

SECOND AMENDMENT TO LEASE
EXERCISE OF OPTION TO EXTEND

THIS SECOND AMENDMENT TO LEASE (this "**Second Amendment**") is made and entered into as of September 25, 2007, by and between **BRCP 1390 MARKET, LLC**, a Delaware limited liability company ("**Landlord**") and the **City and County of San Francisco**, a municipal corporation ("**Tenant**" or "**City**").

RECITALS

- A. Landlord (as successor in interest to API Fox Plaza, LLC, a Delaware limited liability company, success in interest to Calfox, Inc. (managing agent for Polk Market Co.) and Tenant entered into that certain Office Lease dated September 12, 2000 (the "**Lease**") as subsequently amended by the First Amendment to Lease dated June 13, 2006 for premises known as Suites 240 and 250 on the 2nd floor (the "**Second Floor Premises**"), Suites 401 and 418 on the 4th floor, Suite 500 on the 5th floor, Suite 600 on the 6th floor, and Suites 1008 and 1010 on the 10th floor (the "**Tower Premises**", together with the Second Floor Premises, the "**Original Premises**"), all in a building known as Fox Plaza, 1390 Market Street, San Francisco, California (the "**Building**").
- B. Landlord is the successor-in-interest to Original Landlord and is the current owner of the Building.
- C. The Lease's initial term expires December 31, 2007. The First Amendment to Lease provides City with one (1) five year option to extend the Term (the "**Extension Option**", as defined in the Lease) and Landlord certain rights to relocate the Transfer Parcel to Landlord's Commercial Tower.
- D. Landlord and Tenant now wish to amend the Lease to exercise the option to extend the Term, relocate the Transfer Parcel to the Relocation Premises and make certain other modifications to the Lease more particularly set forth below.

AMENDMENT

NOW THEREFORE, in consideration of the mutual agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

1. **EXTENSION OPTION.** City hereby exercises the option to extend the Initial Term for an additional term ("Extended Term") of five (5) years commencing upon the expiration of the Initial Term ("Extension Option") (though December 31 2012). Upon commencement of the Extended Term, all references in the Lease to the Term shall mean the Term as extended by the Extended Term.
2. **AMENDMENTS.**

(a) Paragraph 4(C)(a) of the Lease is hereby deleted in its entirety and replaced with the following new Paragraph 4(C)(a):

"(a) City's lease of the Premises during the Extended Term shall be on all of the terms and conditions set forth in the Lease, except that (i) at the start of the Extended Term, the Base Monthly Rent shall be adjusted to \$172,952.33 (approximately \$30.17 psf), and shall remain fixed at this amount for the remainder of the Term; (ii) the Base Year and the Base Tax Year, for purposes of determining City's Additional Rent, shall be calendar 2008, and there shall be no Additional Rent during calendar year 2008; (iii) subject to Landlord's completion of the relocation as set forth below, the Second Floor Premises shall be deleted from the Premises and the Relocation Premises shall be added to the Premises; and (iv) City shall not be responsible for any increase in Direct Taxes or other costs or expenses resulting from any sale, transfer or subdivision of any interest in or title to the Building or the land on which the Building is located during calendar years 2006, 2007, or 2008."

(b) Upon Relocation, the Parties agree to the Premises (including the Relocation Premises) generally shown on Exhibit A. Notwithstanding the foregoing, Landlord reserves the right to make nonmaterial modifications to boundaries of the ground floor portion of the Relocation Premises, and to change the location of such portion of the Relocation Premises to another portion of the Building located on the ground floor, provided that (i) the ground floor Relocation Premises are in the same approximate configuration as described in Preliminary Space Plans and Specifications attached hereto as Exhibit B, as reasonably determined by the City's Director of Property, and (ii) the total square footage of the ground floor Relocation Premises does not decrease without the prior written consent of the Director of Property. The infant care facility will remain within the Second Floor Premises until such relocation to the ground floor Relocation Premises is completed.

