by reason of noise, odors and/or vibrations, or interfere in any way with other tenants or those having business therein, nor shall any animals or birds be brought in or kept in or about the Premises or the Building. No tenant shall make or permit to be made any unseemly or disturbing noises or disturb or interfere with occupants of this or neighboring Building or Premises or those having business with them whether by the use of any musical instrument, radio, phonograph, unusual noise, or in any other way. Tenant shall not throw anything out of doors or down the passageways.
12. Tenant shall not use or keep in the Premises or the Building any kerosene, gasoline or any inflammable, combustible or explosive fluid, chemical or substance, or use any method of heating or air conditioning other than that supplied by Landlord, unless previously agreed to by Landlord.
13. Landlord reserves the right to prevent access to the building during the continuance of the same by closing the doors or otherwise, for safety of tenants and protection of property in the Building and the Building.
14. Tenant must observe strict care and caution that all water faucets or other apparatus are entirely shut off before Tenant or Tenant's employees leave the Building, and that all electricity, gas, or air shall likewise be carefully shut off, so as to prevent waste or damage, for any default or carelessness.
15. Landlord reserves the right to exclude or expel from the Building any person who, in the judgement of Landlord, is intoxicated or under the influence of liquor or drugs or who shall in any manner do any act in violation of any of the Rules and Regulations of the Building.
16. The requirements of Tenant will be attended to only upon application to the Office of the Building. Employees of Landlord shall not perform any work or do anything outside their regular duties unless under special instructions from Landlord and no employees will admit any person (Tenant or otherwise) to any office without specific instruction from Landlord.

17. Tenant agrees that it shall comply with all fire and security regulations that may be issued from time to time by Landlord and Tenant also shall provide Landlord with the name of a designated responsible employee to represent Tenant in all matters pertaining to such fire or security regulations. Tenant shall cooperate fully with Landlord in all matters concerning fire and other emergency procedure.
18. Landlord reserves the right by written notice to Tenant to rescind, alter, or waive any Rule or Regulation at any time prescribed for the Building when in Landlord's judgment it is necessary, desirable, or property for the best interest of the Building, so long as any such rescission, alteration or waiver does not materially impact any rights or obligations of Tenant under the lease.
19. Tenant shall not disturb, solicit, or canvass any occupant of the Building nor shall Tenant permit or cause others to do so and Tenant shall cooperate to prevent same by others.
21. Without the written consent of Landlord, Tenant shall not use the name of the Building in connection with or in promoting or advertising the business of Tenant except at Tenant's address.

EXHIBIT E

WORK LETTER

(875 Stevenson Street, San Francisco)

This Work Letter is part of the Office Lease dated as of June 16, 1994 (the "Lease"), executed concurrently herewith, by and between Western Mart Co., a California general partnership, dba San Francisco Mart, as Landlord, and the City and County of San Francisco, as Tenant, covering certain Premises described in the Lease. All terms that are capitalized but not defined herein shall have the same meanings given to them in the Lease.

Landlord, at its sole cost and expense (except as otherwise specifically set forth herein), and through Webcor Builders, Inc., its general contractor approved by City (the "Contractor"), shall furnish and install within the Premises the improvements shown on the Construction Documents finally approved by City pursuant to Paragraph 1 below (the "Leasehold Improvements") and perform all structural and other work to the Building and the Building Systems (as defined in Paragraph 3a below) required for City's use and occupancy of the Premises, in accordance with the provisions of this Work Letter. The Leasehold Improvements consist of certain Tenant Improvement Work and Base Building Work, as such terms are hereinafter defined. The Leasehold Improvements incorporate an extensive and comprehensive build out of the Premises which is currently projected to cost several million dollars. The Premises are to be utilized by City for administrative and office purposes to facilitate the vacation and seismic retrofit of City Hall. Landlord has considered the foregoing in developing the Construction Schedule and reasonably expects that construction of the Leasehold Improvements can be accomplished by the target date for Substantial Completion (as defined in Paragraph 5a below).

1. Plans and Specifications

a. Schematics. One calendar week prior to the dates set forth under the column entitled "Schematics Approved By Tenant" for each City department on the City Approval Schedule attached hereto as Exhibit 4, Landlord shall submit to City for City's approval in accordance with Paragraph 1d below, schematic design phase drawings for the Leasehold Improvements to accommodate the program requirements of City relating to the portion of the Premises occupied by such department in accordance with Paragraph 1c below ("Schematics"). Such Schematics shall be drawn at appropriate scales and shall contain a general

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description of the Leasehold Improvements, including without limitation, the general type of construction and furniture and equipment layout sufficient to describe the scope of work.

b. Construction Documents. One calendar week prior to the dates set forth under the column entitled "Construction Docs Approved By Tenant" for each City department on the City Approval Schedule, Landlord shall submit to City working drawings, plans, specifications, general conditions and supplementary general conditions, information for bidders, bid proposal and addenda, all developed to set forth in detail all aspects of the design, function and construction of the Leasehold Improvements relating to the portion of the Premises occupied by such department which expand in greater detail the representations of the Schematics and fix and describe the size and character of the Leasehold Improvements, including without limitation architectural, structural, mechanical, electrical, fire and life safety systems, materials and such other elements as may be appropriate, together with fully developed floor plans, interior elevations, reflected ceiling plans, wall and building sections (collectively, the "Construction Documents"). Such Construction Documents shall be subject to approval by City in accordance with Paragraph 1d below.

c. Preparation of Plans and Specifications. City's architectural consultant, MBT Associates, has prepared and submitted to Landlord program documents to be used as a basis for preliminary space planning and which outline City's requirements for the Premises. Landlord's architect shall design the Premises and prepare the Schematics and Construction Documents in conformity with such program documents and any modifications thereto. Landlord's architect shall consult and hold periodic meetings with City and its architectural consultants and space planners as needed, but no less often than once each week, in the preparation of the Schematics and Construction Documents.

d. City's Approval. The Schematics, Construction Documents and Landlord Change Orders shall be subject to approval by City, which approval shall not be unreasonably withheld or delayed. If City disapproves any Schematics or Construction Documents, or any portion thereof, then City shall, within one (1) calendar week after submission by Landlord thereof, -notify Landlord of its disapproval and of the revisions that City reasonably requires in order to obtain approval consistent with the terms of this Work Letter and the Lease. If City fails to notify Landlord of any objection to any of the foregoing documents within said period, the same shall be treated as a Tenant Delay pursuant to Paragraph 6b below. As soon as reasonably possible thereafter, but in no event later than one (1) calendar week after receipt of such notice, Landlord shall submit to City, by personal delivery to City's Representative, documents incorporating the required revisions. Such revisions

shall be subject to approval by City, which shall not be unreasonably withheld or delayed. Such revisions shall be deemed approved by City if City fails to notify Landlord of any objection within one (1) calendar week after receipt of the revision. All submittals required by this Paragraph 1d shall be made by personal delivery.

