

OFFICE LEASE

between

EDWARD J. CONNER and DOUGLAS C. MOORE,  
Co-Trustees Under the Conner Children Trust No. 2,  
as Landlord

and

CITY AND COUNTY OF SAN FRANCISCO,  
as Tenant

For the lease of

109 New Montgomery Street  
San Francisco, California

December 19, 1994

OFFICE LEASE

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OFFICE LEASE

THIS OFFICE LEASE (this "Lease"), dated for reference purposes only as of December 19, 1994, is by and between EDWARD J. CONNER and DOUGLAS C. MOORE, as Co-Trustees under the Conner Children Trust No. 2 ("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:	December 19, 1994
Landlord:	Edward J. Conner and Douglas C. Moore, as Co-Trustees under The Conner Children Trust No. 2
Tenant:	CITY AND COUNTY OF SAN FRANCISCO
Building (Section 2.1):	109 New Montgomery Street (also known as 617-623 Mission Street)
Premises (Section 2.1):	A portion of the ground floor plus the entire second, third and fourth floors, and certain basement storage space as shown on <u>Exhibit A</u> . Exclusive right to use Minna Street (rear) entrance, lobby area and elevators
Rentable Area of Premises (Section 2.1):	33,998 square feet (5,219 sq.ft. on the ground floor, and 9,593 sq.ft. on each of floors 2, 3 and 4) plus City's space in the basement for storage.

Term (Article 3):	Estimated commencement date: March 15, 1995. <i>3-1-95 per letter</i>
	Expiration date: August 31, 2002
Extension Options (Section 3.4):	One (1) additional term of five (5) years exercisable by City by notice to Landlord given not less than 210 days in advance, with rent determined by CPI adjustment.
Base Rent (Section 4.1):	Annual Base Rent: \$509,970 (\$15.00 per sq. ft.)  Monthly payments: \$42,497.50 (\$1.25 per sq. ft.)
Free Rent Period:	First four (4) months after commencement date.
Base Year (Section 4.3):	Calendar Year 1995
City's Percentage Share (Section 4.3):	59%
Use (Section 5.1):	District Attorney's Family Support Bureau.
Leasehold Improvements (Section 6.1):	Landlord to construct Leasehold and Common Area Improvements
Utilities (Section 9.1):	City pays separately metered electricity; Landlord supplies all other utilities at Landlord's cost.
Services (Section 9.2):	Provided by Landlord at Landlord's cost
Notice Address of Landlord (Section 23.1):	Edward J. Conner 27 Maiden Lane, Suite 250 San Francisco, CA 94108 Fax No.: 415/392-0820

Key Contact for Landlord: Edward J. Conner  
Telephone No.: 392-1072  
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: District Attorney Family  
Support Bureau  
109 New Montgomery  
San Francisco, CA.  
Attn: Edwina Young, Director  
Fax No.: 553-4296 (until  
commencement)  
\_\_\_\_\_ (after  
commencement)

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

Key Contact for Tenant: Edwina Young  
Telephone No.: 553-4286 (until Commencement)  
\_\_\_\_\_ (after Commencement)

Alternate Contact  
for Tenant: Bob Podesta  
Telephone No.: 553-1743

Brokers (Section 23.7): Damner Pike and  
Cushman Wakefield

Other Noteworthy Provisions: City has option to add additional space in the Building to the Premises under the same terms and conditions as this Lease.

## 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. There shall be no adjustment in the Base Rent in the event that the rentable area of the Premises specified in the Basic Lease Information is not correct. 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."

2.2 Common Areas. City shall have the exclusive right to use the Minna Street (rear) entrance to the Building, together with the lobby areas and elevators serving such entrance (the "Exclusive Common Areas"). City shall also have the non-exclusive right to use, together with other tenants in the Building, the other lobbies, corridors, elevators, stairways and other public areas of the Building and the Property (collectively, with the Exclusive Common Areas, the "Common Areas"), and the non-exclusive right of access to and from the Premises by the main entrances to the Building and the Property; provided, however, that customer access to the District Attorney's Family Support Bureau office shall be exclusively through the direct entrance to the Premises on Mission Street.

## 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 as Landlord shall have delivered the Premises to City with the Leasehold Improvements (as defined below) having been substantially completed by Landlord pursuant to Section 6.1, Construction of Leasehold Improvements. The Initial Term of this Lease shall end on the expiration date specified in the Basic Lease Information, or such earlier date on which this Lease terminates

pursuant hereto, provided that City shall have the right to extend the Initial Term pursuant to Section 3.4, Extension Option, below. The word "Term" as used herein shall refer to the Initial Term and any Extended Term if City exercises the Extension Option 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-1 attached hereto, confirming the actual Commencement Date, but Landlord's failure to do so shall not affect the commencement of the Term.

3.3 Delay in Delivery of Possession. Landlord shall use its best 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 Section 6.1, Construction of Leasehold Improvements, on or before the Estimated Commencement Date. Landlord shall require its contractor to use two shifts per day, five days per week as part of using its best efforts to timely deliver possession of the Premises in the event that the construction of the Leasehold Improvements is not proceeding in accordance with the Critical Path Schedule attached hereto as Exhibit B-2. However, if 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. If the Term commences later or earlier than the Estimated Commencement Date, this Lease shall nevertheless expire on the Expiration Date, unless sooner terminated pursuant to the provisions hereof. If Landlord is unable to deliver possession of the Premises to City as required hereunder within one hundred twenty (120) days after the Estimated Commencement Date for any reason other than Tenant Delays (as defined in Section 6.2), then City may, at its option, terminate this Lease, without any further liability hereunder, upon written notice to Landlord.

3.4 Extension Option. City shall have the right to extend the Initial Term of this Lease (the "Extension Option") for the additional term specified in the Basic Lease Information (the "Extended Term"). Such Extension Option shall be on all of the terms and conditions contained in this Lease. City may exercise the Extension Option, if at all, by giving written notice to Landlord no later than two hundred ten (210) 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. The Extension Option is personal to the City and cannot be exercised by any other person or entity other than the City while it is in full and actual possession of the Premises and without the intention of thereafter assigning or subletting. The Extension Option is not assignable, either as a part of an assignment of this lease or separate therefrom. Landlord acknowledges and agrees that City's notice of its intent to exercise an 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 the same, within sixty (60) days after the date such notice of exercise is given.

#### 4 RENT

4.1 Base Rent. Beginning on the Commencement Date, City shall pay to Landlord during the Term the annual Base Rent specified in the Basic Lease Information (the "Base Rent"). The Base Rent 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 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.

4.2 Additional Charges. City shall pay to Landlord any charges or other amounts required under this Lease as additional rent ("Additional Charges"), including the charges for Real Estate Taxes and Operating Costs provided for hereinbelow. All such Additional Charges shall be payable to Landlord at the place where the Base Rent is payable. Landlord shall have the same remedies for a default in the payment of any Additional Charges as for a default in the payment of Base Rent. The Base Rent and Additional Charges are sometimes collectively referred to below as "Rent."

(a) Definitions. For purposes hereof, the following terms shall have the meanings hereinafter set forth:

(i) "Base Year" means the year specified in the Basic Lease Information.

(ii) "City's Percentage Share" means the percentage specified in the Basic Lease Information.



(iii) "Expense Year" means each calendar year commencing January 1st of each year during the Term, including any partial year in which this Lease commences; provided that Landlord, upon advance written notice to City, may change the Expense Year to any other twelve (12) consecutive month period and, in the event of any such change, City's Percentage Share of Operating Costs shall be equitably adjusted for the Expense Years involved in any such change. Expense Year shall not include the Base Year.