(c) City hereby approves the Premises as shown in Exhibit A and the plans and specifications as shown in Exhibit B. In the event of any changes to the ground floor Relocation Premises as provided above, Landlord and City shall correct and replace Exhibit A with a revised Exhibit A to reflect the actual ground floor Relocation Premises as finally constructed.

3. **LANDLORD'S ADDRESS.** Effective as of the date of this Second Amendment, Landlord's address for payment of Rent and for the Building Office portion of addresses for notices given pursuant to the Lease is:

1390 Market Street, Suite 316, San Francisco, CA 94102, or at such other place as Landlord may designate in writing.

4. **ADDITIONAL PROVISIONS.** Landlord hereby agrees to comply with the provisions of Exhibit C.

5. **NO BROKERS.** Tenant represents and warrants that it has not dealt with any real estate broker in connection with this Second Amendment, and no compensation is

due to Tenant's broker in connection with this Second Amendment. Tenant agrees to indemnify and hold Landlord harmless for any loss, cost, liability or expense incurred by Landlord as a result of a claim for brokerage commissions or finder's fee from any broker based on the act or omission of Tenant in breach of the foregoing warranty. Landlord represents and warrants that it has not dealt with any real estate broker in connection with this Second Amendment, and no compensation is due to Landlord's broker in connection with this Second Amendment. Landlord agrees to indemnify and hold Tenant harmless for any loss, cost, liability or expense incurred by Tenant as a result of a claim for brokerage commissions or finder's fee from any broker based on the act or omission of Landlord in breach of the foregoing warranty.

6. **DEFINED TERMS.** All capitalized terms used but not defined in this Second Amendment will have the meanings set forth for such terms in the Lease. All terms that are defined in this Second Amendment and used in any provisions that are added to the Lease pursuant to this Second Amendment will have the meanings in the Lease set forth for such terms in this Second Amendment.

7. **WHOLE AGREEMENT.** This Second Amendment sets forth the entire agreement between the parties with respect to the matters set forth herein. There have been no additional oral or written representations or agreements. Except as amended herein, there shall be no other changes or modifications to the Lease between the parties and the Lease and the terms and provision contained therein shall remain in full force and effect.

8. **MISCELLANEOUS.** This Second Amendment shall be binding upon the parties hereto, their heirs, successors and assigns. Except as modified hereby, there shall be no other changes or modifications to this Second Amendment or to the Lease unless in writing and executed by the parties hereto. No reference to this Second Amendment is necessary in any instrument or document at any time referring to the Lease. Any future reference to the Lease shall be deemed a reference to such document as amended hereby. This Second Amendment shall be governed by, construed and enforced in accordance with the laws of the State of California.

9. **CONFIRMATION OF LEASE.** As amended by this Second Amendment, Landlord and Tenant confirm and ratify in all respects the terms and conditions of the Lease, and further confirm that, except as provided in Section 1 of the First Amendment and Section 2 of this Second Amendment, there are no outstanding tenant improvement obligations of Landlord regarding the Premises. The execution of this Second Amendment shall not constitute a waiver of relinquishment of any rights which Landlord or Tenant may have relating to the Lease.

10. **NO JOINT VENTURE.** This Second Amendment or any activity by Tenant hereunder does not create a partnership or joint venture between Tenant and Landlord relating to the Lease or otherwise. This Second Amendment does not constitute authorization or approval by the City of any activity conducted by Landlord.

11. **COUNTERPARTS.** This Second Amendment may be executed in one or more counterparts, each of which shall be deemed an original, including transmittals by facsimile, all of which together shall constitute one and the same instrument.

12. **AUTHORITY.** Landlord represents and warrants to City that the execution and delivery of this Lease by Landlord has been duly authorized and does not violate any provision of any agreement, law or regulation to which Landlord or the Property is subject.

13. **EFFECTIVE DATE.** This Second Amendment shall become effective on the date that (i) the City enacts such resolution authorizing this Second Amendment and (ii) the Second Amendment is fully executed and delivered by both parties.