e. Payment. City shall be responsible for paying City's reasonable share of the costs of preparing the Schematics and Construction Documents relating to the Tenant Improvement Work. Such costs shall be subject to City's approval and included as line items in the Construction Budget in accordance with Paragraph 4 below. Landlord shall evidence such costs by invoices and other substantiation as City may reasonably require. City's share shall be deducted from the Allowance (as defined in Paragraph 4 below), subject to City's prior approval of such costs.

f. Changes to Construction Documents.

i. City Change Orders. If following City's approval of the Construction Documents, City requests any change, addition or alteration thereto relating to the design or specifications of the Tenant Improvement Work, as defined in Paragraph 3c below ("City Change Order"), Landlord shall cause the Architect or Engineer, as applicable, to prepare plans with respect to such change, addition or alteration. As soon as reasonably possible after City's request, Landlord shall provide City with such plans and notify City of the reasonable estimated cost that would be incurred by reason of such change, addition or alteration and the delay in completion of the Leasehold Improvements, if any, caused by such City Change Order, which delay shall be treated as a Tenant Delay in accordance with the terms of Paragraph 6b below. City may modify, approve or disapprove any such change, alteration or modification based upon the information provided by Contractor. Any such City Change Order shall be subject to Landlord's approval, which approval shall not be unreasonably withheld or delayed. If City approves the final plans prepared by Landlord for the City Change Order within four (4) days of receipt from Landlord, including the cost thereof and the delay caused thereby, then Landlord's Contractor shall proceed with such Change Order. If City does not approve such City Change Order within the above-mentioned four (4) day period, construction of the Premises shall proceed in accordance with the original completed and approved Construction Documents. City shall pay for the reasonable cost of the preparation of plans and specifications relating to any City Change Order actually incurred by Landlord, as evidenced by invoices and other substantiation as City may reasonably require, within fifteen (15) days of Landlord's presentment of said invoices.

ii. Landlord Change Orders. If following City's approval of the Construction Documents, Landlord requests or is required to make any change, addition or alteration thereto relating to the design or specifications of the Leasehold Improvements ("Landlord Change Order"), Landlord shall provide City with plans and specifications with respect to such change, addition or alteration and shall notify City of the delay in completion of the Leasehold Improvements, if any, caused by such Landlord Change Order. Any such Landlord Change Order shall be subject to City's approval, which approval shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Landlord Change Orders shall not be subject to City's approval if such changes (a) are required in order to comply with Laws (as defined in Paragraph 2c below), or (b) relate to the Base Building only, so long as such changes have no material impact on City. City's approval of any Landlord Change Order shall not relieve Landlord's obligation to Substantially Complete the Leasehold Improvements by the date set forth herein. Landlord shall be responsible for the cost of the preparation of plans and specifications relating to any Landlord Change Order, which shall not be paid or deducted from the Allowance.

g. Design and Construction Coordination; Appointment of Representatives. City and Landlord shall each designate and maintain at all times during the design and construction period a project representative ("Representative"), and an alternate for such Representative ("Alternate"), each of whom shall be authorized to confer and attend meetings and represent such party on any matter relating to this Work Letter. Landlord and City shall not make any requests to, and shall not give any instructions or authorizations to, any other employee or agent of the other party, including without limitation, the other party's architect, engineers, consultants and contractors or any of their agents or employees, with regard to matters associated with this Work Letter; provided, however, that City's Representative may communicate directly with Landlord's Architect and Landlord's Architect shall be responsible for ensuring that Landlord is kept apprised of such communications. The initial Representatives and Alternates shall be:

City: Representative -- Tony Irons  
Alternate -- Mary Hanni

Landlord: Representative -- Linda J. Corso  
Alternate -- Kern Rodman

Each party may at any time and from time to time change its Representative or Alternate by written notice to the other party. Each party's Representative or Alternate shall be available during ordinary business hours so that questions and problems may be quickly resolved and so that the Leasehold Improvements may be completed economically and in accordance with the Construction



Schedule. All approvals made by City's Representative or Alternate shall be made in writing.

2. Construction.

a. Permits. Landlord shall have the responsibility for obtaining all governmental permits and approvals required to commence and complete the Leasehold Improvements and other work to be performed by Landlord or its Contractor under this Work Letter, and promptly upon receipt thereof shall deliver copies of all of such permits and approvals to City. Landlord shall have the responsibility of calling for all inspections and approvals by City's Bureau of Building Inspection. Landlord shall use reasonable and most diligent efforts to obtain all such approvals and permits on or before August 24, 1994.

b. Construction Work to be Performed by Landlord. Following approval of the Construction Documents, Landlord shall cause the Leasehold Improvements and all structural and other work to the Building and the Building Systems required for City's use and occupancy of the Premises to be constructed and installed in a good and professional manner in accordance with sound building practice and in conformity with the Construction Documents (as revised by City Change Orders and Landlord Change Orders) and the terms of this Work Letter. City shall not have any obligation with respect to any such work other than as specifically provided herein. Landlord shall cause Contractor to request clarification of the Construction Documents from City in the event of any discrepancy therein or any discrepancy relating to the Tenant Improvements. Landlord shall cause Contractor to commence construction of the Leasehold Improvements as soon as reasonably possible after issuance of all required permits for construction in accordance with the Construction Documents, and shall diligently continue construction to completion, all in accordance with the schedule ("Construction Schedule") attached as Exhibit 1. The Construction Schedule, as prepared by Landlord and approved by City, shows the dates projected by Landlord for commencing and completing the construction of each element of the Leasehold Improvements. SUBJECT TO UNAVOIDABLE DELAYS AND TENANT DELAYS, SUBSTANTIAL COMPLETION OF THE LEASEHOLD IMPROVEMENTS MUST OCCUR NOT LATER THAN MARCH 31, 1995.

Landlord shall keep City apprised of the status of permit approval and the progress of construction. Landlord or its Contractor shall furnish City with weekly reports on construction, which reports may be verbal. From time to time during the design and construction of the Leasehold Improvements and other related work, no more than five (5) designated representatives of City shall have the right upon reasonable advance oral or written notice to Landlord to enter the Premises at reasonable times to inspect the Premises, provided such

inspections do not unreasonably interfere with the construction. Landlord or its representative may accompany City's representatives during any such inspection.

c. General Conditions. The construction of all Leasehold Improvements shall be subject to the following terms and conditions:

i. All of the work shall be performed in compliance with all applicable federal, state and local laws, codes, regulations and building requirements (collectively, "Laws") bearing on construction of the Leasehold Improvements and all structural and other work to the Building and the Building Systems required for City's use and occupancy of the Premises;

ii. Without limiting the foregoing, the construction of the Leasehold Improvements shall fully comply with all applicable accessibility Laws, including, without limitation, the Americans With Disabilities Act and Title 24 of the California Code of Regulations as in effect at the time of construction;

iii. Landlord and/or its Contractor shall be responsible for all required insurance for all work to be performed by Landlord or its Contractor under this Work Letter; and

iv. Landlord shall require competitive bids from subcontractors in each trade in connection with all work performed by Landlord or its Contractor hereunder, other than for work relating to signage and electrical and mechanical systems, which Landlord and City acknowledge in each instance requires a particular contractor to perform.