(iv) "Operating Costs" means the total reasonable costs and expenses actually paid or incurred by Landlord in connection with the management, operation, maintenance and repair of the Building, including, but not limited to: (1) the cost of air conditioning, electricity, steam, water, heating, mechanical, telephone, ventilating, escalator and elevator systems and all other utilities, (2) the cost of repairs and all labor and material costs related thereto, and the cost of general maintenance, cleaning and service contracts and the cost of all supplies, tools and equipment required in connection therewith, (3) the cost incurred by Landlord for janitorial services, security and all insurance carried on the Building or the use or occupancy thereof; (4) wages, salaries, payroll taxes and other labor costs and employee benefits, (5) reasonable management fees, (6) fees, charges and other costs of all independent contractors engaged by Landlord, (7) accounting and legal expenses, (8) depreciation on personal property, including, without limitation, carpeting in public corridor and Common Areas and window coverings provided by Landlord, (9) the fair market rental value of offices in the Building for the property manager, (10) the cost of capital improvements made to the Building after completion of its construction as a labor-saving or energy saving device or to effect other economies in the operation or maintenance of the Building and which benefit the Premises, or made to the Building after the date of this Lease that are required under any governmental law or regulation that was not applicable to the Building at the time that permits for the construction thereof were obtained, unless caused by Landlord's deliberate or negligent violation of such law, rule or regulation, and except to the extent such improvements are attributable to or are made for the primary benefit of a tenant or occupant other than City, and (11) any other expenses reasonably incurred in connection with the management, operation, maintenance or repair of the Building (other than Real Estate Taxes and any services for which Landlord is separately and directly reimbursed by City or other tenants in the Building) which would, under generally accepted accounting principles, be considered an operating expense. The computation of Operating Costs shall be made in accordance with generally accepted accounting principles.

In the event that in the Base Year for Operating Costs or in any Expense Year the Building is less than ninety-five percent (95%) occupied, the Operating Costs shall be appropriately adjusted to reflect a ninety five percent (95%) occupancy level; provided, however, in no event shall Landlord recapture more than one hundred percent (100%) of the Operating Costs in any Expense Year.

Notwithstanding the foregoing, "Operating Costs" shall exclude the items described on the attached Exhibit C.

(v) "Real Estate Taxes" means all taxes, assessments and charges levied upon or with respect to the portion of the Building owned by Landlord or any personal property of Landlord used in the operation thereof, or Landlord's interest in the Building or such personal property. Real Estate Taxes shall include, without limitation, all general real property taxes and general and special assessments, charges, fees, or assessments for transit, housing, police, fire, or other governmental occupants thereof, service payments in lieu of taxes, and any tax, fee, or excise on the act of entering into this Lease or any other lease of space in the Building or any part thereof, or on the rent payable under any lease or in connection with the business of renting space in the Building, that are now or hereafter levied or assessed against Landlord by the United States of America, the State of California or any political subdivision thereof, public corporation, district, or any other political or public entity, and shall also include any other tax, fee or other excise, however described, that may be levied or assessed as a substitute for, or as an addition to, in whole or in part, any other Real Estate Taxes, whether or not now customary or in the contemplation of the parties on the date of this Lease. "Real Estate Taxes" shall also include the reasonable and direct cost to Landlord of contesting the amount, validity or applicability of any of the above-mentioned taxes.

Notwithstanding the foregoing, Real Estate Taxes shall exclude (1) franchise, transfer, inheritance, or capital stock taxes or income taxes measured by the net income of Landlord from all sources unless, due to a change in the method of taxation, any of such taxes is levied or assessed against Landlord as a substitute for, or as an addition to, in whole or in part, any other tax that would otherwise constitute a Real Estate Tax, (2) any penalties, fines, interest or charges attributable to the late payment of any taxes, except to the extent attributable to City's failure to pay its portion of Real Estate Taxes hereunder, (3) any personal property taxes payable by City hereunder or by any other tenant or occupant of the Building unless such taxes are assessed on improvements owned by Landlord, or (4) during the initial term of the lease, any increase in Real Estate Taxes due to any reassessment upon a

transfer of any of Landlord's interest in the Building or the real property on which the Building is located.

(vi) "Tax Year" means each calendar year during the Term, including any partial year during which the Lease may commence; provided that Landlord, upon notice to City, may change the Tax Year from time to time to any other twelve (12) consecutive month period and, in the event of any such change, City's Percentage Share of Real Estate Taxes shall be equitably adjusted for the Tax Year involved in any such change. Tax Year shall not include the Base Year.

(b) Payment of Percentage Share of Operating Costs. During the Term, commencing after the end of the Base Year, City shall pay to Landlord, as Additional Charges, one twelfth (1/12) of City's Percentage Share of the amount, if any, by which Operating Costs for each Expense Year exceed the Operating Costs for the Base Year. City shall make such payments, in advance, on the first day of each month, in an amount estimated by Landlord in reasonable detail in a writing delivered to City. Landlord may revise such estimates of Operating Costs from time to time and City shall thereafter make payments on the basis of such revised estimates, provided that no such revisions shall be retroactive and Landlord may not make any such revisions more than twice in any given Expense Year and no such revision may be made any earlier than four (4) months subsequent to the prior estimate for such Expense Year. With reasonable promptness not to exceed one hundred twenty (120) days after the expiration of each Expense Year, Landlord shall furnish City with a statement (herein called "Landlord's Expense Statement"), prepared by an independent certified public accountant, setting forth in reasonable detail the Operating Costs for such Expense Year and City's Percentage Share thereof. If City's Percentage Share of the actual Operating Costs for such Expense Year exceeds the estimated Operating Costs paid by City for such Expense Year, City shall pay to Landlord (whether or not this Lease has terminated) the difference between the amount of estimated Operating Costs paid by City and City's Percentage Share of the actual Operating Costs within thirty (30) days after the receipt of Landlord's Expense Statement. If the total amount paid by City for any such Percentage Share of Operating Costs exceeds City's Operating Costs Share of the actual Operating Costs for such Expense Year, such excess shall be credited against the next installments of Operating Costs due from City to Landlord hereunder, or refunded to City, at City's option. Notwithstanding anything to the contrary contained herein, in no event shall any annual increase in City's Percentage Share of Operating Costs for any Expense Year exceed fifteen percent (15%). In the event that any annual increase exceeds fifteen percent (15%), Landlord shall so notify City and City shall pay the amount in excess of fifteen percent (15%) at the time of its payment of the next annual Landlord's Expense Statement.

(c) Payment of Percentage Share of Real Estate Taxes. During the Term, commencing after the end of the Base Year, City shall pay to Landlord, as Additional Charges, one twelfth (1/12) of City's Percentage Share of the amount, if any, by which Real Estate Taxes for each Tax Year exceed Real Estate Taxes for the Base Year. City shall make such payments, in advance, on the first day of each month, in an amount estimated by Landlord in reasonable detail in a writing delivered to City. With reasonable promptness not to exceed sixty (60) days after Landlord has received the tax bills for any Tax Year, Landlord shall furnish City with a statement ("Landlord's Tax Statement") setting forth the amount of Real Property Taxes for such Tax Year and City's Percentage Share thereof. If City's Percentage Share of the actual Real Estate Taxes for such Tax Year exceeds the estimated Real Estate Taxes paid by City for such Tax Year, City shall pay to Landlord (whether or not this Lease has terminated) City's Percentage Share of the actual Real Estate Taxes within thirty (30) days after the receipt of Landlord's Tax Statement. If the total amount of estimated Real Estate Taxes paid by City for such Tax Year exceeds City's Percentage Share of the actual Real Estate Taxes for such Tax Year, such excess shall be credited against the next installments of Real Estate Taxes due from City hereunder, or at City's option, such excess shall be refunded to City.

(d) Proration. If the Commencement Date or Expiration Date shall occur on a date other than the first or last day of a Tax Year or Expense Year, City's Percentage Share of Real Estate Taxes or Operating Costs for the Tax Year or Expense Year in which the Commencement Date or Expiration Date occurs, shall be prorated based on a 365-day year.

