

1 [Real Property Lease Renewal and Amendment - BRCP 1390 Market, LLC - 1390 Market
2 Street - Initial Annual Base Rent of \$1,801,119.96]

3 **Resolution authorizing the potential three year renewal and amendment of a lease of**
4 **approximately 27,826 square feet of space at 1390 Market Street with BRCP 1390**
5 **Market, LLC, as Landlord, for use by the Department of Public Health at the initial**
6 **annual cost of \$1,801,119.96 (or \$150,093.33 monthly) and 3% annual increases**
7 **thereafter, for a three year term from December 1, 2018, through November 30, 2021,**
8 **subject to City's right to terminate early, and two five-year options to extend.**

9
10 WHEREAS, The Department of Public Health - Environmental Health Section (DPH -
11 EHS) has occupied space since 1997 at the building commonly known as Fox Plaza, 1390
12 Market Street (Premises) pursuant to a lease with Calfox, Inc. dated September 9, 1996,
13 authorized by Resolution No. 699-96; and

14 WHEREAS, BRCP 1390 Market, LLC, is successor in interest to Calfox; and

15 WHEREAS, The current lease term for DPH - EHS was extended through November
16 30, 2018, by Resolution No. 174-13 for Premises consisting of 27,826 sq. ft.; and

17 WHEREAS, The DPH - EHS, has one five year option to renew the lease through
18 November 30, 2023 but such extension would take the term beyond the slated move date
19 (mid 2020) of DPH - EHS to 49 South Van Ness Avenue, forcing City to backfill or pay double
20 rent; and

21 WHEREAS, The Real Estate Division and the Landlord have negotiated the renewal of
22 the lease for three additional years through November 30, 2021, with an early termination
23 right with 270 days advanced written notice at no cost to the City and with rent at Fair Market
24 Rent; and

1 WHEREAS, The proposed negotiated rent was confirmed to be fair market rent by an
2 independent MAI appraisal, and this determination was confirmed by an appraisal review,
3 consistent with Administrative Code, Chapter 23; and

4 WHEREAS, The Real Estate Division and Landlord have negotiated an amendment to
5 the Lease, substantially in the form on file with the Clerk of the Board of Supervisors in File
6 No. 180070 (the "Lease Amendment"); and

7 WHEREAS, Such terms for extension are subject to enactment of a resolution by the
8 Board of Supervisors and the Mayor, in their respective sole and absolute discretion; now,
9 therefore, be it

10 RESOLVED, That in accordance with the recommendation of the Director of the
11 Department of Public Health and the Director, Real Estate Division, the Director of Property is
12 hereby authorized to take all actions on behalf of the City and County of San Francisco, as
13 tenant, to extend the Lease with BRCP 1390 Market, LLC ("Landlord"), for the building
14 commonly known as Fox Plaza, 1390 Market Street, San Francisco, California, for the area of
15 approximately 27,826 sq. ft., on the terms and conditions set forth herein, and on a form
16 approved by the City Attorney; and, be it

17 FURTHER RESOLVED, That the Lease extension shall be for a term of three years
18 through November 30, 2021, subject to City's rights to terminate as outlined in the lease, for
19 Premises consisting of 27,826 sq. ft. at a monthly rental of \$150,093.33 monthly
20 (approximately \$64.72 per sq. ft. annually) with 3% annual increases, fully serviced except
21 that City shall continue to pay for separately metered electricity on approximately 14,549 sq.
22 ft. while the Landlord shall pay for the other utilities, janitorial services, building maintenance,
23 and repairs. City shall also pay for the typical tenant expenses including standard operating
24 expense increases over a 2019 Base Year; and, be it

1 FURTHER RESOLVED, That the Lease shall continue to include the lease clause,
2 indemnifying, holding harmless, and defending Landlord and its agents from and against any
3 and all claims, costs and expenses, including without limitation, reasonable attorneys' fees,
4 incurred as a result of any default by the City in the performance of any of its material
5 obligations under the Lease, or any negligent acts or omissions of the City or its agents, in,
6 on, or about the Premises or the property on which the Premises are located, excluding those
7 claims, costs and expenses incurred as a result of the gross negligence or willful misconduct
8 of the Landlord or its agents; and, be it

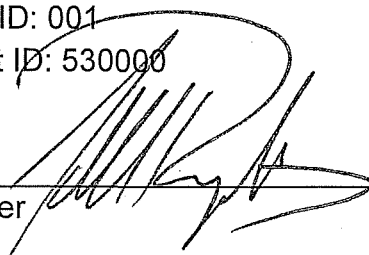
9 FURTHER RESOLVED, That all actions heretofore taken by the officers of the City
10 with respect to such Lease are hereby approved, confirmed and ratified; and, be it

11 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of
12 Property to enter into any amendments or modifications to the Lease (including, without
13 limitation, the exhibits) that the Director of Property determines, in consultation with the City
14 Attorney, are in the best interest of the City, do not increase the rent or otherwise materially
15 increase the obligations or liabilities of the City, are necessary or advisable to effectuate the
16 purposes of the Lease renewal or this Resolution, and are in compliance with all applicable
17 laws, including the City Charter; and, be it

18 FURTHER RESOLVED, That the City shall occupy the entire Premises for the full term
19 of the Lease unless funds for the Department of Public Health's rental payments are not
20 appropriated in any subsequent fiscal year at which time the City may terminate the Lease
21 with advance notice to Landlord; said Lease shall be subject to certification as to funds by the
22 Controller, pursuant to Section 6.302 of the City Charter.


23 FURTHER RESOLVED, That within thirty (30) days of the execution of the Lease
24 Amendment, the Director of Real Estate shall provide a copy to the Clerk of the Board for the
25 Board's file.

\$1,464,743.66 Available
(5 months @\$82,818.07/mo)
(7 months @\$150,093.33/mo)
Department ID: 251975
PS Project ID: 10026708
Activity ID: 001
Account ID: 530000

Controller 

Subject to the enactment of the Annual Appropriation Ordinance for Fiscal Year 2018/2019.

RECOMMENDED:



Director
Department of Public Health



Director of Property
Real Estate Division
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Legislation\2017 Reso R2.doc

Item 2
File 18-0070

Department: Department of Public Health (DPH)
Real Estate Division (RED)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution approves the fourth amendment to a lease agreement between BRCP 1390 Market, LLC as landlord, and Department of Public Health (DPH) as tenant, for approximately 27,826 square feet of office space at 1390 Market Street, increasing the annual rent from \$993,817 to \$1,801,120, with three percent annual increases thereafter, and extending the lease for three years, from December 1, 2018 through November 30, 2021, with two five-year options to extend.

Key Points

- In 1996, the Board of Supervisors approved a seven year lease for DPH to occupy 25,939 square feet of office space at 1390 Market Street for its Environmental Health Section (EHS). The Board of Supervisors approved three lease modifications to exercise five-year options to extend the lease in 2003, 2008, and 2013, and has authorized expansion of the leased premises to 27,826 square feet. DPH currently pays \$993,817 in annual rent, or \$35.72 per square foot.
- The lease is scheduled to expire November 30, 2018 and DPH has an option to extend for another five years. However, EHS is scheduled to move into the new City office building at 49 South Van Ness in mid-2020, and the additional five years are not needed. The proposed fourth amendment to the lease extends the term for an additional three years, beginning December 1, 2018 and expiring November 30, 2021, but provides for the City the right to terminate the lease any time after November 30, 2019 with at least 270 days notice. DPH would have two five-year options to extend the lease through November 2031.

Fiscal Impact

- The initial annual rent of \$1,801,120 would be an increase of \$807,303 from the current rent of \$993,817. The annual rent of \$1,801,120 equals \$64.72 per square foot, which was determined to be fair market value based on a third party appraisal and appraisal review.
- Over the three-year term of the lease extension, DPH would pay \$5,567,082 in total rent.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT

City Administrative Code 23.27 states that any lease with a term of one year or longer or with monthly rent of \$5,000 or more and where the City is the tenant is subject to Board of Supervisors approval. If the base rent is more than \$45 per square foot, the Director of the City's Real Estate Division must obtain an independent appraisal; if the base rent is more than \$60 per square foot, the Director of the City's Real Estate Division must obtain an appraisal review.

BACKGROUND

In 1996, the Board of Supervisors approved a seven year lease for the Department of Public Health (DPH) to occupy 25,939 square feet of office space for its Environmental Health Section (EHS) at Fox Plaza, 1390 Market Street (Resolution 699-96). The Board of Supervisors has approved three lease modifications to exercise five-year options to extend in 2003 (File 03-0179, Resolution 159-03), 2008 (File 08-0121, Resolution 74-08), and 2013 (File 13-0295, Resolution 174-13). The 2013 amendment increased the leased premises to 27,826 square feet. DPH currently pays \$993,817 in annual rent, or \$35.72 per square foot.