d. Bidding for Subcontracts; Hiring Goals. Once the Construction Documents have been completed, Landlord shall cause Contractor to obtain competitive bids in all subcontracts for the performance of the Leasehold Improvements. Landlord agrees to use reasonable and good faith efforts to cause Contractor to let subcontracts for the Leasehold Improvements in compliance with City's MBE/WBE/LBE hiring goals as set forth in attached Exhibit 2. Such bids shall be solicited by Contractor from a list of subcontractors prepared by Contractor which list shall be submitted to Landlord and City for their reasonable approval. Within four (4) days of receipt of such list, Landlord and City shall specify to Contractor any subcontractors which are not acceptable, the reasons therefor, and any additional subcontractors who should be added to such list, which additions shall be subject to each party's reasonable approval. Copies of all such bids shall be submitted to City and Landlord for their review, but Landlord and Contractor shall have the exclusive authority to award, subject to Landlord's efforts obligation to

use reasonable and good faith efforts as set forth above, all subcontracts to the bidder of their choice.

e. Installation Work to be Performed by City. City or its consultants and/or contractors shall, at City's cost, perform surveys and develop plans and specifications for installation of telecommunications, data and computer cabling for City's occupancy of the Premises. City shall provide Landlord and Contractor with such plans and specifications, and City's contractor and Contractor shall coordinate such work with the construction of the Leasehold Improvements. Landlord shall have the right to disapprove City's plans and specifications within four (4) days of submittal by City if, in Landlord's reasonable business judgement, such plans and specifications would have a material adverse effect on the Building structure or Building Systems, in which event City shall promptly modify its plans and specifications. Landlord agrees to cause Contractor to cooperate reasonably with City and its consultants, contractors and subcontractors during all surveying work and the installation of such telecommunications, data and computer cabling. The foregoing obligation shall include, without limitation, an obligation to give City and its consultants, contractors and subcontractors access and entry to the Premises and sufficient opportunity and time during each work day without separate charge therefor, to enable City to install such telecommunications, data and computer cabling; provided, however, that (i) such access and entry shall not unreasonably interfere with the construction of the Leasehold Improvements; (ii) City shall cooperate and cause its contractors and subcontractors to cooperate with Contractor and its subcontractors; and (iii) City shall indemnify and hold Landlord harmless from and against any and all claims, costs and expenses, including without limitation, reasonable attorneys' fees, incurred by Landlord to the extent such claims, costs and expenses arise directly from City's entry on the Premises. Such access shall include reasonable access to the elevator in the Building designated for freight use (i) on a non-exclusive basis during normal business hours and (ii) on an exclusive basis after hours as reasonably needed from time to time. Landlord understands that the conduit for the telecommunications, data and computer cabling shall be included in the Construction Documents and installed by Contractor. Upon termination of the Lease, City shall not remove such conduit, but may, at its sole option, remove the telecommunications, data and computer cabling and the switches and electronic components relating thereto in compliance with the terms set forth in the Lease.

In the event that City, its consultants, contractors or subcontractors encounter any asbestos containing materials ("ACM") in the Building in connection with the installation of City's telecommunications, data and computer cabling, Landlord agrees promptly to cause performance and to be responsible, in Landlord's reasonable discretion and in compliance with

applicable Laws, for all work relating to the containment, removal and disposal of such ACM as necessary for such installation and agrees to bear all costs thereof. In addition, in the event that Contractor encounters any ACM in the construction of the Leasehold Improvements, any costs related to the containment, removal and disposal of such ACM shall not be charged against the Allowance or otherwise be the responsibility of City. Any delay due to the presence of ACM in the Building shall be considered an Unavoidable Delay.

f. Cooperation. Landlord and City shall cooperate at all times with each other in bringing about the timely completion of the Leasehold Improvements. Landlord shall not allow any disputes arising during the construction of the Leasehold Improvements to interfere with the expeditious completion of the Leasehold Improvements.

g. City's Construction Manager. Landlord shall provide City's designated on-site construction manager (who may be replaced or rotated from time to time) with desk and work space at the construction site, and shall provide such construction manager with access to a telephone, facsimile machine, copy machine, Contractor's construction management office and all construction documents as approved and revised (including hand corrected revisions), all at no cost.

### 3. Payment for Work; Allowance

a. Base Building Work Paid by Landlord. Landlord shall be solely responsible for all costs related to all improvements that are required for completion of the Base Building. No costs associated with construction of the Base Building shall be deducted or paid from the Allowance (as hereafter defined). As used in this Work Letter and the Lease, "Base Building" and "Base Building Work" shall mean the following:

i. Accessibility Improvements. All costs for all improvements that are required to bring the Building and the Premises, including but not limited to the lobbies, corridors, drinking fountains, telephone banks, elevators, elevator vestibules, stairs, stair vestibules, restrooms and accessibility signage relating to the above described improvements on all floors of the Building in which the Premises are located, into full compliance with all applicable disabled accessibility Laws, including, without limitation, the Americans With Disabilities Act and Title 24 of the California Code of Regulations.

ii. Building and Building System Improvements. All costs for all structural and other improvements to the Building (including base, core and shell) and the heating, ventilating, air conditioning (which items Landlord shall only be

required to stub throughout the Premises in accordance with Paragraph 3.a.iii below), plumbing, electrical, security, fire protection, life safety and other mechanical and electrical systems of the Building (collectively, "Building Systems") required for City's use and occupancy under applicable Laws, including but not limited to seismic, sprinkler, or other fire and life safety improvements.

iii. Base Building Improvements. All costs necessary to construct (i) the Building shell, including finished ground floor public lobbies, (ii) the core area, including but not limited to Building Systems, complete elevator cab interior finish, complete build-out of exit stairs, (iii) toilet rooms, including but not limited to necessary plumbing fixtures, hardware, ceilings, lighting, and finishes, (iv) drywall covering all exposed core side walls of the main corridor on each floor, (v) exposed ceiling and exposed concrete floor, (vi) heating and air conditioning supply ducts stubbed throughout the Premises, (vii) code required fire sprinkler system as required for B-2 office occupancy for new work in existing buildings ("B-2 Standards"), (viii) build out of telephone and electrical rooms with telephone service and electrical power terminated at panel boards in the telephone and electrical rooms on each floor, (ix) telecommunications, data and computer cabling sleeves stubbed through the slab in the telephone rooms on each floor, (x) standard Building signage located on the outside of the Building and in the ground floor lobby and elevator lobbies on each floor.