(e) Audits. City shall have the right, upon not less than five (5) business days' notice to Landlord, to audit the books and records of the Building related to Operating Costs and Real Estate Taxes. If such audit discloses any discrepancies which would result in a reduction of City's Percentage Share of Operating Costs for any Expense Year, City shall so notify Landlord. If Landlord agrees with the results of such audit, Landlord shall immediately refund to City the amount of any overpayment by City. City shall pay the cost of such audit, provided that if such audit discloses any discrepancies which result in a reduction of City's Percentage Share of Operating Costs of six percent (6%) or more for any Expense Year, then Landlord shall pay the reasonable costs of such audit. If Landlord does not agree with the results of such audit, then Landlord and City shall select a mutually acceptable certified public accountant with experience in determining operating expenses in commercial buildings who shall determine City's Percentage Share of Operating Costs for the Expense Year. Such determination shall be final and binding on the parties. The

cost of the certified public accountant shall be borne equally by the parties; provided, however, that Landlord shall pay the reasonable cost of such audit if such audit discloses any discrepancies which result in a reduction of City's Percentage Share of Operating Costs of six percent (6%) or more for any Expense Year.

(f) Records. Landlord shall maintain at the Building or at its offices in San Francisco in a safe and orderly manner all of its records pertaining to this Lease and Real Estate Taxes, Operating Costs and any other charges paid by City pursuant hereto, for a period of not less than three (3) years following expiration of the Term. Landlord shall maintain such records on a current basis and in sufficient detail to facilitate adequate audit and review thereof. All such books and records shall be available for inspection, copying and audit by City and its representatives, at City's expense, subject to the provisions of subsection (e) above.

4.3 Base Rent During the Extended Term. If City exercises its option to extend the Term as provided in Section 3.4, Extension Period, the Base Rent and Additional Charges payable during the Extended Term shall be adjusted as follows:

The Consumer Price Index for All Urban Consumers (base years 1982-1984 = 100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Labor Statistics (the "Index"), which is published most immediately preceding the Commencement Date of the Extended Term (the "Adjustment Index"), shall be compared with the Index published most immediately preceding the Commencement Date of the initial Term.

If the Adjustment Index has increased over the Base Index, then the Base Rent payable on and after the Adjustment Date shall be set by multiplying the Base Rent by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Base Index.

If the Index is changed so that the base year differs from that used as of the date most immediately preceding the Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

The Base Year as set forth in the Basic Lease Information for the calculation of Additional Charges shall be changed to reflect operating expenses for Calendar Year 2002.

5.1 Permitted Use. City may use the Premises for general office uses and such other uses as may be specified in the Basic Lease Information, and for no other use without the prior written consent of Landlord, which shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the basement portion of the Premises shall be used solely for purposes of storage and placement of equipment such as telephone switching equipment. In addition, only the ground floor portion of the Premises shall be used as the customer office of the Family Support Bureau unless the ground floor space cannot handle the entire case load. In such event, City may also use the upper floors as a customer office provided that all customers use the rear Building entrance on Minna Street for ingress and egress to the Premises. City acknowledges that Landlord may take into account the impact on other tenants, prospective tenants and the marketing of the Building in determining whether to consent to a change in use.

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.

## 6 LEASEHOLD IMPROVEMENTS

6.1 Landlord's Obligation to Construct Improvements. Landlord, through its general contractor approved by City, shall construct the Premises, perform the work and make the installations in the Premises and the Common Areas at Landlord's sole cost pursuant to the Final Plans (as defined in this Section below) approved by City and in accordance with the provisions of this Section below. Such work and installations are referred to as "the Leasehold Improvement Work" and "Leasehold Improvements." Landlord shall submit to City a list of contractors for its approval and City shall have five (5) business days in which to disapprove of any contractor on said list. Any contractor not timely disapproved by City shall be deemed approved.

(a) Plans and Specifications. Before the reference date of this Lease, Landlord has caused its architect(s) or space planner(s) to prepare architectural plans, power and signal plans, reflected ceiling plans and tenant finish specifications for the Leasehold Improvements, suitable for purposes of contractor pricing. City hereby approves the plans and specifications for the Common Areas dated March 16, 1994 (the "Common Area Pricing Plans"), prepared by Daniel Frederick Architect. City also hereby approves the plans and specifications for the Premises dated December 5, 1994 (the "Premises Pricing Plans"), prepared by Huntsman Associates. The Common Area Pricing Plans and the Premises Pricing Plans shall sometimes be referred to collectively as the "Pricing Plans."

Immediately following the Effective Date of this Lease (as defined in Section 23.27 hereof), Landlord shall cause final working drawings and specifications for the Leasehold Improvements to be prepared based on the Pricing Plans and in conformity with the requirements hereof. The final working drawings and specifications shall be consistent with and logical evolutions of the Pricing Plans. Landlord shall submit a copy of all such final working drawings and specifications to City within five (5) days after the Effective Date. Such final working drawings and specifications shall be subject to City's approval, which approval shall not be unreasonably withheld. If City disapproves such final working drawings and specifications, or any portion thereof, then City shall within ten (10) business days of receipt thereof notify Landlord thereof and of the revisions that City reasonably requires in order to obtain City's approval. Landlord and City shall promptly confer and negotiate in good faith to reach agreement as to such proposed revisions and as soon as Landlord and City agree upon the final working drawings and specifications, a representative of each shall sign the same. The final working drawings and specifications approved by City shall be referred to as the "Final Plans."

(b) Permits. Landlord shall secure and pay for any building and other permits and approvals, government fees, licenses and inspections necessary for the proper performance and completion of the Leasehold Improvement Work shown on the approved Final Plans. Landlord shall apply for any permits, approvals or licenses necessary to complete such construction and shall provide copies to City promptly following receipt thereof. Notwithstanding the foregoing, in the event that Landlord, after using its best efforts, is unable to obtain all necessary permits, approvals and licenses required to construct the Leasehold Improvements by January 30, 1995, either party shall have the right to terminate this Lease upon written notice to the other party within ten (10) days of such date.

(c) Construction. Promptly following approval of the Final Plans and Landlord's procurement of all necessary permits and approvals, Landlord shall cause the Leasehold Improvements to be constructed in a good and professional manner in accordance with sound building practice. Landlord shall comply with and give notices required by all laws, rules, regulations, ordinances, building restrictions and lawful orders of public authorities bearing on construction of the Leasehold Improvements. Without limiting the foregoing, construction of the Leasehold Improvements shall comply with City's standard requirements for program accessibility and all applicable handicap access laws, including, without limitation, the Americans With Disabilities Act. Landlord shall pay prevailing wages in connection with the Leasehold Improvement Work as further provided in Section 23.24, Prevailing Wages, below, and shall not use tropical hardwoods subject to the provisions of Section 23.25, Tropical Hardwood Ban, below.

(d) Substantial Completion. Landlord shall keep City apprised of the status of permit approval and the progress of construction. Landlord shall provide City with written monthly estimates of the status of permit approval and the progress of construction. From time to time during the design and construction of the Leasehold Improvements, City shall have the right upon reasonable advance oral or written notice to Landlord to enter the Premises and Common Areas at reasonable times to inspect the Premises, provided such inspections do not interfere with the construction. Landlord or its representative may accompany City during any such inspection. 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 Improvement Work will be substantially completed in accordance with the Final Plans. Landlord shall revise such notice of the approximate substantial completion date as appropriate and shall notify City when the Leasehold Improvement Work is in fact substantially completed and the Premises are ready for occupancy by City. On such date or other mutually agreeable date as soon as practicable thereafter, City and its authorized representatives shall have the right to accompany Landlord or its architect on an inspection of the Premises and Common Areas.