The current lease is scheduled to expire November 30, 2018. The City has an option to extend the lease for an additional five years, through November 30, 2023. However, according to Mr. Charlie Dunn, Senior Real Property Officer, EHS is planning to move into the new City building at 49 South Van Ness in mid-2020, so DPH does not need to exercise the option.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would extend the lease between BRCP 1390 Market, LLC as landlord and DPH as tenant for a term of three years, beginning December 1, 2018 and expiring November 30, 2021. DPH would pay annual rent of \$1,801,120 for approximately 27,826 square feet, or \$64.72 per square foot annually. The rent would increase by 3 percent each year. The premises are comprised of 14,549 square feet in Suite 210, 3,247 square feet in Suite 410, 4,646 square feet in Suite 810, 4,971 square feet in Suite 910, and 413 square feet of storage space. DPH may terminate the lease after November 30, 2019 with no penalty as long as written notice is provided 270 days in advance. DPH has two five-year options to extend the lease through November 30, 2026 and November 30, 2031. The key provisions of the lease amendment are shown in Table 1 below.

Table 1: Key Provisions of Lease Amendment

Premises	27,826 square feet
Annual Rent	\$1,801,120 (\$64.20 per square foot)
Operating Expenses	Approximately \$0.60 per square foot per year for electricity on Suite 210 space. Janitorial services, maintenance, and operating costs paid by landlord.
Term	3 years from December 1, 2018 to November 30, 2021
Early Termination	City may terminate early with 9 months written notice after November 2019
Options to Extend	City has two five year options to extend through November 2026 and November 2031 at 95% of Fair Market Rent
Rent Adjustment	3% annually on December 1, starting in 2019

FISCAL IMPACT

In the first year of the lease extension, DPH will pay \$1,801,120 in rent. This is an increase of \$807,303, or approximately 81 percent, from the current annual rent of \$993,817. According to Mr. Dunn, the rental rate is derived from an appraisal conducted by Mateo Advisors and reviewed by Clifford & Associates showing \$66 per square foot for fully serviced office space and \$12 per square foot for storage space. The breakdown of the rent paid on each piece of the premises is shown in Table 2 below.

Table 2: Initial Rent Paid by Leased Area

Area	Square Feet	Annual Rent per Square Foot	Base Annual Rent
Suite 210	14,549	\$65.10	\$947,140
Suites 410, 810, 910	12,864	66.00	849,024
Storage Premises	413	12.00	4,956
Total	27,826	64.72	1,801,120

According to Mr. Dunn, the rent for Suite 210 is slightly lower than for the other suites because it has its own electricity meter and electricity is supplied through the San Francisco Public Utilities Commission's (SFPUC) Hetch Hetchy Power System. DPH pays approximately \$0.60 per square foot per year, or \$8,729, to SFPUC for electricity for this space and receives a \$0.90 per square foot per year, or \$13,094, reduction in rent for Suite 210. For the other suites, the landlord provides the electricity, which it builds into the rental rate.

Over the three year term of the lease extension, DPH would pay \$5,567,082 in rent. Should DPH decide to extend the lease for an additional five years, it would pay 95 percent of Fair Market Rent, based on rents of similar buildings in the Civic Center area. The breakdown of the rent paid by year is shown in Table 3 below.

Table 3: Annual Rent Paid by DPH over Extension Term

Year	Annual Rent
Year 1 (December 2018 – November 2019)	\$1,801,120
Year 2 (December 2019 – November 2020)	1,855,154
Year 3 (December 2020 – November 2021)	1,910,808
Total	\$5,567,082

RECOMMENDATION

Approve the proposed resolution.

FOURTH AMENDMENT TO LEASE

[DPH LEASE EXTENSION]

THIS FOURTH AMENDMENT TO LEASE [DPH] LEASE EXTENSION (this “**Fourth Amendment**”) is made and entered into as of _____, 2018, by and between **BRCP 1390 Market, LLC**, a Delaware limited liability company (“**Landlord**”), and the **City and County of San Francisco**, a municipal corporation, acting through the Director of Property (“**Tenant**” or “**City**”).

RECITALS

- A. Calfox, Inc., as managing agent for Polk Market Co. (“**Original Landlord**”), as landlord, and City, as tenant, entered into that certain Office Lease, dated September 9, 1996, for premises in the building known as Fox Plaza, located at 1390 Market Street, San Francisco, California (the “**Building**”), which lease was amended by (i) First Lease Amendment, dated as of November 23, 2003, between FP 2001 Co., successor-in interest to Original Landlord, and City, (ii) Second Amendment to Lease, dated June 26, 2006, between API Fox Plaza, LLC, successor-in-interest to FP 2001 Co., and City, and (iii) Third Amendment to Lease [DPH] Extension and Partial Substitution of Premises, dated March 22, 2013, between Landlord, successor-in-interest to API Fox Plaza, LLC, and City (the “**Third Amendment**”). The lease, as so amended (including this Fourth Amendment), is referred to herein as the “**Lease.**”
- B. The premises presently demised under the Lease (the “**Premises**”) is comprised of the following:

Suite	Area (RSF)	Comments
210	14,549	Net of plug load electricity
410	3,247	Fully serviced
810	4,646	Fully Serviced
910	4,971	Fully Serviced
Subtotal Office	27,413	
Storage C, D, & E (the “ Storage Premises ”)	413	Garage level
Total Premises	27, 826	

- C. The Term of the Lease is presently scheduled to expire on November 30, 2018.
- D. Landlord and City presently desire to amend the Lease to (i) extend the Term of the Lease through November 30, 2021, (ii) revise the Base Rent payable under the Lease, (iii) add two (2) additional options to extend the Term, (iv) permit Landlord, at no cost to City, to relocate the Storage Premises into alternative storage space within Landlord’s Commercial Parcel, and (v) make certain other modifications to the Lease more particularly set forth below.

AMENDMENT

NOW THEREFORE, in consideration of the mutual agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

1. **LEASE EXTENSION.** Landlord and City hereby agree to extend the Term for an additional three (3) year period (the “**Fourth Extended Term**”), commencing on December 1, 2018 and expiring November 30, 2021. Upon commencement of the Fourth Extended Term, all references in the Lease to the Term shall mean the Term as extended by the Fourth Extended Term.

2. **BASE RENT AND BASE YEAR.** Commencing on December 1, 2018, the Monthly Base Rent payable under the Lease shall be \$150,093.33 – calculated as follows:

<u>Area</u>	<u>Sq. Ft.</u>	<u>Base Annual Rent PSF</u>	<u>Base Monthly Rent</u>
Storage Premises	413 SF	\$12.00	\$413.00
Suite 210	14,549 SF	\$65.10	\$78,928.33
Suites 410, 810, 910	12,864 SF	\$66.00	\$70,752.00
Total Office and Storage	27,826 SF		\$150,093.33

Base Rent shall be increased by three percent (3%) annually on each December 1 starting on December 1, 2019. Commencing on December 1, 2018, the Base Year and Base Tax Year for the calculation of Additional Rent under Paragraph 6.B. of the Lease shall be the calendar year 2019.

3. **CITY’S RIGHT TO TERMINATE THE LEASE.** If City does not extend the Term under the Fifth Extension Option (as set forth in Section 4 below), City shall have the right to terminate, without penalty, the Lease and vacate and surrender the Premises to Landlord any time after November 30, 2019 by providing not less than two hundred seventy (270) days advance written notice of such termination to Landlord. City’s termination notice shall specify the Lease termination date (as specified in the City’s notice, the “**Accelerated Termination Date**”), provided that the Accelerated Termination Date shall be the last day of a calendar month and shall be no earlier than November 30, 2019. Effective as of the Accelerated Termination Date, the Lease shall be terminated and City shall vacate the Premises and return the same to Landlord in accordance with the terms and conditions of the Lease. Tenant shall remain liable for all Base Rent, Additional Rent and all other sums due under the Lease up to and including the Accelerated Termination Date even though billings for such may occur subsequent to the Lease expiration, as set forth in the Lease.

4. **ADDITIONAL EXTENSION OPTIONS.** On the Effective Date of this Fourth Amendment (as defined in Section 18 below), Paragraph 4.C. of the Lease is deleted and the terms of Paragraph 6.C of the Lease shall not apply to the Fifth Extension Options as set forth in this Section 4. Any other option to extend the Term set forth in the Lease is hereby deleted and replaced by this Section 4.

