

OFFICE LEASE

between

API FOX PLAZA, LLC,  
as Landlord

and

CITY AND COUNTY OF SAN FRANCISCO,  
as Tenant

For the lease of

Fox Plaza, 1390 Market Street  
Suites 900, 902, and 903 on the Ninth Floor  
San Francisco, California

March 6, 2006

OFFICE LEASE

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## BASIC LEASE INFORMATION

The following is a summary of basic lease information for convenience of reference only. In the event of any conflict or inconsistency between the information below and any provision of the Lease, the provision in the Lease shall control.

Lease Reference Date:	March 6, 2006
Landlord:	API FOX PLAZA, LLC
Tenant:	CITY AND COUNTY OF SAN FRANCISCO
Building (Section 2):	Fox Plaza 1390 Market Street San Francisco, CA
Initial Premises (Section 2):	Suites 900 (formerly known as Suites 918 and 924) and 902 on the Ninth Floor
Rentable Area of Initial Premises (Section 2):	8,179 square feet
Additional Premises (Section 2):	Suite 903 on the Ninth Floor
Rentable Area of Additional Premises (Section 2):	1,218 square feet  (Total Rentable Area after Suite 903 is added is 9,397 square feet)
Term (Section 4):	Estimated commencement date: December 1, 2005  Expiration Date: November 30, 2010
Early Termination (Section 4):	Under certain conditions either party may terminate this lease with one (1) year advance written notice.
Extension Options (Section 4):	Two additional terms of five (5) years each, exercisable by City by notice to Landlord given not less than two hundred ten (210) days in advance with rent determined at ninety-five percent (95%) of then fair market value.

Base Rent for the Initial Premises  
(Section 5.1):

Monthly payments: \$17,687.09

Annual Payment: \$212,245.08  
(approx. \$25.95 per square foot annually)

Base Rent for the "Premises" After  
the Additional Premises is added  
(Section 5.1):

Monthly payments: \$20,321.02

Annual Payment: \$243,852.24  
(approx. \$25.95 per square foot annually)

Additional Charges:

None

Use (Paragraph 10):

Offices and public programs for the  
Department of Children, Youth and Their  
Families "DCYF"

Tenant Improvements (Section 6 and  
Work Letter):

Tenant Improvements as per Exhibit "F"

Utilities and Services (Section 18):

Fully serviced lease.

Notice Address of Landlord  
(Section 31):

Building Office  
1390 Market Street, Suite 108  
San Francisco, CA 94102  
Attn: Mark Conroe

Fax No.: (415) 431-6501

with copies to:

Ameriton Inc.  
9200 Panorama Circle  
Englewood, CO 80112  
Attn: Robert Smith

Fax No.: (303) 708-6951

Tel. No.: (303) 708-5968

Key Contact for Landlord:

Mark Conroe

Telephone No.:

(415) 431-6506

Notice Address for Tenant  
(Section 31):

City and County of San Francisco  
Real Estate Division  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102  
Attn: Director of Property

Fax No.: (415) 552-9216

with copies to:

Department of Children,  
Youth and Their Families  
1390 Market Street, Suite 900  
San Francisco, CA 94102  
Attn: Margaret Brodtkin

Fax No.: (415) 554-8965

and to:

Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Attn: Charles Sullivan  
Deputy City Attorney

Fax No.: (415) 554-4755

Key Contact for Tenant:

Charlie Dunn

Telephone No.:

(415) 554-9861

Alternate Contact for Tenant:

Ken Bukowski

Telephone No.:

(415) 934-4844

## OFFICE LEASE

### 1. PARTIES.

THIS LEASE, dated for reference purposes only as of March 6, 2006, is made by and between API FOX PLAZA, LLC, a Delaware Limited Liability Company, ("Landlord") and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, ("Tenant" or "City").

### 2. PREMISES.

Landlord does hereby lease to Tenant, and Tenant does hereby lease from Landlord, those certain premises situated in the City and County of San Francisco, State of California, known as Suites 900 and 902 on the ninth floor (the "Initial Premises") plus Suite 903 on the Ninth Floor (the Additional Premises") of that certain building known as Fox Plaza, 1390 Market Street, San Francisco (the "Building"), and as shown on the floor plans attached hereto as Exhibit "A." The Initial Premises and the Additional Premises are hereinafter called the "Premises."

Tenant shall have the non-exclusive right to use and enjoy the elevator lobbies, corridors, sidewalks, elevators, stairways and other public areas of the Building and land upon which the Building is located (collectively, the "Common Areas") and the non-exclusive right of access to and from the Premises by the entrances of the Building. The Common Areas shall be subject to the exclusive control and management of Landlord, and Tenant shall use the Common Areas in accordance with the restrictions contained herein and the Rules and Regulations as provided in Section 12 below. Landlord may, from time to time, alter, eliminate, relocate or reserve for private use any of the Common Areas and may temporarily close or restrict the use of any Common Areas as needed for repairs, provided that any and all such changes shall not materially interfere with Tenant's use and enjoyment of the Premises or Tenant's ability to conduct normal administrative office operations in the Premises.

### 3. COVENANTS.

Tenant covenants, as a material part of the consideration for this Lease, to keep and perform each and all of the terms, covenants and conditions by it to be kept or performed, and this Lease is made upon the condition of such performance.

### 4. TERM.

(A) **Initial Term.** The Premises are leased for an initial term (the "Initial Term") as follows:

(i) For the Initial Premises, commencing on the later of (i) December 1, 2005; (ii) the effective date of a resolution, enacted by the City's Board of Supervisors in its sole discretion, approving the transaction contemplated by this Lease; (iii) the date this Lease has been mutually executed and exchanged by City and Landlord; and (iv) the date City's Human Rights Commission has approved Landlord's compliance with the Equal Benefits Ordinance.

(ii) For the Additional Premises, commencing on the date Landlord delivers Suite 903 to City with the Leasehold Improvements having been Substantially Completed (as defined in the attached Work Letter) pursuant to Section 6 (Tenant Improvements) (as defined in the attached Work Letter) and as more fully described in the attached Work Letter (the "Commencement Date of the Additional Premises").

The Term of this Lease shall end on the Expiration Date, subject to (i) City's right to extend the Lease as provided in Section 4(C), (ii) each party's right to terminate the Lease early as provided in Section 4(C), and (iii) such earlier date upon which this Lease terminates pursuant to any other provisions hereto. The word "Term" as used herein shall refer to the Initial Term and any extended term (the "Extended Term") if City exercises any of the extension options (the "Extension Option") as provided herein below.

Upon the Commencement Date, the month-to-month lease dated September 19, 2005 between Landlord and City for Suite 902 and the lease dated October 9, 1995 as amended for Suite 900 (formerly Suites 918 and 924) shall terminate. Any rents paid under these leases shall be prorated and prepaid rent for the period following termination shall be credited against Base Rent due under this Lease.

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 December 1, 2005, then promptly thereafter Landlord shall deliver to City a notice substantially in the form of Exhibit "B" attached hereto, confirming the actual Commencement Date, but Landlord's failure to do so shall not affect the commencement of the Term.

**(B) Nonappropriation.** If, at any time during the Term of this Lease funds are not requested in the annual departmental budget of the City and County of San Francisco's Department of Children, Youth and Their Families for the payment, during the following fiscal year of City, of rent and all other charges under this Lease or under a new lease of non-City like office space to be used by the Department of Children, Youth and Their Families for the personnel then located in the Premises, or if such funds are requested but the Board of Supervisors or Mayor of the City and County of San Francisco (the "Board of Supervisors") fails to appropriate funds in their sole and absolute discretion, then in either such case Tenant may terminate this Lease by giving written notice to Landlord of the circumstances giving rise to such right of termination and of Tenant's election to terminate. In the event Tenant gives to Landlord such notice of termination, this Lease shall terminate upon the last date sufficient funds are appropriated (the "Termination Date") with the same effect as if the Termination Date were the Expiration Date, but such termination would not relieve City from any obligation under this Lease prior to the Termination Date or surrender of the Premises. In the event of termination hereunder for non-appropriation, City agrees that it will not appropriate funds for the payment of rent and other charges due hereunder and utilize such funds for the purpose of renting similar premises in a non-City building in which City will conduct the operations conducted by City in the Premises prior to the Termination Date for one (1) year from the Termination Date. Rent shall be apportioned as of the Termination Date and Landlord shall refund any prepaid portion of rent for any period after such date to Tenant.



**(C) Lease Termination.** During the Initial Term or any Extended Term, each party shall have the right to terminate this Lease as follow: In the event Landlord intends to develop the Premises as residential units, Landlord shall provide City with written notice of Landlord's intention to develop. In the event City desires to move its functions to a City-owned facility or "backfill" City-rented space, City shall provide notice of City's intent to Landlord. In either such event, the Lease shall terminate three hundred sixty-five (365) days from the receipt of such notice. The preceding notwithstanding, it is not the intent of the parties that either party shall use such termination rights fraudulently; to obtain more rent from another commercial tenant or pay less rent in another new rental space. [If, following Landlord's notice, Landlord abandons its plans to develop residential units, then Landlord shall notify City and City shall have the right to nullify Landlord's termination notice and continue to lease the Premises as if the notice had never been sent.]

**(D) Extension Option(s).** City shall have the right to extend the Initial Term of this Lease for the additional term(s) set forth below as follows: City shall have the right to extend the Initial Term of this Lease for two (2) additional terms of five (5) years each. Each Extended Term Option shall be on all of the terms and conditions contained in this Lease except that the Base Rent shall be adjusted to ninety-five percent (95%) of the prevailing market rent in accordance with Paragraph 5(C) hereof. City may exercise the Extension Option, if at all, by giving written notice to Landlord of City's intent to exercise the Extension Option 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. 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 City's Board of Supervisors and the City's Mayor, as required under applicable law, in their respective sole and absolute discretion, approving and authorizing the same, within seventy-five (75) days after the date the new Base Rent has been determined pursuant to Section 5(C) (Determination of Base Rent for the Extended Term).

## **5. RENT.**

**(A) Base Rent.** Beginning on the Commencement Date, City shall pay to Landlord during the Initial Term the monthly base rent as specified in the Base Lease Information (the "Base Rent") for the Initial Premises and, upon the Commencement Date of the Additional Premises, for the Additional Premises as set forth in the Basic Lease Information. The Base Rent shall be payable in 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 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 twenty-eight (28)-, twenty-nine (29)-, thirty (30)- or thirty-one (31)-day month (as the case may be).

**(B) Additional Rent.** None.

**(C) Determination of Base Rent for the Extended Term.** At the commencement of the Extended Term, the Base Rent shall be adjusted to ninety-five percent (95%) of the prevailing market rate for space of comparable size and location to the Premises then being offered for rent in other buildings similar in age, location and quality to the Premises situated within the Civic Center area of San Francisco ("Reference Area"). As used herein, the term "prevailing market rate" shall mean the base rental for such comparable space, taking into account (i) any additional rental and all other payments and escalations payable hereunder, (ii) floor location and size of the premises covered by leases of such comparable space, (iii) the duration of the renewal term and the term of such comparable leases, (iv) free rent given under such comparable leases and any other tenant concessions, and (v) building standard tenant improvement allowances and other allowances given under such comparable leases.

Within fourteen (14) days of City's notice of intent to exercise an Extension Option, Landlord shall provide City with its good faith written determination of the current prevailing market rent along with at least five (5) rent comparables supporting Landlord's determination. If City disputes Landlord's determination of the prevailing market rate, City shall so notify Landlord in writing within fourteen (14) days following Landlord's written notice to City of the prevailing market rate and such dispute shall be resolved as follows:

**(a)** Within thirty (30) days following Landlord's written notice to City of the prevailing market rate, Landlord and City shall attempt in good faith to meet no less than two (2) times, at a mutually agreeable time and place, to attempt to resolve any such disagreement.

**(b)** If within this thirty (30)-day period Landlord and City cannot reach agreement as to the prevailing market rate, they shall each select one appraiser to determine the prevailing market rate. Each such appraiser shall arrive at a determination of the prevailing market rate and submit his or her conclusions jointly to Landlord and City within thirty (30) days of the expiration of the thirty (30)-day consultation period described in (a) above.

**(c)** If only one appraisal is submitted within the requisite time period, it shall be deemed to be the prevailing rate. If both appraisals are submitted within such time period, and if the two appraisals so submitted differ by less than ten percent (10%) of the higher of the two (2), then the average of the two (2) shall be the prevailing market rate. If the two (2) appraisals differ by more than ten percent (10%) of the higher of the two (2), then the two (2) appraisers shall immediately select a third appraiser who will within thirty (30) days of his or her selection make a determination of which prevailing market rate is closest to his/her/their opinion of prevailing market rent.