The Leasehold Improvement Work shall be deemed to be "substantially completed" for purposes hereof when Landlord's architect determines that the Leasehold Improvements shall have been substantially completed in accordance with the approved Final Plans subject only to punch-list items. Landlord shall notify City when the Leasehold Improvement Work is substantially complete and Landlord and City shall promptly do a walk-through of the premises. Landlord and City shall prepare a list of all items not conforming to the Final Plans, and Landlord shall diligently pursue to completion all such work. 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 punch list consisting of any additional items that have not been finished in accordance with the Final Plans. Landlord shall promptly complete all defective or incomplete items identified in such punch list, and shall in any event complete all items within thirty (30) days after the delivery of such list. City's failure to include any item on such list shall not alter the Landlord's responsibility hereunder to complete all Leasehold Improvement Work in accordance with the approved Final Plans, nor constitute any waiver of any latent defects.

No approval by City or any of its Agents of the Pricing Plans, Final Plans or completion of the Leasehold Improvement Work for purposes of this Lease shall be deemed to constitute approval of any governmental or regulatory authority with jurisdiction over the Premises, and nothing herein shall limit Landlord's obligations to obtain all such approvals.

## 6.2 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 using diligent and timely efforts, enemy action, civil commotion, protests, riots, demonstrations, or by any other reason without fault and beyond the reasonable control of the party obligated to perform. In the event of any such delay, the party affected by such delay shall give prompt written notice to the other of the occurrence of such event and the projected delay in performance, and thereafter shall keep the other party regularly informed of the status of such Unavoidable Delay.

(b) Tenant Delays. Subject to any Unavoidable Delay, City shall be responsible for any delay in the construction of the Leasehold Improvements due to any of the following (collectively, "Tenant Delays"): (i) a delay in granting its reasonable approval of plans and specifications (beyond the period granted therefor), (ii) any changes requested by or on behalf of City after approval by City of the Final Plans; (iii) any other delay caused by any act or omission of City or any contractor, agent or employee of City. If there is any Tenant Delay, the Premises shall be deemed completed, for purposes of determining the Commencement Date, on the date the Premises would have been completed but for such delay.

(c) Changes By City. Any change requested by City after approval of the Final Plans shall be at City's sole cost and expense and shall be subject to Landlord's approval. City shall notify Landlord of any proposed change and, if Landlord

approves such change, Landlord shall obtain from its contractor the cost of such change and the number of days of Tenant Delay which would result from such change (collectively, the "Change Order Information"). Landlord shall notify City of the Change Order Information and City shall have three (3) days in which to approve the same by so notifying Landlord in writing. If City does not so notify Landlord, the City shall be deemed to have withdrawn its request for such change.

(d) Changes by Landlord. Landlord shall have the right to make such changes in the approved Final Plans (or in Landlord's work pursuant thereto) as Landlord may deem reasonably necessary for coordinating and completing landlord's work or as required by governmental authorities. Minor changes or deviations from the approved Final Plans that Landlord determines are reasonably necessary during construction of the Premises shall not require City's consent. Landlord's architect shall determine which changes or deviations are "minor" for purposes of the preceding sentence.

6.3 Installation of Telecommunications and Other Equipment. Landlord and City acknowledge that the Leasehold Improvement Work shall be completed by Landlord inclusive of the installation of telecommunications wiring, data and computer cabling but exclusive of the installation of facilities; equipment and furniture systems. City shall be responsible for installing such facilities and equipment, provided that Landlord shall furnish access to City and its consultants and contractors to the main telephone service serving the floors on which the Premises are located and all other parts of the Building for which access is needed for proper installation of all such facilities and equipment. City shall provide Landlord with its telecommunications wiring plan prepared by Landlord's architect no later than commencement of construction of the Leasehold Improvement Work. Landlord's responsibility for the installation of telecommunications wiring shall include the tagging and testing of such wiring and the terminating of the same in accordance with the wiring plans provided to Landlord. City and Landlord shall use their good faith efforts to coordinate any such activities to allow the Leasehold Improvements and installation of such telecommunications, data and computer cabling facilities and equipment to be completed in a timely and cost-effective manner.

## 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 Landlord shall not unreasonably withhold or delay. However, the installation of furnishings, fixtures, equipment or decorative improvements not

attached to the Premises in such a manner that the removal thereof may damage the Premises, 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 notifies City in writing at the time Landlord approves such Alterations that they must be removed at the Expiration Date.

7.2 Title to Improvements. Except for City's Property (as defined in the next Section) 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.

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 damage to the Premises (collectively, "City's Personal Property") shall be and remain City's property. At any time during the Term City may remove any of its 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 reasonably 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 that Personal Property, so long as the supplier, lessor or lender agrees that it (i) will remove the Property from the Premises prior to the Expiration Date (but if it does not remove the Personal Property within such time it shall have waived any rights it may have had to the Personal Property, and (ii) will repair any damage caused by the removal of the Personal Property. Landlord shall recognize the rights of an supplier, lessor or lender who has an interest in any items of City's Personal Property to enter the

Premises and remove such property during normal business hours, after notice to Landlord, during the Term.

## 8 REPAIRS AND MAINTENANCE

8.1 Landlord's Repairs. Landlord shall repair and maintain in a timely manner, at its cost and in good condition, the exterior and structural portions of the Building, including, without limitation, the roof, foundation, bearing and exterior walls and subflooring, 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 use its best efforts to: (i) maintain the Building in a clean, safe and attractive manner; (ii) not permit any other tenants of the Building to unreasonably disturb or interfere with City's use of the Premises or permit to be done in or about the Building or 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, 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: (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 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. Landlord shall furnish the following utilities and services to the Premises: (a) heating, air conditioning and ventilation in amounts required for City's comfortable use and occupancy of the Premises, during the period from 8:00 a.m. to 6:00 p.m., Monday through Friday, 8:00 a.m. to 5:00 p.m. Saturdays except holidays generally recognized in San Francisco; (b) electric current in amounts required for normal lighting and for the operation of personal computers and other normal office machines and equipment, on a twenty-four (24) hours-a-day, three hundred sixty-five (365) days-a-year basis ("Daily Basis"); (c) elevator service on a Daily Basis; and (d) water for lavatory, kitchen and drinking purposes on a Daily Basis. During the Term, Landlord shall provide freight elevator service upon City's reasonable request. 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 buildings similar to the Building in the San Francisco Financial District.

Notwithstanding the foregoing, City shall pay, as Additional Charges, the cost of the electricity for the Premises and the roof-mounted HVAC equipment. Such electricity usage shall be metered on one or more separate meters. The bills for such usage shall be sent directly by the utility company to City and City shall pay such bills directly. The parties acknowledge that there will be one or more separate meters for the ground floor commercial space and the fifth and sixth floors.

Landlord shall not be required to provide HVAC or water to the basement portion of the Premises.

9.2 Services.

(a) Janitorial Service. Landlord shall provide at its cost janitorial service in accordance with the specifications contained in Exhibit E attached hereto.

(b) Security Service. Landlord shall provide at its cost security for the Building in accordance with the specifications contained in Exhibit F attached hereto.

9.3 Disruption in Essential Utilities or Services. 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 three (3) or more consecutive business days if such failure is in the reasonable control of Landlord or a period of fourteen (14) 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 impairs City's ability to carry on its business in the Premises. 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 ninety (90) days and such failure materially and substantially 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. 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 to the acts, omissions or negligence of City and its Agents.