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 CITY'S BOARD OF SUPERVISORS SHALL HAVE DULY ADOPTED A RESOLUTION APPROVING THIS LEASE AND AUTHORIZING CONSUMMATION OF THE TRANSACTION CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ADOPTION 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 ADOPTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Second Amendment as of the day and year first above written.

LANDLORD

TENANT

~~API Fox Plaza, LLC, a Delaware limited liability company~~

City and County of San Francisco, a municipal corporation

By: _____
BRCP 1390 Market, LLC, a Delaware limited liability company
Its: Agent

By: Amy D Brown
Name: Amy Brown, Director of Real Estate

RECOMMENDED:

By: _____
BRCP Realty II, L.P., a Delaware limited partnership
Its: Sole Member

DENNIS J. HERRERA, City Attorney

By: _____
BRCP Gen-Par II, LLC, a Delaware limited liability company
Its: General Partner

By: [Signature]

Approved by Board of Supervisors on May 22, 2007, Resolution No. 27807 (File No. 070506)

By: [Signature]
Name: Marcum D. "Eli" Khouri
Managing Director
Its: _____

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

By: [Signature]
Deputy City Attorney

EXHIBIT A

Premises

Current Premises:

<u>SUITE</u>	<u>SQ. FT.</u>
1008-1010	3,601
6 TH Floor	18,168
5 TH Floor	18,127
401, 408, 418	9,281
240 – 250	<u>13,637</u>
Total Rentable Sq Ft	<u>62,814</u>
Total Monthly Rent	\$157,035.00
% Share of Operating Expenses	<u>26.92%</u>

Upon Commencement of Expansion Premises:

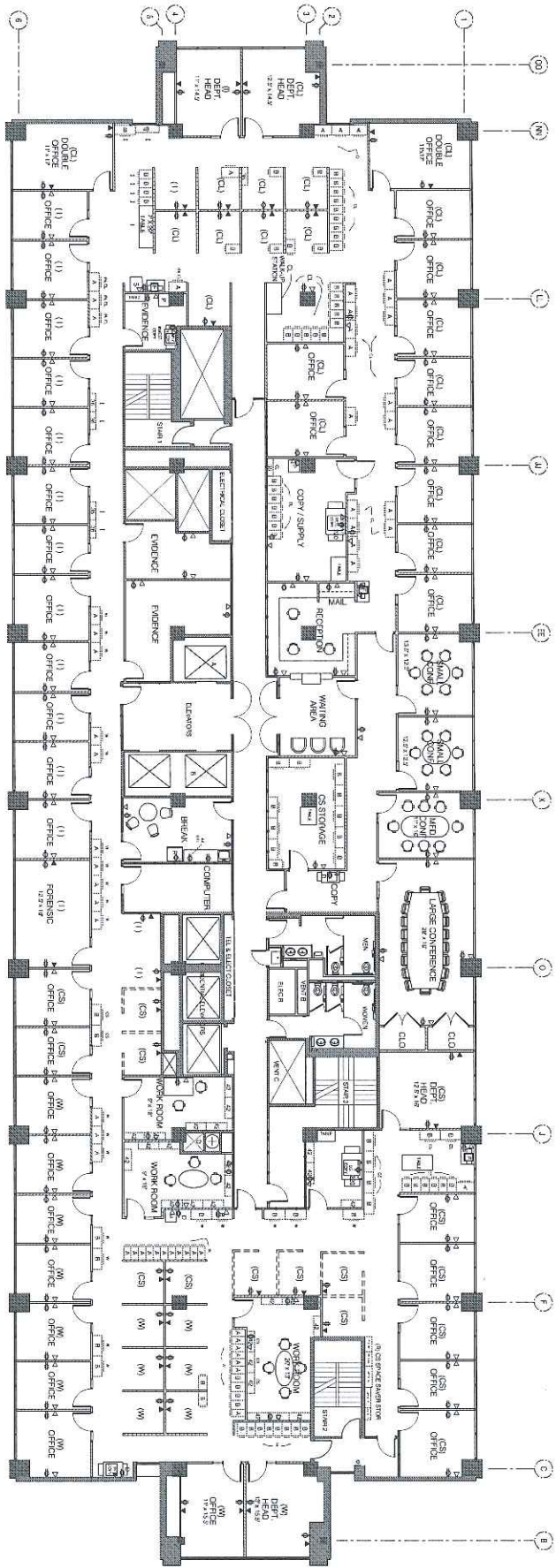
<u>SUITE</u>	<u>SQ. FT.</u>
1008-1010	3,601
6 TH Floor	18,168
5 TH Floor	18,127
401, 408, 418	9,281
240 – 250	<u>13,637</u>
Subtotal	<u>62,814</u>
7 TH (Expansion Premises)	5,969
Total Rentable Sq. Ft.	<u>68,803</u>
Total Monthly Rent	\$172,952.33
% Share of Operating Expenses	31.75%

