

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.

16. ENTRY. Landlord reserves and shall at all reasonable times and with reasonable advance notice of not less than 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.

17. 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 Paragraph shall survive the termination of this Lease, with respect to any damage, destruction, injury or death occurring prior to such termination.

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 Paragraph shall survive the termination of this Lease, with respect to any damage, destruction, injury or death occurring prior to such termination.

18. 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 necessary in Landlord's reasonable judgment 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. 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 oral request, in accordance with the Rules and Regulations. Landlord shall also furnish lobby attendant service consisting of a lobby attendant 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 San Francisco Civic Center area as of the Commencement Date of this Lease.

Suites 250, 500 and 600 of the Premises shall be separately metered for electricity for power, other than central mechanical, elevator and Common Area power which costs shall be at Landlord's expense subject to reimbursement as detailed in Paragraph 6. Tenant shall pay directly to the local public utility, prior to delinquency, all charges for electricity for such portions of the Premises. Any interruption of service due to non-payment of such utility bills by Tenant shall not be deemed an interruption of an Essential Service as set forth below. If the local public utility shall for any reason cease to separately meter electricity for the Premises, Landlord shall submeter such electrical usage and Tenant shall agree to reimburse Landlord monthly at Landlord's cost per kilowatt hour which reimbursement shall be deemed "Additional Rent" as set forth herein.

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 five (5) or more consecutive days after notice from Tenant if such failure is in the reasonable control of Landlord, or a period of ten (10) or more consecutive days after notice from Tenant if such failure is not within the reasonable control of Landlord, then the Base Monthly Rental and additional charges hereunder shall be abated based on the then current monthly rental rate per rentable square foot and the extent 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 reasonable diligence 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 written notice to Tenant with its good faith estimate of the time required to restore the disrupted Essential Services. If such Essential Services cannot be restored within one hundred fifty (150) 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 fifty (50) days after the date such Essential Services were disrupted, terminate this Lease as of the date specified in such notice, which termination 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 Monthly Rental and additional charges 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.

19. 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 Monthly Rental or other money hereunder, provided that for the first two (2) payments of Base Monthly Rental and Additional 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 Monthly Rental and Additional 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 Monthly Rent and Additional 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 Monthly Rental and Additional 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 Monthly Rental and Additional 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 Monthly Rental and Additional Rent due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied in payment of future Base Monthly Rental and Additional 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.

20. 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 and No/100 Dollars (\$5,000,000.00) to protect Landlord and Tenant against liability to the public and property, incident to the use of or resulting from any accident occurring in, on or about the Premises and facilities, to indemnify against the claims of one (1) 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 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 Paragraph 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 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.



21. 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 Paragraph 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 (30<sup>th</sup>) 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 Paragraph above, then: (i) City's obligation to pay Base Monthly Rental and Additional Rent shall continue up until the date of termination, and thereafter shall cease, except that Base Monthly Rental and Additional Rent shall be reduced as provided in this Paragraph 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 Paragraph 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 Monthly Rental 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 based upon the then current monthly rental rate per rentable square foot. (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 Paragraph, 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 Monthly Rental 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 Monthly Rental and additional charges owing by City for the period of the Taking.

22. ESTOPPEL CERTIFICATE; SUBORDINATION AND ATTORNMENT. Within ten (10) days after notice from Landlord, Tenant shall execute and deliver at no charge to Landlord, or to such party as Landlord 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 by Tenant 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 Landlord. Failure to deliver the certificate within the ten (10) days shall be conclusive upon Tenant for the benefit of Landlord and any successor to Landlord, that this Lease is in full force and effect and has not been modified except as may be represented by Landlord.

Tenant is hereby informed that the Building of which the demised Premises are a part is leased by Landlord under the terms of a ground lease (Indenture of Lease) between Massachusetts Mutual Life Insurance Company and Two Polk Corporation, Fox San Francisco Plaza Corporation & Sunset-Fox Plaza, Inc., dated September 30, 1964. Tenant will, upon request of Massachusetts Mutual Life Insurance Company ("Lessor") or any holder ("holder") of a first deed of trust covering the leasehold estate created under such Indenture of Lease ("encumbrance"), agree to attorn to such Lessor or such holder in the event of a termination of such Indenture of Lease, 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 Indenture of Lease or other encumbrance or a separate written agreement between Tenant and Lessor or any holder of an 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. a written agreement is entered into by Lessor or holder and is recorded providing that notwithstanding any default in the encumbrance by Landlord and the foreclosure or termination thereof, or the enforcement by Lessor or any holder of any rights or remedies thereunder or with respect thereto, (including, without limitation, a sale thereunder) Tenant shall be joined or made a party to any such foreclosure, termination or other proceeding and 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 Lessor or any holder that contain the covenants of Holder required hereunder, which instrument shall be enforceable by City. In the event that any ground lease or master lease terminates for any reason or a 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 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.

23. 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 reasonable diligence 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 impaired by such construction, then Base Monthly Rental and Additional Rent (if applicable) for the space so affected shall be abated to the extent and for the duration of such disruption based upon the then current monthly rental rate per rentable square foot. Tenant's acknowledgement of Landlord's right to construct an additional building as provided above is made in City's capacity as Tenant only. Nothing herein shall be deemed to constitute approval of any such project by any governmental agency or authority with jurisdiction. 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.

24. 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 imposes 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 16, 2000, which is attached to this Lease.