## 10 COMPLIANCE WITH LAWS

10.1 Premises Compliance. Landlord represents and warrants to City that, to the best of Landlord's knowledge, the Premises and the Common Areas and Building Systems serving the Premises are now, and as of the Commencement Date will be, in full compliance with all 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 are not now, and as of the Commencement Date 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, and otherwise comply with, at its expense, all applicable laws, rules, regulations and requirements now in force or hereafter enacted dealing with the condition, use or occupancy of the Premises, 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 normal administrative 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 that as a condition to any such Encumbrance, the holder of the Encumbrance shall, at City's request, enter into a subordination and nondisturbance agreement with City in a 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 as 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 form reasonably acceptable to City, any additional documents evidencing the priority or subordination of this Lease with respect to any such Encumbrance as provided herein. City agrees that the holder of an Encumbrance shall not have any obligation to perform any of the obligations of Landlord under this lease until such holder has become the successor landlord hereunder, but that in the event of Landlord's default with respect to such obligation, City will give any holder of an Encumbrance whose name and address have been furnished to City in writing for such purpose notice of Landlord's default and allow such holder thirty (30) days following receipt of such notice for the cure of said default.

Landlord shall use its best efforts to provide to City, before the Effective Date, executed non-disturbance and attornment agreements from the holder of any existing Encumbrance. The form of such agreement shall be subject to City's reasonable approval.

## 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 Leasehold Improvements or if City at its sole option makes funds available to Landlord, Landlord shall also repair the Leasehold Improvements to the extent of such insurance or payment by City), provided that such repairs can be made under applicable laws within seventy five (75) days after Landlord obtains all necessary permits for such repairs but not later than two hundred ten (210) days after the date of such damage (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 by the negligence or willful misconduct of City or its Agents. Notwithstanding the foregoing, Landlord shall have the right to elect not to repair in the event that the damage is caused by a risk not covered by Landlord's insurance, the proceeds of available insurance are less than eighty percent (80%) of the cost of restoration or the restoration cannot be completed within seventy five (75) days after the commencement of work in the opinion of Landlord's architect. If Landlord so elects, Landlord shall give notice to City within thirty (30) days after such damage terminating this lease as of a date to be specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after giving such notice. In the event of the giving of such notice, this Lease shall expire and all



interest of City in the Premises shall terminate on such date so specified in such notice and the rent, reduced by any proportionate reduction based upon the extent, if any, to which said damage interfered with the use and occupancy of City, shall be paid to the date of such termination.

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. 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 refund to City any Rent previously paid for any period of time subsequent to such date of termination.

Notwithstanding the foregoing, in the event the Premises are damaged or destroyed by reason of flood or earthquake, and such damage or destruction is not fully covered by insurance proceeds payable under the insurance policies Landlord is required to carry hereunder (excluding any deductible, for which Landlord shall be responsible), Landlord may terminate this Lease by written notice to City within thirty (30) days of the date Landlord receives written notice that such damage is not covered by insurance. If Landlord does not elect to terminate this Lease as provided above, the Lease shall remain in full force and effect, and Landlord shall repair and restore the Premises as provided above.

If at any time during the last six (6) months of the Term of this Lease there is substantial damage that Landlord would be required to repair hereunder, Landlord or City may, at the respective option of each, terminate this Lease as of the date such damage occurred by giving written notice to the other party of its election to do so within thirty (30) days after 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, 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 normal operations 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 or otherwise materially adversely affect City's normal operations in the Premises.

(c) Either party electing to terminate under the provisions of this Section 13 shall do so by giving the other party 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

Except as provided in this Section below, City shall not directly or indirectly sell, assign, encumber, pledge or otherwise transfer or hypothecate all or any part of its interest in or rights with respect to the Premises or its leasehold estate hereunder or permit all or any portion of the Premises to be occupied by anyone other than itself or sublet all or any portion of the Premises, without Landlord's prior written consent in each instance, which shall not be unreasonably withheld or delayed. City shall have the right, upon notice to but without the consent of Landlord, to assign this Lease or sublet all or any of the Premises to any department, commission or agency of the City and County of San Francisco. Any subletting or assignment hereunder by City shall not result in City being released or discharged from any liability under this Lease. As a condition to Landlord's prior written consent as provided for in this paragraph, the subtenant or assignee, as the case may be, shall agree in writing to comply with and be bound by all of the terms, covenants, conditions, provisions and agreements of this Lease, and City shall deliver to Landlord, promptly after execution, an executed copy of each sublease or assignment, as the case may be, and an agreement of said compliance by each sublessee. Landlord's consent to one sale, assignment, encumbrance, subletting, occupation, lien or other transfer shall not be deemed to be a consent to any subsequent occurrence and any such transaction which does not comply with the provisions of this paragraph shall be void.

City shall pay all reasonable and actual costs of any subletting or assignment, including without limitation, real estate commissions and Landlord's reasonable attorneys fees expended in connection therewith (not to exceed \$1,000). Any net profit from any subletting or assignment shall be paid one-half to Landlord and one-half to City by any assignee or subtenant after payment of expenses, including any cost of improvements to the Premises, brokerage commissions, free rent and other concessions, and permit fees. Such net profit shall include, without limitation, any increase in rental over that paid by City under this Lease and any other consideration (or its cash equivalent) for execution of the assignment or sublease; provided, however, that net profit shall not include any profit from the sale of personal property. As a condition to any subletting or assignment, all assignees and subtenants shall verify in writing to Landlord all consideration paid or given or to be paid or given for such sublease or assignment.

#### 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.

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. Acts of maintenance or preservation or efforts to relet the premises, shall not constitute a termination of City's right to possession.

## 16 INDEMNITIES

16.1 City's Indemnity. City shall indemnify, defend and hold harmless ("Indemnify") Landlord and its Agents 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 or occupancy of the Premises, (b) any default by City in the performance of any of its obligations under this Lease, or (c) any negligent or willful acts or omissions of City, its Agents or invitees, 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. 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 and provided further that no such settlement shall obligate Landlord in any manner without the prior written approval of Landlord. City hereby assumes all risks and waives all claims against Landlord for any damage to property or any injury to or death of any person in or about the Premises or the Building arising from any cause whatsoever except to the extent caused by the negligence or willful misconduct of Landlord or its Agents. 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 or willful 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. 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, earthquake, 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. Notwithstanding the foregoing, Landlord shall not be obligated to carry earthquake insurance if the premium for such earthquake insurance policy is in excess of twenty five percent (25%) of the premium for the casualty insurance policy required hereunder. 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. City shall be named as an additional insured under the policy of all risk coverage insurance maintained 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 Landlord shall use its best efforts not to interfere with City's use of the Premises. Landlord shall at all times have a key to unlock all of the doors in and about the Premises.

## 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 two (2) days after the Expiration Date, City shall remove from the Premises all of City's Personal Property, City's telecommunications, data and computer facilities 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. Notwithstanding anything to the contrary herein, City shall not be required to demolish or remove from the Premises any of the Leasehold Improvements. 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, 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 [Landlord's Indemnity] 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 in the Building or on, under or about the Property caused by Landlord or its Agents.

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 or invitees 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.

## 22 SPECIAL PROVISIONS

22.1 Option to Expand. Provided City is not then in default hereunder, City shall have the option (the "Expansion Option") to lease additional space on the fifth and sixth floors of the Building (the "Expansion Premises"), on the same terms and conditions as contained in this Lease, except that Rent for such Expansion Premises shall be calculated at \$15 per rentable square foot during the initial term and at the per rentable square foot rate determined in accordance with Section 4.3 during the Extended Term (as 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) and except for terms applicable to leasehold improvements for the Expansion Premises as set forth below. City may exercise the Expansion Option only in accordance with the following terms and conditions. City shall give Landlord written notice of its intention to take a portion of the Additional Premises and designate the portion it desires to take. If such space is not then leased, Landlord and City shall immediately enter into an amendment of this lease adding such premises to the definition of "Premises" as set forth in Section 2 above and setting forth the rent and tenant improvement allowance calculated in accordance with this Section 22; provided, however, that in the event City desires to take less than an entire floor, City shall take at least one-half of the floor and the portion of the floor to be

taken by City shall be designated by Landlord. City acknowledges that it will be necessary to have building corridors through its space in the event that City takes less than an entire floor. Landlord shall not be required to lease to City any portion of a floor which would leave Landlord with any remaining portion of the floor which was not commercially and economically rentable to third parties.