Specific items which Landlord and City currently contemplate to be included in the Base Building Work performed by Landlord are listed in attached Exhibit 3, provided that such list is not intended to be comprehensive or exclusive.

b. Telecommunications and Data Functions. City shall be solely responsible for all costs related to the telecommunications and data functions work described in Paragraph 2e above.

c. Allowance; Tenant Improvement Work. Subject to the foregoing provisions of this Paragraph 3, Landlord shall pay for the cost of constructing and installing the Tenant Improvement Work up to a total sum of \$1,062,000 based upon a rate of Nine Dollars (\$9.00) per rentable square foot in the Premises, which amount shall be adjusted if the Premises is remeasured (the "Allowance"). In the event that the actual costs to construct and install the Tenant Improvement Work exceed the amount of the Allowance, City shall, subject to the provisions of this Paragraph 3, pay any actual costs to construct and install the Tenant Improvement Work which exceed the amount of the Allowance as set forth in Paragraph 4 below. City shall not be responsible for, and the Allowance shall exclude, any review, supervision, administration or management fees of any person or entity, any

overhead or other general expenses of Landlord or any other person or entity; provided, however, that the Construction Budget (as defined in Paragraph 4a below) may include City's reasonable share of such fees of Contractor, the total amount of which shall not exceed five and one-half percent (5.5%).

As used in this Work Letter and the Lease, "Tenant Improvement Work" and "Tenant Improvements" shall mean the construction and performance of all work to the Premises, exclusive of the construction of the Base Building, for City's use and occupancy of the Premises as specified in the Construction Documents, which work shall be designed by Landlord in consultation with City.

4. City's Approval of Costs.

a. Approval of Construction Budget. Prior to commencement of construction of the Leasehold Improvements, Landlord shall provide City with an initial construction budget for the Tenant Improvement Work for its approval. The Tenant Improvement Work shall include costs based on a detailed construction budget prepared by Landlord and approved by City, as such construction budget may be approved and revised in accordance with this paragraph ("Construction Budget"). The Construction Budget and any revisions thereto shall include a line item cost breakdown and a cost schedule of plans and specifications based upon actual bids and a schedule of estimated monthly disbursements. The Construction Budget shall set forth all costs of the Tenant Improvement Work and any other costs to be paid by City hereunder as line items in cost categories of the budget. If the Leasehold Improvements cannot be completed in strict conformity with the most recently approved Construction Budget, Landlord shall promptly submit to City for its approval a revised budget and shall identify to City changes in line items and the reasons for the changes. If further changes are required, Landlord shall seek City's approval, following the same procedures. No costs shall be included in the Allowance, and City shall not be obligated to pay any costs in excess of the Allowance, unless and until it approves the Construction Budget and any revisions thereto. City shall have the right to approve or disapprove any Construction Budget or revisions thereto in its reasonable judgement, including without limitation disapproval based on the fact that if approved City's share of the Tenant Improvement Work costs (exclusive of the Allowance) would exceed the amount appropriated therefor and approved by City's Board of Supervisors. No such approval or disapproval shall be unreasonably delayed. The most recently approved Construction Budget shall supersede all previously approved budgets.

b. Progress Payments. After the Allowance has been exhausted in full and provided that the conditions set forth in Paragraph 4c below have been met, City shall make monthly

progress payments for the cost of the Tenant Improvement Work. Funds will be disbursed by City to Landlord on or about the tenth (10th) day of each month in amounts equal to ninety percent (90%) of the amount of costs associated with the Tenant Improvement Work which City and Landlord have determined is owing to Contractor; provided, however, that such amount shall not exceed ninety percent (90%) of the line item cost breakdown set forth in the Construction Budget for such items. At least ten (10) days before the date established for each progress payment, Landlord shall submit to City an itemized application for payment for work completed in accordance with the Construction Budget. Such applications may not include requests for payment of amounts Landlord does not intend to pay to Contractor because of a dispute or otherwise. Landlord shall promptly apply all such payments from City to the payment of the invoice or invoices to which the payment relates. In the event that City's failure to make disbursements to Landlord as required hereunder results in a delay in Substantial Completion of the Leasehold Improvements, such delay shall be considered a Tenant Delay.

c. Required Documentation of Costs. Both prior to and following the exhaustion of the Allowance, Landlord shall promptly deliver to City and each application for payment pursuant to Paragraph 4b shall include (i) copies of all invoices received by Landlord from Contractor in connection with the construction of the Leasehold Improvements, (ii) satisfactory evidence of payment of such invoices, including unconditional lien waivers, or if such invoices have not been paid, conditional lien waivers, all such lien waivers being in the form prescribed by California Civil Code Section 3262, executed by each subcontractor and material supplier intended to be paid out of the particular disbursement and covering all labor, services, equipment and materials performed or supplied by the particular subcontractor or material supplier since the last previous disbursement (collectively, "Lien Waivers"), and (iii) such additional supporting data which substantiates the Contractor's right to payment as City may reasonably require, such as copies of invoices or requisitions from subcontractors and material suppliers.

d. Payment of Retention. City shall disburse to Landlord the remaining ten percent (10%) withheld from the cost of the Tenant Improvement Work upon: (i) expiration of the lien period and the absence of any unreleased mechanics' liens or stop notices; (ii) Substantial Completion of the Leasehold Improvements; and (iii) delivery of unconditional Lien Waivers upon final payment, together with such other proof as City may reasonably require that all of the costs and expenses of the Leasehold Improvements have been paid. Notwithstanding the foregoing, City shall disburse to Landlord any portion of such remaining ten percent (10%) due to a subcontractor or material supplier when City, in its reasonable judgement, determines that

all of the following have occurred: (i) completion of all aspects of such subcontractor or material supplier's work relating to the Leasehold Improvements; (ii) expiration of the lien period and the absence of any unreleased mechanics' liens or stop notices relating to such subcontractor or material supplier's work; and (iii) delivery of unconditional Lien Waivers upon final payment from each such subcontractor or material supplier, together with such other proof as City may reasonably require that all of the costs and expenses relating to such subcontractor or material supplier's work have been paid.

e. No Waiver of Conditions. Each waiver by City of a condition of payment must be expressly made by City in writing. If City makes a payment before fulfillment of one or more required conditions, that payment alone shall not be a waiver of such conditions, and City reserves the right to require their fulfillment before making any subsequent payments. If all conditions are not satisfied, City, acting in its reasonable judgement, may make payment as to certain items or categories of costs and not others.

f. City's Cure Right. If Landlord does not make timely payment to Contractor or any of its subcontractors or material suppliers and has no bona fide, good faith dispute relating to such payment, upon five (5) days' prior written notice to Landlord City may, but shall not be obligated to, advance City's funds directly to such Contractor or its subcontractors or material suppliers to pay the cost of the Leasehold Improvements, and any such advance shall be payable to City by Landlord immediately upon demand, with interest at a rate of the lesser of twelve percent (12%) per annum or the maximum rate permitted by law.