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"). To the best of Landlord's knowledge, 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 herein above 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.



25. CONTROLLER'S CERTIFICATION OF FUNDS. Notwithstanding anything to the contrary, except as set forth in Paragraph 4.B 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, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure.

26. FUTURE ELEVATOR. Landlord shall have the right to exclude approximately two hundred fifty-two (252) square feet from the fourth, fifth and sixth floor portions of the Premises in order to install an additional elevator as shown as Space "X" on Exhibit "A," page 1, by serving sixty (60) days' advance written notice on Tenant. At the end of such sixty (60)-day period, Tenant shall vacate and surrender Space "X." Landlord shall install demising walls at Landlord's expense, and shall pay for any costs of relocating Tenant from such portion of the Premises. Tenant hereby agrees not to place or locate equipment or operations in the Space "X" areas which would be unreasonably expensive or difficult to relocate. Tenant's Base Monthly Rental shall be reduced proportionately by the area so excluded based upon the then current monthly rental rate per rentable square foot, and Tenant's Share of Direct Taxes and Operating Expenses shall be reduced proportionately by the area so excluded. 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.

27. 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 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 represents it has not changed the information previously provided in its "Chapter 12B Declaration: Nondiscrimination in

Contracts and Benefits" form (Form HRC-12B-101). 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, and (ii) the HRC approved such form. City's Department of Real Estate has confirmed that the HRC approved such form.

E. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of property to City are incorporated in this Section by reference and made a part of this Agreement 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 and No/100 Dollars (\$50.00) 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.

## 28. 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 by depositing in the same in the United States mail, postage prepaid and addressed to Landlord, 425 California Street, Suite 2300, San Francisco, CA 94104 and to Tenant in care of Director of Property, 25 Van Ness Avenue, Suite 400, San Francisco, CA 94102, 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 Paragraph. 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. Prior Agreements. This Lease, together with its exhibits, contains all the agreements of the parties hereto and supersedes any previous negotiations or prior leases, terms, services or oral commitments. 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; 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 application 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. The captions preceding the paragraphs and subparagraphs of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the parties, without any presumption against the party responsible for drafting any part of this Lease. Except as otherwise specifically provided herein, wherever in this Lease Landlord or City is



required or requested to give its consent or approval to any matter or action by the other, such consent or approval shall not be unreasonably withheld or delayed and the reasons for disapproval of consent shall be stated in reasonable detail in writing. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Lease, whether or not language of non-limitation, such as "without limitation" or similar words, are used. 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. Time is of the essence of this Lease.

E. Waiver. Landlord's failure to take advantage of any default or breach of covenant on the part of Tenant 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 Landlord to insist upon the performance by Tenant 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.

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

G. Successors. 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.

H. 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.

I. Prevailing Wages. 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 subsection (b) of the San Francisco Charter Section 7.204 and Sections 6.33 through 6.45 of the San Francisco Administrative Code that relate to payment of prevailing wages.

J. No Personal Liability. 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. Tropical Hardwood and Virgin Redwood Ban. Except as expressly permitted by the application of Sections 12I.3.b and 12I.4.b of the San Francisco Administrative Code, neither Landlord nor any of its contractors shall provide any items to City in the construction of the Leasehold Improvements or otherwise in the performance of this Lease which are tropical hardwoods, 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 product, virgin redwood, or virgin redwood wood products. In the event Landlord fails to comply in good faith with any of the provisions of Section 12I of the San Francisco Administrative Code, Landlord shall be liable for liquidated damages for each violation in any amount equal to Landlord's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greatest. Landlord acknowledges and agrees that the liquidated damages assessed shall be payable to the City and County of San Francisco upon demand and may be set off against any monies due to Landlord from any contract with the City and County of San Francisco.

L. Bicycle Storage. Article 1.5 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. Landlord agrees to continue, at no cost to Landlord, to provide the previously installed bicycle storage facilities in compliance with Article 1.5 of the Code.

M. Resource Efficient City Buildings. Landlord acknowledges that the City and County of San Francisco has enacted San Francisco Administrative Code Sections 82.1 to 82.8 relating to resource-efficient City buildings and resource-efficient pilot projects. Landlord hereby agrees that it shall comply with all applicable provisions of such code sections as such sections apply to the Premises. With regard to the indoor air quality portion of the recently enacted Administrative Code changes, City has not established standards as described in Section 82.1 of the Administrative Code. In the event City's future indoor air quality standards require changes to the Building's HVAC system when no new construction is occurring on the Premises, and such requirements are not being applied uniformly to existing Class A buildings in San Francisco which are not performing new construction, then the City shall pay all pre-approved direct costs which City requires Landlord to incur in order to comply with the increased standards.

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

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

P. Brokerage Fees; Indemnity. 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 Paragraph shall survive any termination of this Lease.

Q. Attorney 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.

R. Representations. 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 Monthly Rental and Additional 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, free and clear of all claims, encumbrances and liens except for the Indenture of Lease noted in Paragraph 22 and any other encumbrances approved in writing by Tenant prior to the date hereof. 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 Paragraph.

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.

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.

29. COMMUNICATION LINE REPAIRS. 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.

30. 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.