If the space designated by City is then leased, Landlord shall not enter into a lease with any third party tenant for such space when it becomes available without first offering such space to City as follows. Landlord shall notify City in writing at least thirty (30) days prior to the date when such space is available. City shall have thirty (30) days from receipt of such notice to notify Landlord that it will take the space on the terms set forth in this Section 22. If City timely notifies Landlord of its election to take such space, City shall have an additional sixty (60) days in which to have the City's Mayor and Board of Supervisors enact a resolution approving such election. City's rights under this paragraph shall be deemed to have been waived, and Landlord shall be free to lease the space to anyone without any further obligation to City: (i) if City fails to respond to said notice within said thirty (30) day period; (ii) after giving written notice of its exercise of its option, if Landlord and City do not enter into a lease amendment (subject to approval of City's Mayor and Board of Supervisors) within forty five (45) days and Landlord has used its good faith efforts to enter into such amendment or (iii) if City's Mayor and Board of Supervisors do not enact a resolution approving such action within said sixty (60) days. As used herein, "third-party tenant" excludes any tenant or party then in possession of any portion of the Premises.

If City exercises the Expansion Option the following provisions shall apply:

If the Expansion Premises are not then improved for general office use at the time of City's notice to exercise the Expansion Option, Landlord shall improve the Expansion Premises for general office use in accordance with a cost estimate and plans and specifications approved by City. Said plans and specifications shall to the extent possible be the same as the Common Area Pricing Plans and the Premises Pricing Plans, including, without limitation, with respect to private offices and power stubs for furniture systems, the types of building materials, mechanical systems, floor card access reader (with 20 additional cards) and the nature and quality of finishing work and carpets; provided, however, that Landlord shall have no obligation to install any other security system, wiring other than typical electrical wiring or an HVAC system other than a typical HVAC system. Landlord shall bear the cost of such tenant improvements to the Expansion Premises in accordance with the approved plans and

specifications; provided, however, that in the event that there are less than sixty (60) months remaining on the lease term as of the date of delivery of the Expansion Premises to City, Landlord shall bear a portion of the cost of constructing such improvements equal to the cost multiplied by a fraction, the numerator of which is the number of months remaining in the Lease Term (and any exercised extension thereof) after the date of the delivery of the Expansion Premises to City and the denominator of which is sixty (60), and City shall pay any such excess cost; provided, further, that the City shall not be required to pay any portion of the cost of any common area improvements made by Landlord. The determination of substantial completion of such improvements to the Expansion Premises, and all other issues related to the acceptance of such improvements by City and commencement of occupancy of the Expansion Premises shall, except as otherwise specified in this Section, be governed the provisions of Article 6 above as if the "Leasehold Improvements" described therein pertained to the improvement of the Expansion Premises as described above.

In the event the Expansion Premises are improved and acceptable to City for general office use at the time of City's notice to exercise the Expansion Option, City shall lease such space commencing on the date 120 days following City's notice.

22.2 Covenant Not to Lease Basement Space to Non-Tenants. During the term hereof (including any Extension Term), Landlord shall not lease any storage space in the basement of the Building to any person who is not a tenant of the Building without the consent of City.

## 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 be 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.

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 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 Base Rent 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 ten percent (110%) of the monthly rental in effect during the last month of the Term of this Lease, and such tenancy shall otherwise be on the terms and conditions contained herein.

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.

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 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, 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.

23.20 Transfer of Landlord's Interest. Landlord shall have the right to transfer its interest in the Real Property, the Building or this Lease. 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.

23.21 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.

23.22 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.

23.23 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; provided, however, that Landlord shall have the right to terminate City's tenancy in accordance with Section 15 if City fails to timely pay rent. 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 for which sufficient funds are appropriated. City shall use its best 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 space in another building in which the City will conduct the operations then being conducted by City in the Premises. City shall use its best efforts to obtain sufficient funds for the payment of Rent and any other payments required hereunder.

23.24 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 generally 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.

23.25 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.

23.26 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.

23.27 Effective Date. The date on which this Lease shall become effective (the "Effective Date") is the date upon which (i) City's Mayor and Board of Supervisors enact a resolution approving this Lease in accordance with all applicable laws and (ii) this Lease is duly executed by the parties hereto.


23.28 Rent. All monetary obligation of City under this lease shall be deemed rent.

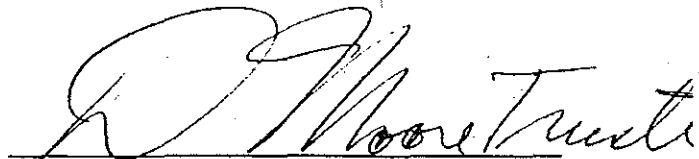
23.29 Landlord's Default. If City obtains a money judgment against Landlord resulting from any default or other claim arising under this Lease, such judgment shall be satisfied only out of Landlord's right, title and interest in the Building and the underlying real property. No other real, personal or mixed property of Landlord (or of any of the individuals who comprise Landlord) shall be subject to levy to satisfy any such judgment.

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. IN THE EVENT THAT CITY DOES NOT NOTIFY LANDLORD WITHIN THIRTY (30) DAYS OF THE DATE OF THIS LEASE THAT SAID RESOLUTION HAS BEEN DULY ENACTED, LANDLORD SHALL HAVE THE RIGHT TO TERMINATE THIS LEASE BY SO NOTIFYING CITY. LANDLORD SHALL HAVE NO OBLIGATION TO COMMENCE THE LEASEHOLD IMPROVEMENT WORK UNLESS AND UNTIL SUCH RESOLUTION HAS BEEN DULY ENACTED.

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

LANDLORD:

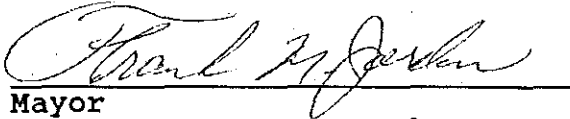
  
\_\_\_\_\_  
Edward J. Conner  
~~Ce-Trustee, Conner Children Trust No. 2~~ JK

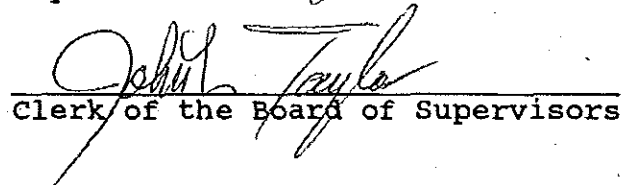


Douglas C. Moore  
~~Co~~-Trustee, Conner Children Trust No. 2

CITY:

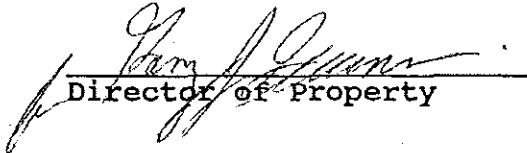
CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

  
Mayor

  
Clerk of the Board of Supervisors

RECOMMENDED:

