

## FIRST AMENDMENT TO LEASE

This First Amendment to Lease is made and entered into as of this \_\_\_\_ day of November, 2000 by and between the City and County of San Francisco, acting by and through the San Francisco Port Commission (the "Port"), and AMB Property, L.P., a Delaware limited partnership ("Tenant").

THIS LEASE IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES.

A. On or about August 2, 1999, the Port and Tenant entered into that certain Lease, dated as of such date (the "Lease"), for the redevelopment and use of that certain property known as Pier 1, as more particularly described in the Lease (the "Property").

B. Pursuant to the Lease and that certain Development Agreement between the Port and Tenant dated as of March 9, 1999, Tenant has undertaken development of Pier 1, and in connection therewith is entering into a limited liability operating agreement (the "Operating Agreement") to form AMB Pier One LLC, a California limited liability company (the "LLC") with Banc of America Historic Ventures LLC (the "Tax Credit Investor") as an historic tax credit investor, all as anticipated pursuant to various provisions of the Lease. Under the terms of the Operating Agreement, Tenant will be required to obtain permitted financing of the Tenant's leasehold interest in the Property.

C. Pursuant to Port Commission Resolution No. 99-17, and Board of Supervisors Resolution No. 329-99, the Port Commission and Board of Supervisors authorized the Port's Executive Director to enter into any additions, amendment or other modifications to the Lease that the Executive Director determines, in consultation with the City Attorney, are in the best interests of the Port, do not decrease the rent or otherwise materially increase the obligations or liabilities of the Port and are necessary or advisable to complete the transaction contemplated in the Lease and effectuate the purpose and intent of those Resolutions, such determination to be conclusively evidenced by the execution and delivery of the Executive Director of the Lease and any amendments thereto.

D. In order to facilitate the tax credit transaction and related permanent financing, the Parties desire to make certain clarifications and modifications of the Lease, the Parties hereto are prepared to make such clarifications and modifications in the form of this First Amendment to Lease, and the Executive Director has determined

that such changes are in the best interests of the Port, do not decrease the rent or otherwise materially increase the obligations or liabilities of the Port and are necessary or advisable to complete the transaction contemplated in the Lease and effectuate the purpose and intent of the Port Commission and Board of Supervisors.

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

**Section 1. Historic Tax Credit Investment**

(a) Section 2.3(b) of the Lease is hereby amended in its entirety to read as follows:

**Share of Historic Tax Credits.** Under the DA, Tenant is required to use good faith efforts to construct the Project in such a manner as to qualify for 20% federal income tax credits for historic rehabilitation, pursuant to Internal Revenue Code § § 38 and 47, and 16 U.S.C.A. § 470 et seq. and applicable regulations ("Historic Tax Credits"). Tenant shall use its best efforts to diligently obtain an investor for, or otherwise take advantage of, such Historic Tax Credits at a value equal to or higher than that for comparable historic rehabilitation projects. For purposes hereof, the term "Historic Tax Credit Investment Proceeds" shall mean the amounts (net of any sales commissions, reasonable legal fees and other actual out-of-pocket costs incurred in obtaining the investor for the Historic Tax Credit) Tenant receives from an investor (the "Investor") in an investment entity of which Tenant or an Affiliate is a member or partner in consideration for the allocation to such Investor of the Historic Tax Credits and other tax-related benefits applicable to the Initial Improvements, minus the net present cost to Tenant (directly or through the LLC) as of the Rent Commencement Date, using a discount rate of two hundred and fifty basis points (250 bp) per quarter, of (i) any projected distribution of cash flow and allocation of tax losses to the Investor, (ii) any projected payment to the Investor at such time as the Investor sells, assigns or transfers all or a substantial portion of its interest in the entity to Tenant, an Affiliate, or their successors and assigns (the "Investor Interest Sale"), (iii) any out of pocket costs incurred by Tenant (directly or

through the LLC) to Investor or other third parties, including payments under Tenant's tax credit, operating deficit or completion guaranties and any distribution of extraordinary cash proceeds, pursuant to the Operating Agreement and any documents executed in connection therewith, and (iv) any prepayment penalty associated with the initial financing required as a result of the Investor Interest Sale. Port and Tenant shall each be entitled to 50% of the Historic Tax Credit Investment Proceeds. Tenant shall retain the Port's 50% share of the Historic Tax Credit Investment Proceeds and apply such 50% share towards reducing the Total Construction Costs of the Project, thereby increasing Minimum Rent as further provided in Section 2.3(c)(iii) hereof. All costs deducted from amounts received from Investors to calculate the Historic Tax Credit Investment Proceeds shall be excluded from the Certified Construction Costs.

