

1 (Approval of Lease and Sublease; Negative Declaration and Indemnity Clause)

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3 APPROVING LEASE AND SUBLEASE WITH AMB PROPERTY CORPORATION FOR THE  
4 DEVELOPMENT OF PIER 1 (EMBARCADERO AND WASHINGTON STREETS) AS A  
5 MARITIME OFFICE PROJECT; APPROVING NEGATIVE DECLARATION, AND ~~INDEMNITY~~  
6 AGREEMENT

7  
8 WHEREAS, City Charter Section B3.5581(g) authorizes the Port Commission to enter into  
9 leases and franchises for the operation of property within the jurisdiction of the Port Commission; and,

10  
11 WHEREAS, The Waterfront Land Use Plan policies for improvements to the Ferry Building  
12 Harbor Area also includes historic rehabilitation of the adjacent Pier 1; and,

13  
14 WHEREAS, At present, the Port of San Francisco occupies, leases and maintains the Ferry  
15 Building for office space for commercial tenants and its own administrative offices; and,

16  
17 WHEREAS, The Port of San Francisco intends to relocate its administrative offices to Pier 1  
18 to facilitate the plan to restore the Ferry Building as an intermodal ferry terminal and mixed-use  
19 development; and,

20  
21 WHEREAS, On January 21, 1998, the Port Commission issued a Request For Interest and  
22 Qualifications to Master Lease and Develop Pier 1 for Maritime-Related Office Uses ("RFI/Q") to  
23 assess the availability of private investment to achieve its objectives; and,

1           WHEREAS, The Port received responses from four major national developers whose  
2 proposals were reviewed and analyzed by Port staff, a selection panel of experts, and an independent  
3 financial consultant; and,

4           WHEREAS, On May 26, 1998, the Port Commission chose AMB Property Corporation  
5 (hereafter "AMB") to enter into an exclusive negotiation agreement to pursue project development and  
6 lease discussions, based on AMB's financial capacity, development concept, responsiveness to public  
7 access and public trust objectives, and shorter lease term (50 years instead of 66 years) and its  
8 commitment to occupying the building as a project manager and co-tenant; and,

9           WHEREAS, On March 9, 1999, the Port Commission adopted findings and approved, by  
10 Resolution No. 99-17, the Pier 1 Development Agreement ("Development Agreement") for the  
11 development of Pier 1; and,

12           WHEREAS, The Development Agreement sets forth certain conditions precedent to the  
13 conveyance of a 50-year leasehold estate in Pier 1 to AMB and a coterminous leaseback of certain  
14 space therein to the Port pursuant to a form of lease ("Lease") and sublease ("Sublease") attached  
15 thereto, and governs AMB's initial construction obligations of the Pier 1 improvements; and

16           WHEREAS, By letter dated February 16, 1999, the Planning Department found that the  
17 project contemplated under the Lease and Sublease is consistent with the Eight Priority Policies of City  
18 Planning Code Section 101.1; and

1 WHEREAS, The Pier 1 project is consistent with the San Francisco General Plan's  
2 Northeastern Waterfront Plan's policies, including policies calling for retention of older buildings of  
3 architectural merit or historical significance to preserve the architectural and historical character of the  
4 waterfront and to ensure the compatibility of new development, and, more specifically calling for  
5 retention of the arched bulkhead building structures such as Pier 1 which policies are met by this  
6 project's adaptive reuse of the historic structures consistent with the Secretary of the Interior's  
7 Standards; and,  
8

9 WHEREAS, The Board of Supervisors hereby adopts the following findings with respect to  
10 the Final Negative Declaration for the Pier 1 Project, case File No. 98.646E, ("the Project"):  
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12 1. The Department of City Planning ("Department") fulfilled all procedural requirements of the  
13 California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 et. seq., "CEQA"), the State  
14 CEQA Guidelines (Cal. Admin. Code Title 14, Section 15000 et. seq., "CEQA Guidelines") and  
15 Chapter 31 of the San Francisco Administrative Code ("Chapter 31"), and  
16

17 2. Pursuant to CEQA § 21094 and CEQA Guideline § 15162, the Project Negative Declaration  
18 is tiered from the Waterfront Land Use Plan Environmental Impact Report ("Waterfront Land Use Plan  
19 EIR") certified by the San Francisco Planning Commission on January 9, 1997, and  
20

21 3. In accordance with CEQA § 21166, the Project is consistent with the Waterfront Land Use  
22 Plan, is consistent with the San Francisco General Plan and Planning Code requirements, and as  
23 relevant with respect to the Project (1) no substantial changes are proposed which would require major  
24 revisions to the Waterfront Land Use Plan EIR; (2) no substantial changes have occurred with respect  
25