  
San Francisco District Attorney

  
Director of Property

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

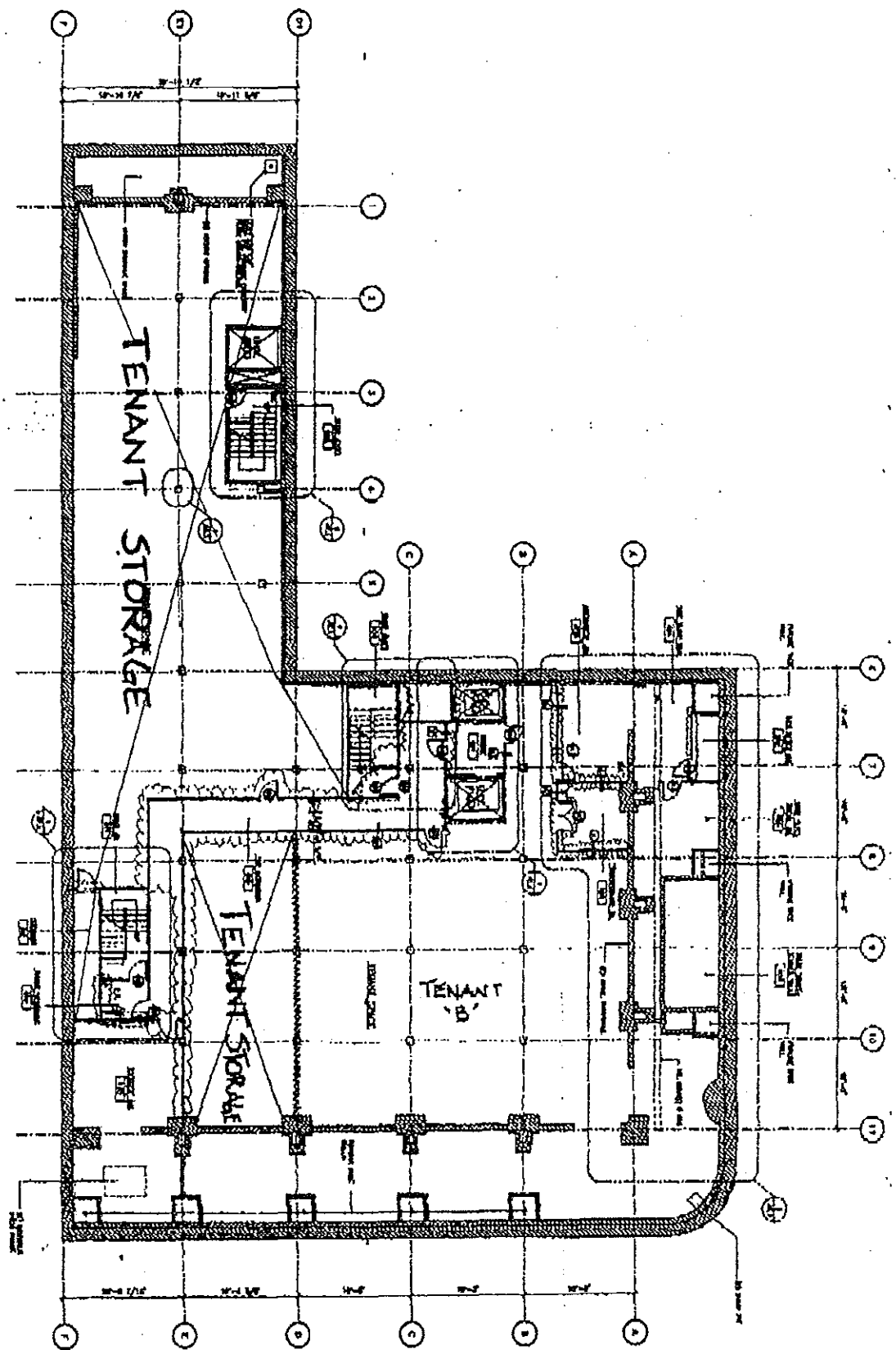
By   
Deputy City Attorney

OFFICE LEASE

EXHIBIT A

FLOOR PLANS  
CONSISTING OF \_\_\_\_\_ PAGE(S)

(Include base floor plans B-4)



1 FLOOR PLAN: BASEMENT LEVEL

NOTES

1. SEE NOTES ON OTHER SHEETS.

WALL TYPE LEGEND

- 1. CONCRETE WALL WITH 2" POLYURETHANE INSULATION
- 2. CONCRETE WALL WITH 1" POLYURETHANE INSULATION
- 3. CONCRETE WALL WITH 1/2" POLYURETHANE INSULATION
- 4. CONCRETE WALL WITH 1/4" POLYURETHANE INSULATION
- 5. CONCRETE WALL WITH 1/8" POLYURETHANE INSULATION
- 6. CONCRETE WALL WITH NO INSULATION
- 7. CONCRETE WALL WITH 1" POLYURETHANE INSULATION AND 1/2" GYPSUM BOARD
- 8. CONCRETE WALL WITH 1/2" POLYURETHANE INSULATION AND 1/2" GYPSUM BOARD
- 9. CONCRETE WALL WITH 1/4" POLYURETHANE INSULATION AND 1/2" GYPSUM BOARD
- 10. CONCRETE WALL WITH 1/8" POLYURETHANE INSULATION AND 1/2" GYPSUM BOARD
- 11. CONCRETE WALL WITH NO INSULATION AND 1/2" GYPSUM BOARD