(b) The following new language is hereby added at the end of Section 2.3(c)(iii) of the Lease:

Anything to the contrary in this Lease notwithstanding, upon an Investor Interest Sale, the Historic Tax Credit Investment Proceeds shall be recalculated (the "Actual Tax Credit Value") based upon the actual amounts received from the Investor, the actual allocation of cash flow and tax losses to the Investor over the life of the Investor's investment in the investment entity until the date of the Investor Interest Sale, any distribution of extraordinary cash proceeds, the actual amounts paid by Tenant to the Investor at the time of the Investor Interest Sale, any prepayment penalty associated with the initial financing required as a result of the Investor Interest Sale and any out of pocket costs incurred by Tenant (directly or through such investment entity) to Investor or other third parties, including payments under Tenant's tax credit, operating deficit or completion guaranties, pursuant to the Operating Agreement and any documents executed in connection therewith. Within ninety (90) days of such Investor Interest Sale, Tenant shall submit to Port a statement describing the calculation of the Actual Tax Credit Value. The Port shall have sixty (60) days from

receipt of the statement to object to such calculation, and failure to timely object shall be deemed approval of the statement. Upon determination of the Actual Tax Credit Value, the Minimum Rent adjusted pursuant to Section 2.3(c)(iii) hereof that was due and payable by Tenant between the Rent Commencement Date and the date the Actual Tax Credit Value is approved by the Port, or otherwise determined by arbitration or the courts shall be recalculated to determine the amounts that would have been payable if such rent adjustments had been calculated based on the Actual Tax Credit Value. If Port has received either less or more such adjusted Minimum Rent than Port would have received had the Minimum Rent adjustment been calculated based on the actual Tax Credit Value, then in the case of overpayment by Tenant, Tenant shall be allowed to take a rent credit against all of the Minimum Rent due under this Lease until it has recovered the full amount of the overpayment. In the case of an underpayment, Tenant shall promptly pay Port the amount of such underpayment. After the date of such recalculation, the Minimum Rent shall be prospectively adjusted upward or downward, as the case may be, by the difference between Minimum Rent based upon the originally projected Historic Tax Credit Investment Proceeds and Minimum Rent based upon the Actual Tax Credit Value.

Section 2. Participation in Proceeds from Sale of Lease.

Section 16.1(i) of The Lease is hereby amended in its entirety to read as follows:

Participation in Proceeds from Sale of Lease. Upon an assignment, sale, or other transfer of Tenant's entire interest in this Lease or upon the occurrence of a Significant Change (other than an assignment to accommodate sale of Historic Tax Credits as described in Section 16.1(j)) occurring at any time and from time to time during the Term, then Tenant shall pay to Port as Additional Rent hereunder, fifty percent (50%) of all sums paid or payable to Tenant in connection with this Lease by the transferee after deducting the following:

- (i) expenses for verifiable, reasonable and customary brokerage commissions,
- (ii) the value of Tenant's trade fixtures conveyed, and
- (iii) other expenses actually paid or obligations (excluding Leasehold Mortgages or other debt or financing obligations) incurred by Tenant in connection with the transfer
- (iv) in the case of the first transfer of this Lease by Tenant to a third party pursuant to Section 16.1(i) hereof, (the "Initial Transfer"), any unamortized cost of the Initial Improvements and Subsequent Construction based upon the actual construction costs thereof based on a straight-line amortization basis over the Term remaining at the time of sale; and
- (v) in the case of any subsequent transfer after the Initial Transfer, the gross purchase price paid by the transferee to the prior tenant in consideration for the transfer, plus the actual construction cost of any Subsequent Construction incurred after the immediately preceding transfer less depreciation calculated in accordance with generally accepted accounting practices.

### Section 3. Payment of Rent

Effective July 1, 2001, notwithstanding the provisions of Section 2.4 of the Lease and Section 2D of that certain Sublease by and between Tenant, as Sublessor, and the Port, as Sublessee, dated as of August 2, 1999, (the "Port Sublease") providing for set off of rent, such sections shall apply only after a default by the Port, as Sublessee under the Port Sublessee, or by AMB, as Tenant under the Lease, as the case may be, and unless or until such default occurs, each party shall pay its rent under the Master Lease or Sublease by cash payment as and when the same falls due.

### Section 4. Ratification

The Lease, as modified hereby, shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this First Amendment to Lease as of the day and year first above written.

TENANT

AMB PROPERTY, L.P.,  
a Delaware limited partnership

By: AMB PROPERTY CORPORATION, A Maryland  
corporation



By: Luis A. Belmonte

Its: ~~Managing Director~~ Executive Vice President *LB*

PORT

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation, operating by and through  
the SAN FRANCISCO PORT COMMISSION

By: 

Douglas F. Wong  
Executive Director

APPROVED AS TO FORM:

LOUISE H. RENNE, City Attorney

By: 

Neil H. Sekhri  
Assistant Port General Counsel