31. RELOCATION. Landlord shall have the right, from time to time during the Term of this Lease, to relocate Suites 401, 418, 1008, 1010, to another location in the Building, provided (a) Landlord shall give Tenant at least three (3) months' notice prior to the effective date of such relocation, (b) the new Premises shall contain a rentable area no less than 95% of the original Premises, shall provide the same number of private offices and other rooms as the original Premises, and shall be altered to provide the same quantity and quality of Tenant Improvements as those in the original Premises, (c) there shall be no increase in rent due to such relocation, and (d) Basic Monthly Rent and Tenant's share of Operating Expenses and Direct Taxes shall be proportionately reduced if the rentable square footage is reduced. If such option is exercised, Landlord shall pay all costs of the Tenant Improvements for such alternate space, shall complete all such improvements before relocating City, and such relocation shall occur over a single weekend and be accomplished so as to minimize the disruption to the business of City. Landlord shall reimburse City for all reasonable and necessary costs including but not limited to weekend moving costs, data and telephone relocation, new letterhead and business cards, and up to \$1,000 for City's move supervision. If Tenant is relocated, Landlord and Tenant agree to execute an amendment to this Lease reflecting the relocation of the Premises.

32. INFANT CARE FACILITY. For the purposes of this paragraph, "infant" shall mean a child from six weeks to twenty-four months of age. Notwithstanding any other provisions of this lease, Tenant may, without Landlord's consent, use a portion of the Premises, not to exceed the existing area shown on Exhibit "A" – Suite 250, for a licensed infant care facility ("facility"), subject to the following conditions:

(a) The operator of the facility must have a minimum of five (5) years experience in infant care without any fines or sanctions by regulatory authorities and be licensed by the State of California to provide infant care in the facility. Tenant shall provide documentation establishing that such license has been obtained.

(b) The facility shall be used solely for care of infants. Tenant shall develop an emergency life safety plan and evacuation plan for the facility. The maximum infant occupancy shall be the maximum permitted by code and operator's license, but in no event more than twelve (12) infants.

(c) Should the existence or operation of the facility require any code-related building modifications, including, but not limited to, modifications of restrooms, plumbing, ventilation, recreation areas, exiting, fire sprinklers, life safety, signage, security or equipment, Landlord shall not be required to install the modifications or to permit Tenant to install them or, if Tenant is permitted to install the modifications, to reimburse Tenant for such modifications.

(d) The operator shall provide and maintain insurance from an insurer or insurers acceptable to Landlord evidencing coverage for comprehensive general liability and property damage (occurrence form) with limits of not less than \$5,000,000.00 per occurrence, which names Landlord and Tenant as additional insureds. Such policy shall be primary and non-

contributing with any insurance carried by Landlord and shall provide that the policy cannot be canceled or altered without thirty (30) days prior written notice to Landlord. The operator shall furnish Landlord with a certificate of such insurance.

(e) Such facility shall be available only to the children of employees of City or such other tenants of Fox Plaza as may be approved by both Tenant and Landlord.

(f) Such facility shall be operated only during normal weekday working hours of tenants of Fox Plaza.

(g) Should Landlord's liability insurance premium and maintenance costs be directly increased due to the existence and operation of the facility, Tenant shall reimburse Landlord for the increase.

(h) Notwithstanding any other provision of this Lease, to the fullest extent permitted by law, Tenant shall defend, indemnify, and hold Landlord harmless from any claim arising from the use, occupancy or condition of the facility excepting claims resulting from the negligence or willful misconduct of Landlord or Landlord's authorized representatives.

33. FLOOR LOAD. Tenant shall not place a load upon any floor of the Premises which exceeds the floor load per square foot which such floor was designed to carry and which is allowed by law. Landlord acknowledges that as of the Commencement Date, Tenant's placement of fixtures and equipment in the Premises is acceptable to Landlord, and Landlord will not require Tenant to change such placement unless required to by law. Landlord reserves the right to prescribe the weight and position of all safes and heavy installations which Tenant wishes to place in the Premises after the Commencement Date so as to properly distribute the weight thereof. Should Tenant move any safe, heavy equipment or bulky matter in or about the Building, it shall do so in full compliance with the applicable codes of the City and County of San Francisco and in consideration of the structural design of the Building. Tenant shall submit to Landlord notice of the terms and manner in which it plans to make the move, for Landlord's approval, which Landlord agrees will not be unreasonably withheld or delayed.

34. NOISE OR VIBRATION. Business machines and mechanical equipment belonging to Tenant which cause noise and/or vibration that may be transmitted to the structure of the Building or to any leased space to such a degree as to reasonably be objectionable to Landlord or to any tenants in the Building shall be placed and maintained by Tenant, at Tenant's expense, in settings of cork, rubber or spring type noise and/or vibration eliminators sufficient to eliminate such vibration and/or noise transmission. Landlord acknowledges that, as of the Commencement Date, Tenant's machines and equipment do not cause objectionable noise and/or vibration.

35. MAINTENANCE OF TENANTS AUXILIARY POWER HVAC SYSTEM. Tenant shall contract for preventive maintenance and repair of its HVAC, Emergency, Security, and Uninterruptible Power Supply Systems for Tenant's telephone and computer equipment. In addition, Tenant shall reimburse Landlord for costs actually and reasonably incurred by Landlord in required maintenance of Tenant's 5<sup>th</sup> and 6<sup>th</sup> floor computer room auxiliary power and HVAC system that is requested or contracted for by Tenant. In making any request for reimbursement of such maintenance costs, Landlord shall furnish to Tenant copies of all invoices and statements evidencing such costs, together with such other information as Tenant may reasonably request to verify the costs.