City shall have the right to extend the Term of the Lease (collectively, the "**Fifth Extension Options**") for two (2) additional terms of five (5) years each (the "**Fifth Extension Terms**"). The Fifth Extension Options shall be on all of the terms and conditions contained in the Lease, except that the Base Rent shall be adjusted as provided below. City may exercise each of the Fifth Extension Options, if at all, by giving written notice to Landlord no later than three hundred sixty five (365) days before the expiration of the Term to be extended; provided, however, if City is in material default under the Lease on the date of giving such notice and fails to cure such default as provided in the Lease, Landlord may reject such exercise by delivering written notice thereof to City promptly after such failure to cure. Landlord acknowledges and agrees that City's notice of its intent to exercise a Fifth Extension Option shall be subject to enactment of a resolution by the Board of Supervisors and the Mayor, in their respective sole and absolute discretion, approving and authorizing the same, within ninety (90) days after the date the Base Rent for the applicable Fifth Extended Term is determined. If such approval and authorization is not received by Landlord within such ninety (90) day period, City's Fifth Extension Option shall terminate and City shall have no further option to extend the Term of the Lease.

The Base Rent during each Fifth Extension Term shall be adjusted at the start of each Fifth Extension Term to ninety five percent (95%) of the then-prevailing Fair Market Rent. At the start of each Fifth Extension Term, the Base Year shall also be adjusted to the calendar year of the first year of the applicable Fifth Extension Term; provided that City shall continue to pay Additional Rent during each Fifth Extended Term. City and Landlord hereby agree that Fair Market Rent shall be determined as follows:

(a) "Fair Market Rent" shall be the prevailing market rate for space of comparable size and location to the Premises having recently been leased to tenants in the Building or other Civic Center buildings similar in age, seismic condition, location and quality to the Property. As used herein, the term "prevailing market rate" shall mean the rental for such comparable space, taking into account (i) any expense adjustments such as separately metered electricity, taxes, operating expenses, and maintenance paid, (ii) the location and size of the premises of such comparable leases, (iii) the credit worthiness of the tenant, (iv) the duration of the renewal term and the term of such comparable space, (v) any free rent and any other tenant concessions offered under such comparable space, and (vi) any tenant improvements allowances and other allowances offered by such comparable space. Fair Market Rent shall be determined on a per square foot basis, and may include different rates for office, ground floor and basement space.

(b) Within thirty (30) days of Landlord's receipt of City's notice of its intent to exercise a Fifth Extension Option, Landlord shall provide written notice to City of Landlord's good faith determination of the prevailing market rate along with reasonable substantiation for such rate, including, but not limited to, at least three (3) recent comparable lease transactions. If City disputes Landlord's determination of the prevailing market rate, City shall so notify Landlord of the City's determination of prevailing market rate and reasonable substantiation for such rate within fourteen (14) days following Landlord's notice to City. If City and Landlord still disagree, then the dispute shall be resolved as follows:

(i) Within thirty (30) days following City's notice of the prevailing market rate (the "**Consultation Period**"), Landlord and City shall attempt in good faith to meet no less than two

(2) times, at a mutually agreeable time and place, to attempt to resolve the disagreement. Landlord and Tenant may agree in writing to extend the Consultation Period for a reasonable period to resolve their disagreement.

(ii) If within this Consultation Period, Landlord and City cannot reach agreement as to the prevailing market rate, they shall each select one appraiser to determine the prevailing market rate. Each such appraiser shall be an "MAI" designated appraiser with at least five (5) years experience appraising commercial office properties in San Francisco. Each appraiser shall arrive at a determination of the prevailing market rate and submit his or her conclusions to Landlord and City within thirty (30) days of the expiration of the Consultation Period.

(iii) If only one appraisal is submitted within the requisite time period, it shall be deemed to be the prevailing market rate. If both appraisals are submitted within such time period, and if the two appraisals so submitted differ by less than ten percent (10%) of the higher of the two, then the average of the two shall be the prevailing market rate. If the two appraisals differ by more than ten percent (10%) of the higher of the two, then the two appraisers shall immediately select a third appraiser, with the qualifications specified above, who will within twenty (20) days of his or her selection choose either Landlord's or City's appraisers' determination of the prevailing market rate and provide the reasoning for such selection. All appraisals and determinations hereunder shall be in conformity with the Uniform Standards of Professional Appraisal Practice, Code of Professional Ethics and the Standards of Professional Appraisal Practice of the MAI. Landlord and City shall pay the cost of the appraiser selected by such party and one-half of the cost of the third appraiser.

5. **LANDLORD'S RIGHT TO RELOCATE STORAGE PREMISES.** During the Term or any extension thereof, Landlord shall have the right upon not less than ninety (90) days prior written notice to City to relocate the Storage Premises to an area (the "**Relocated Storage Premises**") in Landlord's Commercial Parcel of the Building provided that (i) the Relocated Storage Premises are the same size and functionality as the Storage Premises, and (ii) Landlord shall be responsible for all costs to move City's property from the Storage Premises to the Relocated Storage Premises. City shall pay the same amount of Base Rent for the Relocated Storage Premises as is payable under the Lease for the Storage Premises, and no Additional Rent shall be payable with respect to the Relocated Storage Premises. City acknowledges that the Relocated Storage Premises may not be in the garage area of the Building. In the event of that City does not want to lease the Relocated Storage Premises, City shall have the right to terminate the Storage Premises from the Lease (and reduce the Base Rent owed accordingly) by written notice to Landlord.

6. **LANDLORD'S RIGHT TO MAKE SEISMIC IMPROVEMENTS.**

A. **Construction Activities.**

(a) Tenant acknowledges that certain seismic improvements are being considered at the Building that involve installing diagonal braces in a single column bay (window opening) in two locations from the ground floor through the seventh floor of the Building and small steel plates installed at an additional four locations per floor (the "**Construction Activities**"). The Construction Activities are intended to improve the seismic performance of the Building by reducing building movement during an earthquake. The Construction Activities will be

undertaken, if at all, as a voluntary seismic upgrade to the Building (and, according to Landlord's architect, is not required by any Building codes) at Landlord's election and at no cost to Tenant. Tenant understands that the Construction Activities will impact Tenant's access to and use of certain common areas of the Building and certain portions of the Premises as shown in Attachment 2. During the periods access or use is denied, such spaces are referred to herein as the "**Restricted Common Areas**" and the "**Restricted Premises**", respectively. Tenant consents to the Construction Activities, and the limitations on Tenant's use of the Restricted Common Areas and the Restricted Premises, on the terms and conditions set forth in this Fourth Amendment.

(b) Throughout the Term, including during Construction Activities, Tenant shall have access to and possession of all of the Premises that are not part of the Restricted Premises. Unless otherwise agreed to by Tenant, the portion of the Construction Activity that impacts the Premises, as opposed to the Common Areas or the exterior of the Building (the "**Premises Construction Activities**"), shall occur in phases, one floor of the Premises at a time, so that the Restricted Premises shall not affect more than one floor of the Premises at any time and Tenant shall not be dislocated from space on more than one floor at a time.

B. Construction Activity Coordination.

(a) Landlord will provide Tenant with reasonable advance notice, but not less than four (4) weeks' notice, of upcoming Premises Construction Activities and the anticipated schedule and work program for the Restricted Premises. Landlord agrees to meet with Tenant weekly before and during Premises Construction Activities and reasonably address Tenant's ongoing concerns, and to work out the location of any Replacement Space (as defined below) and a mutually and reasonably agreed schedule for relocation work in an effort to minimize any disruption to Tenant. Landlord agrees to provide an overall construction schedule and updated "two week look ahead" schedules at the start of each week during which the Premises Construction Activities are being performed. Landlord acknowledges that Tenant's work is privileged and confidential and Landlord and Tenant agree to work cooperatively to provide Landlord's workers access through the Premises to the Restricted Premises, as needed, in a manner that meets Tenant's reasonable security requirements.