**(d)** All appraisers specified herein shall be members of the American Institute of Real Estate Appraisers (MAI) with no less than five (5) years' experience appraising leases of commercial properties similar to the Premises in the Reference Area. Landlord and City shall pay the cost of the appraiser selected by such party and one-half (1/2) of the cost of the third appraiser plus one-half (1/2) of any other costs incurred in the arbitration.

**(e)** In the event the City's Director of Property does not believe the Board of Supervisors and the Mayor, as required under applicable law, will approve of the prevailing market rate as determined by the appraisal procedure specified above, the City's Director of

Property may revoke the exercise of the Extension Option by City within five (5) days of the determination of the prevailing market rate. In the event the City's Director of Property revokes the exercise of the Extension Option or the Board of Supervisors does not enact authorizing legislation as required above, the Expiration Date shall automatically be extended to a date which is six (6) months following City's notice,

(f) In the event that a final determination of the Market Rental Value of the Premises is not arrived at until after the applicable Extended Term shall have commenced, Tenant shall pay the same monthly rental as was paid in the immediately preceding period, until such final determination is arrived at. Within thirty (30) days after such final determination is arrived at, as the case may be Landlord shall pay to Tenant or Tenant shall pay to Landlord, retroactively for the period until the date of such determination, the excess or underpaid rental (if any) actually received by Landlord over the rental payment due pursuant to such determination.

#### **6. TENANT IMPROVEMENTS.**

Landlord, at Landlord's sole expense, shall furnish and install the Tenant Improvements set forth in the Exhibit "F" (the "Work Letter").

#### **7. SURRENDER.**

Tenant agrees to surrender the Premises at the termination of the tenancy herein created, in the same condition as herein agreed they have been received, except for reasonable use and wear thereof and damage by act of God, the elements, fire or any other casualty not caused by Tenant. Upon termination of this Lease, Tenant shall remove from the Premises all of its personal property described in Section 15 below and any Tenant Work City is required to remove from the Premises pursuant to the provisions of Section 15 herein. Tenant shall repair or pay for the cost of repairing any damage to the Premises or the Building resulting from such removal. Tenant shall not be obligated to remove or demolish any of the Tenant Improvements. The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger and shall at the option of Landlord, terminate all of any existing subleases or subtenancies, or may, at the option of Landlord, operate as an assignment to him of any or all such subleases or subtenancies, in the absence of any other agreement between Landlord and Tenant or such subtenants.

#### **8. HOLDING OVER.**

If Tenant holds possession of the Premises after the Term of this Lease, Tenant shall, at the option of Landlord to be exercised by Landlord's giving written notice to Tenant, become a tenant from month-to-month upon the terms and conditions herein specified, so far as applicable, at a Base Rent equal to one hundred twenty-five percent (125%) of the sum of Base Rent payable for the final month of the Term, payable as if the Term of this Lease had been extended. Tenant shall continue to be such tenant until thirty (30) days after Tenant shall have given to Landlord or Landlord shall have given to Tenant a written notice of intention to terminate such month-to-month tenancy. Unless Landlord shall consent to the holdover tenancy as provided above, Tenant shall be a tenant at sufferance only, whether or not Landlord shall accept any rent from Tenant while Tenant is so holding over.

**9. DELIVERY OF POSSESSION.**

In the event of the inability of Landlord to deliver possession of the Additional Premises at the time of the commencement of the Term of this Lease in the condition required hereunder, neither Landlord nor its agents shall be liable for any damage caused thereby, nor shall this Lease thereby become void or voidable, nor shall the Term herein specified be in any way extended, but in such event Tenant shall not be liable for any Base Rent until such time as Landlord can deliver possession in accordance with the provisions of this Lease. However, if Landlord is unable to deliver possession of the Additional Premises to City as required hereunder or complete the required improvements to the Initial Premises on or before March 1, 2006, then City may, at its option, terminate this Lease, without any further liability hereunder, upon sixty (60) days' advance written notice to Landlord.

**10. TEMPORARY PREMISES.**

Intentionally deleted.

**11. USE.**

The Premises are to be used for public meetings and office uses for the organization specified in the Basic Lease Information and for no other purpose without the written consent of Landlord. Tenant shall not do or permit anything to be done in or about the Premises, nor bring nor keep anything therein which will in any way materially increase or cause a cancellation or a policy exclusion of fire or other insurance upon the Building, or any of its contents, or which shall violate any law, ordinance, rule or regulation affecting the occupancy and use of the Premises, which is or may hereafter be enacted or promulgated by any public authority, or obstruct or interfere with the rights of other tenants of the Building, or injure or annoy them, nor use, nor allow the Premises, to be used, for any improper, immoral, unlawful or objectionable purpose, or for any kind of eating house, or for sleeping purposes, or for washing clothes, or cooking therein (except for microwave cooking in the kitchens), and nothing shall be prepared, manufactured, or mixed in the Premises which would emit an odor into the corridors of the Building. Tenant will not, without the written consent of Landlord, either (1) use any apparatus or device in connection with the Premises which will materially injure, vibrate or shake the Premises or materially increase the amount of electricity or water usually furnished or supplied to the Premises, or (2) connect with the water pipes any apparatus or device for the purpose of using water materially above an office use.

Landlord shall maintain the Building in a good, clean and safe manner and shall not permit any other tenants of the Building to disturb or interfere with Tenant's use of the Premises or permit to be done in or about the Building anything that is illegal, will be dangerous to life or limb or will constitute a nuisance to Tenant, its agents, contractors, officers, employees and invitees.

If Tenant's use of any of the Premises or access thereto is interrupted as a result of the Premises or the Common Areas being rendered unsafe for human occupancy due to Landlord's failure to comply with its obligations under this Lease or for any other reason, then, without limiting any of Tenant's other rights or remedies hereunder or at law or in equity, Landlord shall

immediately undertake all necessary steps to correct such condition, and, in the event such condition continues for five (5) days, the Base Rent shall be abated based on the extent to which such default materially interferes with Tenant's ability to conduct normal administrative office operations in the Premises. If any such condition shall continue for thirty (30) days or more after Landlord has been advised in writing by Tenant ("Tenant's Notice") and shall materially impair Tenant's ability to carry on its business in the Premises, then Landlord shall promptly provide Tenant with its good-faith estimate of the time required to restore the Premises or eliminate the condition ("Landlord's Notice"). If Tenant's normal and safe use of the Premises cannot be restored within ninety (90) days of the date City's use was interrupted, then Tenant may, without limiting any of its other rights or remedies hereunder or at law or in equity, by written notice given to Landlord given within one hundred (100) days after the date of Tenant's Notice, terminate this Lease as of the date specified in such notice, which date shall not be less than thirty (30) nor more than ninety (90) days after the date of Landlord's Notice.

## **12. RULES.**

Tenant shall faithfully observe and comply with the rules and regulations that Landlord shall promulgate from time to time for the safety, care and cleanliness of the Building and the preservation of good order thereon, as provided below. The current rules and regulations for the Building are attached hereto as Exhibit "D" (the "Rules and Regulations") and are hereby expressly made a part hereof. Any reasonable additions or modifications thereto by Landlord shall be binding upon Tenant upon Landlord's delivery to Tenant of a copy thereof, provided that such additions or modifications shall not reduce the obligations of Landlord hereunder nor materially interfere with Tenant's use of the Premises, and such additions or modifications must be applicable to other office tenants in the Building. Landlord agrees to administer the Rules and Regulations in a fair and nondiscriminatory manner, and to cause other tenants or occupants to comply with the Rules and Regulations.

## **13. ASSIGNMENT.**

Except as provided below Tenant will not assign, mortgage or hypothecate this Lease, or any interest therein, or permit the use of the Premises by any person or persons other than Tenant, or sublet the Premises, or any part thereof, without the written consent of Landlord, provided that Tenant may assign this Lease or sublet the Premises to any other department or agency of the City and County of San Francisco for administrative office use by giving Landlord written notice thereof so long as such administrative office use by any such other City department or agency shall not (i) include psychological or substance abuse counseling, medical treatment, correctional, police or probation work as part of the business conducted on the Premises, (ii) involve substantial walk-in visitation from the general public without appointments (such as a welfare or recorder's office), or (iii) cause a material increase in the demands upon the utilities, services or Common Areas of the Building. Consent to any assignment or subletting requiring Landlord's consent as provided above shall not operate as a waiver of the necessity for such a consent to any subsequent assignment or subletting, and the terms of such consent shall be binding upon any person holding by under or through Tenant. To the extent Landlord's consent to assignment is required, Landlord shall not unreasonably withhold its consent to subletting or assigning the Premises, subject to the following provisions:

(a) If Tenant desires at any time to assign this Lease or sublet all or any portion of the Premises, Tenant shall first notify Landlord at least sixty (60) days prior to the proposed effective date of the assignment or sublease, in writing, of its desire to do so and shall submit in writing to Landlord (1) the name of the proposed subtenant or assignee, (2) the nature of the proposed subtenant's or assignee's business to be carried on in the Premises, (3) a copy of the proposed sublease or assignment, and (4) financial statements for the two most recent completed fiscal years of the proposed subtenant or assignee, and a bank and a landlord reference. Thereafter, Tenant shall furnish such supplemental information as Landlord may reasonably request concerning the proposed subtenant or assignee. At any time within fifteen (15) days after Landlord's receipt of the information specified above, Landlord may by written notice to Tenant elect to (1) terminate this Lease not less than forty-five (45) nor more than ninety (90) days after the end of such fifteen (15)-day period as to the portion of the Premises so proposed to be assigned or subleased, with a proportionate abatement in rent payable hereunder, (2) consent to the sublease or assignment, or (3) reasonably disapprove of the sublease or assignment, setting forth in writing Landlord's ground for so doing. Such grounds may include, without limitation, a material increase in the impact upon the Common Areas of the Building, a material increase in the demands upon the utilities and services supplied by Landlord, a possible material adverse effect upon the reputation of the Building from the nature of the business to be conducted, or a reputation for financial reliability on the part of the proposed subtenant or assignee which is unsatisfactory in the reasonable judgment of Landlord. If Landlord consents to the sublease or assignment within the fifteen (15)-day period or if Landlord takes no action within that period, Tenant may thereafter enter into such assignment or sublease of the Premises, or a portion thereof, upon the terms and conditions and as of the effective date set forth in the information furnished by Tenant to Landlord.

(b) Each permitted assignee, transferee or sublessee, other than Landlord, shall assume and be deemed to have assumed this Lease and shall be and remain liable jointly and severally with Tenant for the payment of the rent and for the due performance or satisfaction of all of the provisions, covenants, conditions and agreements herein contained on Tenant's part to be performed or satisfied. No permitted assignment shall be binding on Landlord unless such assignee or Tenant shall deliver to Landlord a counterpart of such assignment which contains a covenant of assumption by the assignee, but the failure or refusal of the assignee to execute such instrument of assumption shall not release or discharge the assignee from its liability as set forth above.

(c) Any notice by Tenant to Landlord pursuant to subsection 13(a) of a proposed assignment or subletting that requires Landlord's consent, shall be accompanied by a payment of Three Hundred Fifty Dollars (\$350) as a non-refundable fee for Landlord's time and the processing of Tenant's request for Landlord's consent. In the event that Tenant should sublease to another tenant, Tenant shall pay to Landlord monthly on or before the first of each month one-half (1/2) of the excess rent received from such subtenant or subtenants over and above the concurrent underlying rent payable by Tenant to Landlord for that portion of the Premises being sublet to such other tenant or tenants. Tenant shall furnish Landlord with a true signed copy of such sublease or subleases and any supplementary agreements or amendments thereto, within five (5) days after their respective execution.

#### **14. SALE.**

If Landlord sells or conveys the Building containing the Premises and the successor-in-interest of Landlord expressly assumes the terms, covenants and conditions of this Lease in writing, then upon notice to Tenant of the name and address of Landlord's successor, Landlord shall be released thereby from any liability under this Lease for events that occur following the date of assignment and assumption, and Tenant agrees to look solely to the responsibility of such successor-in-interest of Landlord for claims arising on or after the date of the transfer. Landlord shall expressly assign, and the purchaser shall expressly assume, this Lease in connection with any sale of the Building.