36. BENEFICIAL OCCUPANCY, SUITE 240. In the event that Landlord delivers Suite 240 prior to the Commencement Date with the Tenant Improvements required herein Substantially Completed (as defined in the Work Letter), Tenant shall have beneficial occupancy of Suite 240.



subject to all terms and conditions of this Lease, and shall pay Rent for Suite 240 as set forth in Paragraph 6.A.ii.

37. SIGNAGE. No sign, placard, banner, picture advertisement, name or notice shall be inscribed, displayed printed or affixed by Tenant, its employees, agents, contractors or representatives that is visible from outside of the Premises or on the outside of the Building without the written consent of Landlord first had and obtained. Landlord reserves the right to impose uniform signage for all public areas of the Building and to change said signage standards from time to time.

38. FREQUENCY INTERFERENCE. Tenant shall not be liable for any interference caused by Tenant to any telecommunications system in or attached to the Building, including but not limited to radio and switching equipment, antennae, cables and wires (collectively, "Telecommunications Equipment,") installed by Landlord or other tenants in the Building that is installed after the installation of Tenant's own Telecommunications Equipment. Any interference caused by Tenant to any Telecommunications Equipment that was installed prior to the installation of Tenant's Telecommunications Equipment shall be remedied by Tenant as soon as reasonably possible. Any interference caused by another tenant of the Building to any of Tenant's Telecommunications Equipment due to equipment that was installed after the installation of Tenant's Telecommunications Equipment shall be remedied by such other tenant as soon as reasonably possible. If the parties are unable to agree as to the party responsible for such interference and the appropriate remedy within a fourteen (14) day period, the matter shall be subject to non-binding arbitration in accordance with the commercial Rules of the American Arbitration Association at its office nearest the Building. The dispute shall be submitted to and determined by a mutually agreeable arbitrator knowledgeable and experienced in the operation of the telecommunication systems. If the parties are not able to agree upon the choice of an arbitrator then the parties shall each appoint one arbitrator who meets the qualifications set forth above, and the two arbitrators shall jointly appoint a third arbitrator, independent of either arbitrator, who also shall meet the qualifications set forth above. No provisions of this Lease shall be subject to arbitration except as specifically provided herein. In no event shall the failure to pay Rent when due be subject to arbitration, regardless of whether such nonpayment or payment is related to disputes under those provisions which are subject to arbitration under this Paragraph. If Tenant is required to stop using its Telecommunications Equipment to effectively remedy frequency interference to others, Tenant shall not be entitled to compensation from Landlord nor shall there be an abatement in Rent therefor.

39. TENANT ADVANCE. It is agreed that the Base Monthly Rental for the Premises includes the repayment of an advance to Tenant for the Tenant Improvements listed in Paragraph 5 hereof, and for Preparatory Work as hereinafter defined, which sum shall be repaid by applying the payments of the Base Monthly Rental to such repayment plus interest of 10% per annum from the date of delivery of the Premises until such repayment plus interest is repaid in full. Such repayment and interest are included in the Base Monthly Rent as set forth in Paragraph 6 hereof. Notwithstanding the foregoing, in the event of an early termination of this Lease pursuant to Paragraph 4 hereof or for any reason other than Tenant's default hereunder, the advance to Tenant shall be forgiven and there shall be no right of recovery against Tenant for any unpaid principal or interest, and Landlord shall release Tenant from and waive any liability with respect thereto. Landlord shall indemnify and hold harmless Tenant, its officer, directors, agents and representatives, from and against any and all claims, losses, fines, penalties, costs, damages and expenses (including, without limitation, attorneys' fees) arising out of this Paragraph.



The Preparatory Work is work performed for the Improvements including, without limitation: demolition, removal and replacement of systems and materials, and common area and restroom work.

40. RIGHT OF FIRST OFFER TO LEASE.

A. City shall have the right of first offer to expand the Premises by adding Suite 410 currently occupied by SCA Environmental, Inc. consisting of 4,384 rentable square feet with a lease expiration of May 31, 2004, and/ or Suite 425 currently occupied by the California Department of Corporations consisting of 4,534 rentable square feet with a lease expiration of December 31, 2002 (collectively, the "First Offer Space(s)") of the Building to the Premises at the then fair market rental for such spaces. Tenant's right of first offer to lease each of the First Offer Spaces shall be a one time opportunity to lease such spaces upon the expiration of the current leases (a "Scheduled Lease Expiration") or earlier termination of the current leases (an "Unscheduled Lease Expiration"), before Landlord leases them to a third party, including the current tenant or other tenant who has a subsequent right to lease such space.

Provided City is not then in default under this Lease, for each First Offer Space, between eight (8) and ten (10) months prior to the above Scheduled Lease Expiration dates for the leases to the above mentioned third-party tenants, Landlord shall notify City in writing (the "First Offer Notice") of Landlord's good faith determination of the then fair market rental, improvement work and other terms and conditions upon which Landlord is willing to lease the First Offer Space described in the First Offer Notice. Landlord's good faith determination shall be determined in accordance with the factors described in Paragraph 4C.2 above. For an Unscheduled Lease Expiration, Landlord may give the First Offer Notice at any time but not more than ten (10) months prior to the date the First Offer Space is likely to become available.