## 5. Substantial Completion

a. Construction Schedule. Landlord shall cause Contractor to complete the Leasehold Improvements in accordance with the Construction Schedule, with a target date for Substantial Completion occurring on or before February 1, 1995, but in no event whatsoever shall Substantial Completion occur later than March 31, 1995, as extended by Tenant Delays and other Unavoidable Delays. When construction progress so permits, but not less than fifteen (15) days in advance of completion, Landlord shall notify City of the approximate date on which the Leasehold Improvements will be Substantially Completed. Landlord shall notify City when the Leasehold Improvements are in fact Substantially Completed and the Premises are ready for occupancy by City, and City or its representatives shall be permitted to accompany Landlord or its architect on an inspection of the Premises on such date or other mutually agreeable date soon thereafter.



b. Substantial Completion. The Commencement Date of the Lease shall occur on the date of Substantial Completion of the Leasehold Improvements in accordance with the terms of this Work Letter and the Lease. The Leasehold Improvements shall be deemed to be "Substantially Completed" and "Substantial Completion" shall be deemed to have occurred for purposes hereof on the date when (i) all necessary inspections required for occupancy of the Premises have been completed and signed off as approved by the appropriate governmental authority, (ii) a temporary Certificate of Occupancy with respect to City's occupancy of the Premises has been issued by the appropriate governmental authority, and (iii) Landlord's architect reasonably determines and certifies in writing to City that the Leasehold Improvements have been Substantially Completed in accordance with the Construction Documents to the extent necessary to enable City to occupy the Premises and to conduct its normal business operations therein without unreasonable impairment or interference, but subject to "punchlist" items, the completion of which will not unreasonably interfere with City's normal business operations therein. Landlord shall cause Contractor to diligently pursue to completion all such details. Notwithstanding the foregoing, City shall have the right to present to Landlord within thirty (30) days after acceptance of the Premises, or as soon thereafter as practicable, a written punchlist consisting of any items that have not been finished in accordance with the Construction Documents and the terms of this Work Letter. Landlord shall complete all defective or incomplete items identified in such punchlist promptly, and in any event within thirty (30) days after the delivery of such list. City's failure to include any item on such list shall not alter Landlord's responsibility hereunder to complete all Leasehold Improvements in accordance with the Construction Documents and the provisions hereof, nor constitute a waiver of any latent defects.

## 6. Delays in Construction

a. Unavoidable Delays. For purposes hereof, "Unavoidable Delays" shall mean any delays by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, inability to obtain labor or materials after diligent and timely efforts, enemy action, civil commotion, protests, riots, demonstrations, or by any other reason without fault and beyond the reasonable control of Landlord. In the event of any such delays, Landlord shall give prompt written notice to City of the occurrence of such event and the projected delay in performance and thereafter shall keep City regularly informed of the status of such Unavoidable Delay. In no event shall the number of days of Unavoidable Delays exceed a total of sixty (60) days.

b. Tenant Delays. For purposes hereof and subject to any Unavoidable Delays, "Tenant Delays" shall mean any delay in the construction of the Leasehold Improvements due solely and directly to any of the following: (i) City's delay in granting its reasonable approval of plans and specifications (beyond the period granted therefor), (ii) City Change Orders made by City pursuant to Paragraph 1f above, provided that such delay shall be limited to the number of days actually consented to by City, (iii) City's delay in revising its plans and specifications for the telecommunications, data and computer cabling as provided in Paragraph 2e above, and (iv) City's failure to make disbursements to Landlord in accordance with Paragraph 4c above (beyond the period granted therefor). Notwithstanding anything to the contrary set forth herein, City shall be responsible only to the extent any delays are actually caused by Tenant Delays.

c. Landlord Delays; Liquidated Damages.  
NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE LEASE, IF LANDLORD'S DELIVERY OF POSSESSION OF THE PREMISES TO CITY IS DELAYED DUE TO LANDLORD'S FAILURE TO COMPLETE CONSTRUCTION OF THE LEASEHOLD IMPROVEMENTS PRIOR TO MARCH 31, 1995, (AS EXTENDED BY UNAVOIDABLE DELAYS AFFECTING LANDLORD OR ITS CONTRACTOR AND TO TENANT DELAYS), THEN LANDLORD SHALL PAY TO CITY FIVE THOUSAND DOLLARS (\$5,000) FOR EACH DAY OF SUCH DELAY, AS LIQUIDATED DAMAGES. THE PARTIES HAVE AGREED THAT CITY'S ACTUAL DAMAGES IN THE EVENT OF SUCH FAILURE WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY PLACING THEIR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THEY HAVE AGREED UPON THE SUM SPECIFIED ABOVE, AFTER NEGOTIATION, AS THEIR REASONABLE ESTIMATE OF CITY'S DAMAGES IN SUCH EVENT.

Initials: Landlord JD

City ATD

d. Right of Termination. Notwithstanding anything to the contrary and without limiting City's right to collect liquidated damages as provided above, if Substantial Completion is delayed beyond May 31, 1995, then City shall have the right to terminate this Work Letter and Lease and Landlord shall pay to City all costs which City has paid for construction of the Tenant Improvement Work pursuant to Paragraph 4 hereof, all as more specifically set forth in Section 3.3 of the Lease.

## 7. General Provisions.

a. Notices. Except as may be otherwise specifically provided herein, any notice given under this Work Letter shall be in writing and given by delivering the notice in person, by commercial courier or by sending it by first class mail, certified mail with a return receipt requested, or Express Mail, return receipt requested, with postage prepaid, and addressed to the parties as follows:

City: Real Estate Department  
25 Van Ness Avenue, Ste. 400  
San Francisco, CA 94102  
Fax No. 552-9216  
Attn: Steve Legnitto

with a copy to:

Bureau of Architecture  
30 Van Ness Avenue, Ste. 4100  
San Francisco, CA 94102  
Fax No. 557-4701  
Attn: Tony Irons

Landlord: San Francisco Mart  
c/o The ADCO Group  
1355 Market Street  
San Francisco, CA 94103  
Fax No. 861-3914  
Attn: David Dworman

or such other address as a party may designate to the others as its new address for such purpose by notice given to the others in accordance with the provisions of this paragraph. Any notice hereunder shall be deemed to have been given and received two (2) days after the date when it is mailed if sent by first class, certified mail, one day after the date when it is mailed if sent by U.S. Express Mail, or upon the date personal delivery is made. Neither party may give official or binding notice by facsimile, but facsimile notice will be official and binding if a facsimile notice is signed by the recipient and returned by facsimile to the sender.