#### **15. MAINTENANCE AND REPAIRS; ALTERATIONS.**

Tenant has examined and inspected and knows the condition of the Premises and every part thereof and, subject to the provisions of Section 6 hereof, the Work Letter and the Plan (Exhibits "F" and "G"), accepts the Initial Premises in their present "as is" condition. Tenant shall maintain the interior portions of the Premises and shall keep the Premises in good working order and in a safe and sanitary condition, subject to Landlord's obligations hereunder and except for ordinary wear and tear and damage by casualty. Tenant shall not alter or change the Premises without the prior written consent of Landlord. However, installation of furnishings, fixtures, equipment or decorative improvements, or repair the existing improvements, none of which affect the Building systems or structural integrity of the Premises, shall not constitute an alteration requiring Landlord's consent for purposes hereof. Tenant waives the provisions of California Civil Code Section 1932(1), 1941 and 1942 with regard to Landlord's obligation for tenantability of the Premises and Tenant's right to make repairs at Landlord's expense. Tenant, with prior written approval by Landlord which approval shall not be unreasonably withheld, shall have the right during the Term hereof to make alterations, attach fixtures and erect additions or structures ("Tenant Work") in or upon the Premises provided the same shall not be detrimental to the structural integrity or appearance of the Building. All Tenant Work shall at once become part of the realty and belong to the Landlord. Movable furniture and equipment and other items of personal property shall remain the property of Tenant. However, at Landlord's election, Tenant shall, at Tenant's expense, remove any or all Tenant Work and restore the Premises to the condition before the last day of the Term if Landlord requires such removal at the time of Landlord's consent to any such Tenant Work as provided below. At least thirty (30) days before the commencement of Tenant Work, Tenant shall submit to Landlord reproducible plans, specifications, and product samples of the proposed Tenant Work for Landlord's review and consent. Tenant shall be responsible to assure that the Tenant Work shall include properly engineered modifications to Landlord's air conditioning, lighting, fire sprinkler and life safety systems and shall comply with all governmental regulations, including life safety, handicap and seismic requirements applicable to such Tenant Work, which compliance shall be done at Tenant's sole cost and expense. Repair of all damage or injury done to the Premises by Tenant, or by any person who may be in or upon the Premises with the consent of Tenant, shall be paid for by Tenant. To the extent permissible under applicable laws, Tenant shall not at any time prior to or during the Term hereof, either directly or indirectly, use any contractors, labor or materials whose use would conflict with union contractors or labor engaged by Tenant or by Landlord or by others in the construction, maintenance, or operation of the demised Premises or the Building.

Landlord shall repair and maintain in first-class condition consistent with other Class A office buildings in the Reference Area, the exterior and structural portions of the Building (including, without limitation, the roof, foundation, bearing and exterior walls and subflooring), the windows in the Building, the Common Areas of the Building, 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"), except for damage occasioned by the act of Tenant, which damage, upon Landlord's request, shall be repaired by Tenant at Tenant's expense. Landlord shall maintain the Common Areas of the Building and the Building Systems in compliance with all applicable earthquake, life safety and disability access laws and all other applicable laws, rules and regulations of all governmental authorities, including, without limitation, the Americans with Disabilities Act, so long as Tenant is using the Premises for their intended purpose and the repairs are not made necessary due to the negligence or willful misconduct of Tenant or by any Tenant Work made by or on behalf of Tenant to the Premises. The foregoing sentence notwithstanding, Landlord shall retain any right to which it may be entitled to contest or appeal an interpretation of said laws, rules and regulations prior to compliance. Tenant shall maintain its use of the Premises in compliance with all applicable laws, statutes and regulations, except that Tenant shall not be required to make any structural or non-structural alterations in order to comply therewith unless such alterations shall be necessitated by Tenant's unique use of the Premises or any Tenant Work made by or on behalf of Tenant to the Premises.

#### **16. DAMAGE OR DESTRUCTION.**

If during the Term the Premises or any major Building System, e.g., mechanical or electrical, is totally or partially damaged or destroyed from any cause, rendering the Premises totally or partially inaccessible, untenable or unusable, Landlord shall restore the Premises (including the Tenant Improvements) to substantially the same condition as they were in immediately before destruction, if the restoration can be made under the existing laws and can be completed within ninety (90) business days after the date of destruction.

In such event, this Lease shall remain in full force and effect; provided, however, unless such damage is the result of the negligence or willful misconduct of Tenant or Tenant's employees or invitees, Tenant shall be entitled to a proportionate reduction of Base Rent while such repairs to be made hereunder by Landlord are being made. Such proportionate reduction shall be made on a per rentable square foot basis and the extent to which such damage and the making of such repairs by Landlord shall interfere with Tenant's ability to conduct normal administrative office operations in the Premises.

Within thirty (30) business days after the date of such damage, Landlord shall notify Tenant whether or not, in Landlord's reasonable judgment made in good faith, such repairs can be made within ninety (90) business days after the date of such damage. If such repairs cannot be made within such ninety (90)-business-day period, then either party may, by written notice to the other given at any time within one hundred (100) business days after the date of such notice, terminate this Lease as of the date specified in such notice, which date shall be not less than thirty (30) nor more than ninety (90) business days after the date of Landlord's notice. If Tenant fails to terminate this Lease and if restoration is permitted under the existing laws, Landlord, at its election, can either terminate this Lease by written notice to Tenant within fifteen (15) days after the date for Tenant to elect to terminate this Lease as provided above, or restore the



Premises within a reasonable time and this Lease shall continue in full force and effect. If the existing laws do not permit the restoration, either party can terminate this Lease immediately by giving notice to the other party. In case of termination, the Base Rent shall be reduced by a proportionate amount based on the extent to which such damage interferes with the conduct of City's business in the Premises, and City shall pay such reduced Base Rent up to the date of termination. Landlord shall refund to City any Base Rent previously paid for any period of time subsequent to such date of termination.

Provided that the events are not the result of Landlord's or its authorized representatives' active negligence or willful misconduct, Landlord shall not be required to repair any injury or damage by fire or other cause, or to make any restoration or replacement of any Tenant Work made by or on behalf of Tenant (unless Landlord's insurance covers the same) or of any of Tenant's personal property including, but not limited to, any decorations, partitions, railings, or office fixtures. Except as provided above, Tenant shall be responsible for restoring or replacing such Tenant Work and personal property in the event of damage if Tenant desires to repair or restore the same. Except for any abatement of Base Rent, Tenant shall have no claim against Landlord for any damage suffered by reason of any such damage, destruction, repair or restoration (except to the extent of events that result from Landlord's or its employees, contractors, agents or authorized representatives' willful misconduct or negligent acts or omissions), nor shall Tenant have the right to terminate this Lease as the result of any statutory provision now or hereafter in effect pertaining to the damage and destruction of the Premises or the Building, except as expressly provided herein. Tenant hereby waives the provisions of Sections 1932(2) and 1933(4) of the California Civil Code.

Tenant hereby agrees that Landlord shall not be liable for injury to Tenant's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of Tenant, Tenant's employees, agents or contractors, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether such damage or injury results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant except to the extent that such events are the result of Landlord's or its employees, contractors, agents or authorized representatives' willful misconduct or negligent acts or omissions or breach of Landlord's obligations hereunder. Landlord shall not be liable for any damages arising from any act or neglect of any other tenant of the Building.

Notwithstanding the foregoing, in the event the Premises are damaged or destroyed by reason of earthquake or flood, 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 is damage that would take more than two (2) months to repair) that Landlord would be required to repair hereunder, Landlord or City may, at the respective option of each, terminate

this Lease with respect to the floor affected by the damage 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.

**17. ENTRY.**

Landlord reserves and shall at all reasonable times and with reasonable advance notice of not less than twenty-four (24) hours (except in emergency situations, in which case Landlord shall use efforts to give notice as appropriate under the circumstances) have the right to enter the Premises to inspect the same; to supply any service to be provided by Landlord to Tenant hereunder (except that no advance notice will be required for any regularly scheduled service, such as regular janitorial service and building engineering); to submit the Premises to prospective purchasers or tenants; to post notices of non-responsibility and for "for lease" or "for sale" signs; and to alter, improve or repair the Premises and any portion of the Building and may for that purpose erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed, always providing the entrance to the Premises shall not be blocked thereby, and further providing that the business of Tenant shall not be unreasonably interfered with. In connection therewith, Landlord agrees to perform such alterations, improvements and repairs to the Premises or any portion of the Building in an expeditious manner calculated to least interfere with Tenant's business operations at the Premises. Unless a claim arises due to Landlord's negligence or willful misconduct or breach of Landlord's obligations under this Lease, Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby. For the purpose of access as provided above, Landlord shall at all times have and retain a key with which to unlock all of the doors in, upon and about the Premises, excluding Tenant's vaults and safes, and Landlord shall have the right to use any and all means which Landlord may deem proper to open such doors in an emergency, in order to obtain entry to the Premises, and any entry to the Premises obtained by Landlord by any of such means, or otherwise, shall not under any circumstances be construed or deemed to be forcible or unlawful entry into, or a detainer of the Premises, or an eviction of Tenant from the Premises or any portion thereof; with the further understanding that if Landlord gains access by forcible entry (unless at the request of Tenant), Landlord, at its sole expense, shall repair the doors and any other damage to the Premises to the same condition as before such entry and will take the necessary steps to protect and safeguard the Premises until permanent repairs are made. All extraordinary cost and expenses incurred by Tenant as a result of the exercise by Landlord of its right of entry hereunder shall be borne by Landlord unless Tenant requests Landlord to enter the Premises, or except on account of a default by Tenant under the Lease, in which case such costs and expenses shall be borne by Tenant. As used herein, "extraordinary costs and expenses" refers to the costs and expenses not normally incident to the conduct of Tenant's business operations in the Premises, such as the provision of additional security, or provision of additional electrical or HVAC service.

**18. HOLD HARMLESS.**

To the fullest extent permitted by law, Landlord shall not be liable to Tenant for any damage to Tenant or Tenant's property from any cause except as otherwise provided in this Lease and except for the willful misconduct and negligent acts and omissions of Landlord, its

officers, employees, agents, contractors and representatives, or occasioned directly by Landlord's breach of its obligations under this Lease.

To the fullest extent permitted by law, Tenant shall hold Landlord and Landlord's officers, agents and employees harmless from, and shall defend them against, any and all claims, direct or vicarious liability, damage or loss arising out of: (a) any injury to or death of any person or damage to or destruction of any property occurring in or on the Premises, or any part thereof, (b) any default by Tenant in the observance or performance of any of the terms, covenants or conditions of this Lease to be performed by Tenant hereunder, or (c) any willful misconduct or negligent acts or omissions of Tenant, its employees, agents, representatives and contractors in, or its invitees or visitors on or about the Premises. The foregoing indemnity obligation of Tenant shall exclude only claims, liability, damage or loss to the extent that they result from the active negligence or willful misconduct of Landlord or Landlord's officers, employees, agents, contractors and authorized representatives and which are not caused by Tenant's actions. The provisions of this Section shall survive the termination of this Lease, with respect to any damage, destruction, injury or death occurring prior to such termination. 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. City's obligations under this Section shall survive the termination of the Lease.

To the fullest extent permitted by law, Landlord shall hold Tenant and Tenant's officers, agents and employees harmless from, and shall defend them against, any and all claims, direct or vicarious liability, damage or loss arising out of: (a) any injury to or death of any person or damage to or destruction of any property occurring in or on the Common Areas of the Building, (b) any default by Landlord in the observance or performance of any of the terms, covenants or conditions of this Lease to be performed by Landlord hereunder, or (c) any willful misconduct or negligent acts or omissions of Landlord, its employees, agents, representatives and contractors in, on or about the Premises. The foregoing indemnity obligation of Landlord shall exclude only claims, liability, damage or loss to the extent that they result from the active negligence or willful misconduct of Tenant or Tenant's officers, employees, agents, contractors and authorized representatives and which are not caused by Landlord's actions. The provisions of this Section shall survive the termination of this Lease, with respect to any damage, destruction, injury or death occurring prior to such termination. 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.

## **19. SERVICES AND UTILITIES.**

Provided Tenant shall not be in default hereunder, and subject to the provisions elsewhere herein contained and to the Rules and Regulations of the Building, Landlord agrees to furnish to the Premises from 7:30 a.m. to 5:15 p.m., Monday through Friday (exclusive of Saturdays, Sundays and legal holidays) heating and air conditioning in the amount reasonably necessary for the comfortable use and occupancy of the Premises for Tenant's business operations. Passenger

elevator service, electric current and water will be available twenty-four (24) hours a day, three hundred sixty-five (365) days a year (a "Daily Basis"). Landlord shall also furnish to Tenant janitorial supplies and services and scavenger service in accordance with the standards attached hereto as Exhibit "C." Freight elevator service shall be available upon Tenant's reasonable advance request, in accordance with the Rules and Regulations. Landlord shall also furnish security service consisting of a security guard stationed in the lobby of the Building by the elevators serving the Premises, on a twenty-four (24) hours a day, three hundred sixty-five (365) days a year basis. All services provided by Landlord under this Lease shall be furnished in a manner consistent with such services normally provided in other Class A office buildings similar to the Building in the Referenced Area as of the Commencement Date of this Lease. Landlord shall furnish normal and customary amounts of electrical power to the Premises for the operation of Personal Computers and other normal office machines and equipment on a Daily Basis.