B. For Scheduled Lease Expirations, the following shall apply:

If City fails to give Landlord notice within thirty (30) days after receipt of the First Offer Notice, Landlord thereafter shall have the right to lease the First Offer Space described in the First Offer Notice to any third party at any terms acceptable to Landlord.

If City, within thirty (30) days after receipt of the First Offer Notice, indicates in writing its agreement to lease the First Offer Space on the terms described in the First Offer Notice, then the Lease shall be amended in writing to include such space in the Premises on the same terms and conditions described in the First Offer Notice and otherwise on the terms and conditions contained in this Lease. The Base Rent payable under this Lease shall be increased by the amount of Rent payable in connection with the First Offer Space described in the First Offer Notice, and City's share of Operating Expenses and Direct Taxes shall be adjusted to reflect the addition of such space.

If City, within thirty (30) days after receipt of the First Offer Notice, indicates in writing its agreement to lease the First Offer Space described in the First Offer Notice but disputes Landlord's good faith determination of the then fair market rental, improvement work and other terms and conditions, then the fair market rental shall be determined following the procedure detailed in Paragraph 4C.2. Once the fair market rental has been determined, the Lease shall be amended in writing to include such space in the Premises on such determined terms and conditions and otherwise on the terms and conditions contained in this Lease. The Base Rent payable under this Lease shall be increased and City's share of Operating Expenses and Direct Taxes shall be adjusted to reflect the addition of such space.

C. For an Unscheduled Lease Expiration, the following shall apply:



If City fails to give Landlord notice within thirty (30) days after receipt of the First Offer Notice, Landlord thereafter shall have the right to lease the First Offer Space described in the First Offer Notice to any third party at any terms acceptable to Landlord.

If City, within thirty (30) days after receipt of the First Offer Notice, indicates in writing its agreement to lease the First Offer Space on the terms described in the First Offer Notice, then the Lease shall be amended in writing to include such space in the Premises on the same terms and conditions described in the First Offer Notice and otherwise on the terms and conditions contained in this Lease. The Base Rent payable under this Lease shall be increased by the amount of Rent payable in connection with the First Offer Space described in the First Offer Notice, and City's share of Operating Expenses and Direct Taxes shall be adjusted to reflect the addition of such space. Unlike a Scheduled Lease Expiration, City shall not have the right to require that the fair market rent be determined in accordance with Section 4C.2 and must either accept Landlord's determination or decline to add such space to the Premises.

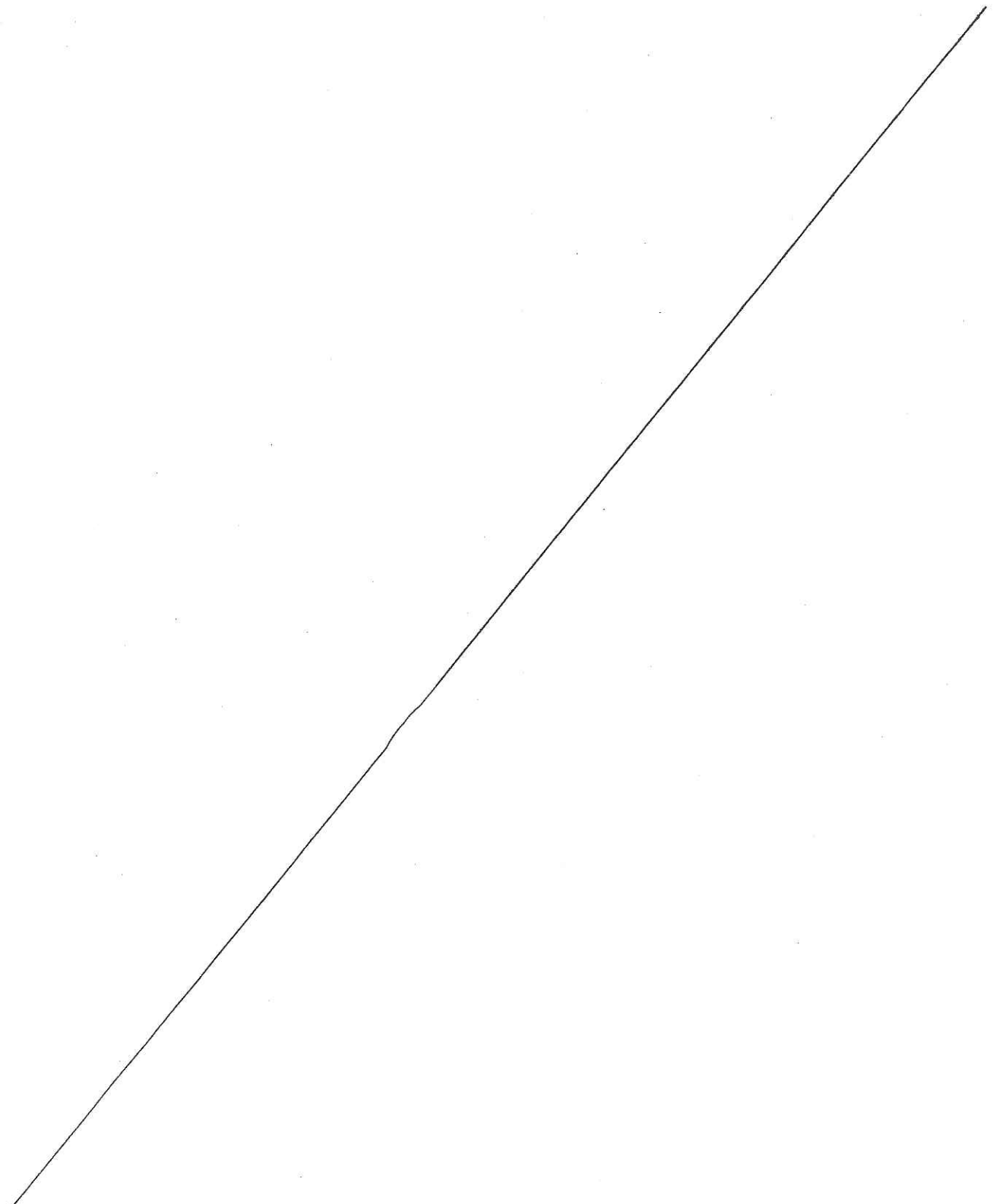
D. Notwithstanding any of the foregoing, City's exercise, in any case, of its Right of First Offer with respect to any First Offer Space shall be subject to approval thereof by the Board of Supervisors and the Mayor, in their respective sole discretion, within sixty (60) days after determination of the Rent for such space. In the event City does not provide Landlord written evidence of such approval by the Board of Supervisors and the Mayor within seventy five (75) days after determination of the Rent for such space, Landlord thereafter shall have the right to lease the First Offer Space described in the First Offer Notice to any third party at any terms acceptable to Landlord.