1 to the circumstances under which the Project is being undertaken which would require major revisions  
2 in the Waterfront Land Use Plan EIR; and (3) no new information of substantial importance, which was  
3 not known or could not have been known at the time the Waterfront Land Use Plan EIR was certified,  
4 has become available, and

5  
6 4. Based on the Initial Study, the Department determined that there was no substantial evidence  
7 that the Project could have a significant effect on the environment, and

8  
9 5. On December 12, 1998, the Department issued a Preliminary Negative Declaration, and in  
10 accordance with CEQA, the CEQA Guidelines, and Chapter 31, the Department posted the document in  
11 the Department offices, and mailed a copy of the document to the project sponsor. The Department  
12 provided notice of the preparation of the Preliminary Negative Declaration in a newspaper of general  
13 circulation and this notice was mailed to the Department's list of persons requesting such notice, and

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15 6. In accordance with CEQA § 21091(b) and CEQA Guidelines § 15073, the Preliminary  
16 Negative Declaration was available for a 30-day public review period; and

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18 7. Two comment letters were received in response to the Preliminary Negative Declaration, one  
19 from the Golden Gate Bridge Highway and Transportation District and one from the San Francisco  
20 Municipal Railway. The Department responded in writing to the letters and comments from these  
21 letters were incorporated into the Final Negative Declaration, and

22  
23 8. No appeal of the Preliminary Declaration was filed with the Department, and

1 9. The Department prepared the Final Negative Declaration, which was published on January  
2 21, 1999, and since that time no substantial changes in the Project or circumstances under which the  
3 project is being undertaken or new information of substantial importance has become available that  
4 would require additional analysis or an addendum to the Final Negative Declaration; and,

5  
6 WHEREAS, On March 9, 1999, the Port Commission adopted, in Resolution No. 99-17, the  
7 Final Negative Declaration and mitigation monitoring program, and since that time no substantial  
8 changes in the project or the circumstances under which the project is being under taken or new  
9 information of substantial importance has become available that would require additional analysis or an  
10 addendum to the Final Negative Declaration; and,

11 WHEREAS, Charter Section 9.118 requires in relevant part for the Board of Supervisors to  
12 approve non-maritime leases of real property for a period of ten or more years, or contracts or  
13 agreements entered into by a City department for a term in excess of ten years, and though the Lease  
14 and Sublease are for predominantly maritime uses, the Port Commission has requested and  
15 recommended approval thereof by the Board of Supervisors; and,

16  
17 WHEREAS, A copy of the proposed form of Lease and Sublease, including a copy of the  
18 Development Agreement is on file with the Clerk of the Board in File No. 990527 ; and,

19  
20 WHEREAS, The Sublease (Article 17) between the Port of San Francisco and AMB for  
21 occupancy of Pier 1 for administrative offices includes an indemnity clause in favor of AMB, subject to  
22 the approval of the San Francisco Board of Supervisors as provided below:

23 “PORT’S INDEMNITY. Port shall indemnify, defend and hold harmless

24 (“Indemnify”) Sublandlord [AMB] and its Agents from and against any and all

1 claims, costs and expenses, including, without limitation, reasonable attorney's fees,  
2 (collectively, "Claims"), incurred as a result of (a) Port's use of the Premises, (b) any  
3 default by Port in the performance of any of its obligations under this Sublease, or (c)  
4 any negligent acts or omissions of Port or its Agents, in, on or about the Premises or  
5 the Property; provided, however, Port shall not be obligated to Indemnify  
6 Sublandlord or its Agents to the extent any Claim arises out of the active negligence  
7 or willful misconduct of Sublandlord or its Agents. In any action or proceeding  
8 brought against Sublandlord or its Agents by reason of any Claim Indemnified by  
9 Port hereunder, Port may, at its sole option, elect to defend such Claim by attorneys in  
10 the City's office of the City Attorney, by other attorneys selected by Port, or both.  
11 Port shall have the right to control the defense and to determine the settlement or  
12 compromise of any action or proceeding, provided that Sublandlord shall have the  
13 right, but not the obligation, to participate in the defense of any such Claim at its sole  
14 cost. Port's obligations under this Section shall survive the termination of the Lease";  
15  
16 now, therefore be it

17  
18 RESOLVED, The Board of Supervisors has reviewed and considered the Final Negative  
19 Declaration and finds that it reflects the independent judgment and analysis of the Department and the  
20 Port Commission, is adequate, accurate, and objective, and that incorporation of the comments resulted  
21 in no significant revisions to the Preliminary Negative Declaration, and that there is no substantial  
22 evidence that the Project will have a significant effect on the environment, and hereby adopts the Final  
23 Negative Declaration; and, be it  
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1 FURTHER RESOLVED, The Board of Supervisors hereby adopts the mitigation monitoring  
2 program prepared for the Project, a copy of which is attached to Port Commission Resolution No. 99-17  
3 and is on file with the Clerk of the Board in File No. 990527 ; and, be it