b. Landlord's Duty to Notify City. Landlord shall promptly notify City in writing of: (a) any litigation or other matter or event that may affect Landlord's ability to pay its debts as they come due or could result in the bankruptcy, insolvency or reorganization of Landlord; (b) any communication, whether written or oral, that Landlord may receive from any governmental, judicial or legal authority, giving notice of any claim or assertion that the Property, Building or Leasehold Improvements fail in any respect to comply with any applicable Laws; (c) any material adverse change in the physical condition of the Property (including any damage suffered as a result of earthquakes or floods) or Landlord's financial condition or operations; and (d) any default by the Contractor or any subcontractor or material supplier of which Landlord becomes aware.

c. Prevailing Wages for Construction Work. Landlord agrees that any person performing labor in the construction of the Leasehold Improvements or other construction work which

Landlord is obligated to provide under this Work Letter shall be paid not less than the highest prevailing rate of wages and that Landlord shall include, in any contract for construction of the such work, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Landlord further agrees that, as to the construction of the Leasehold Improvements and other work under this Work Letter, Landlord shall comply with all the provisions of subsection (b) of San Francisco Charter Section 7.204 and Sections 6.33 through 6.45 of the San Francisco Administrative Code.

d. Tropical Hardwood Ban.

i. Except as expressly permitted by the application of Sections 12I.3.b and 12I.4.b of the San Francisco Administrative Code, neither Landlord nor any of its contractors shall provide any items to City in the construction of the Leasehold Improvements or otherwise in the performance of this Lease which are tropical hardwoods or tropical hardwood products.

ii. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood product.

iii. In the event Landlord fails to comply in good faith with any of the provisions of Section 12I of the San Francisco Administrative Code, Landlord shall be liable for liquidated damages for each violation in any amount equal to Landlord's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greatest. Landlord acknowledges and agrees that the liquidated damages assessed shall be payable to the City and County of San Francisco upon demand and may be set off against any monies due to Landlord from any contract with the City and County of San Francisco.

e. Days. Unless otherwise provided herein, all periods specified by a number of days shall refer to business days. Saturdays, Sundays and recognized City holidays shall not constitute business days.

f. Approvals. Landlord understands and agrees that City is entering into the Lease and this Work Letter in its proprietary capacity and not as a regulatory agency with certain police powers. Notwithstanding anything to the contrary herein, no approval by City as Tenant hereunder of any plans for the Leasehold Improvements nor any other approvals by City hereunder, shall be deemed to constitute approval by any governmental regulatory authority with jurisdiction over the Premises. All approvals or other determinations of City as Tenant hereunder may be made by City's Director of Property unless otherwise specified herein.

g. Time of Essence. Time is of the essence with respect to all provisions of this Work Letter in which a definite time for performance is specified, including without limitation, the date of Substantial Completion.

The parties have executed this Work Letter as of the date of the Lease.

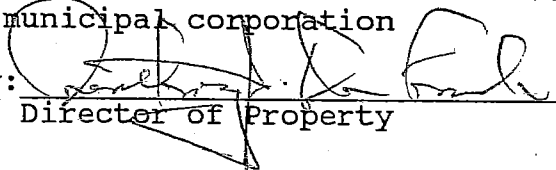
LANDLORD:

WESTERN MART CO., a California general partnership, dba San Francisco Mart

By:   
David Dworman  
Executive Director

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By:   
Director of Property

APPROVED AS TO FORM:  
LOUISE H. RENNE, City Attorney

By:   
Deputy City Attorney

June 16, 1994

PRELIMINARY CONSTRUCTION SCHEDULE - SF MART 2 CITY OFFICES PROJECT  
BASE BUILDING AND TENANT IMPROVEMENT SCHEDULE

Activity Name	Weeks	Start Date	Finish Date	Jul '94		Aug '94		Sept '94		Oct '94		Nov '94		Dec '94		Jan '95														
				1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27
START OPERATIONS																														
Final Prep/Proc. Work	2.00	Jul 9	Jul 23																											
Final Work	0.76	Jul 28	Jul 28																											
Final Work	3.00	Jul 29	Aug 19																											
CONSTRUCTION																														
Demolition 2-3Ch	2.00	Jul 9	Jul 23																											
Demolition 40-100%	4.99	Aug 2	Aug 30																											
Rough MEP'S Core Work	5.00	Aug 5	Sept 12																											
Final Full IR Partitions	4.00	Aug 18	Sept 11																											
Rough Elect/Flooring	6.00	Aug 23	Oct 4																											
Wall Installation	5.00	Aug 31	Oct 6																											
Sheetrock/Plumb Taping	8.00	Sept 2	Oct 14																											
Carling GYM	0.07	Sept 16	Oct 22																											
Complete above grid MEPS	6.00	Sept 17	Oct 28																											
Final U/G Partitions	6.25	Sept 17	Oct 28																											
Rough Elect/Wiring	8.00	Sept 23	Nov 4																											
Upgrade Elevators	8.00	Oct 2	Nov 27																											
Ceiling Installation	4.00	Oct 2	Oct 28																											
Draw Ceiling Tiles	5.00	Oct 4	Nov 6																											
Wall Installation	4.80	Oct 6	Nov 5																											
Subcontract/Finish Floor/2	8.00	Oct 13	Nov 24																											
Final Floor Finishes, Floors	3.00	Oct 19	Dec 14																											
Carpetwork, Epoxy & Specialties	8.00	Oct 26	Dec 9																											
Wall Finish/2	8.00	Oct 31	Dec 12																											
Finishing	6.00	Nov 7	Dec 18																											
Final Cleanup	6.95	Nov 7	Dec 19																											
Punchlist	4.00	Dec 1	Dec 23																											
Construction Completion		Dec 20																												

WEBCOR Builders, Inc . 2755 Campus Drive, Ste 175 - San Marcos, CA 94403 - (415)349-1327

Exhibit 1  
To Exhibit 620

DEPARTMENT OF PUBLIC WORKS

INTER-BUREAU MEMO

TO: Mr. Edwin Lee  
Director, Human Rights Commission

DATE: March 21, 1994

THROUGH: Norman M. Karasick  
City Architect

SUBJECT: City Hall Seismic Upgrade  
Tenant Relocation

FROM: Tony Irons, Project Manager

Following a request by the Board of Supervisors, we had a preliminary phone conversation on March 16, 1994 concerning MBE/WBE participation in the construction process of the City Hall Relocation effort. We agreed that the Mayor's Office of Housing could serve as a model for the structuring of an agreement.

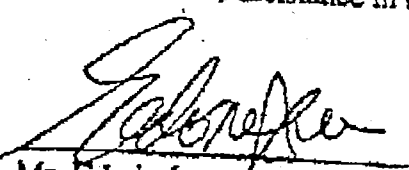
Since the construction will be performed by contractors working under agreements with private owners of space to be leased to the City, the construction companies are exempt from compliance with HRC requirements. However, given the large amount of monies involved it was felt a voluntary participation program would be of benefit.

After discussions with Ms. Mary Gin Startweather and you on Friday, March 18, 1994, we agreed that a good faith effort goal of 17% MBE and 3% WBE (20% MBE/WBE) was acceptable.