41. ATTACHMENTS. The following items are attached hereto as of the time of signing and are an integral part of this 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 – Exclusions from Operating Costs
- Exhibit F – Work Letter including Schedule 1 for Suites (a) 240, 250 (b) 401, 408 (c) 500\_(d) 600 (e) 1018 and 1010
- Exhibit G – Tenant Improvements
- Exhibit H – Notice to Fox Plaza Employees and Contractors dated February 16, 2000

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, THE PARTIES ACKNOWLEDGE AND AGREE THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS LEASE UNLESS AND UNTIL A RESOLUTION OF CITY'S BOARD OF SUPERVISORS SHALL HAVE BEEN DULY ENACTED APPROVING THIS LEASE, AND AUTHORIZING THE MAYOR AND DIRECTOR OF PROPERTY TO CARRY OUT THE TRANSACTIONS CONTEMPLATED BY THIS LEASE. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY UNDER THIS LEASE ARE CONTINGENT UPON, AND SUBJECT TO, THE DUE ENACTMENT OF SUCH A RESOLUTION. THIS LEASE SHALL BE NULL AND VOID IF SUCH RESOLUTION IS NOT ENACTED BY THE MAYOR AND THE BOARD OF SUPERVISORS IN THEIR RESPECTIVE SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS. APPROVAL OF THE TRANSACTIONS CONTEMPLATED BY THIS LEASE BY ANY DEPARTMENT OR AGENCY OF THE CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH

RESOLUTION WILL BE ENACTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

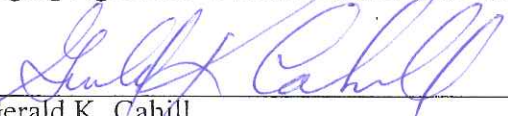




IN WITNESS WHEREOF, the parties hereto have executed this Lease, in triplicate, as of the date first above written.

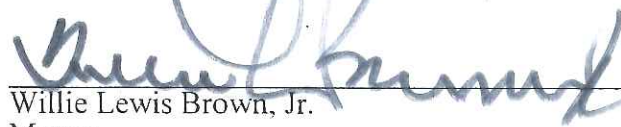
**LANDLORD:**

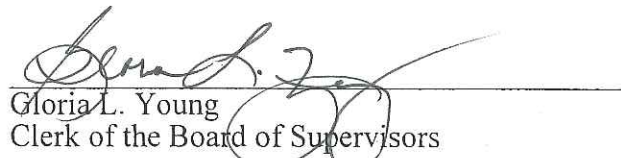
CALFOX, INC.,  
a California corporation,  
As Managing Agent for Owner, Polk Market Co.

By   
Gerald K. Cahill  
President

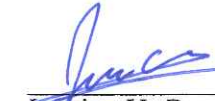
**TENANT:**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