Except as provided below, Landlord shall not be in default hereunder or be liable for any damages directly or indirectly resulting from, nor shall the rental herein reserved be abated by reasons of (i) the installation, use or interruption of use of any equipment in connection with the furnishing of any of the foregoing utilities and services, (ii) failure to furnish or delay in furnishing any such utilities or services when such failure or delay is caused by Acts of God or the elements, labor disturbances of any character, any other accidents or other conditions beyond the reasonable control of Landlord, or by the making of repairs or improvements to the Premises or to the Building, or (iii) the limitation, curtailment, rationing or restriction on use of water or electricity, gas or any other form of energy or any other service or utility whatsoever serving the Premises or the Building in compliance with any mandatory or voluntary governmental laws, ordinances, regulations or requirements.

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 Tenant's ability to conduct normal administrative office operations in the Premises for a period of three (3) or more consecutive days after notice from Tenant if such failure is in the reasonable control of Landlord, or a period of five (5) or more consecutive days after notice from Tenant if such failure is not within the reasonable control of Landlord, then the Base Rent hereunder shall be abated based on the extent of such inability of Landlord materially impairs Tenant's ability to conduct normal administrative office operations in the Premises. Such abatement shall continue until the Essential Services have been restored so that the lack of any remaining services no longer materially impairs Tenant's ability to conduct normal administrative office operations in the Premises. Landlord shall use its best efforts to restore disrupted Essential Services as soon as possible. If any such condition shall continue for thirty (30) days or more after Landlord has been advised in writing, then Landlord shall promptly provide Tenant with its good faith estimate of the time required to restore the disrupted Essential Services. If such Essential Services cannot be restored within ninety (90) days of the date such services were interrupted and such failure materially interferes with Tenant's ability to conduct normal administrative office operations in the Premises, then Tenant may, without limiting any of its other rights or remedies hereunder or at law or in equity, by written notice given to Landlord within one hundred (100) days after the date such Essential Services were disrupted, terminate this Lease of the date specified in such notice, which date shall not be less than thirty (30) nor more than ninety (90) days after the date of Landlord's notice. Tenant shall not be entitled to any abatement of Base Rent or right to terminate if Landlord's inability to supply Essential Services to Tenant is

due to the acts, omissions or negligence of Tenant, its employees, officers, contractors, agents or representatives.

## **20. DEFAULT.**

The failure to perform or honor each covenant, condition and representation made under this Lease shall constitute a default hereunder by Tenant upon expiration of the appropriate grace period hereinafter provided. Tenant shall have a period of ten (10) days from the date of written notice from Landlord within which to cure any default in the payment of Base Rent or other money hereunder, provided that for the first two (2) payments of Base Rent at the beginning of each new fiscal year for City, City shall have twenty (20) days to cure any such nonpayment after the payment of Base Rent is due. Tenant shall have a period of thirty (30) days after written notice from Landlord within which to cure any other default under this Lease, provided, however, that with respect to defaults which cannot be reasonably cured within thirty (30) days, the default shall not be deemed to be uncured if Tenant commences to cure within thirty (30) days from Landlord's notice and continues to prosecute diligently the curing thereof. Such notices shall be coincident with and not in addition to any required for an unlawful detainer. Upon an uncured default of this Lease by Tenant, Landlord shall have the following rights and remedies in addition to any other rights or remedies available to Landlord at law or in equity:

(a) The rights and remedies provided by California Civil Code Section 1951.2, including but not limited to, recovery of 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 the Tenant proves could be reasonably avoided, as computed pursuant to Section 1951.2(b);

(b) The rights and remedies provided by California Civil Code Section 1951.4, that 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 Tenant's right to possession, if Tenant has the right to sublet or assign, subject only to reasonable limitations. Acts of maintenance or preservation, efforts to relet the Premises or the appointment of a receiver upon Landlord's initiative to protect its interest under this Lease shall not constitute a termination of Tenant's right to possession. If Tenant has vacated the Premises and Landlord exercises its rights under California Civil Code Section 1951.4, Landlord may from time to time sublet the Premises or any part thereof for such term or terms (which may extend beyond the Term of this Lease) and at such rent and such other terms as Landlord may obtain on the market, with the right to make alterations and repairs to the Premises. Upon each such subletting, (i) Tenant shall be immediately liable to pay to Landlord, in addition to Base Rent hereunder, any commercially reasonable real estate commissions paid by Landlord in connection with such subletting and commercially reasonable cost of such subletting and such alterations and repairs incurred by Landlord and the amount, if any, by which the Base Rent owing hereunder for the period of such subletting (to the extent such period does not exceed the Term hereof) exceeds the amount agreed to be paid as Base Rent for the Premises for such period pursuant to such subletting or (ii) at the option of Landlord, rents received from such subletting shall be applied, first, to payment of any indebtedness other than rent due hereunder, from Tenant to Landlord; second, to the payment of any costs of such subletting and of such alterations and repairs; third, to payment of Base Rent due and unpaid hereunder; and the

residue, if any, shall be held by Landlord and applied in payment of future Base Rent as the same becomes due hereunder. If Tenant has been credited with any rent to be received by such subletting under option (i) above and such rent shall not be promptly paid to Landlord by the subtenant(s), or if such rentals received from such subletting under option (ii) during any month be less than that to be paid during that month by Tenant hereunder, Tenant shall pay any such deficiency to Landlord. Such deficiency shall be calculated and paid monthly. No taking possession of the Premises by Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of such intention be given to Tenant. Notwithstanding any such subletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach;

(c) The right to terminate this Lease by giving notice to Tenant in accordance with applicable law;

(d) The right and power to enter the Premises and remove therefrom all persons and property, to store such property in a public warehouse or elsewhere at the cost of and for the account of Tenant, and to sell such property and apply the proceeds therefrom, pursuant to applicable California law; and

(e) The right to have a receiver appointed for Tenant, upon application by Landlord, to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to Landlord pursuant to applicable law.

## 21. INSURANCE.

Tenant shall, at its sole cost and expense, obtain and keep in force during the Term of this Lease as it may be extended, liability and property damage insurance with limits of not less than Five Million Dollars (\$5,000,000) to protect Landlord and Tenant against liability to the public and property, incident to the use or resulting from any accident occurring in, on or about the Premises and facilities, to indemnify against the claims of one or more persons. Such insurance described above shall be issued by companies qualified to do and doing business in the State of California, rated at least "A plus XV" by Best's Insurance Reports and as may be approved by Landlord, shall name Landlord as an additional named insured, shall be primary and noncontributing with any insurance which may be carried by Landlord, and shall provide that such policy(ies) cannot be canceled or altered without thirty (30) days' prior written notice to Landlord. Within ten (10) days of Landlord's execution of this Lease, each such policy or official policy duplicate(s) or official certificate(s) thereof shall be submitted to Landlord for Landlord's review and approval and for Landlord's retention. Should Tenant fail to provide policy(ies) or certificate(s) or renewals thereof, Tenant shall be in default under the terms, covenants and conditions of this Lease.

Notwithstanding the foregoing paragraph, City, but not City's assignee or sublessee (unless another department or agency of the City of San Francisco), may elect not to carry such insurance, thereby being "self-insured," provided that Tenant shall notify Landlord in writing of such election. Landlord hereby acknowledges that Tenant has elected as of the Commencement Date to self-insure and no further notice of such election shall be required. Nothing herein shall limit indemnity made by Tenant in favor of Landlord in Section 17 above.

At all times during the Term, Landlord shall keep the Building (excluding the land upon which it is located) insured against damage and destruction by fire, vandalism, malicious mischief, sprinkler damage and other perils customarily covered under an all-risk insurance policy in an amount equal to one hundred percent (100%) of the full insurance replacement value (replacement cost new, including, debris removal and demolition) thereof. Such insurance coverage shall include the Tenant Improvements. Landlord shall, prior to the Commencement Date and, upon City's written request, thereafter prior to any 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 Tenant.

## **22. EMINENT DOMAIN.**

For purposes hereof, the following terms shall have the following meanings:

"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.

"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.

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

**A. 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.

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

**C. Partial Taking; Election to Terminate.** If there is a Taking of any portion (but less than all) of the Premises, then this Lease shall terminate in its entirety if all of the following exist: (A) the partial Taking, in City's reasonable judgment, renders the remaining portion of the Premises untenable or unsuitable for continued use by City for its intended purposes or otherwise materially adversely affects City's normal operations in the Premises provided, however, Landlord is given an opportunity to cure the effect on City and its operations in the Premises on or before the Date of Taking, at Landlord's sole cost, by making alterations to the Premises or providing alternate space elsewhere in the Building (such alternate space shall contain approximately the same rentable area and be in the same configuration as the space so taken and shall be altered to provide the same quantity and quality of Tenant Improvements as the space so

taken), (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.

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.

Either party electing to terminate under the provisions of this Section 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 (30th) day after such written notice is given or the date of Taking.

**D. Rent; Award.** Upon termination of this Lease pursuant to an election under this Section above, then: (i) City's obligation to pay Base Rent shall continue up until the date of termination, and thereafter shall cease, except that Base Rent shall be reduced as provided in this Section 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 or Tenant's Work.

**E. 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 this Section 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) Base 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, (b) Tenant's Share for purposes of determining Additional Rent shall be reduced to reflect the amount of area of the Premises taken, and (c) 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 or Tenant's Work.

**F. Temporary Takings.** Notwithstanding anything to the 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 Base Rent and additional charges 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 Base Rent and additional charges owing by City for the period of the Taking.

## **23. ESTOPPEL CERTIFICATE; SUBORDINATION AND ATTORNMENT.**



Within ten (10) days after notice from the other party, either party shall execute and deliver at no charge to the other party, or to such party as the other party may designate, in recordable form, a certificate stating (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the date and nature of each modification), (b) the date, if any, to which rental and other sums payable hereunder have been paid, (c) that no notice has been received of any default which has not been cured, except as to defaults specified in such certificate and (d) such other matters as may be reasonably requested by either party. Failure to deliver the certificate within the ten (10) days shall be conclusive upon either party for the benefit of the other party and any successor, that this Lease is in full force and effect and has not been modified except as may be represented by therein.

Tenant will, upon request of any holder ("holder") of a first deed of trust covering the Property, agrees to attorn to the such holder in the event of a sale under the power of sale contained in such deed of trust, or a foreclosure of such deed of trust provided that:

(a) such encumbrance shall contain a covenant that permits the proceeds of all property insurance covering the Building or Premises (other than rental interruption insurance), and all proceeds of any appropriation, to be paid over or made available for the repair, replacement and rebuilding of the Premises and/or Building as provided in this Lease; and

(b) this Lease shall be recognized to be and shall remain in full force and effect, and Tenant shall be permitted to remain in quiet and peaceable possession of the Premises throughout the Term in accordance with the provisions of this Lease, as long as no event of default by Tenant is outstanding beyond any cure period provided herein as of the date of such foreclosure or termination.

In the event of any such request of Tenant for attornment, Landlord shall, upon Tenant's request, deliver to Tenant the instrument or instruments between Landlord and any holder that contain the covenants of holder required hereunder, which instrument shall be enforceable by City. In the event that any conveyance in lieu of foreclosure is made for any reason, Tenant shall, notwithstanding any subordination, attorn to and become the tenant of the successor-in-interest to Landlord, at the option of such successor-in-interest, provided such successor-in-interest recognizes this Lease and provided that no Tenant default exists beyond the applicable cure period, agrees not to disturb Tenant's quiet enjoyment of the Premises. Upon request by Landlord, Tenant shall execute and deliver such instruments as may be reasonably necessary or convenient to evidence such subordination and/or attornment.

#### **24. LANDLORD'S RIGHT TO BUILD.**

During the Term hereof, Landlord shall have the right to construct an additional building, including a tower, in the block bounded by Market Street, Polk Street and Hayes Street, and may for that purpose erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed, provided that Landlord shall always ensure adequate access to the Premises. Landlord shall give Tenant at least ninety (90) days' prior written notice of any such construction activity. Landlord shall perform all construction work as expeditiously as possible and shall use its best efforts to minimize any interference with Tenant's normal administrative office operations in the Premises as a result of such construction or any pre-

construction or post-construction activities. To the extent that Tenant's normal administrative office functions in any portion of the Premises are materially impaired by such construction, then Base Rent for the space so affected shall be abated to the extent and for the duration of such disruption. Tenant's acknowledgement of Landlord's right to construct an additional building as provided above is made in City's proprietary capacity as Tenant only. Nothing herein shall be deemed to constitute approval of any such project by any governmental agency or authority with jurisdiction, including City acting in its regulatory capacity. If such construction occurs during the last six (6) months of the Term and such construction materially adversely affects Tenant's use of the Premises, Tenant shall have the right to terminate this Lease as to the floor on which the affected Premises are located.