Upon Relocation of the 2nd Floor Premises & Commencement of Expansion Premises:

<u>SUITE</u>	<u>SQ. FT.</u>
1008-1010	3,601
7 TH Floor	18,488
6 TH Floor	18,168
5 TH Floor	18,127
401, 408, 418	9,281
Ground Floor Suite 110	<u>1,737</u>
Total Rentable Sq. Ft.	<u>69,402</u>
Total Monthly Rent	\$172,952.33
% Share of Operating Expenses	31.75%

POLK STREET

1390 MARKET



COMMON AREA ELEVATORS

CLAMS
 (20) LATERAL FILE A
 (20) LATERAL FILE B
 (1) SHELF

INVESTIGATIONS
 (1) LATERAL FILE B
 (4) VERTICAL FILE B
 (1) SHELF (48 WBS)

WORKERS COMP
 (1) LATERAL FILE A
 (20) VERTICAL FILE A
 (20) VERTICAL FILE B
 (2) SHELF

CONSTRUCTION
 (1) LATERAL FILE B
 (1) VERTICAL FILE B

LEGEND

1	STANDARD
2	1-20' BENCH
3	1-20' BENCH
4	1-20' BENCH
5	1-20' BENCH
6	1-20' BENCH
7	1-20' BENCH
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99	1-20' BENCH
100	1-20' BENCH

ROOM/AREA IDENTIFICATION LEGEND

(I) - INVESTIGATIONS
 (M) - WORKERS COMP
 (CS) - CONSTRUCTION

NOTES:
 1. ROOMS AT PRICE TO INSTALL FLOOR DUE EXPOSURE & DATA AT THE LABEL CONF. HAND-DRAWN TO TENANT CONF.
 2. ALL DIMENSIONS SHOWN ARE APPROXIMATE AND NOT TO BE
 3. CABETS ARE 7' X 7' CLEAR INSIDE DIM. 1" IS AT ALL LOCATIONS
 4. POWER / DATA SCOPE AT COMPUTER ROOM STBD