  
Willie Lewis Brown, Jr.  
Mayor

  
Gloria L. Young  
Clerk of the Board of Supervisors


**RECOMMENDED:**

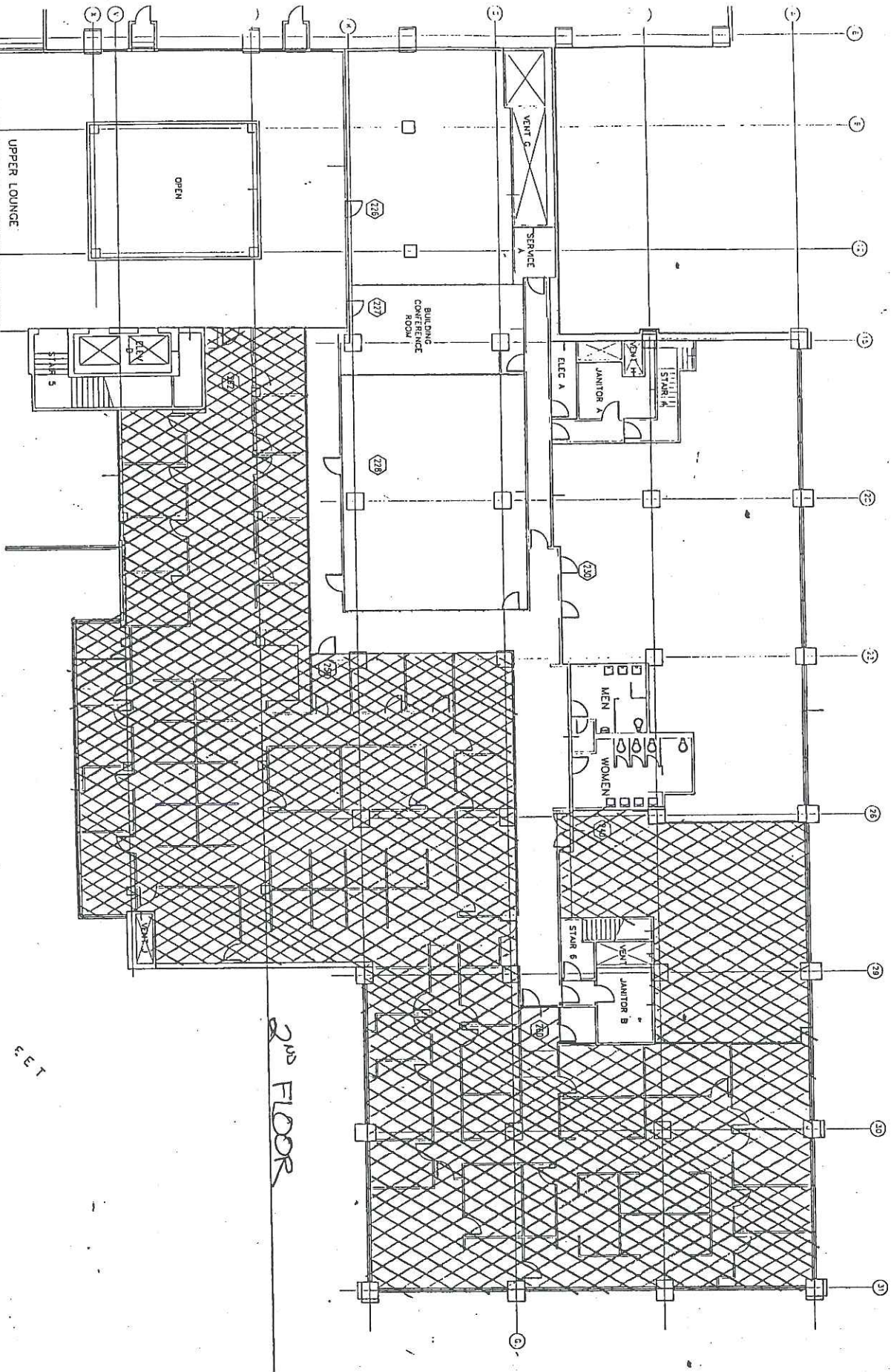
 *Scott Smith, Chief Counsel, for*  
Louise H. Renne  
City Attorney