(b) Before any part of the Premises can become Restricted Premises, Landlord shall prepare, at no cost to Tenant, replacement space on third (3rd), eleventh (11th) or twelfth (12th) floors of the Building, or an alternative location reasonably approved by the Tenant, that provides substantially the same functionality (but not the same finishes) and no less than the same square footage as the applicable Restricted Premises, with no less than the same number of offices and conference rooms and the same telephone, computer and internet connectivity as compared to the applicable Restricted Premises (each, a "**Replacement Space**"). As part of such relocation, Landlord shall provide data and telephone connections to Tenant's servers located on the sixth (6th) floor and other necessary equipment (the "**Communication Connections**") for the Replacement Space so as to ensure the same connectivity and to prevent any interruption in telephone or internet service to affected employees of Tenant during their occupancy of the applicable Replacement Space. The Replacement Spaces currently existing in the Building have been built-out and are ready for occupancy, however, if required by law, Landlord shall obtain any necessary regulatory approvals for use of the Replacement Space before Tenant's occupancy. Tenant shall review and approve each Replacement Space, including the Communication Connections, before any

relocation, which approval shall not be unreasonably withheld, conditioned, or delayed, and Tenant shall respond in writing within five (5) business days to Landlord's request for approval.

C. Relocation from Restricted Premises.

(a) Upon Tenant's approval of the applicable Replacement Space, Landlord shall, at no cost to Tenant, promptly move Tenant's furniture, files, equipment and personal property (collectively, the "**Personal Property**") from the affected Restricted Premises to the Replacement Space.

(b) Landlord agrees to hire a relocation or move consultant reasonably acceptable to Tenant to assist in the securing and moving of the Personal Property. Tenant agrees that Linda Fink with WK Design is an acceptable move consultant. All relocations (from the Restricted Premises to the Replacement Space, and from the Replacement Space back to the Premises) shall start after 6:00 pm on Friday and be fully complete by 8:00 on Monday, except as may otherwise be agreed by Tenant. Tenant's only responsibility will be to clear work surfaces into Landlord supplied boxes and disconnect and reconnect telephone and computer equipment. Landlord shall remove files from file cabinets as needed to transport the cabinets without damage, and shall be responsible for any items lost or damaged during a relocation. Landlord and Tenant shall reasonably cooperate to prepare an inventory of Tenant's files and property to be relocated, which inventory shall be prepared by Landlord and approved by Tenant.

(c) Landlord shall pay all costs associated with Construction Activities, including restoring each part of the Restricted Premises impacted by Construction Activities to good condition and repairing any damage to the Premises caused by the Construction Activities or Landlord's construction workers. By way of example, if the Construction Activities disturb the existing dropped ceiling, Landlord shall make such improvements that the ceiling is uniform and consistent with the ceiling of the other portions of the Premises. Without limiting the foregoing, Landlord shall paint the walls and install new carpet in each of the Restricted Premises (consistent with existing paint color and carpet) before returning possession of such space to Tenant.

(d) Upon completion of the Premises Construction Activity and Landlord's restoration of the Restricted Premises as it relates to a floor of the Premises, Landlord shall notify Tenant. Landlord shall obtain the approval of the San Francisco Building Department (to the extent required) for Tenant to occupy the Restricted Premises before alleging that the work has been completed. Tenant shall review and inspect the restoration of the Premises, and notify Landlord of any items that have not been completed in accordance with the standards set forth in this Fourth Amendment. Upon Tenant's approval of the restoration work with respect to the applicable Restricted Premises, which approval shall not be unreasonably withheld, conditioned or delayed, Landlord shall, at no cost to Tenant, move the Personal Property back to the applicable Restricted Premises, consistent with the placement of such materials before the relocation, and restore the Communications Connections. Such work shall be performed at a mutually agreed upon time.

(e) Upon Landlord's return of each part of the Restricted Premises and the Personal Property in the condition required under this Fourth Amendment, the applicable Restricted Premises shall terminate. The parties shall memorialize in writing the start and end date for each of the

Restricted Premises for purposes of the Rent abatement set forth in Section 6.E of this Fourth Amendment.

D. Construction Work.

(a) Landlord shall cause the Construction Activities, including the work in and around the Restricted Premises, to be performed in a good and professional manner in accordance with sound building practices and consistent with other first-class buildings in the Civic Center region of San Francisco. Such work shall be performed by licensed and insured contractors and shall be performed in accordance with all applicable laws and regulations, and all such work in the Premises shall otherwise performed in accordance with the terms of the Lease, as amended hereby. Landlord shall use good faith efforts to cause such work to be performed and completed with due diligence and without interruption, subject to standard force majeure delays. In accordance with and subject to the limitations set forth in Paragraph 17 of the Lease, the parties confirm that Landlord's indemnity obligations under Paragraph 17 shall extend to any losses (other than any loss of use or enjoyment of the Premises or loss of business) or injuries resulting from the Construction Activities and the relocations contemplated by this Fourth Amendment.

(b) Landlord will obtain all required permits before starting work. Tenant, in approving this Fourth Amendment, is acting in its proprietary capacity as a tenant of the Property and not as a regulatory entity.

(c) Before starting Premises Construction Activities, Landlord shall take appropriate measures to insulate the Restricted Premises from the remainder of the Premises and to protect the remainder of the Premises from noise, dust and damage caused by the construction so that work can continue in these spaces during business hours. Unless otherwise approved by Tenant, no construction materials will travel through the Premises to the Restricted Premises except after 7:00 pm and before 8:00 am, and on weekends. During Landlord's use of the Restricted Premises and the Restricted Common Areas, Landlord shall take commercially reasonable measures necessary to minimize the disruption to Tenant's use and occupancy of the remainder of the Premises at all times, including but not limited to performing construction work which would produce excessive noise or any dust or disruption in the Premises (outside of the Restricted Premises) on weekends or after 7:00 pm and before 8:00 am; provided that Tenant acknowledges that certain Construction Activities producing noise (but not excessive noise that unreasonably disturbs Tenant's use of the Premises as a public law office) shall be performed on floors below and above the Premises during normal business hours for the Building.

(d) If applicable due to the presence of asbestos containing materials in any Restricted Premises, Landlord shall timely perform and provide the results for routine air testing pursuant to a schedule, quantity and quality approved by City's Environment Health's asbestos and lead divisions.

(e) Tenant acknowledges and agrees that Landlord may install barricades and scaffolding on or about the Building and the common areas as needed during the Construction Activities.

(f) Except for prearranged and OSHA compliant inspections during construction coordination meetings, Tenant shall not enter or use the Restricted Premises during the Construction Activities.

(g) Landlord agrees that any person performing labor with respect to the Construction Activities shall be paid not less than the highest prevailing rate of wages, and Landlord shall include this requirement in all construction contracts, as set forth in Paragraph 28 of the Lease and San Francisco Administrative Code Section 23.61.

E. Rent Abatement. During the time that Tenant cannot use the Restricted Premises (on a floor by floor basis), Tenant shall receive a proportionate abatement of Base Rent and a proportionate reduction in Tenant's Percentage Share of Operating Expenses based on the square footage of the Restricted Premises. Tenant shall not be required to pay Base Rent or Operating Expenses for any Replacement Space.

F. Recognition of and Payment for Inconvenience and Associated Costs. In consideration of the disruption and inconvenience to Tenant resulting from the Premises Construction Activities and Tenant's loss of the Restricted Premises for the limited periods contemplated by this Fourth Amendment, if the Premises Construction Activities proceed, Landlord shall make a one-time payment to Tenant in the amount of Twenty-Five Thousand Dollars (\$25,000). Payment will be made within ten (10) business days of the start of the Premises Construction Activities (i.e., the date that Landlord notifies Tenant that the contractor is to begin the work in the Restricted Premises). In addition, if the City's aggregate required occupancy of Replacement Spaces exceeds fifteen (15) months from the commencement of the Premises Construction Activities and such delay is not caused by the acts or omissions of Tenant, its agents or employees, Landlord shall provide to Tenant a credit against Rent in the amount of Ten Thousand Dollars (\$10,000) for each calendar month, or portion thereof, that the City's occupancy of Relocation Spaces continues (prorated based on the number of days in that calendar month). Landlord shall not be required to make the above payment (or provide the credit) if its elects not to proceed with the Premises Construction Activities. Upon receipt of the payments in this paragraph and Landlord's fulfillment of its obligations relating to the Construction Activities and the relocations (including Landlord's indemnity as set forth in Section 6.D(a) above), Landlord shall have no additional liability to Tenant resulting from the disruption and inconvenience caused by the Construction Activities.

G. General Cooperation. Tenant acknowledges and agrees that the Construction Activities as provided herein may be performed by Landlord in the Restricted Premises and Building during normal business hours for the Building. Landlord and Tenant agree to cooperate with each other in order to enable the Construction Activities to be performed in a timely manner and with as little inconvenience to the operation of Tenant's business in the Premises (exclusive of any Restricted Premises from which Tenant has been relocated) as is reasonably possible.

7. ADDITIONAL PROVISIONS. The Lease is amended and updated to include the provisions in Attachment 1, which replace the corresponding language in the Lease.