1 PRELIMINARY SPACE PLAN - CITY ATTORNEY
 SP9 1/16" = 1'-0"

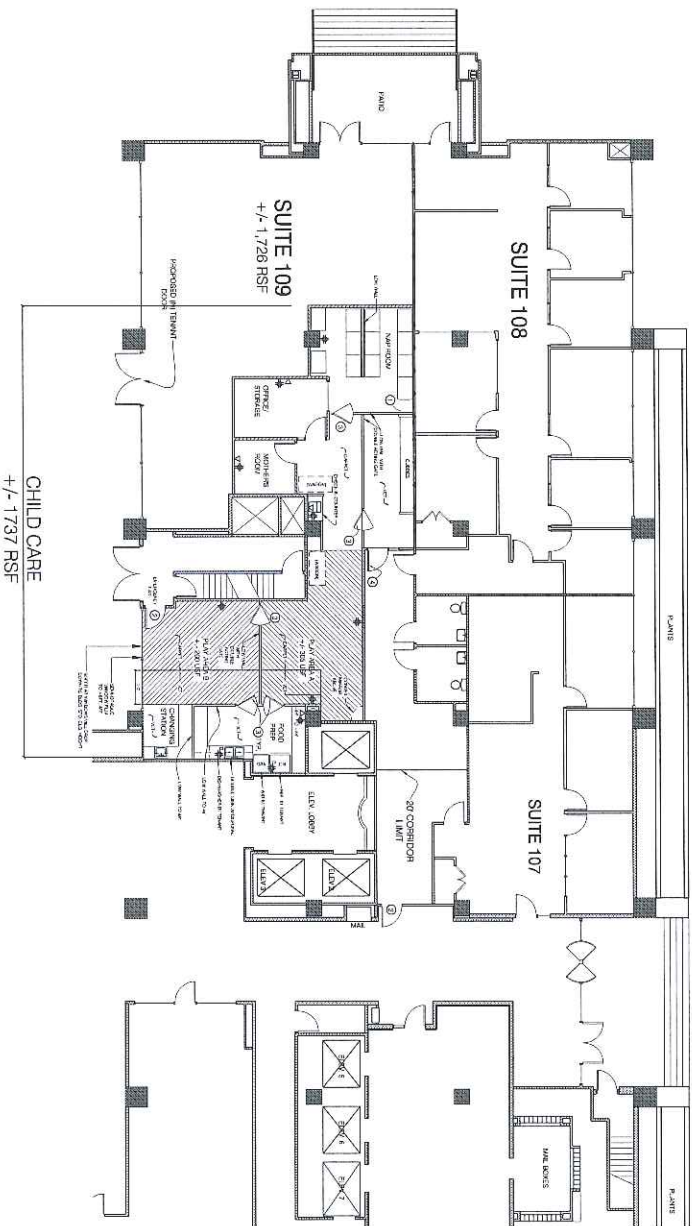
RESUBMIT DATE

PROJECT NAME
 CITY ATTORNEY

SHEET NUMBER 06201101
 DRAWN BY: FI
 DATE: 06/20/07
 SCALE: 1/8" = 1'-0"
 THIS SHEET IS 24" X 36"
 DRAWING NUMBER

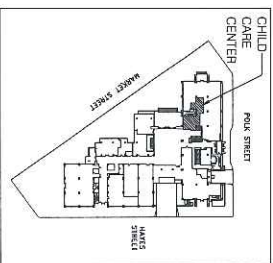
SP9

1390 MARKET
FIRST FLOOR
CHILD CARE
CENTER



1 SPACE PLAN
SP.6
1/8" = 1'-0"

- NOTES:
- 1) CHANGES WILL BE REQUIRED IN WAP ROOMS FOR FULL VISUAL COVERAGE. OFFICE, FOOD PREP AND PLAY AREAS. RESPONSIBILITY FOR COST AND INSTALLATION FELD.
 - 2) WHERE FIRE MARSHALL'S CODE ALLOW, PROVIDE TOP-MOUNTED DOOR LATCHES ONLY. WHERE LEVER HARDWARE IS REQUIRED, PROVIDE IN DIRECTION OF EGRESS ONLY.
 - 3) CHUTE LOCATED AT TERMINAL FROM IS CHILD'S ENTRY DOOR TO HERE.



KEY PLAN

PROJECT NUMBER: 0807111
 DRAWN BY: SP
 DATE: 02/07/07
 SCALE: AS NOTED
 THIS SHEET IS 22" X 34"
 DRAWING NUMBER:

SP.6

REVISION	DATE
1. TENANT REVISION	02/28/07
2. TENANT REVISION	04/12/07
3. TENANT REVISION	05/07/07

PROJECT NAME:
 FIRST FLOOR
 CHILD CARE
 SPACE PLAN

EXHIBIT B

Space Plan and Specifications

1. Plans: The Permit Plans and Specifications for the 7th floors, dated August 16, 2007 including the revision and alternates requested by City, and Preliminary Space Plans for the Ground Floor dated 5/7/07, prepared by Weske Associates are attached hereto by reference.