## **25. ASBESTOS; HAZARDOUS MATERIAL.**

The sprayed-on fireproofing materials applied to certain structural members in the Building (which structural members are primarily located above the ceiling in the Premises) contain asbestos. In order to preserve the air quality of the Building, and prevent exposure to asbestos-containing materials, Landlord has established rules and regulations governing the manner in which alterations and improvements are to be undertaken in the areas where the subject fireproofing is located. Tenant must comply with all such rules and regulations established by the Landlord. Such rules and regulations may be modified from time to time by Landlord, provided no such modification results in any material interference with Tenant's business in the Premises for the purposes provided herein. If any governmental entity promulgates or revises a statute, ordinance, code or regulation, or imposes mandatory controls or mandatory guidelines with respect to such asbestos-containing materials, or if Landlord is required to make alterations to, or to remove such asbestos-containing materials, Landlord shall comply with such mandatory controls or mandatory guidelines (including, without limitation, any asbestos worker safety laws that impose a duty of Tenant toward Tenant's employees) and shall, in its reasonable discretion, comply with any applicable voluntary guidelines. Except as required by applicable law (including, without limitation, any asbestos worker safety law that impose a duty of Tenant toward Tenant's employees), Landlord shall have no obligation to remove, encapsulate or remediate the asbestos-containing materials but may elect to do so in its sole discretion. So long as Tenant is not displaced from the Premises, or any portion thereof, and Tenant's use of the Premises is not materially adversely affected, any compliance or the making of alterations, or the removal of all or a portion of such asbestos-containing materials by Landlord, whether in the Premises or elsewhere in the Building, shall not, in any event, (a) entitle the Tenant to receive any damages, (b) relieve Tenant of the obligation to pay any sums due hereunder, (c) constitute or be construed as a constructive or other eviction of Tenant, or (d) constitute or be construed as a breach of Tenant's quiet enjoyment.

However, if such compliance, alterations or removal do materially interfere with Tenant's ability to conduct normal administrative office operations in the Premises Tenant shall be entitled to an abatement of rent based on the extent to which Tenant's ability to conduct normal administrative office operations in the Premises is impaired, and if such compliance, alterations or removal cannot be completed within ninety (90) days, Tenant shall have the right to terminate this Lease upon written notice to Landlord. Any asbestos abatement work by Landlord shall be done in an expeditious, first-class professional manner and in accordance with construction specifications approved by an independent asbestos consultant (certified by the Division of

Occupational Safety and Health after July 1, 1992, according to the requirements of SB 732). In addition, the performance of the abatement work shall be monitored by such consultant, or another independent asbestos consultant meeting the qualifications specified above. Before asbestos abatement areas are released for re-occupancy, the consultant shall certify in writing to Tenant, that the areas have been determined to be safe for reoccupation based on air monitoring results, according to applicable law and industry standard practice.

Landlord shall keep all records regarding asbestos-related work performed at the Building at a location where it is accessible to Building occupants for review. Landlord shall provide notices and maintain records in compliance with California Health and Safety Code Section 25915 et seq. Tenant acknowledges receipt of a copy of such notice dated February 14, 1992.

Landlord hereby represents and warrants to City that, to best of Landlord's knowledge, neither the Premises, the Building nor the real property upon which the Building is located (collectively, the "Property") is in violation of any federal, state, local or administrative law, rule, regulation, order or requirement relating to Hazardous Material (as defined below), industrial hygiene or other environmental conditions (collectively, "Environmental Laws"). The Property does not contain any underground storage tanks nor do the Premises or the Building consist of any building materials that contain Hazardous Material except as expressly provided hereinabove with respect to the presence of asbestos-containing materials and in the attached Notice to Fox Plaza Employees and Contractors. No Hazardous Material is presently stored or located on or in the Property by Landlord or, to the best of Landlord's knowledge, by any tenant or occupant of the Property other than City, except for such substances used in such limited quantities as is customary in office use and common office cleaning products as further described in the Hazardous Materials Storage Permit Application Filing Form submitted by Landlord in March 1991, as the same may be revised, provided such storage and use is and shall be in compliance with Environmental Laws throughout the Term hereof. To the best of Landlord's knowledge, there has been no release and there is no threatened release of any Hazardous Material on, in, under or about the Property. The Property is not subject to any claim by any governmental regulatory agency or third party related to the release, or threatened release, of any Hazardous Material, and to the best of Landlord's knowledge 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 on, in, under or about the Property, or the migration of Hazardous Material from or to other property. Without limiting any other provisions of this Lease, Landlord shall indemnify and hold harmless Tenant against and from any and all claims, judgments, damages, penalties, fines, costs, liabilities, losses and expenses arising during or after the Term of this Lease as a result of any breach of any of the foregoing representations or warranties or any presence of Hazardous Material on or in the Property unless City is responsible therefor as provided herein.

Tenant covenants and agrees that neither Tenant nor any of Tenant's agents, employees, contractors, invitees, assignees or sublessees, shall cause or permit any Hazardous Material (as hereinafter defined) 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 nothing herein shall prevent Tenant from using 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. If Tenant breaches any of its

obligations contained herein, or, if any act or omission of Tenant or any of its agents, employees, contractors, invitees, assignees or sublessees results in any contamination of the Premises or the Building or in the release or threatened release of Hazardous Material from, on or about the Premises or the Building, then Tenant shall indemnify and hold harmless Landlord against and from any and all claims, judgments, damages, penalties, fines, costs, liabilities, losses and expenses arising during or after the Term of this Lease as a result of such release or threatened release except to the extent caused by Landlord, its agents, employees, contractors, invitees or licensees.

As used herein, the term "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 and Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health and 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. The term "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.

## **26. CONTROLLER'S CERTIFICATION OF FUNDS.**

Notwithstanding anything to the contrary herein, there shall be no obligation for the payment or expenditure of money by the City under this Lease unless the Controller of the City and County of San Francisco first certifies, pursuant to Section 6.302 of the Charter of such City and County, 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.

## **27. MISCELLANEOUS.**

**(A) Notices.** Except as otherwise provided herein, all notices to be given between the parties hereto shall be in writing and may be served personally or be depositing in the same in the United States mail, postage prepaid and addressed to Landlord, 1390 Market St., Suite 108, San Francisco, CA 94102 and to Tenant in care of Director of Property, 25 Van Ness Avenue, Suite 400, San Francisco, CA 94102, as well as any additional addresses shown in the Basic Lease Information or to such other address as either Landlord or Tenant may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section. Any such notice or other communication shall be deemed to have been rendered or given two (2) days after the date when it shall have been mailed if sent by certified mail, or upon the date personal delivery is made. For convenience of the parties, copies of notices may also be given by telefacsimile to the telephone number set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither party may give official or binding notice by facsimile.

**(B) Entire Agreement.** This Lease, together with its exhibits, contains all the agreements of the parties hereto and supersedes any previous negotiations. There have been no representations made by the Landlord or understanding made between the parties other than those set forth in this Lease and its exhibits. This Lease may not be modified except by a written instrument duly executed by the parties hereto.

**(C) Severability and Governing Law.** If any provision of this Lease or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Lease and the appreciation of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law. This Lease shall be governed by and construed pursuant to the laws of the State of California and City's Charter.

**(D) Interpretation of Lease.** The captions preceding the sections and subsections 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 work "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.

**(E) No Implied Waiver.** A party's failure to take advantage of any default or breach of covenant on the part of the other party shall not be or be construed as a waiver thereof, nor shall any custom or practice which may grow up between the parties in the course of administering this instrument be construed to waive or to lessen the right of the waiving party to insist upon the performance by the breaching party of any term, covenant or condition hereof, or to exercise any rights given him on account of any such default. A waiver of a particular breach or default shall not be deemed to be waiver of the same or any other subsequent breach or default. The acceptance of rent hereunder shall not be, nor be construed to be a waiver of any breach of any term, covenant or condition of this Lease.

The rights and remedies of either party hereto set forth in this Lease shall be cumulative, except as may otherwise be expressly provided herein.

**(F) Gender and Number and Time of Essence.** The words "Landlord" and "Tenant" as used herein shall include the plural as well as the singular. Words used in masculine gender include the feminine and neuter. Subject to the provisions hereof relating to assignment

and subletting, this Lease is intended to and does bind the heirs, executors, administrators, successors and assigns of any and all of the parties hereto. Time is of the essence of this Lease.

**(G) MacBride Principles.** 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.

**(H) Prevailing Wage.** Landlord agrees that any person performing labor in the construction of the Tenant Improvements or any other improvements which Landlord is obligated to provide under this Lease shall be paid not less than the highest prevailing rate of wages and that Landlord shall include, in any contract for construction of the Tenant Improvements or such other 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 the Tenant Improvements under this Lease, Landlord shall comply with all the provisions of Section 6.22(E) of the San Francisco Administrative Code relating to payment of prevailing wages.

**(I) Tropical Hardwood and Virgin Redwood Ban.**

**(i)** Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, neither Landlord nor any of its contractors shall provide any items to City in the construction of the Leasehold Improvements or otherwise in the performance of this Lease which are tropical hardwood, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood products.

**(ii)** In the event Landlord fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Landlord shall be liable for liquidated damages for each violation in an amount equal to Landlord's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greatest. Landlord acknowledges and agrees that the liquidated damages assessed shall be payable to the City and County of San Francisco upon demand and may be set off against any monies due to Landlord from any contract with the City and County of San Francisco.

**(J) 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 Tenant shall be personally liable to Landlord, its successors and assigns, in the event of any default or breach by Tenant or for any amount which may become due to Landlord, its successors and assigns, or for any obligation of Tenant under this Lease.

**(K) 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. 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 and hold harmless the other party from all claims, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

**(L) Attorney's Fees.** In the event that either Landlord or Tenant 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, including, without limitation, court costs and reasonable attorneys' fees and costs. For purposes of this Agreement, Tenant shall not be precluded from contending in any action or proceeding that the reasonable fees of attorneys of the Office of the City Attorney of the City and County of San Francisco should 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 Attorneys' services were rendered who practice in the City of San Francisco law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

**(M) Quiet Enjoyment, Title, and Authority.** Landlord covenants and represents that it has full right, power and authority to grant the leasehold estate hereunder, and covenants that Tenant, upon paying the Base 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, its agents or employees. Landlord further covenants and represents that Landlord has good and marketable title to the Building and leasehold title to the real property on which it is located. Without limiting the provisions of this Lease, Landlord agrees to indemnify and defend Tenant against and hold Tenant harmless from any and all liabilities, claims, suits, demands, judgments, costs, interest and expenses (including, without limitation, reasonable attorneys' fees) arising out of any claim that would interfere with Tenant's right to quiet enjoyment as provided in this Section.

Landlord represents and warrants that each and all the persons signing this Lease on behalf of the managing agent of the Building are duly authorized to do so, that the managing agent is duly authorized to execute this Lease on behalf of the owner of the Building, and that this Lease does not violate any provision of any agreement to which Landlord or the Property is subject. Upon City's request, Tenant shall provide City with evidence reasonably satisfactory to City confirming the foregoing representations and warranties.

**(N) Bankruptcy.** Landlord represents and warrants to Tenant 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. In the event that Landlord becomes subject of any bankruptcy, insolvency, rehabilitation, reorganization or other debtor-relief case or proceeding under any applicable federal or state law, whether now existing or hereinafter enacted, Tenant shall not be deprived of Tenant's leasehold estate created hereby or any rights or benefits of Tenant under this Lease without Tenant's consent given in its sole discretion. The parties agree that Tenant'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, Tenant 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 Rent payable hereunder any and all reasonable costs and expenses incurred by Tenant in obtaining such services, facilities or amenities.

**(O) Non Discrimination in City Contracts and Benefits Ordinance.**

**a. Covenant Not to Discriminate.**

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

**b. Subcontracts.**

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

**c. Non-Discrimination in Benefits.**

Landlord does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits specified above within the United States, between employees with domestic partners and employees with spouses, and/or between domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity



pursuant to state or local law authorizing such registration, subject to the condition set forth in Section 12.B2(b) of the San Francisco Administrative Code.