8. NO BROKERS. Tenant represents and warrants that it has not dealt with any real estate broker in connection with this Fourth Amendment, and no compensation is due to

Tenant's broker in connection with this Fourth Amendment. Tenant agrees to indemnify and hold Landlord harmless for any loss, cost, liability or expense incurred by Landlord as a result of a claim for brokerage commissions or finder's fee from any broker based on the act or omission of Tenant in breach of the foregoing warranty. Landlord represents and warrants that it has not dealt with any real estate broker in connection with this Fourth Amendment, and no compensation is due to Landlord's broker in connection with this Fourth Amendment. Landlord agrees to indemnify and hold Tenant harmless for any loss, cost, liability or expense incurred by Tenant as a result of a claim for brokerage commissions or finder's fee from any broker based on the act or omission of Landlord in breach of the foregoing warranty.

9. **DEFINED TERMS.** All capitalized terms used but not defined in this Fourth Amendment will have the meanings set forth for such terms in the Lease. All terms that are defined in this Fourth Amendment and used in any provisions that are added to the Lease pursuant to this Fourth Amendment will have the meanings in the Lease set forth for such terms in this Fourth Amendment.

10. **WHOLE AGREEMENT.** This Fourth Amendment sets forth the entire agreement between the parties with respect to the matters set forth herein. There have been no additional oral or written representations or agreements. Except as amended herein, there shall be no other changes or modifications to the Lease between the parties and the Lease and the terms and provision contained therein shall remain in full force and effect.

11. **MISCELLANEOUS.** This Fourth Amendment shall be binding upon the parties hereto, their heirs, successors and assigns. Except as modified hereby, there shall be no other changes or modifications to the Lease unless in writing and executed by the parties. No reference to this Fourth Amendment is necessary in any instrument or document at any time referring to the Lease. From and after the Effective Date, any reference to the Lease shall be deemed a reference to such document as amended hereby. This Fourth Amendment shall be governed by, construed and enforced in accordance with, the laws of the State of California.

12. **CONFIRMATION OF LEASE.** As amended by this Fourth Amendment, Landlord and Tenant confirm and ratify in all respects the terms and conditions of the Lease, and further confirm that there are no outstanding tenant improvement obligations of Landlord regarding the Premises. The execution of this Fourth Amendment shall not constitute a waiver of relinquishment of any rights which Landlord or Tenant may have relating to the Lease.

13. **NO JOINT VENTURE.** This Fourth Amendment or any activity by Tenant hereunder does not create a partnership or joint venture between Tenant and Landlord relating to the Lease or otherwise. This Fourth Amendment does not constitute authorization or approval by the City of any activity conducted by Landlord.

14. **COUNTERPARTS.** This Fourth Amendment may be executed in one or more counterparts, each of which shall be deemed an original, including transmittals by facsimile, all of which together shall constitute one and the same instrument.

15. **AUTHORITY.** Landlord represents and warrants to City that the execution and delivery of this Lease by Landlord has been duly authorized and does not violate any provision of any agreement, law or regulation to which Landlord or the Property is subject.

16. **STATUTORY DISCLOSURES; COMPLIANCE.** For purposes of Section 1938(a) of the California Civil Code, Landlord hereby discloses to Tenant, and Tenant hereby acknowledges, that the Premises have not undergone inspection by a Certified Access Specialist (CASp). As required by Section 1938(e) of the California Civil Code, Landlord hereby states as follows: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." In furtherance of the foregoing, Landlord and Tenant hereby agree as follows: (a) any CASp inspection requested by Tenant shall be conducted, at Tenant's sole cost and expense, by a CASp approved by Landlord, subject to Landlord's reasonable rules and requirements; (b) such inspection shall be limited to the Premises and access to the Premises; (c) Tenant is not a Small Business and San Francisco Administrative Code section 38.5 does not apply to this Lease; and (d) Tenant, at its sole cost and expense, shall be responsible for making any improvements or repairs to correct violations of construction-related accessibility standards identified as a result of any such inspection by Tenant, which work shall be performed in accordance with the terms of the Lease. Notwithstanding the foregoing, (A) if any disability access improvements or upgrades are triggered by the Construction Activities, Landlord shall make such improvements or upgrades at no cost to Tenant, and (B) notwithstanding anything to the contrary set forth in the Lease, (x) if any disability access improvements or upgrades are triggered by tenant improvements or alterations selected or performed by or on behalf of Tenant, then Tenant shall be responsible for the cost of such improvements or upgrades, and (y) Tenant hereby acknowledges that Tenant shall be solely responsible for compliance with applicable laws, regulations and ordinances (including with respect to any upgrades or modifications required by the ADA or any similar statutes) arising from or triggered by any tenant improvements, alterations or additions performed by or on behalf of Tenant.

17. **ADDITIONAL SERVICES.** City reserves the right to request that Landlord, at City's cost, perform minor Lease related services or incur additional expenses not otherwise described in the Lease from time to time, as reasonably requested by the City and approved by the Real Estate Division, acting through the Director of Property or his or her designee. If Landlord, in its sole discretion, agrees to perform such services or incur such additional expenses, City shall reimburse Landlord for the pre-approved cost for such expenses as Additional Rent within thirty (30) days after receipt of Landlord's invoice for such service or expense, which shall include reasonable backup documentation.

18. **EFFECTIVE DATE.** This Fourth Amendment shall become effective on the date (the "**Effective Date**") that (i) the City's Board of Supervisors enacts such resolution

authorizing this Fourth Amendment and (ii) the Fourth Amendment is fully executed and delivered by both parties.

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

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IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Fourth Amendment as of the day and year first above written.

LANDLORD

TENANT

BRCP 1390 Market, LLC,
a Delaware limited liability company

City and County of San Francisco,
a municipal corporation

By: BRCP Realty II, L.P.,
a Delaware limited partnership
Its: Sole Member

By: _____
Name: John Updike, Director of Real Estate

By: BRCP Gen-Par II, LLC,
a Delaware limited liability company
Its: General Partner

RECOMMENDED:
Department of Public Health

By: _____

By: _____

Name: _____

Its: _____

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
Charles Sullivan, Deputy City Attorney