2. Additional Specifications: Such plans shall also include or provide:

(i) the server room shall also include, without limitation, 24 hour air conditioning, anti-static tiles, sleeves and risers, and 6 dedicated 15 amp electrical outlets;

(ii) labeled or color coded 2 data and 2 telephone "CAT 5e" or better wiring for each room, equipment and each work station ready to be terminated to City's telecommunication or data equipment as the case may be;

(iii) turnkey electrical outlets including additional dedicated outlets as required and a minimum of 1 floor plex electrical outlet for each room, equipment, and work station;

(iv) HVAC designed to meet ASHRAE standards for City's build out and, notwithstanding the foregoing, HVAC zoning of not less than 1 zone per 1200 rentable square feet, appropriate locations of thermostats and air supply and return vents.

(v) For the ground floor, Landlord's cost shall provide monitoring cameras and any other improvements and/ or equipment required for obtaining state infant care licensing shall be borne equally by City and Landlord..

3. General: Landlord shall be responsible for obtaining any necessary approvals for proposed uses of the Relocation Premises prior to Tenant's occupancy, including but not limited to approval by the Mayor's Office of Disability, San Francisco Department of Building Inspection and the Fire Marshall. With regards to the Infant Care Program, Landlord shall be responsible for the physical improvements necessary to obtain California State licensing and City shall be responsible for program requirements of such licensing. The cost of the camera system shall be split equally between Landlord and City.

Landlord shall complete all improvements in accordance with applicable law and the approved plans, and Landlord shall obtain Temporary Occupancy Permits and subsequent final building permit sign-offs and any additional required approvals before commencing the relocation of Tenant from the Second Floor Premises to the Relocation Premises. Tenant shall have no obligation to vacate the Second Floor Premises (but will continue to pay rent on the 2nd floor premises) unless and until all necessary approvals and permits have been obtained

EXHIBIT C

City Provisions

1.1 Controller's Certification of Funds

The terms of this Lease shall be governed by and subject to the budgetary and fiscal provisions of the City's Charter. 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 Lease unless the Controller of the City and County of San Francisco first certifies, pursuant to Section 3.105 of the City's Charter, 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, 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.

1.2 Non-Liability of City Officials, Employees and Agents

Notwithstanding anything to the contrary in this Lease, 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.

1.3 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.

1.4 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 as required by Section 6.22(E) of the San Francisco Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California. Landlord shall include, in any contract for construction of such Leasehold Improvements or other improvements to the Premises, 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 shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing labor in the construction of any Leasehold Improvements or other improvements to the Premises.

1.5 Non Discrimination in City Contracts and Benefits Ordinance

(a) Covenant Not to Discriminate

In the performance of this Lease, Landlord covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height, or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee or, any City employee working with, or applicant for employment with, Landlord in any of Landlord's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Landlord.

(b) Subcontracts

Landlord shall include in all subcontracts relating to the Premises a non-discrimination clause applicable to such subcontractor in substantially the form of subsection (a) above. In addition, Landlord shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k) and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Landlord's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) Non-Discrimination in Benefits

Landlord does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits specified above within the United States, between employees with domestic partners and employees with spouses, and/or between domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the condition set forth in Section 12.B2(b) of the San Francisco Administrative Code.

(d) HRC Form

As a condition to this Lease, Landlord shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission (the "HRC"). Landlord hereby represents that prior to execution of the Lease: (a) Landlord executed and submitted to the HRC Form HRC-12B-101 with supporting documentation, and (b) the HRC approved such form.

(e) Incorporation of Administrative Code Provisions by Reference

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of property to City are incorporated in this Section by reference and made a part of this Lease as though fully set forth herein. Landlord shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Landlord understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against in

violation of the provisions of this Lease may be assessed against Landlord and/or deducted from any payments due Landlord.

1.6 Tropical Hardwood and Virgin Redwood Ban

(a) 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 City in the construction of the Leasehold Improvements or otherwise in the performance of this Lease which are tropical hardwood, tropical hardwood wood products, virgin redwood, or virgin redwood wood products.

(b) The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood products.