**d. HRC Form.**

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

**e. Incorporation of Administrative Code Provisions by Reference.**

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

**(P) Bicycle Storage Facilities.** Article 1.5, Section 155.1, of the San Francisco Planning Code ("Code") requires the provision of bicycle storage at City leased buildings at no cost to Landlord and if funds are available. In the event public and/or private donations, grants or other funds become available, at any time during the Term of the Lease including any extension thereof, City may, by giving a sixty (60)-day advanced written notice to Landlord, rent up to three (3) parking stalls in the Building garage at the then market rate for the installation of such code compliant facilities and an area in front of the Building which meets the Class 1 and/or Class 2 requirements of the Code to accommodate such bicycle storage. Landlord, at no cost to Landlord, shall reasonably cooperate with City regarding the location of such spaces in furtherance of the implementation of such requirements of the Code.

**(Q) Resource Efficient City Buildings and Pilot Projects.** Landlord acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 707 relating to resource efficient City buildings and resource efficient pilot projects. Landlord hereby agrees that it shall comply with all applicable provisions, if any, of such code sections; provided, however, that nothing in this Section shall be deemed to required Landlord to perform any obligation or incur any expense which is the responsibility of City or its agents under such code section.

**(R) Conduct Code.** Through its execution of this Lease, Landlord acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with City for the selling or leasing of any land

or building to or from City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three (3) months has elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by City and the contractor. Negotiations are terminated when City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

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

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

**(U) Effective Date.** The date on which this Lease shall become effective (the "Effective Date") is the date upon which this Lease is duly executed by the parties hereto in accordance with all applicable laws and the conditions to the commencement of the Lease set forth in Section 4(A) above have been satisfied.

**(V) Counterparts.** This Lease may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

**28. COMMUNICATION LINE REPAIRS.**

In connection with Tenant's rights and obligations under Exhibit F, Section 3(d), Tenant agrees that any new or existing telephone or data line serving its Premises located within the Building shall be its sole responsibility to maintain, repair, upgrade or replace unless the line is damaged by an act of Landlord, its agents, employees or subcontractors. "Line" as used herein shall include both copper and fiberoptic cable and wire, conduit, switchboard, splice box, riser and related items. Tenant shall be responsible for any loss, damage or injury caused by Tenant, its employees, agents or subcontractors to building communication lines. Access to telephone risers, closets and equipment outside of the Premises may be reasonably controlled by Landlord to prevent disturbance of asbestos and to regulate security of telephone/data equipment. If repair or replacement of a line shall pierce a fire-rated separation, Tenant shall be responsible for costs of restoring the integrity of such separation. Notwithstanding the foregoing, at all times during the Term of this Lease, Landlord shall, upon reasonable notice by the City, afford City and its agents with reasonable access to those portions of the Building outside of the Premises which are necessary to maintain and repair telecommunications and data and computer cabling facilities and equipment installed by the city pursuant to Exhibit F, Section 3(d).

**29. DIRECTOR OF PROPERTY.**

All approvals, consents or other determinations permitted or required by City as Tenant hereunder shall be made by or through City's Director of Property unless otherwise provided in this Lease, subject to applicable law. Any amendments or modifications to this Lease, including, without limitation, amendments to or modifications to the exhibits to this Lease, shall be subject to the mutual written agreement of City and Landlord, and City's agreement may be made upon the sole approval of the City's Director of Property, or his or her designee; provided, however, material amendments or modifications to this Lease (a) changing the legal description of the Premises, (b) increasing the term of the Lease, (c) increasing the Base Rent, and (d) any other amendment or modification which materially increases City's liabilities or financial obligations under this Lease shall additionally require the approval of City's Board of Supervisors.

**30. PARKING.**

During the term hereof, provided that Tenant is not in default of the parking agreement of the garage operator or payment of parking fees, Tenant shall have the right to rent five (5) non-reserved parking space in the building garage from the garage operator. Tenant shall pay the garage operator on the first of each month the then current parking rate.

**31. ATTACHMENTS.**

The following items are attached hereto as of the time of signing and are an integral part of the herein lease:

- Exhibit A – Floor Plan
- Exhibit B – Notice of Lease Commencement
- Exhibit C – Janitorial Standards
- Exhibit D – Rules and Regulations dated August 4, 1992
- Exhibit E – INTENTIONALLY OMITTED

- Exhibit F – Work Letter including Schedules I and II
- Exhibit G – Tenant Improvements – 9th Floor Plan
- Exhibit H – INTENTIONALLY OMITTED
- Exhibit I – Notice to Fox Plaza Employees and Contractors dated January 25, 1995


NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, LANDLORD ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY HERETO UNLESS AND UNTIL CITY'S BOARD OF SUPERVISORS SHALL HAVE DULY ADOPTED A RESOLUTION APPROVING THIS LEASE AND AUTHORIZING CONSUMMATION OF THE TRANSACTION CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS LEASE SHALL BE NULL AND VOID UNLESS CITY'S MAYOR AND BOARD OF SUPERVISORS APPROVE THIS LEASE, IN THEIR RESPECTIVE SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ADOPTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

Remainder of the page intentionally left blank

IN WITNESS WHEREOF, the parties hereto have executed this Lease, in triplicate, as of the date first above written.

**LANDLORD:**


API FOX PLAZA LLC  
a Delaware Limited Liability Company

By   
Name: W. ROBERT SMITH  
Its: SEN. V.I.

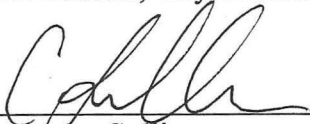
**TENANT:**  
CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

  
Steve Legnitto  
Director of Property 

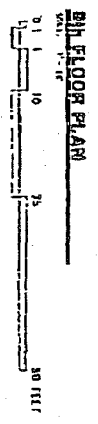
**RECOMMENDED:**

  
Director  
Department of Children,  
Youth and Their Families

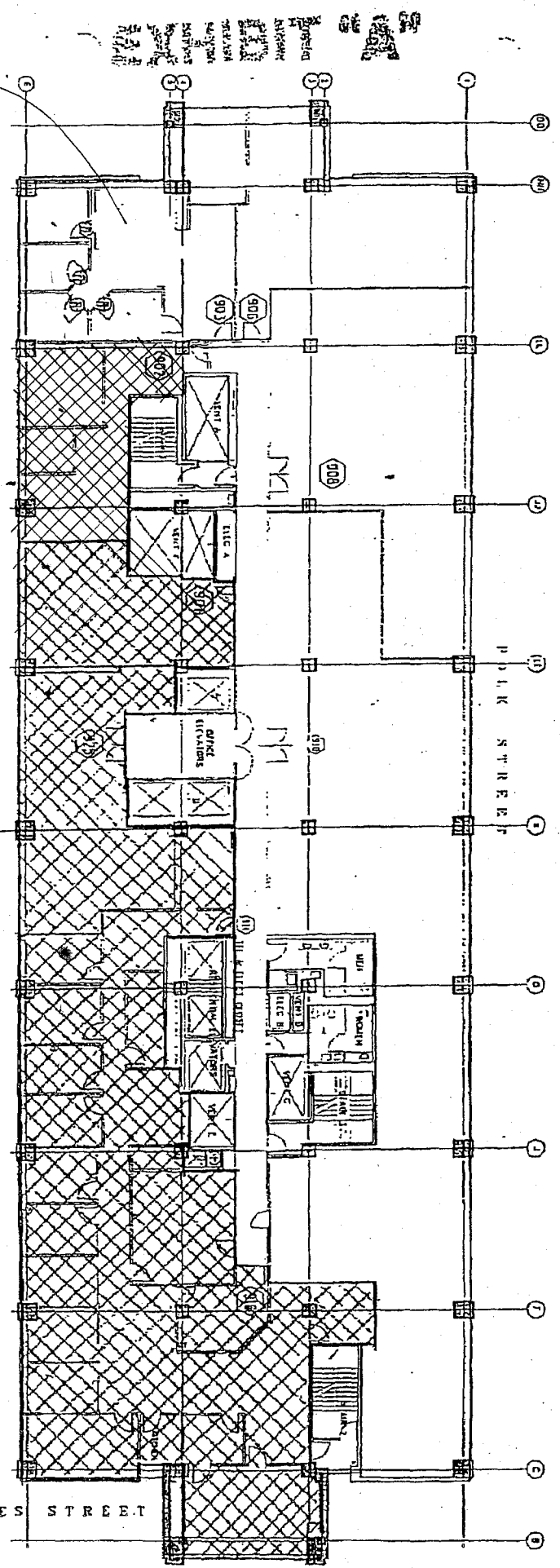
**APPROVED AS TO FORM:**  
Dennis J. Herrera, City Attorney

By   
Charles Sullivan  
Deputy City Attorney

ADDITIONAL PREMISES

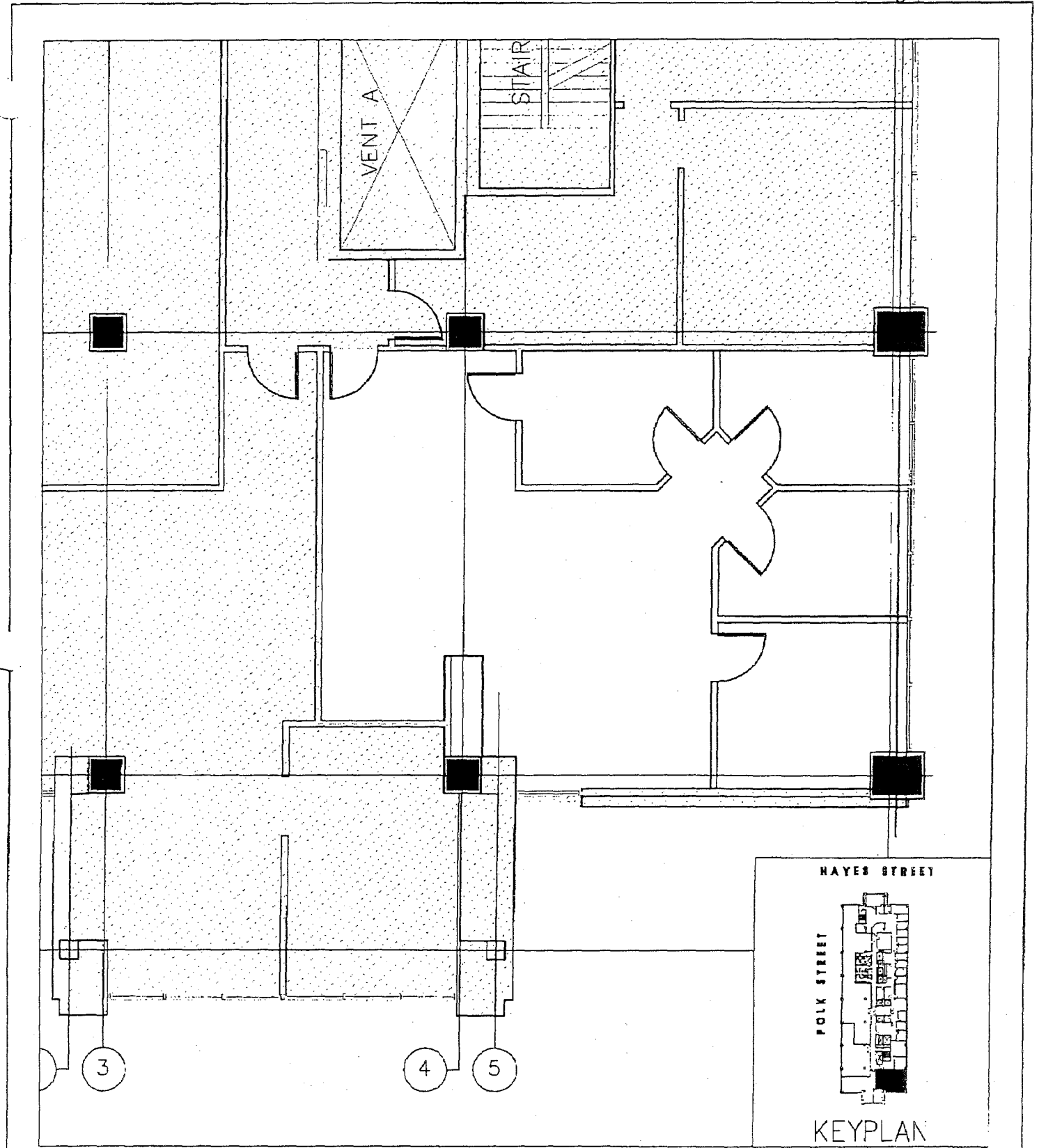


EXISTING PREMISES



Scale 90%

Suite 903



**Fox Plaza - 1390 Market Street**  
**Suite 903, 9th Floor**  
**1,218 Rentable Sq. Ft.**

09.30.04

Scale: 1/8"=1'-0"

**OTTOLINI-BOOTH  
 & ASSOCIATES  
 ARCHITECTS, INC.**

221 MAIN STREET, SUITE 828  
 SAN FRANCISCO, CA 94105

415-777-0766 phone  
 415-777-4154 fax



**EXHIBIT B**

**Notice of Lease Commencement**  
For the Original Premises

[Date]

\_\_\_\_\_  
Director of Property  
Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102

RE: Acknowledgement of Commencement Date, Lease Between API FOX PLAZA, LLC (Landlord), and the CITY AND COUNTY OF SAN FRANCISCO (Tenant), for premises known as FOX PLAZA, 1390 Market Street, Suites 909 and 902, San Francisco, CA

Dear Mr. \_\_\_\_\_:

This letter will confirm that for all purposes of the Lease, the Commencement Date (as defined in Section 4 of the Lease) is \_\_\_\_\_, 200\_.