ATTACHMENT 1

Updated City Provisions

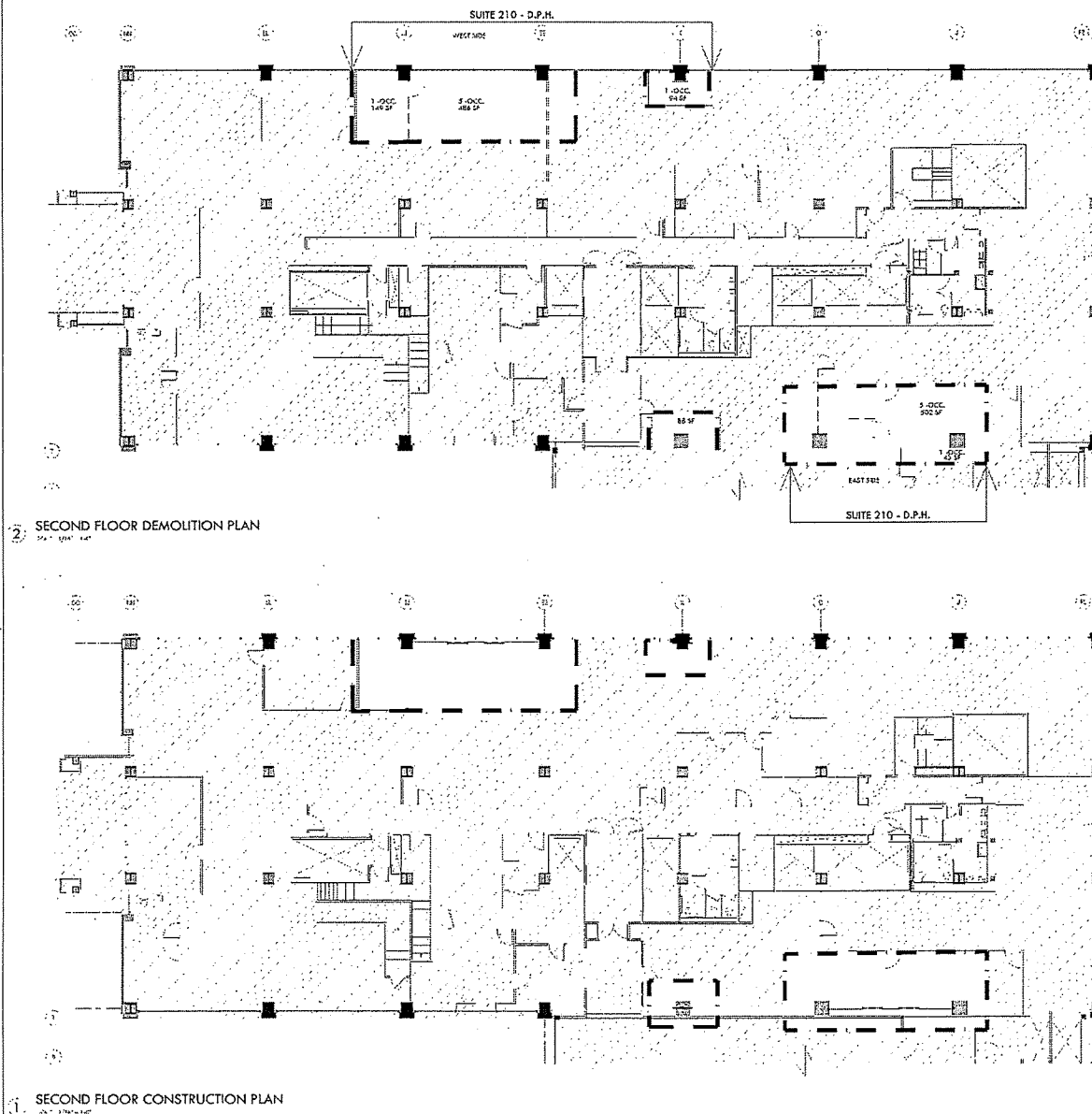
Conflicts of Interest

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

Notification of Limitations on Contributions

Through its execution of this Lease, Landlord acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Landlord acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Landlord further acknowledges that the prohibition on contributions applies to each Landlord; each member of Landlord's board of directors, and Landlord's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Landlord; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Landlord. Additionally, Landlord acknowledges that Landlord must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Landlord further agrees to provide to City the name of each person, entity or committee described above.

ATTACHMENT 2
Restricted Premises



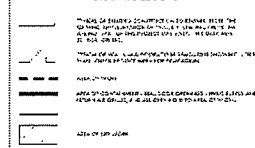
GENERAL DEMOLITION NOTES

1. DEMOLITION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA SEISMIC ACT AND ALL APPLICABLE AND RELATED STATE AND FEDERAL REGULATIONS TO THE MAXIMUM EXTENT POSSIBLE TO PROTECT THE PUBLIC HEALTH, SAFETY AND WELFARE OF THE COMMUNITY.
2. DEMOLITION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA SEISMIC ACT AND ALL APPLICABLE AND RELATED STATE AND FEDERAL REGULATIONS TO THE MAXIMUM EXTENT POSSIBLE TO PROTECT THE PUBLIC HEALTH, SAFETY AND WELFARE OF THE COMMUNITY.
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4. DEMOLITION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA SEISMIC ACT AND ALL APPLICABLE AND RELATED STATE AND FEDERAL REGULATIONS TO THE MAXIMUM EXTENT POSSIBLE TO PROTECT THE PUBLIC HEALTH, SAFETY AND WELFARE OF THE COMMUNITY.
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GENERAL CONSTRUCTION NOTES

1. ALL WORK SHALL BE IN ACCORDANCE WITH THE CALIFORNIA SEISMIC ACT AND ALL APPLICABLE AND RELATED STATE AND FEDERAL REGULATIONS TO THE MAXIMUM EXTENT POSSIBLE TO PROTECT THE PUBLIC HEALTH, SAFETY AND WELFARE OF THE COMMUNITY.
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GRAPHIC LEGEND



SURGE NOTES

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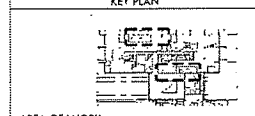
SQUARE FOOTAGE

SUITE 210 DPH	
WEST OFFICES	729 SF
CIRCULATION	73 SF
FACTOR 10%	
TOTAL SF	802 SF
SUITE 210 DPH	
EAST OFFICES	590 SF
CIRC. 10%	59 SF
TOTAL SF	649 SF
SUITE 226 - POSSIBLY	
EAST OFFICES	43 SF
CIRC. 10%	4 SF
TOTAL SF	793 SF

OCCUPANTS

SUITE 210 DPH	13 OCCUPANTS
SUITE 226 POSSIBLE	1 OCCUPANT

KEY PLAN



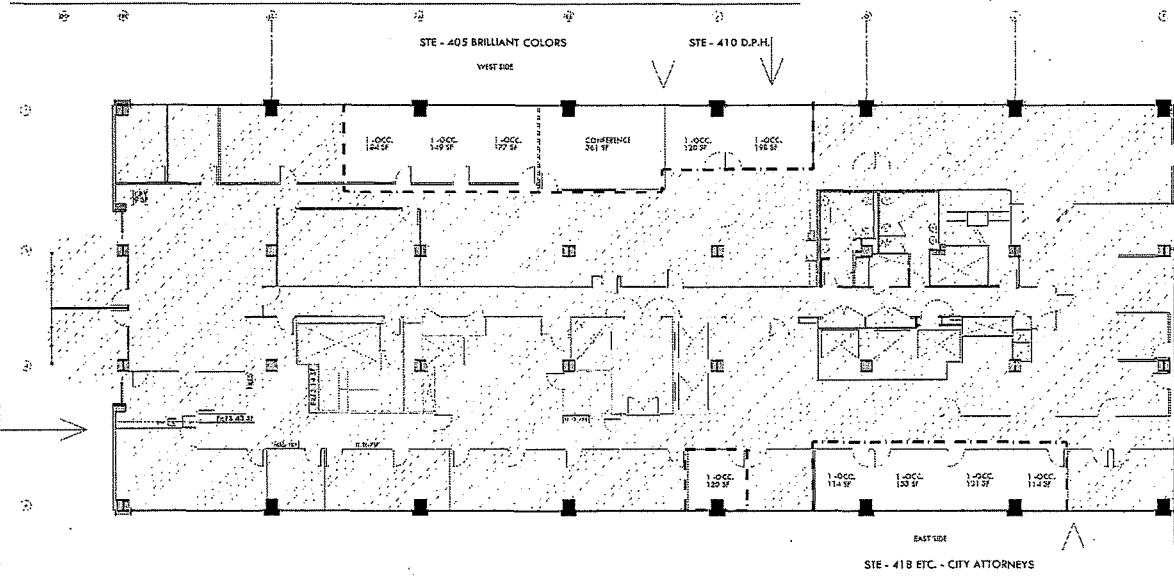
1390 MARKET STREET
SEISMIC BRACING - SCOPING DRAWING
1390 MARKET STREET
SAN FRANCISCO CA, 94610