(c) In the event Landlord fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Landlord shall be liable for liquidated damages for each violation in an 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.

1.7 Bicycle Storage Facilities

Article 1.5, Section 155.1, of the San Francisco Planning Code (the "Planning Code") requires the provision of bicycle storage at City-leased buildings at no cost to Landlord and if funds are available. Landlord agrees to continue at no cost to the City, the existing bicycle facilities located in the garage. In the event public and/or private donations, grants or other funds for additional facilities become available, at any time during the Term of this Lease including any extension thereof, City may, by giving a 60-day advanced written notice to Landlord, install additional compliant bicycle storage in the Building garage provided the garage owner approves the same. Landlord agrees to use best efforts to obtain such approval. If parking spaces are lost, City shall pay the monthly rent value for any such parking spaces used for such bicycle parking, and Landlord also agrees that City may install bicycle racks in other location(s) in front of the Building, which are required to meet the Class 1 and/or Class 2 requirements of the Planning Code. Landlord, at no cost to Landlord, shall reasonably cooperate with City regarding the location of such spaces in furtherance of the implementation of such requirements of the Planning Code. The above notwithstanding, City acknowledges that Landlord does not own the entire building and only has limited rights to the parking garage and the common areas.

1.8 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.

1.9 Certification by Landlord

By executing this Lease, Landlord certifies that neither Landlord nor any of its officers or members have been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. In the event Landlord or any

of its officers or members have been so suspended, disbarred, disciplined or prohibited from contracting with any governmental agency, it shall immediately notify the City of same and the reasons therefore together with any relevant facts or information requested by City. Any such suspension, disbarment, discipline or prohibition may result in the termination or suspension of this Lease. Landlord acknowledges that this certification is a material term of this Lease.

1.10 Sunshine Ordinance

In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between City and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

1.11 Conflicts of Interest

Through its execution of this Lease, Landlord acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provisions, and agrees that if Landlord becomes aware of any such fact during the Term of this Lease, Landlord shall immediately notify City.

1.12 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.

1.13 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.

1.14 Graffiti Removal

(a) Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

(b) Landlord shall use good faith and best efforts to remove all graffiti from the Building and from any real property owned or leased by Landlord in the City and County of San Francisco within forty eight (48) hours of the earlier of Landlord's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require Landlord to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

(c) Any failure of Landlord to comply with this section of this Lease shall constitute a breach of this Lease.

1 [Lease of Real Property]

2 **Resolution authorizing the exercise of an option to extend an approximate 68,783**
3 **square foot lease at 1390 Market Street for use by the City Attorney.**
4

5 WHEREAS, The City Attorney has occupied space at 1390 Market Street since the
6 1980's; and

7 WHEREAS, The current lease of 62,814 square feet for the City Attorney expires
8 December 31, 2007; and

9 WHEREAS, The building at 1390 Market St. provides good proximity to the City
10 Attorney's office at City Hall and to other City Departments; and

11 WHEREAS, Over the past seven years, enterprise departments, have requested more
12 assistance from the City Attorney and leasing an additional 5,969 square feet will allow for
13 appropriate areas for case management, attorney offices, meeting and deposition space for
14 such work; and

15 WHEREAS, Relocating leased facilities to other leased facilities is costly and
16 disruptive; and

17 WHEREAS, The Director of Property believes the proposed renewal transaction
18 represents Fair Market Rent; and

19 WHEREAS, A portion of those leased facilities are used by Marin Day School for use
20 as Infant Care facilities which provide valuable services to the City; and, now, therefore, be it

21 **RESOLVED**, That in accordance with the recommendation of the City Attorney and the
22 Director of Property, the Director of Property is hereby authorized to take all actions, on behalf
23 of the City and County of San Francisco, as Tenant, to execute an amendment (copy of which
24 is on file with the Clerk of the Board, the "Amendment") and other related documents with API
25