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

Very truly yours,

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

Accepted and Agreed:

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

Dated \_\_\_\_\_



EXHIBIT C

JANITORIAL STANDARDS

Landlord shall furnish, at its cost, janitorial service to the Premises and Common Areas as follows:

FIVE DAYS PER WEEK  
(EXCEPT HOLIDAYS)

- PREMISES:

Empty wastepaper baskets, trash containers and other receptacles.

Vacuum carpets and rugs (spot clean as required, extra charge). Sweep and dust mop resilient and hard floors. Wet mop spillage.

Dust and wipe clean office furniture, file cabinets, water fountains and coolers, empty waste water. Arrange office furniture (computer equipment not to be moved or tampered with).

Dust window sills and counters.

FIVE DAYS PER WEEK  
(EXCEPT HOLIDAYS)

- COMMON AREAS;

Clean restrooms, sanitize fixtures and floor surfaces. Refill restroom dispensers.

Open, vacuum, sweep and dust common areas and stairwells as required.

Clean elevators, maintain floor covering.

LOBBIES AND ENTRYWAYS:

Maintain in first class appearance.

SEMI-ANNUALLY -  
WINDOWS:

Wash interior and exterior windows.

ANNUALLY -  
CARPETS:

Shampoo high traffic areas.

If Landlord shall use an outside janitorial service, said service shall bond its employees.

## EXHIBIT D

### **RULES AND REGULATIONS OF FOX PLAZA**

In the event of any conflict or inconsistency between any of the Rules and Regulations set forth hereinbelow and any of the provisions of the Lease between Landlord and Tenant, the Lease provisions shall control.

1. **SIGNS.** No sign, placard, picture, advertisement, name or notice shall be inscribed, displayed, printed or affixed on or to any part of the outside or inside of the Building without the written consent of Landlord first had and obtained, and Landlord shall have the right to remove any such objectionable sign, placard, picture, advertisement, name or notice without notice to and at the expense of Tenant (Lessee). Upon approval, Tenant will affix the sign to the wall as directed; no glue or screws will be used. If a sign is glued, the costs incurred to repair the damage resulting from removal of the sign will be the responsibility of the Tenant. Notwithstanding the foregoing, as of the date of the Lease, Landlord approves all of Tenant's existing signs, placards, pictures, names and notices inscribed, displayed, printed or affixed on or to any part of the outside or inside of the Building.
2. **BULLETIN BOARD.** The Bulletin Board or Directory of the Building will be provided exclusively for the name and location of Tenant only; and Landlord reserves the right to exclude any other names therefrom, and also charge Tenant for Landlord's cost to provide directory strips for each and every name, in addition to the name of the Tenant, placed by it upon such Bulletin Board or Directory.
3. **LOCKS.** No additional locks shall be placed upon any doors of the Premises, and Tenant agrees not to have any duplicate keys made without the consent of Landlord; provided, however, Landlord agrees that all employees of Tenant working in the Premises shall have a copy of the key(s) to the Premises. If more than two keys for any door lock are desired, the additional number shall be paid for by Tenant. Upon termination of Tenant's Lease, Tenant shall surrender all keys.
4. **WIRING.** When wiring of any kind is introduced, it must be connected as directed by Landlord, and no boring or cutting for wires will be allowed except with the consent of Landlord. The location of telephones, call boxes, telephone boards, and other office equipment affixed to the Premises shall be prescribed by Landlord.
5. **NON-RESPONSIBILITY.** Landlord is not responsible to any tenant for non-observance or violation of the Rules and Regulations by any other tenant, except as may be otherwise provided in the Lease.
6. **OBSTRUCTING LIGHT:** Tenant shall not allow anything to be placed against or near the glass in the partitions or in the doors between the Premises leased and in the halls or corridors. The doors between the Premises and the corridors of the Building shall at all times, except when in actual use for ingress and egress, be kept closed.
7. **HALLS AND STAIRWAYS:** The entries, passages, halls, exits, entrances, stairways, and elevators shall not be obstructed by Tenant or used for any purpose other than ingress and egress to and from the respective offices. Tenant shall not bring into or keep within the Building any animal, vehicle or bicycle, except for

see-eye dogs for any sight impaired employees or invitees of Tenant and any mechanized wheelchairs or similar devices.

8. **PLUMBING:** The wash basins, water closets, and urinals shall not be used for any purpose other than those for which they were constructed.
9. **CLOSING PRECAUTIONS:** Tenant shall see that the windows, transoms and doors of the Premises are closed and securely locked before leaving the Building and Tenant shall exercise due care and caution that all water faucets or water apparatus are entirely shut off before Tenant or Tenant's employees leave the Building, and that all electricity, gas or air shall likewise be carefully shut off, so as to prevent waste or damage. Tenant shall make good injuries sustained by other tenants or occupants of the Building or by Landlord due to any default or carelessness herein.
10. **MOVING FURNITURE, SAFES, ETC.:** No furniture, freight or equipment of any kind shall be brought into or removed from the Building without prior notice to Landlord or Landlord's agent and all moving of same into or out of the Building by tenants shall be done at such times and in such manner as Landlord shall designate. Landlord shall have the right to prescribe the weight, size, and position of all safes and other heavy property brought into the Building, and also the times and manner of moving the same in and out of the Building. Landlord will not be responsible for loss or for damages to any such safe or property from any cause, but all damage done to the Building by moving or maintaining any such safe, furniture, freight, equipment or property shall be repaired at the expense of Tenant. Tenant shall advise Landlord at least seven days in advance of any move.
11. **JANITOR SERVICE:** Tenant shall not employ any person or persons other than the janitor of Landlord for the purpose of cleaning the leased Premises, unless otherwise agreed. Except with the written consent of Landlord, no person shall be permitted to enter the Building for the purpose of cleaning same. Tenant shall not cause any unnecessary labor by carelessness or indifference in the preservation of good order and cleanliness. Janitor service shall not include moving of furniture, shampooing of rugs or carpets or other special services. Janitor service will not be furnished when rooms are occupied during the regular hours when janitor service is provided. Window cleaning shall be done only at the regular and customary times determined by Landlord for such services.
12. **VIOLATION OF RULES:** Landlord reserves the right to exclude or expel from the Building any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of the Rules and Regulations of the Building.
13. **REQUIREMENTS:** The requirements of Tenant will be attended to only upon application at the Office of the Building. Employees of Landlord shall not perform any work or do anything outside of their regular duties unless under special instructions from the office, and no employee will admit any person (Tenant or otherwise) to any office without specific instructions from the Office of the Building.
14. **ROOMS USED IN COMMON:** Rooms used in common by tenants including Mall areas, elevators, restrooms, corridors and exterior plaza shall be subject to these Rules and Regulations as they may apply and to any special regulations posted therein, including but not limited to "no smoking" regulations.

15. **ENTRANCE DOORS:** Landlord reserves the right to close and keep locked all entrance and exit doors of the Building during such hours as Landlord may deem to be advisable for the adequate protection of the property. All tenants, their employees, or other persons entering or leaving the Building at any time when it is so locked are required to sign the Building register when so doing, and the Security Guard in charge may refuse to admit to the Building while it is locked, Tenant or any of Tenant's employees, or any other person, without a Valid Building Pass, or other satisfactory identification showing his right to access to the Building at such time. Landlord assumes no responsibility and shall not be liable for any error in regard to any such pass or identification, or from the admission of any authorized person to the Building.
16. **ELECTRICITY:** Tenant may operate a reasonable number of typical office machines, including adding machines, personal computers, calculators, clocks, coffee machines, microwave oven, refrigerator and small copy machines. Tenant may not operate large office machines, including but not limited to mini or mainframe computers, additional air conditioning units and similar large scale equipment without Landlord's prior written approval, except that Landlord hereby approves any and all such equipment existing as of the date of the Lease.
17. **COOKING:** No cooking except microwave cooking shall be done or permitted by tenants in their respective Premises, nor shall Premises occupied by tenants be used for the storage of merchandise, washing clothing, lodging, or any improper, objectionable or immoral purposes.
18. **HEATING:** No tenant shall use or keep in the Building any kerosene, gasoline or inflammable or combustible fluid or material or use any method of heating or air conditioning other than that supplied by Landlord.
19. **VENDING MACHINES:** No vending of food or beverage dispensing machine or machines of any description shall be installed, maintained or operated upon any premise in the Building without the written permission of the Landlord..
20. **NAME:** Landlord, with prior written notice to Tenant, at anytime may change the name of the Building.
21. **FREIGHT ELEVATOR:** The building freight elevator will be used for all deliveries of supplies, packages, equipment, furniture and other deliveries. Landlord shall set the hours for use of the freight elevator. Should Landlord permit deliveries on passenger elevators, such permission shall not be deemed a precedent for other deliveries in passenger elevators..
22. **PRECAUTIONS TO PREVENT ASBESTOS EXPOSURE.** The sprayed-on fire-proofing materials covering the structural steel throughout the Building and other items in ceiling plenum areas and the Building's telephone and electrical closets, as well as certain mineral core doors, certain vinyl tile, and pipe lagging in mechanical spaces and other areas contain asbestos. Asbestos is known to the State of California to cause cancer. In tenant spaces, this asbestos-containing material is located in the ceiling plenum (above the ceiling tiles) and in the telephone and electrical closets. Landlord has established special procedures for all repairs, maintenance, alterations, additions, modifications, improvements or other such work to be undertaken by Tenant in areas of the Building where asbestos-containing material may be present. Before Tenant or its contractors remove or otherwise disturb any ceiling tiles, or do any work in the electrical or telephone closets,

Tenant must notify the Asbestos Site Manager through the Office of the Building about such work. The Asbestos Site Manager must issue Tenant a work permit before any such work begins. Tenant and its contractor(s) must strictly comply with all work permit requirements, all directions (written or oral) and all asbestos work procedures, plans and documents given them by Building Management. Tenant shall also immediately report to the Asbestos Site Manager through the Building Management Office any time Tenant observes or suspects there has been a spill or other release of asbestos containing materials.

23. **BUILDING:** The word "Building" as used in these Rules and Regulations means the Building which is a part of the Premises leased pursuant to the Lease to which these Rules and Regulations are attached. Each tenant shall be liable to Landlord for any loss, cost expense, damage or liability, including attorney's fees, cause or occasioned by the failure of such first named tenant to comply with these Rules and Regulations, but Landlord shall have no liability for such failure or for failing or being unable to enforce compliance therewith by any tenant except as may be otherwise provided in the Lease, and such failure by Landlord or non-compliance by any other tenant shall not be grounds for termination of the Lease to which these Rules and Regulations are attached by the Tenant hereunder.

## EXHIBIT F

### Alterations to Suite 902 - 9th Floor Fox Plaza

This Work Letter is part of the Office Lease dated as of December 27, 2005 (the "Lease"), executed concurrently herewith, by and between API Fox Plaza LLC, a Delaware Limited Liability Company, as Landlord, and the City and County of San Francisco ("Tenant" or "City") covering certain premises described in the Lease. All terms that are capitalized but not defined herein shall have the same meanings given to them in the Lease.

Landlord, at its sole cost and expense, and through its general contractor approved by City (the "Contractor"), shall furnish and install within the Premises the improvements (the "Tenant Improvements" or "Tenant Improvement Work") described herein and in Schedule 1 attached hereto, in accordance with the provisions of this letter.

#### 1. Plans and Specifications

a. Plans. If required, Landlord shall cause its architect or space planner approved by City (the "Architect") to prepare drawings and specifications approved by City for the Tenant Improvements, including but not limited to the items described in Schedule 1 attached hereto (the "Plans"). If following approval of the Plans, City requests a change, addition, or alteration to the approved Plans, then City shall bear the cost of any such change, addition, or alteration.

#### 2. Permits

a. Responsibility Obtaining Permits. Landlord shall have the responsibility for obtaining all governmental permits and approvals required to commence and complete the Tenant Improvement Work, and promptly upon receipt thereof shall deliver copies of all of such permits and approvals to City. Landlord shall use its best efforts to obtain all such approvals and permits as soon as possible after execution by City of this Lease, in order to comply with the construction schedule referred to in Section 5.a. below. Tenant shall reasonably cooperate with Landlord in obtaining such approvals and permits, without expense to Tenant.