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5 FURTHER RESOLVED, That the Board of Supervisors approves the form and substance of  
6 the Lease and Sublease, and the transactions which the Lease and Sublease contemplate, (including  
7 without limitation the terms of the Development Agreement to the extent incorporated or referenced in  
8 the Lease) incorporating the business terms set forth in the Memorandum for Agenda Item 7B for the  
9 Port Commission meeting on March 9, 1999, a copy of which is on file with the Clerk of the Board in  
10 File No. 990527 ; and, be it

11 FURTHER RESOLVED, That the San Francisco Board of Supervisors hereby authorizes  
12 the Port of San Francisco to agree to hold AMB Property Corporation harmless from claims arising out  
13 of or connected with the terms of the Sublease between AMB Property Corporation and the Port of San  
14 Francisco dated March 9, 1999 as set forth therein; and, be it

15  
16 FURTHER RESOLVED, That the Board of Supervisors authorizes and directs the  
17 Executive Director of the Port (the "Executive Director") to execute the Lease and Sublease upon  
18 satisfaction or waiver of the conditions precedent set forth in the Development Agreement in  
19 substantially the form of such agreements on file with the Clerk of the Board in File No. 990527 ,  
20 including an indemnity to AMB under the Sublease with respect to the Port's sublease premises, and in  
21 such final form as is approved by the Executive Director in consultation with the City Attorney; and, be  
22 it  
23  
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1           FURTHER RESOLVED,     That the Board of Supervisors authorizes the Executive Director  
2 to enter into any additions, amendments or other modifications to the Lease or Sublease (including,  
3 without limitation, preparation and attachment of, or changes to, any or all of the exhibits or the  
4 Development Agreement) that the Executive Director, in consultation with the City Attorney,  
5 determines are in the best interests of the City, do not materially increase the obligations or liabilities of  
6 the City, and are necessary or advisable to complete the transactions which the Lease and Sublease  
7 contemplate and effectuate the purpose and intent of this resolution, such determination to be  
8 conclusively evidenced by the execution and delivery by the Executive Director of the Lease and  
9 Sublease and any such amendments thereto; and, be it  
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11           FURTHER RESOLVED,     That the Board of Supervisors urges the Executive Director and  
12 any other appropriate officers, agents or employees of the City to take any and all steps (including, but  
13 not limited to, the execution and delivery of any and all certificates, agreements, notices, consents,  
14 escrow instructions, closing documents and other instruments or documents) as they or any of them  
15 deems necessary or appropriate, in consultation with the City Attorney, in order to consummate the  
16 transactions under the Lease and Sublease and the Development Agreement (to the extent referenced or  
17 incorporated in the Lease), in accordance with this resolution, or to otherwise effectuate the purpose  
18 and intent of this resolution, such determination to be conclusively evidenced by the execution and  
19 delivery by any such person or persons of any such documents; and, be it  
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21           RESOLVED, That the Board of Supervisors authorizes the Executive Director to enter into any  
22 additions, amendments or other modifications to the Lease or the Sublease (including, without  
23 limitation, the respective exhibits thereto, including, without limitation, the Work Letter Agreement)  
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1 that the Executive Director determines, in consultation with the City Attorney, are in the best interests  
2 of the Port, do not decrease the rent or otherwise materially increase the obligations or liabilities of the  
3 Port, and are necessary or advisable to complete the transaction contemplated in the Lease and Sublease  
4 and effectuate the purpose and intent of this resolution, such determination to be conclusively  
5 evidenced by the execution and delivery by the Executive Director of the Lease, Sublease and any  
6 amendments thereto; and, be it

7  
8 FURTHER RESOLVED, That the Board of Supervisors approves, confirms and ratifies all  
9 prior actions taken by the officials, employees and agents of the Port Commission or the City with  
10 respect to the implementation of the project contemplated by the Lease and Sublease.

11 APPROVED AS TO FORM

12  
13 LOUISE H. RENNE  
City Attorney

14  
15 By:   
16 NEIL H. SEKHRI, Deputy City Attorney



# City and County of San Francisco

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

## Tails

### Resolution

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**File Number:** 990527

**Date Passed:**

Resolution approving lease and sublease with AMB Property Corporation for the Development of Pier 1 (Embarcadero and Washington Streets) as a maritime office project; approving negative declaration, and indemnity agreement.

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April 19, 1999 Board of Supervisors — ADOPTED

Ayes: 9 - Ammiano, Becerril, Bierman, Brown, Katz, Kaufman, Leno, Yaki, Yee

Absent: 2 - Newsom, Teng

File No. 990527

I hereby certify that the foregoing Resolution was ADOPTED on April 19, 1999 by the Board of Supervisors of the City and County of San Francisco.



Gloria L. Young  
Clerk of the Board

APR 27 1999

Date Approved



Mayor Willie L. Brown Jr.