Supervisor Peskin
Real Estate Division
BOARD OF SUPERVISORS

1 Fox Plaza, LLC ("Landlord") or its successors in interest, for approximately 68,783 square feet
2 in the building commonly known as 1390 Market Street, San Francisco, California, on the
3 terms and conditions herein and on a form approved by the City Attorney; and, be it

4 FURTHER RESOLVED, That the lease renewal shall commence upon January 1, 2008
5 for the existing premises and substantial completion of the improvement for the 5,969 of
6 expansion space and terminate on December 31, 2012. The monthly base rent for the
7 extended term shall be \$172,952.33 (or approximately \$30.17 per square foot per year) and
8 except as provided below, shall remain flat for the five year term; and, be it

9 FURTHER RESOLVED, That the City shall pay for typical tenant expenses including
10 for its prorata share of operating expenses over a 2008 Base Year and for other typical tenant
11 expenses; and, be it

12 FURTHER RESOLVED, That the City shall continue to use a portion of the Premises
13 for provision of childcare services by Marin Day School, a California non profit corporation for
14 \$1 per year; and, be it

15 FURTHER RESOLVED, That the lease shall include a clause approved by the City
16 Attorney, indemnifying and holding harmless the Landlord, from and agreeing to defend the
17 Landlord against any and all claims, costs and expenses, including, without limitation,
18 reasonable attorney's fees, incurred as a result of City's use of the premises, any default by
19 the City in the performance of any of its obligations under the lease, or any acts or omissions
20 of City or its agents, in, on or about the premises or the property on which the premises are
21 located, excluding those claims, costs and expenses incurred as a result of the active gross
22 negligence or willful misconduct of Landlord or its agents; and, be it

23 FURTHER RESOLVED, That all actions heretofore taken by the officers of the City
24 with respect to such lease are hereby approved, confirmed and ratified; and, be it
25

1 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of
2 Property to enter into any amendments or modifications to the Lease (including without
3 limitation, the exhibits) that the Director of Property determines, in consultation with the City
4 Attorney, are in the best interest of the City, do not increase the rent or otherwise materially
5 increase the obligations or liabilities of the City, are necessary or advisable to effectuate the
6 purposes of the Lease or this resolution, and are in compliance with all applicable laws,
7 including City's Charter; and, be it

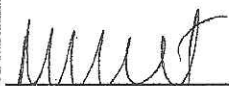
8 FURTHER RESOLVED, That the City shall occupy the entire Premises for the full term
9 of the lease unless funds for the City Attorney's rental payments are not appropriated in any
10 subsequent fiscal year at which time City may terminate the lease with reasonable advance
11 written notice to Landlord. Such termination shall then be effective upon surrender of the
12 Premises. In the event of termination for non-appropriation, City agrees that it will not
13 appropriate funds for the purpose of renting similar premises in a non-City building to conduct
14 City Attorney operations for at least a year from such Termination Date. Said Lease shall be
15 subject to certification as to funds by the Controller, pursuant to Section 3.105 of the Charter.

16
17 \$1,037,713.98 Available
(Rent 1/1/08 to 6/30/08)

18 Index No. 1G-AGF-AAA-CAT-CATO1-FC2
19 035004

20
21 
22 Controller
23 Subject to the enactment of the 2007/2008
24 Annual Appropriation Ordinance


25 RECOMMENDED:



City Attorney

Real Estate Division
BOARD OF SUPERVISORS

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Director of Property
Real Estate Division

Real Estate Division
BOARD OF SUPERVISORS



City and County of San Francisco
Tails
Resolution

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 070506

Date Passed:

Resolution authorizing the exercise of an option to extend an approximate 68,783 square foot lease at 1390 Market Street for use by the City Attorney.

May 22, 2007 Board of Supervisors — ADOPTED

Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Jew, Maxwell,
McGoldrick, Mirkarimi, Peskin, Sandoval

File No. 070506

I hereby certify that the foregoing Resolution was ADOPTED on May 22, 2007 by the Board of Supervisors of the City and County of San Francisco.

Kay Gulbengay
Interim Clerk of the Board

MAY 31 2007

Date Approved

Mayor Gavin Newsom