NOT FOR CONSTRUCTION

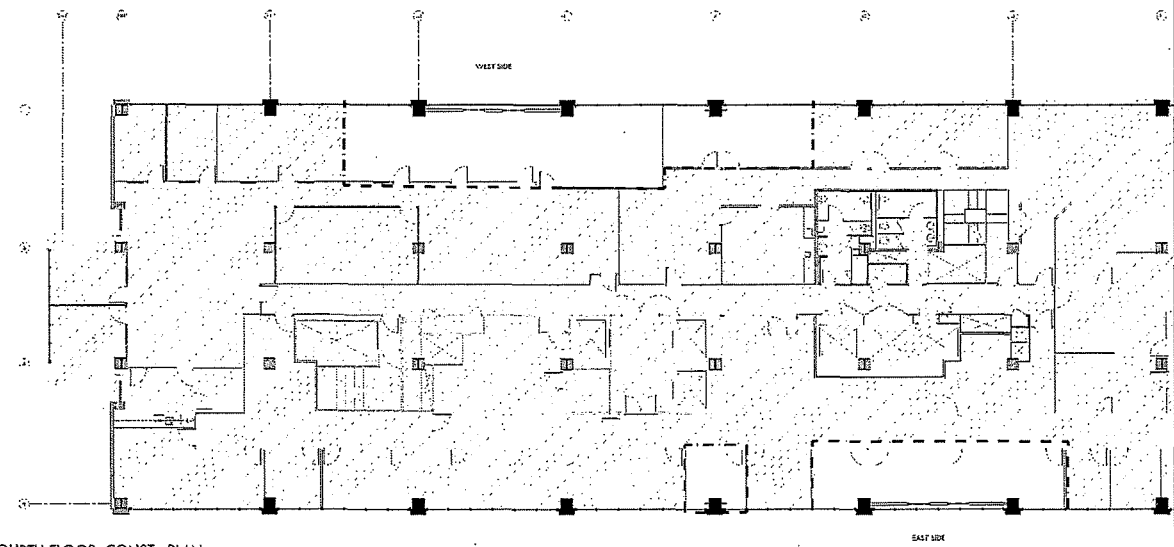
SHEET TITLE:
SECOND FLOOR PLAN

SCALE: AS NOTED
PROJECT NO: 00001284
REV. SHEET IS OF 4 OF 4

A2.04



FOURTH FLOOR DEMO PLAN



FOURTH FLOOR CONST. PLAN

- GENERAL DEMOLITION NOTES**
1. DEMOLITION SHALL BE ACCORDING TO THE CITY OF SAN FRANCISCO'S SEISMIC BRACING - SCOPING DRAWING (SBD) AND THE SEISMIC BRACING - SCOPING DRAWING (SBD) FOR THE PROJECT. THE SBD SHALL BE USED TO DETERMINE THE SEISMIC BRACING - SCOPING DRAWING (SBD) FOR THE PROJECT. THE SBD SHALL BE USED TO DETERMINE THE SEISMIC BRACING - SCOPING DRAWING (SBD) FOR THE PROJECT.
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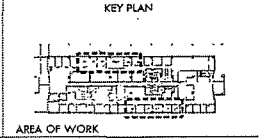
- SURGE NOTES**
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SQUARE FOOTAGE

SUITE 405 BRILLIANT COLORS	
WEST OFFICES	871 SF
CIRCULATION	87 SF
FACTOR 10%	
TOTAL SF	958 SF
SUITE 410 DEPT. PUBLIC HEALTH	
WEST OFFICES	318 SF
CIRCULATION	32 SF
FACTOR 10%	
TOTAL SF	350 SF
SUITE 418 CITY ATTORNEY	
EAST OFFICES	632 SF
CIRCULATION	63 SF
FACTOR 10%	
TOTAL SF	695 SF

OCCUPANTS

SUITE 405 BRILLIANT COLORS	
3 OCCUPANTS	
1 CONFERENCE ROOM	
SUITE 410 DEPT. PUBLIC HEALTH	
2 OCCUPANTS	
SUITE 418 CITY ATTORNEY	
5 OCCUPANTS	



1390 MARKET STREET
 SEISMIC BRACING - SCOPING DRAWING
 1390 MARKET STREET
 SAN FRANCISCO CA. 94610

NOT FOR CONSTRUCTION

SHEET TITLE
FOURTH FLOOR PLAN

SCALE AS NOTED
 PROJECT NO. 00091-004
 THIS SHEET IS 20" x 30"

A2.06

**THIRD AMENDMENT TO LEASE
[DPH]
EXTENSION AND PARTIAL SUBSTITUTION OF PREMISES**

THIS THIRD AMENDMENT TO LEASE [DPH] EXTENSION AND PARTIAL SUBSTITUTION OF PREMISES (the "Third Amendment") is made and entered into as of June 21, 2013, by and between BRCP 1390 Market, LLC, a Delaware limited liability company ("Landlord"), and the City and County of San Francisco, a municipal corporation ("Tenant" or "City").

RECITALS

- A. Calfox, Inc., as managing agent for Polk Market Co. ("Original Landlord"), as landlord, and City, as tenant, entered into a certain Office Lease, dated September 9, 1996, for premises in the building known as Fox Plaza, located at 1390 Market Street, San Francisco, California (the "Building"), which lease was amended by (i) that certain First Lease Amendment, dated as of November 23, 2003, between FP 2001 Co., successor-in-interest to Original Landlord, and City, and (ii) that certain Second Amendment to Lease, dated June 26, 2006, between API Fox Plaza, LLC, successor-in-interest to FP 2001 Co., and City (the "Second Amendment"). The lease, as so amended, is referred to herein as the "Lease." Landlord is successor-in-interest to API Fox Plaza, LLC's interest in the Lease. By letter dated December 18, 2007, City exercised an option to extend the term of the Lease through November 30, 2013.
- B. Pursuant to the terms of the Second Amendment, certain premises within the Building commonly known as Suite 410 were substituted for the premises commonly known as Suite 230, originally demised under the Lease. The premises presently demised under the Lease (the "Premises") is comprised of the following:

Suite	Area (RSF)	Comments
210	14,549	Net of plug load electricity
410	3,247	Fully serviced
820 - 822	2,759	Fully Serviced
910	4,971	Fully Serviced
Subtotal Office	25,526	
Storage C, D, & E (the "Storage Premises")	413	Garage level
Total Premises	25, 939	

- C. The Term of the Lease is presently scheduled to expire on November 30, 2013. City has exercised the final option to extend the Term of the Lease for an additional five (5) years, as provided in Paragraph 4.C. of the Lease, and City and Landlord have negotiated in good faith to establish the new Base Rent payable for the extension term.

- D. Landlord is the current owner of Landlord's Commercial Parcel of the Building (as defined in the Second Amendment to Lease), which does not include the Building's garage, however Landlord has arranged for City's use of the Storage Premises in the garage.
- E. Landlord and City presently desire to amend the Lease to; (i) extend the Term of the Lease through November 30, 2018, (ii) provide for the substitution of Suite 810 for Suite 820 - 822 following the substantial completion of improvements to be constructed by Landlord in Suite 810 pursuant to space plans approved by City, (iii) revise the Base Rent payable under the Lease, (iv) add an additional option to extend the Term, (v) permit Landlord, at its cost, to relocate the Storage Premises into storage space within Landlord's Commercial Parcel, and (vi) make certain other modifications to the Lease more particularly set forth below.

AMENDMENT

NOW THEREFORE, in consideration of the mutual agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

1. **LEASE EXTENSION.** Landlord and City hereby agree to extend the Term for an additional five (5) year period (the "**Third Extended Term**"), commencing on December 1, 2013, and expiring November 30, 2018. Upon commencement of the Third Extended Term, all references in the Lease to the Term shall mean the Term as extended by the Third Extended Term.

2. **BASE RENT AND BASE YEAR.** Commencing on December 1, 2013, and continuing throughout the Third Extended Term, the Monthly Base Rent payable under the Lease shall be \$76,362.79 - calculated as follows:

<u>Area</u>	<u>Sq. Ft.</u>	<u>Base Annual Rent PSF</u>	<u>Base Monthly Rent</u>
Storage Premises	413 SF	\$10	\$344.17
Suite 210	14,549 SF	\$35.35	\$42,858.93
Suite 410	3,247 SF	\$36.25	\$9,808.65
820-822	2,759 SF	\$36.25	\$8,334.48
910	4,971 SF	\$36.25	\$33,159.69
Total Office and Storage	25,939 SF		\$76,362.79

Commencing on December 1, 2013, the Base Year and Base Tax Year for the calculation of Additional Rent under Paragraph 6.B. of the Lease shall be the calendar year 2014.

3. **ADDITIONAL EXTENSION OPTION.** Effective as of the Effective Date of this Third Amendment, as defined in Section 17 below, Paragraph 4.C. of the Lease shall be deleted and the following provisions shall be substituted therefor:

"C. Extension Option. City shall have one (1) option to extend the Term for an additional term (the "**Fourth Extended Term**") of five (5) years, commencing on December 1, 2018 ("**Extension Option**"). Upon commencement of the Fourth Extended Term, all references in the Lease to the Term shall mean the Term as extended by the Fourth Extended Term.

(a) City's lease of the Premises during the Fourth Extended Term shall be on all of the terms and conditions set forth in the Lease, except that (i) the Base Monthly Rental shall be adjusted to ninety-five percent (95%) of Market Rental Value in accordance with Paragraph 6.C. hereof, and (ii) the Base Year and the Base Tax Year, for purposes of determining City's Additional Rent, shall be calendar year 2019.

(b) Landlord acknowledges and agrees that City's notice of its intent to exercise the Fourth Extension Option shall be subject to enactment of a resolution by the Board of Supervisors and the Mayor, in their respective sole and absolute discretion, approving and authorizing the same no later than ninety (90) days after the date such notice of exercise is given. If such approval and authorization is not received by Landlord on or before such date, the Fourth Extension Option shall terminate and City shall have no further option to extend the Term."

4. DETERMINATION OF MARKET RENTAL VALUE FOR EXTENSION TERM. Effective as of the Effective Date of this Third Amendment, the second and third grammatical paragraphs of Paragraph 6.C. of the Lease shall be deleted and the following provisions shall be substituted therefor:

"No later than December 1, 2017, Landlord shall provide City with a preliminary notice of Landlord's good faith best estimate of the Base Monthly Rental for the Fourth Extended Term. Such Landlord's estimate of the Base Monthly Rental will be provided to City for City's internal budgeting program only. Such estimate shall not be binding upon either City or Landlord.