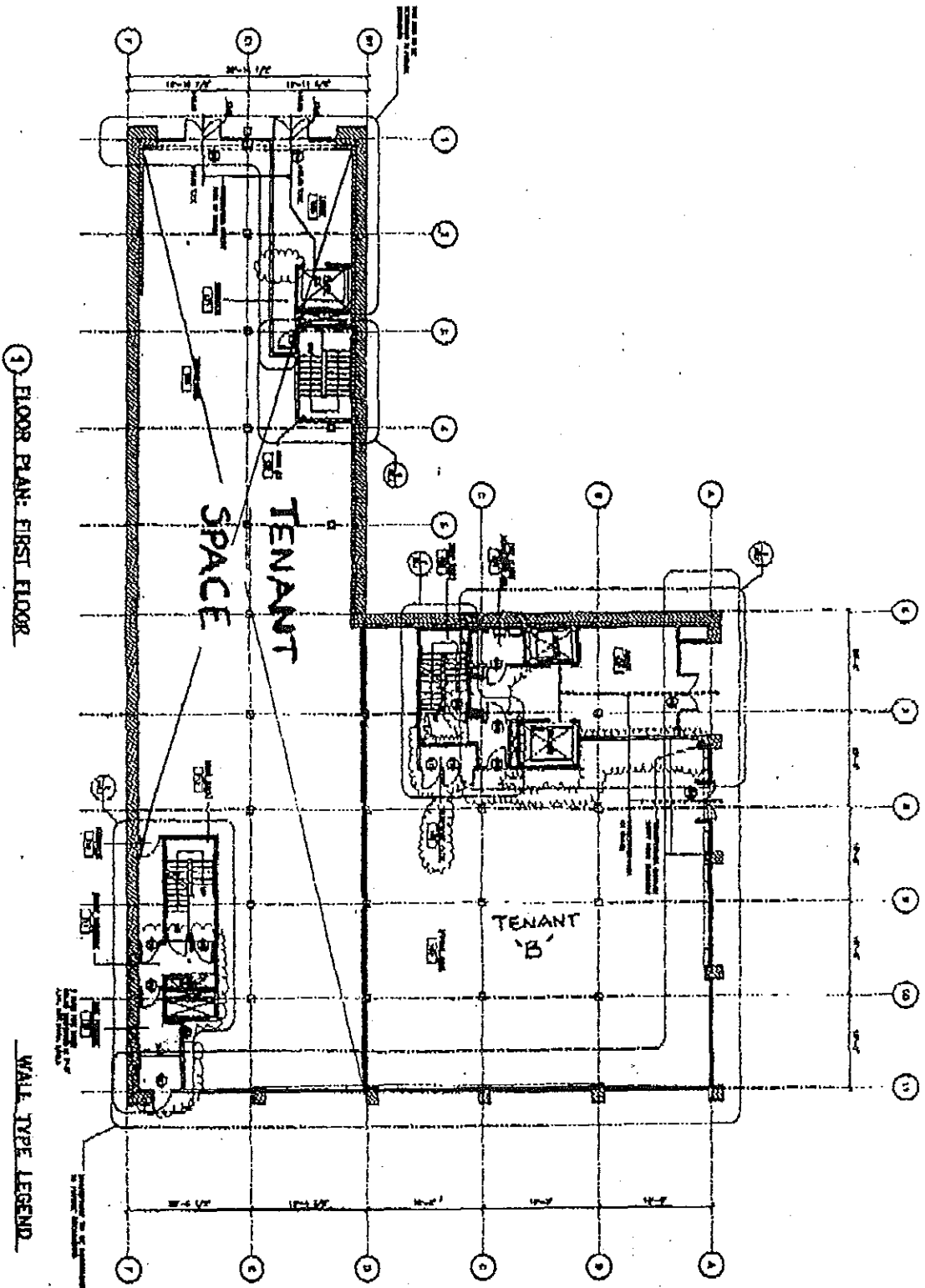
DANIEL FREDRIK ARONOFF

30 NORTH 10TH AVENUE  
SUITE 100  
DENVER, CO 80202

617-623

BASEMENT  
FLOOR PLAN

A2



1 FLOOR PLAN: FIRST FLOOR

WALL TYPE LEGEND

- 1. 4" CMU with 1/2" Gypsum Board
- 2. 4" CMU with 1/2" Gypsum Board and 1/2" Insulation
- 3. 4" CMU with 1/2" Gypsum Board and 1/2" Insulation and 1/2" Drywall
- 4. 4" CMU with 1/2" Gypsum Board and 1/2" Insulation and 1/2" Drywall and 1/2" Acoustic Ceiling
- 5. 4" CMU with 1/2" Gypsum Board and 1/2" Insulation and 1/2" Drywall and 1/2" Acoustic Ceiling and 1/2" Soundproofing
- 6. 4" CMU with 1/2" Gypsum Board and 1/2" Insulation and 1/2" Drywall and 1/2" Acoustic Ceiling and 1/2" Soundproofing and 1/2" Fire Rating
- 7. 4" CMU with 1/2" Gypsum Board and 1/2" Insulation and 1/2" Drywall and 1/2" Acoustic Ceiling and 1/2" Soundproofing and 1/2" Fire Rating and 1/2" Blast Resistant

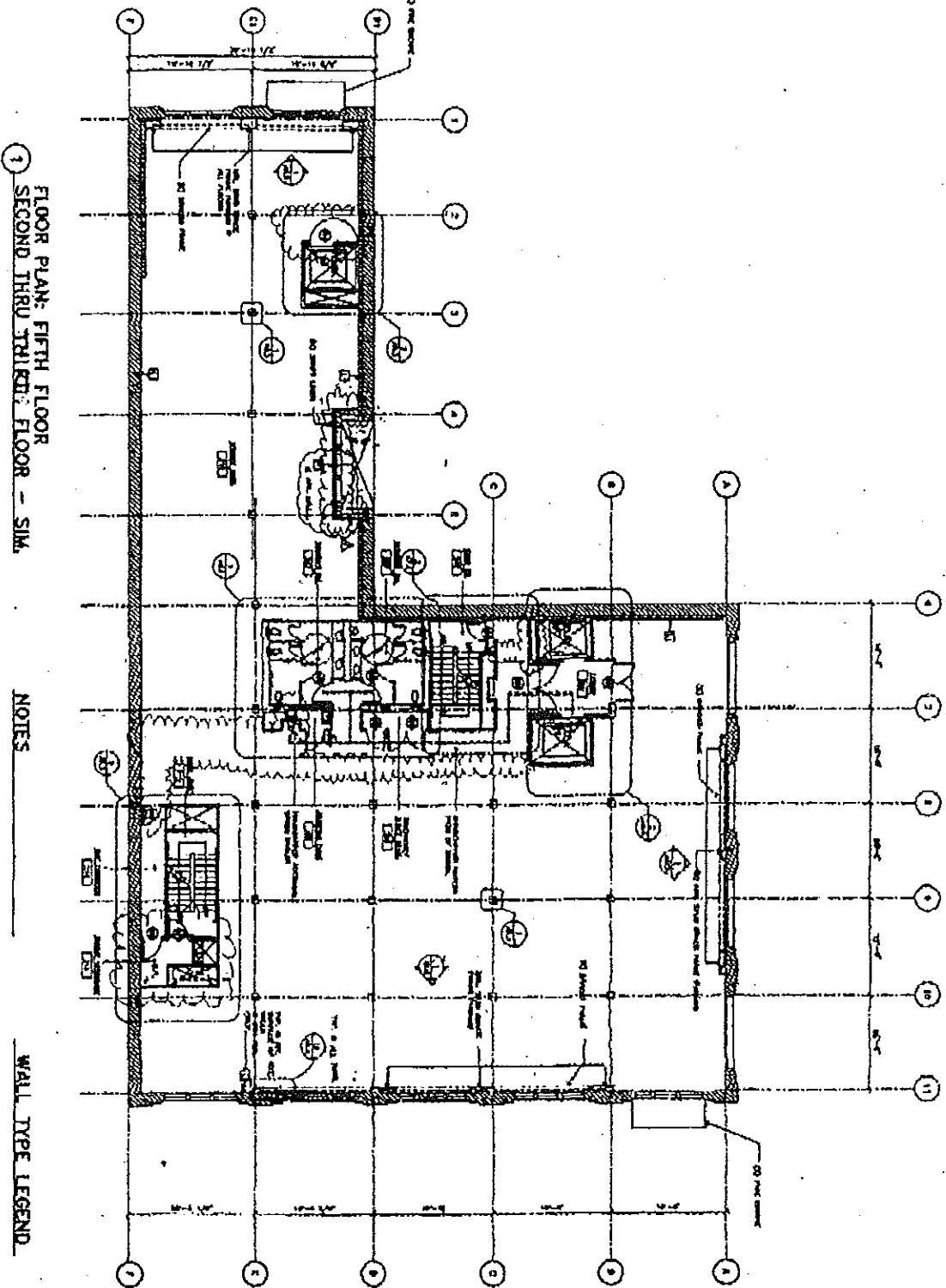


PROJECT NO.	6728FH
DATE	11/15/84
SCALE	1/8" = 1'-0"
SHEET NO.	A2
FLOOR PLAN	FIRST FLOOR PL.

617-623

DANIEL FREDY ARCH

11/15/84



1 FLOOR PLAN: FIFTH FLOOR  
 SECOND THRU THIRD FLOOR - SIM.

NOTES  
 1. THE WORK ON THIS FLOOR IS TO BE DONE IN ACCORDANCE WITH THE SPECIFICATIONS AND CONDITIONS OF CONTRACT.

WALL TYPE LEGEND  
 1. CONCRETE WALL WITH 2" INSULATION  
 2. CONCRETE WALL WITH 1" INSULATION  
 3. CONCRETE WALL  
 4. BRICK WALL WITH 2" INSULATION  
 5. BRICK WALL WITH 1" INSULATION  
 6. BRICK WALL  
 7. GLASS CURTAIN WALL  
 8. GLASS CURTAIN WALL WITH INSULATION  
 9. GLASS CURTAIN WALL WITH INSULATION AND SHADING DEVICES  
 10. GLASS CURTAIN WALL WITH INSULATION AND SHADING DEVICES AND OPERABLE SHADING DEVICES

TENANT SPACE - FULL FLOOR

SHEET NO. 2  
 SECOND T FIFTH FLOOR PLAN  
 A2

617-623

DANIEL FRIEDE ARCHIT.  
 200 S. 10TH ST. SUITE 100  
 MINNAPOLIS, MN 55402  
 TEL: 612-338-1111



EXHIBIT B-1

[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 \_\_\_\_\_