  
Anthony DeLucchi  
Director of Property *cd*

**APPROVED AS TO FORM:**

LOUISE H. RENNE, City Attorney

By   
Elizabeth A. Dietrich  
Deputy City Attorney



UPPER LOUNGE

OPEN

BUILDING CONFERENCE ROOM

JANITOR A

MEN

WOMEN

STAIR 5

JANITOR B

VENT G

SERVICE

ELEC A

STAIR A

VENT H

VENT I

VENT J

VENT K

VENT L

VENT M

VENT N

VENT O

VENT P

VENT Q

VENT R

VENT S

VENT T

VENT U

VENT V

VENT W

VENT X

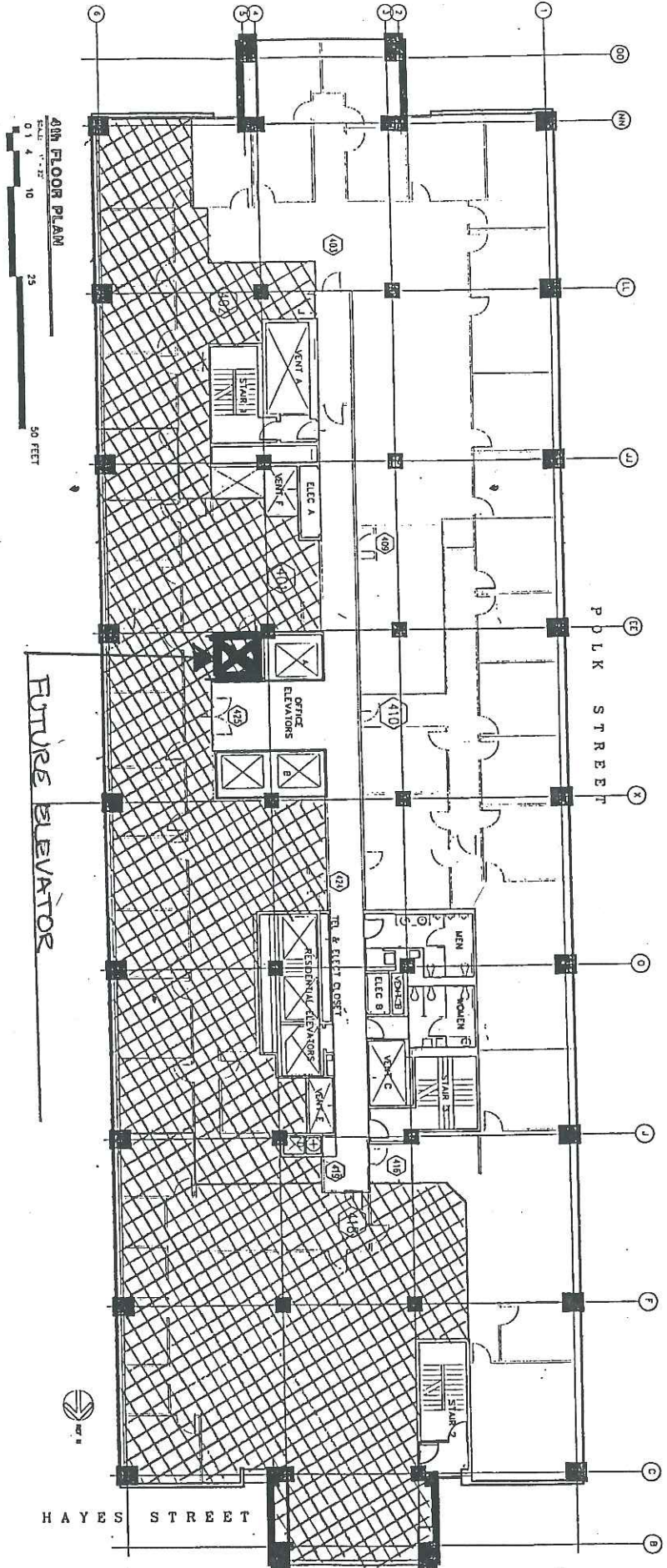
VENT Y

VENT Z

FEET

2ND FLOOR





4TH FLOOR PLAN

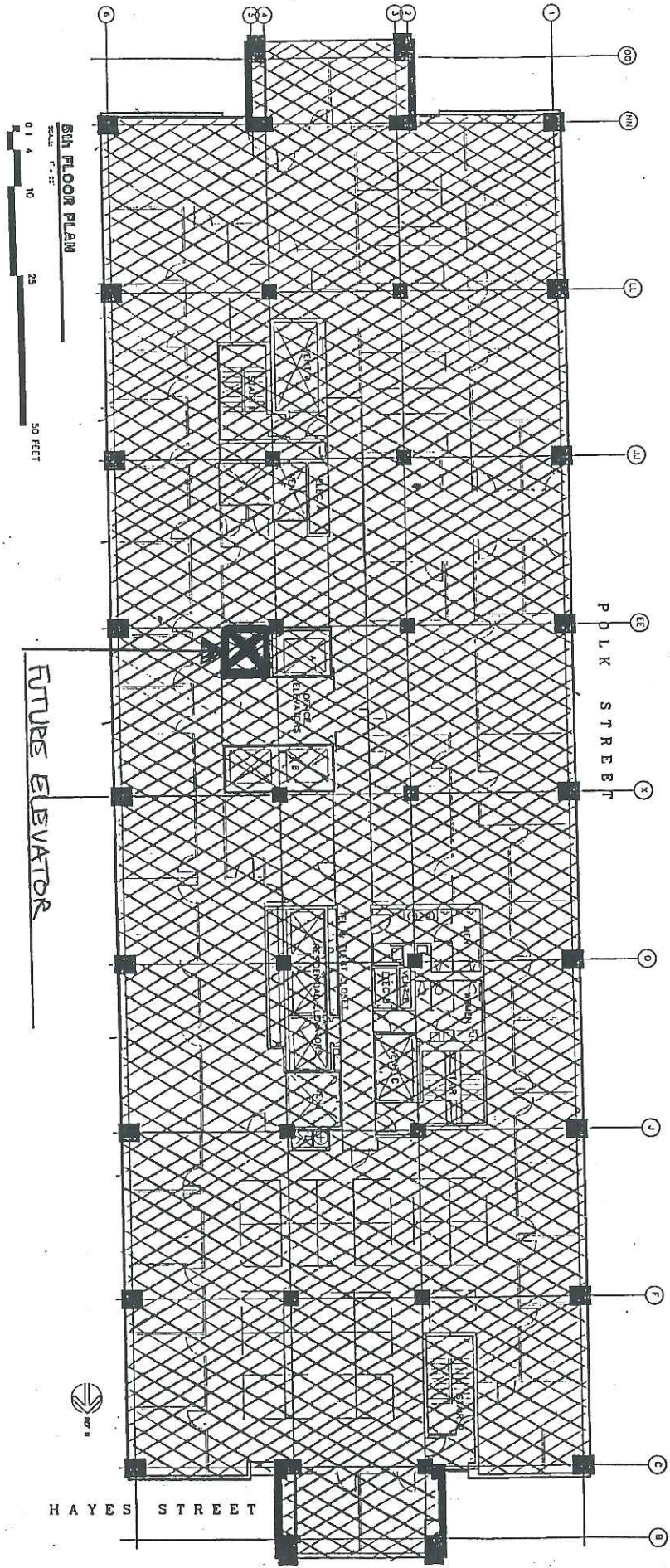
SCALE: 1/8" = 1'-0"

0 10 25 50 FEET

FUTURE ELEVATOR

HAYES STREET

POLK STREET



5th FLOOR PLAN  
SCALE: 1" = 4'-0"



FUTURE ELEVATOR

HAYES STREET

POLK STREET