#### 3. Construction

a. Construction of Tenant Improvements. Landlord shall cause the Tenant Improvements to be constructed and installed in a good and professional manner in accordance with sound building practice consistent with other first-class buildings in the Reference Area and in conformity with any Plans, the terms of this Work Letter and the Lease. City shall not have any obligation with respect to any such work other than as, provided herein or in the Lease.

b. General Conditions. The performance of all Tenant Improvement Work by Landlord shall be subject to the following terms and conditions:

i. All of the Tenant Improvement Work shall be performed in compliance with all laws, codes, regulations and building requirements bearing on construction of the Tenant Improvements;

ii. The construction of the Tenant Improvements shall comply with all applicable laws (including, without limitation, the applicable portions of the Americans With Disabilities Act); and

iii. Landlord and its Contractor shall be responsible for all required insurance; and

iv. Landlord shall through its approved Contractor furnish and install all improvements that are required to bring the Premises, the path of travel to the Premises, and the lobby, corridors, public bathrooms on the floor of the Building in which the Premises are located into compliance at the commencement of the herein Lease with all applicable laws (including, without limitation, the applicable portions of the Americans With Disabilities Act) for City's use of the Premises;. Landlord shall not be responsible for making accessible any of Tenant's furniture, workstations, shelving or equipment which Landlord does not design or install.

c. Asbestos Related Work. In the event that Landlord or City encounter any asbestos containing materials ("ACM") in the Building in connection with the construction of the Tenant Improvement Work, Landlord agrees promptly to cause performance and to be responsible, in Landlord's reasonable discretion and in compliance with applicable laws, codes, regulations and building requirements for all work relating to the containment, removal and disposal of such ACM as necessary for such construction and agrees to bear all costs thereof.

d. Installation of Furniture Systems, Telecommunications and Other Equipment. Landlord and City acknowledge that the Tenant Improvement Work shall be completed by Landlord exclusive of the installation of furniture systems and telecommunications, data and computer cabling facilities and equipment. City shall be responsible for installing such systems, facilities and equipment, provided that Landlord shall furnish access to City and its consultants and contractors to the main telephone service serving the floor on which the Premises is located and all other parts of the Building for which access is needed for proper installation of all such systems, facilities and equipment. City shall have the right to enter the Premises and such other portions of the Building at reasonable times during the course of construction of the Tenant Improvements in order to install such systems, facilities and equipment. City and Landlord shall use their good faith efforts to coordinate any such activities to allow the Tenant Improvements and the installation of such furniture systems, telecommunications, data and computer cabling facilities and equipment to be completed in a timely and cost-effective manner. It is understood that Landlord will perform all above-ceiling work related to installation of Tenant-furnished telephone and data cable.

#### 4. Payment for Work

All costs of the Tenant Improvement Work shall be performed at Landlord's sole cost and expense. Landlord shall not be entitled to an administrative fee from Tenant relating to the Tenant Improvement Work.

#### 5. Substantial Completion

a. Construction Schedule. Landlord shall perform the Tenant Improvement Work in accordance with the construction schedule to be provided to Tenant. Landlord shall keep City apprised of the status of permit approval and the progress of construction. From time to time during the construction of the Tenant Improvements, City shall have the right upon reasonable advance oral or written notice to Landlord to enter the Premises at reasonable times to inspect the Premises, provided such inspections do not unreasonably interfere with the construction. Landlord or its representative may accompany City 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 Tenant Improvement Work will be Substantially Completed in accordance with the any Plans and the provisions hereof. Landlord shall notify City when the Tenant Improvement Work is in fact Substantially Completed and the Premises are ready for occupancy by City, and City or its representatives shall be permitted to accompany Landlord or its architect on an inspection of the Premises on such date or other mutually agreeable date soon thereafter.

b. Substantial Completion. The Tenant Improvements shall be deemed to be "Substantially Completed" and "Substantial Completion" shall be deemed to occur for purposes hereof when the Tenant Improvements are sufficiently complete in accordance with the any Plans and the terms of this Work Letter to the extent necessary to enable City to occupy the Premises and to conduct its normal business operations therein without unreasonable interference or impairment and City shall have approved the Tenant Improvements after its inspection of the Premises. City may, at its respective option, approve the Tenant Improvements even though there remain minor details that would not interfere with City's use. Landlord shall diligently pursue to completion all such details. Notwithstanding the foregoing, City shall have the right to present to Landlord within thirty (30) days after acceptance of the Premises, or as soon thereafter as practicable, a written punch list consisting of any items that have not been finished in accordance with the Plans and the terms of this Work Letter. Landlord shall promptly complete all defective or incomplete items identified in such punch list, and in any event within thirty (30) days after the delivery of such list. City's failure to include any item on such list shall not alter Landlord's responsibility hereunder to complete all Tenant Improvement Work in accordance with the Final Plans and the provisions hereof, nor constitute a waiver of any latent defects.

#### 6. Delays in Construction

a. Unavoidable Delays. For purposes hereof, "Unavoidable Delays" shall mean any delays by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, permit issuance without fault and beyond the reasonable control of Landlord, other labor disputes, inability to obtain labor or materials after diligent and timely efforts, enemy action, civil



commotion, protests, riots, demonstrations, federal or state governmental restrictions, or by any other reason beyond the reasonable control of the party obligated to perform. In the event of any such delays, Landlord shall give prompt written notice to City of the occurrence of such event and the projected delay in performance and thereafter shall keep City regularly informed of the status of such Unavoidable Delay.

b. Tenant Delays. Subject to any Unavoidable Delays, City shall be responsible for any delay in the construction of the Tenant Improvements due solely and directly 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) City's material changes in the Final Plans after City has approved them, (iii) a delay in excess of one week in delivery of data or telephone cables, and (iv) a delay in excess of one week in Tenant's installation of furniture systems. No such Tenant Delays in the completion of construction of the Tenant Improvement Work shall be considered in the determination of the Commencement Date of the Lease and the Tenant Improvements shall be considered to be Substantially Completed for purposes of the determination of the Commencement Date on the date by which the Tenant Improvements would have been completed if there had been no such delay. Notwithstanding the foregoing, City shall be responsible only to the extent any delays are actually caused by Tenant Delays.

c. Landlord Delays. If Landlord's delivery of possession of the Premises to City is delayed due to Landlord's failure to complete construction of the Tenant Improvements in a timely manner (subject to Tenant Delays), Landlord and Tenant shall have the rights and obligations provided in Section 9 of the Lease.

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

City:                   Attn: Director of Property  
Real Estate Division  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102

Landlord:            Attn: Mark Conroe  
Building Office  
1390 Market Street, #108  
San Francisco, CA 94102

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

e. Prevailing Wages for Construction Work. In constructing the Tenant Improvements, Landlord shall comply with the prevailing wages provisions contained in Section 27 of the Lease.

f. Tropical Hardwood Ban. In constructing the Tenant Improvements, Landlord shall comply with all provisions of the Lease including but not limited to the tropical hardwood ban and arsenic-treated wood provisions contained in Section 27 of the Lease.

g. Calendar Days. Unless otherwise provided herein, all periods specified by a number of days shall refer to calendar days.

h. Approvals. Notwithstanding anything to the contrary herein, no approval by City of the Final Plans, completion of the Tenant Improvement Work or any other approvals by City hereunder shall be deemed to constitute approval of any governmental or regulatory authority with jurisdiction over the Premises. All approvals or other determinations of City as Tenant hereunder may be made by City's Director of Property unless otherwise specified herein.

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

ATTACHMENTS: SCHEDULE I

## SCHEDULE I

### WORK LETTER – EXHIBIT F

#### I. SUITE 900

Landlord shall furnish and install the following leasehold improvements as shown on the Plans and as described herein. All work shall be performed after hours and/or on weekends and performed in such a way as to minimize disruption and disturbance (including noticeable dust and odors) to City's use of the Premises. City shall be responsible for only clearing desks and counter tops into Landlord supplied boxes. All work shall be performed on a schedule reasonably approved by City. It is understood that any furniture, equipment, panel systems, work stations, divider screens and signage shown on such Plans are schematic and not to be furnished by Landlord nor indicate the size, quality or quantity of Tenant's furniture and equipment unless specifically stated in this Work Letter.

1. Paint all walls and trim with Building standard paint; color selection by Tenant. Replace damaged ceiling tile if any, and paint tile to match for a uniform, attractive ceiling.
2. Install Shaw Contract Carpet Tiles Style: Radiance, Color: Seaside Elegance 50 cm x 50 cm carpet tile (or "Green Label Plus" equivalent) with "NextStep" equivalent backing . Provide new rubber baseboard. Color selections by Tenant.
3. Clean and repair to "like new" the building standard mini-blinds on all exterior windows throughout Suite 900.
4. Provide a thorough cleaning of all surfaces.
5. The HVAC shall be designed by a licensed mechanical engineer according to ASHRAE standards for Tenant's existing use and layout. Relocated supply vents away from existing workstations. Relocate thermoatats where necessary and calibrate. Such design shall be approved by City. Landlord shall deliver an HVAC air balance report showing that the HVAC system was is operating as designed

#### II. SUITE 902

Landlord shall furnish and install the following leasehold improvements as shown on the Plans and as described herein. . All work shall be performed after hours and/or on weekends and performed in such a way as to minimize disruption and disturbance (including noticeable dust and odors) to City's use of the Premises. City shall be responsible for only clearing desks and counter tops into Landlord supplied boxes. All work shall be performed on a schedule reasonably approved by City. It is understood that any furniture, equipment, panel systems, work stations, divider screens and signage shown on such Plans are schematic and not to be furnished by Landlord nor indicate the size, quality or quantity of Tenant's furniture and equipment unless specifically stated in this Work Letter.

1. The HVAC shall be designed by a licensed mechanical engineer according to ASHRAE standards for Tenant's intended use [conference room for up to forty-nine (49) people]. Such design shall be approved by City. Landlord shall deliver an HVAC air balance report showing that the HVAC system was installed as designed
2. Data/Telephone: Tenant desires to the greatest extent possible to reuse the outlets that have existing telephone and/or data cable. If required, Tenant shall furnish new fire rated Teflon cable for the outlets and Landlord shall pull such new wire from the telephone/storage closet and or Tenants switch/server area to the existing outlets. Tenant shall be responsible for furnishing and installing all terminations, splices, wiring boards, cover plates and telephone equipment.

### III. SUITE 903

Landlord shall furnish and install the following leasehold improvements as shown on the Plans and as described herein. It is understood that any furniture, equipment, panel systems, work stations, divider screens and signage shown on such Plans are schematic and not to be furnished by Landlord nor indicate the size, quality or quantity of Tenant's furniture and equipment unless specifically stated in this Work Letter.

1. Demolish and remove all partitions and doors not required by the new layout. Relocate all telephone/data, electrical, thermostats and light switches. Install new walls and doors as required by the Plans.
2. Install a connecting door between Suites 902 and 903. Door, frame and hardware to match existing Suites 900 to 902 door, frame, and hardware. Install lock preventing access from Suites 902 to 903 and provide five (5) keys.
3. Change light fixture lenses to match existing Suite 902 lenses.
4. Paint all walls and trim with Building standard paint; color selection by Tenant. Replace damaged ceiling tile if any, and paint tile to match for a uniform, attractive ceiling.
5. Install Shaw Global Diversity # 5045- 45580 carpet with pad. Provide new rubber baseboard. Color selections by Tenant.
6. If required, provide "like new" building standard mini-blinds on all exterior windows throughout Suite 903.
7. Provide five (5) keys to the entrance door.
8. Install new quad electrical outlets and data outlets as required. All existing electrical outlets shall be functional.
9. Adjust all light fixtures as required by the Plans.

10. The HVAC shall be designed by a licensed mechanical engineer according to ASHRAE standards for Tenant's use and layout. Such design shall be approved by City. Prior to Substantial Completion, Landlord shall deliver an HVAC air balance report showing that the HVAC system was installed as designed.
11. Landlord shall provide a three (3) day "burn off" prior to Substantial Completion.
12. Data/Telephone: Tenant desires to the greatest extent possible to reuse the outlets that have existing telephone and/or data cable. If required, Tenant shall furnish new fire rated Teflon cable for the outlets and Landlord shall pull such new wire from the telephone/storage closet and or Tenants switch/ server area to the existing outlets. Tenant shall be responsible for furnishing and installing all terminations, splices, wiring boards, cover plates and telephone equipment.
13. Make all other improvements as shown on the approved Plans.