These goals, pertinent to all labor and materials for City funded construction are also acceptable to the to the private building owners and their contractors.

If this record accurately represents your understanding of these agreed goals, please sign below and return by fax to me at 415-557-4701.

Your continued assistance in this matter is greatly appreciated.

  
Mr. Edwin Lee  
Director, Human Rights Commission

Date: 3/21/94

TI#1/TI9067

EXHIBIT 2  
TO EXHIBIT E

SFM/CITY LEASE  
BASE BUILDING SCOPE OF WORK

DEMOLITION - Demolition includes existing tenant spaces, corridors and restroom cores.

CURBS & SIDEWALKS - Includes work to be done for ADA, such as sidewalk cuts at lobby entrances and corners.

MISC. IRON - New handrails required by ADA and supports for folding doors at elevators.

CASEWORK - Includes restroom countertops, new doors for SFM lobby entrance, lobby separation panel and SFM lobby desk.

INSULATION - Perimeter thermal insulation and acoustic insulation for restrooms.

DOORS & WINDOWS - Includes vestibule doors, freight elevator vestibule doors, exit doors with panic hardware, upgrades of all existing hardware for ADA, new base building doors for restrooms and restroom areas, and stairwell fencing.

GLASS/GLAZING - Restroom mirrors.

DRYWALL - Corridors, partitions in restrooms, furring of perimeter and core, SFM lobby ceiling.

CERAMIC TILE - Restrooms, SFM lobby floor.

ACOUSTIC CEILING - New in corridors.

FLOORING - Corridors.

PAINT & WALLCOVERING - Corridors, restrooms, and SFM lobby.

RESTROOMS - All code work required in restrooms.

CONVEYING SYSTEMS - New interior finishes, relocation of elevator cab controls and reconfiguration of elevator controls.

SPRINKLERS, FIRE PROTECTION - Work required in corridors and to bring to space. The tenant spaces are already sprinklered. Any relocation of heads within space is TI.

PLUMBING - Restroom work.

HVAC - Includes all work necessary to bring HVAC to space to meet Title 24. Distribution within space and HVAC for special needs ie. computer rooms and Mail/Reproduction Department are TI.

ELECTRICAL - Lighting and electrical in corridors, stairwells and restrooms; life safety requirements for restrooms, corridors and stairwells, modifications required for HVAC; SFM lobby requirements.

SIGNAGE - Mart 2 Directory, base building ADA signage, Mart 2 entry signage.

SPECIALTIES - Mart 2 tenant mailboxes.



Sheet1

## EXHIBIT 4 CITY APPROVAL SCHEDULE

<u>Floor</u>	<u>Department</u>	<u>Program Received By Landlord</u>	<u>Schematics Approved By Tenant *</u>	<u>Construction Docs. Approved By Tenant *</u>
1	Repro/Mail	6/30/94	6/29/94	8/3/94
1	Recorder	6/30/94	6/29/94	7/20/94
2	Tax Collector	6/30/94	7/6/94	8/3/94
2	Controller	6/30/94	7/6/94	8/10/94
2	Treasurer	6/30/94	7/6/94	8/10/94
3	Assessor	6/30/94	6/29/94	8/1/94
3	Controller	6/30/94	6/29/94	8/10/94
4	DPW/DIR	6/30/94	6/22/94	7/20/94
4	DPW/OFFMA	6/30/94	6/15/94	7/20/94
4	DPW/BSM	6/30/94	6/22/94	7/20/94
4	BBR/JANITOR	6/30/94	6/22/94	8/1/94
4	Permit Appeal	6/30/94	6/15/94	7/20/94
4	Civil Service	6/30/94	6/29/94	7/20/94
4	Cafe	6/30/94	7/6/94	8/1/94
4	Mtg. Rm	6/30/94	6/22/94	7/20/94
	Building Core	6/15/94	6/24/94	6/27/94

**\*NOTE:** Landlord shall submit documents for approval to City, one calendar week in advance of approval dates listed above.

EXHIBIT F

STANDARDS FOR UTILITIES PROVIDED BY LANDLORD

Landlord shall provide the following utilities and services, at its cost:

a. Elevator. Three exclusively dedicated unattended automatic passenger elevator facilities serving the floors on which the Premises are located, on a 24-hour a day, 7-day a week basis. One such dedicated elevator may be converted to non-exclusive service during Mart Weeks and during periods that the elevator servicing the Building exclusive of the Premises is not operative. Freight elevator service is available as follows: Monday through Friday, 9:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m., except holidays generally recognized in the City of San Francisco. Use of the freight elevator shall be scheduled in advance during January and July.

b. Ventilation; Heating and Air-Conditioning. Ventilation to the Premises, and air-conditioning and heating to the Premises in season, on a 5-day a week basis, Monday through Friday, except holidays generally recognized in the City of San Francisco, from 7:30 a.m. to 5:30 p.m., and at such temperatures and in such amounts as reasonable for office buildings in the San Francisco Civic Center area, subject to applicable governmental laws, ordinances, rules and regulations.

c. Water. Water available at current points of supply in public areas for drinking and lavatory purposes only, and hot and cold water in the Premises for drinking purposes, on a 24-hours a day, 7-days a week basis.

EXHIBIT G

STANDARDS FOR SECURITY SERVICE FURNISHED BY LANDLORD

Landlord shall furnish security services for the Building as follows:

SECURITY GUARDS:

One security guard roving the lobby, perimeter of Building and Building areas exclusive of the Premises from 7 a.m. to 11 p.m. at 875 Stevenson Street and 1355 Market Street, Monday through Friday (except City holidays) and one security guard at the lobby desk of 1355 Market Street from 11 p.m. to 7 a.m. on weekends and City holidays

EXHIBIT H

STANDARDS FOR JANITORIAL SERVICE FURNISHED BY LANDLORD

Landlord shall furnish janitorial services to the Building as follows:

SEMI-ANNUALLY -  
WINDOWS:

Wash exterior windows.

EXHIBIT I

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Director of Property  
Real Estate Department  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, Ca 94102

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(Space above this line for Recorder's use)

SUBORDINATION, ATTORNMENT AND  
NONDISTURBANCE AGREEMENT

This Agreement dated as of \_\_\_\_\_, 1994, is by  
and among \_\_\_\_\_, a  
\_\_\_\_\_, as lender ("Lender"),  
WESTERN MART CO., d/b/a San Francisco Mart, a  
\_\_\_\_\_, as landlord ("Landlord")  
and the CITY AND COUNTY OF SAN FRANCISCO, a municipal  
corporation, as tenant ("City").

A. Landlord is the owner of the real property located in  
the City and County of San Francisco, more particularly described  
on the attached Exhibit A (the "Real Property"). The Real  
Property is improved with a building commonly known as 875  
Stevenson Street, San Francisco, California (the "Building").

B. Landlord has executed a deed of trust ("Deed of Trust")  
in favor of Lender covering Landlord's interest in the Real  
Property to secure a loan evidenced by a promissory note in the  
principal sum of \$ \_\_\_\_\_, dated \_\_\_\_\_. The  
Deed of Trust was recorded on \_\_\_\_\_, in the Official  
Records of the City and County of San Francisco, California, as  
Document No. \_\_\_\_\_ at Book \_\_\_\_\_, Page \_\_\_\_\_.

C. City has entered or is entering into a lease with  
Landlord, dated as of \_\_\_\_\_, 1994, for certain  
space in the Building (the "Premises"). Such lease and any  
amendments, modifications and side letters thereto shall  
collectively be referred to herein as the "Lease."

D. In order to carry out the provisions of the Lease, the parties are willing to enter into this Agreement, subject to the terms and conditions set forth below.

ACCORDINGLY, in consideration of the mutual covenants contained herein and for other good and valuable consideration, Lender, Landlord and City agrees as follows:

1. Subordination. It is hereby declared and understood that the Lease, the leasehold interests and estates created thereby, and the rights, privileges and powers of the Landlord and Tenant thereunder, are subject and subordinate to the Deed of Trust and to any renewals, extensions, modifications or replacements thereof.

2. Nondisturbance and Attornment. In the event Lender or any other purchaser at a foreclosure sale or sale under private power of sale contained in the Deed of Trust succeeds to the interest of Landlord under the Lease by reason of any foreclosure of the Deed of Trust or the acceptance by Lender of an assignment or other transfer of Landlord's rights in the Real Property in lieu of foreclosure, or by any other manner for any other reason, it is agreed that:

a. Following receipt a duly authorized and executed written notice of such transfer from Lender or such other purchaser, City shall pay to Lender or such other purchaser all rents subsequently payable under the Lease and shall attorn to and be bound to Lender or such other purchaser under all of the terms, covenants, and conditions of the Lease for the remaining balance of the term thereof, with the same force and effect as if Lender or such other purchaser were the Landlord under the Lease; and

b. Lender or such other purchaser shall recognize the Lease to be in full force and effect, City's leasehold estate under the Lease shall not be disturbed or terminated by reason of any default by Landlord under the Deed of Trust, and City shall be permitted to remain in quiet and peaceable possession of the Premises throughout the term of the Lease (including, without limitation, any renewal terms thereunder) in accordance with the provisions of this Lease, as long as no material event of default by City is outstanding beyond any cure period provided herein as of the date of such foreclosure or transfer in lieu of foreclosure.

3. Availability of Insurance Proceeds. Lender agrees and covenants with City that notwithstanding anything to the contrary contained in the Deed of Trust, the proceeds of all property insurance covering the Building or the Premises (other than rental interruption insurance), shall be paid over or made available for the repair, replacement and rebuilding of the Premises or Building as provided in this Lease.

4. General Provisions.

a. Successors and Assigns. The covenants and agreements contained herein shall run with the land and shall be binding upon and inure to the benefit of the respective heirs, administrators, executors, legal representatives, successors and assigns of the parties hereto.

b. Attorneys' Fees. In the event that any party fails to perform any of its obligations under this Agreement or fails to perform any of its obligations under this Agreement or in the event a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not prevailing in such dispute, whichever the case may be, shall pay any and all costs and expenses incurred by the other parties in enforcing or establishing their rights hereunder, including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Agreement, the reasonable fees of attorneys of the Office of City Attorney of the City and County of San Francisco shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

c. Amendments. This Agreement may not be modified or amended except by a written instrument executed by all of the parties hereto.

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

The parties hereto have executed this Agreement as of the date first written above.

**LENDER:**

\_\_\_\_\_ /  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**LANDLORD:**

WESTERN MART CO.,  
d/b/a San Francisco Mart,  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**CITY:**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
Director of Property

APPROVED AS TO FORM:  
LOUISE H. RENNE, City Attorney

By \_\_\_\_\_  
Deputy City Attorney





Fw: Please transfer File Nos. 121046, 121047, 121048 from Budget to Board of Supervisors

Rick Caldeira

to:

victor.young

10/31/2012 03:18 PM

Hide Details

From: Rick Caldeira/BOS/SFGOV

To: victor.young@sfgov.org.

Please process.

----- Forwarded by Rick Caldeira/BOS/SFGOV on 10/31/2012 03:23 PM -----

From: Judson True/BOS/SFGOV

To: BOS Legislation/BOS/SFGOV@SFGOV,

Cc: Angela Calvillo/BOS/SFGOV@SFGOV, Rick Caldeira/BOS/SFGOV@SFGOV

Date: 10/31/2012 03:00 PM

Subject: Please transfer File Nos. 121046, 121047, 121048 from Budget to Board of Supervisors

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Thank you.

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Judson True  
Office of Supervisor David Chiu  
City Hall, Room 264  
San Francisco, CA 94102  
415.554.7451 desk  
415.554.7454 fax

**FORM SFEC-126:  
NOTIFICATION OF CONTRACT APPROVAL  
(S.F. Campaign and Governmental Conduct Code § 1.126)**

<b>City Elective Officer Information</b> <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors
<b>Contractor Information</b> <i>(Please print clearly.)</i>	
Name of contractor: <b>SRI NINE MARKET SQUARE LLC, a Delaware limited liability company</b>	
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i>	
100% member of the LLC is Market Square Holdings LLC, assigned from Shorenstein Realty Investors, Nine, LP, per assignment of membership interest dated August 1, 2012.	
Contractor address: c/o Shorenstein Realty, 235 Montgomery Street, SF, CA	
Date that contract was approved: <i>(By the SF Board of Supervisors)</i>	Amount of contract: Payment to City of up to \$3,250,000.
Describe the nature of the contract that was approved: 4 <sup>th</sup> Amendment of Lease of an office building for City uses, setting effective termination date	
Comments:	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves: San Francisco Board of Supervisors  
Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

<b>Filer Information</b> <i>(Please print clearly.)</i>	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

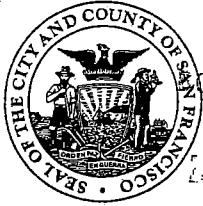
Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed

OFFICE OF THE MAYOR  
SAN FRANCISCO



RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

EDWIN M. LEE  
MAYOR

2012 OCT 23 PM 3:01

TO: Angela Calvillo, Clerk of the Board of Supervisors  
FROM: *for* Mayor Edwin M. Lee *JK*  
RE: Fourth Amendment to Lease of Real Property with SRI Nine Market Square, LLC  
DATE: October 23, 2012

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Attached for introduction to the Board of Supervisors is the resolution authorizing the Fourth Amendment to Lease of 875 Stevenson Street floors 1, 3 and 4, terminating said lease with SRI Nine Market Square, LLC.

I request that this item be calendared in Budget and Finance Committee.

Should you have any questions, please contact Jason Elliott (415) 554-5105.

12/047