Then Landlord, not less than six (6) months before the commencement of the Fourth Extended Term, shall submit to City in writing Landlord's determination of Market Rental Value for the Premises for the Fourth Extended Term. The amount of Market Rental Value submitted by Landlord shall become the monthly rental for the Fourth Extended Term thirty (30) days after Landlord gives said determination in writing to City unless before expiration of said thirty (30) day period City gives written notification to Landlord of City's determination of Market Rental Value. Such dispute shall be resolved as follows:"

5. SUBSTITUTION OF SUITE 810 PREMISES FOR SUITE 820-822 PREMISES.

(a) Substitution: Suite 810 Premises. Beginning on the date the Leasehold Improvements are Substantially Completed (as defined in Section 6) (the "**Substitution Date**"), as provided in Section 6 below of this Third Amendment, those premises commonly known as Suite 810, shown outlined on the attached Exhibit A-3 (the "**Suite 810 Premises**"), shall be

added to the Premises under the Lease and that portion of the existing Premises commonly known as Suite 820-822 shall be deleted from the Premises under the Lease.

(b) Base Rent; Modification of Base Rent. The parties acknowledge that the Suite 810 Premises is comprised of 4,646 rentable square feet of space and Suite 820-822 is comprised of 2,759 rentable square feet of space. City shall pay Base Rent in the amount of \$14,789.77 per month (\$38.20 psf annually) for the Suite 810 Premises. Effective as of the Substitution Date the Base Rent payable under the Lease shall be modified by (i) deleting the Base Rent for Suite 820-822 (in the amount \$7,451.60 per month through November 30, 2013 and \$8,334.48 per month commencing December 1, 2013) and adding the \$14,789.77 Base Rent payable for the Suite 810 Premises.

(c) Confirming Amendment. Upon the Substantial Completion of the Suite 810 Tenant Improvements in accordance with this Third Amendment, Landlord and Tenant shall to execute an amendment to the Lease confirming Substitution Date and the Base Rent payable. Execution of such confirming amendment shall be ministerial, and shall not require the prior approval of the City's Board of Supervisors, although it shall be subject to the prior written approval of City's Director of Real Estate and the City Attorney.

6. TENANT IMPROVEMENTS FOR SUITE 810 PREMISES. Landlord, through its general contractor reasonably approved by City, shall perform the work and make the installations in the Suite 810 Premises at Landlord's sole cost (subject to the limitations set for below) pursuant to the Construction Documents (as defined in this Section below) approved by City, and in accordance with the provisions of this Section below. Such work and installations are referred to as the "**Leasehold Improvement Work**" and "**Leasehold Improvements.**"

(a) Plans and Specifications. Before the reference date of this Third Amendment, Landlord has caused its architect or space planner approved by City to prepare and submit to City for its approval an architectural plan, power and signal plan, reflected ceiling plan, floor plans, and tenant finish specifications for the Leasehold Improvements, based on City's program requirements for use of the Suite 810 Premises, and in form and detail sufficient for purposes of contractor pricing. City hereby approves the plans and specifications dated February 5, 2013 (the "**Pricing Plans**"), prepared by Weske Associates, copies of which are attached hereto as Exhibit C-3.

Immediately following the Effective Date of this Amendment (as defined in Section 17 hereof), based on the approved Pricing Plans and any adjustments authorized by City, Landlord shall cause final plans, specifications and working drawings for the Leasehold Improvements to be prepared, in conformity with the requirements hereof. Landlord shall submit a copy of such final plans, specifications and working drawings to City within sixty (60) days after the Effective Date. Such final working drawings and specifications shall be subject to City's approval, which approval shall not be unreasonably withheld or delayed. If City disapproves such final working drawings and specifications, or any portion thereof, then City shall promptly notify Landlord thereof and of the revisions that City reasonably requires in order to obtain City's approval. As soon as reasonably possible thereafter, but in no event later than thirty (30) days after City's notice, Landlord shall submit to City final plans, specifications and working drawings incorporating the revisions required by City. Such revisions shall be subject

to City's approval, which shall not be unreasonably withheld or delayed. The final plans, specifications and working drawings for the Leasehold Improvements approved by City shall be referred to as the "**Final Construction Documents**." If, following approval, the Director of Property for the City requests any change, addition or alteration in the Final Construction Documents, Landlord shall cause its architect to prepare plans with respect thereto. As soon as practical, Landlord shall notify City of the cost that would be incurred by reason of such change, addition or alteration. If City approves the cost thereof in writing within five (5) days of receipt from Landlord such approved cost shall be referred to herein as the "**Approved Change Cost**" and (i) Landlord's contractor shall proceed with such change, addition or alteration as soon as reasonably practical thereafter, and (ii) City shall pay for any increase in the cost of the Leasehold Improvements resulting from such change, alteration or addition up to the Approved Change Cost and shall not have a right to terminate pursuant to Section 6(b) below with respect to any such changes, alterations or additions. If City does not approve such cost within the above mentioned five (5) day period, construction shall proceed in accordance with the original completed and approved Final Construction Documents and City shall pay the reasonable and actual architect fees for designing the changes, up to a total of Five Hundred Dollars (\$500).

(b) Permits; Right to Terminate Provisions Regarding Substitution. Landlord shall secure and pay for any building and other permits and approvals, government fees, licenses and inspections necessary for the proper performance and completion of the Leasehold Improvement Work shown on the approved Final Construction Documents. Promptly following City's approval of the Final Construction Documents, Landlord shall apply for any permits, approvals, including but not limited to the City's Mayor's Office of Disability or licenses necessary to complete such construction and shall provide copies to City promptly following receipt thereof. Notwithstanding the foregoing, in the event that Landlord, after using commercially reasonable efforts, is unable to obtain all necessary permits, approvals and licenses required to construct the Leasehold Improvements within one hundred and eighty (180) days after the Effective Date (the "**Trigger Date**"), or if prior to the Trigger Date, based on the Final Construction Documents, Landlord determines and notifies City in writing that the total cost of the Leasehold Improvements exceeds \$300,000, either party shall have the right to terminate the provisions providing for the substitution of the Suite 810 Premises for Suite 820-822 upon written notice to the other within ten (10) days after the Trigger Date or within ten (10) days following Landlord's notice set forth above that the total cost of the Leasehold Improvements shall exceed \$300,000, as applicable. Landlord shall be responsible for arranging for all inspections required by City's Bureau of Building Inspection and City's Mayor's Office of Disability.

(c) Prevailing Wage and First Source Hiring. City has adopted a First Source Hiring Ordinance (Board of Supervisors Ordinance No. 264-98) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry level positions. Within thirty (30) days after the City and County of San Francisco Department of Public Health adopts a First Source Hiring Implementation and Monitoring Plan in accordance with the First Source Hiring Ordinance, Landlord shall enter into a First Source Hiring Agreement that meets the applicable requirements of Section 83.9 of the First Source Hiring Ordinance in connection with certain building permit applications.

Landlord agrees that any person performing labor in the construction of the Leasehold Improvements or other improvements to the Premises, which Landlord provides under the Lease, shall be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the San Francisco Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California. Landlord shall include in any contract for construction of such Leasehold Improvements or other improvements to the Premises, 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 shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing labor in the construction of any Leasehold Improvements or other improvements to the Premises.

(d) Construction. Immediately upon approval of the Final Construction Documents and Landlord's procurement of all necessary permits and approvals, Landlord shall commence construction and shall cause the Leasehold Improvements to be completed in a good and professional manner in accordance with sound building practice. Landlord shall comply with and give notices required by all laws, rules, regulations, ordinances, building restrictions and lawful orders of public authorities bearing on construction of the Leasehold Improvements. Without limiting the foregoing, construction of the Leasehold Improvements shall comply with all applicable disabled access laws, including, without limitation, the requirements of the Americans With Disabilities Act of 1990, Title 24 of the California Code of Regulations (or its successor) and City's requirements for program accessibility. Landlord agrees that any person performing labor in the construction of the Leasehold Improvements or other improvements to the Premises, which Landlord provides under this Lease, shall be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the San Francisco Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California. Landlord shall include, in any contract for construction of such Leasehold Improvements or other improvements to the Premises, 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 shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing labor in the construction of any Leasehold Improvements or other improvements to the Premises. The provisions of Paragraphs 6 and 13 of Exhibit B-3 attached to this Third Amendment shall apply to the construction of the Leasehold Improvements.

(e) Construction Schedule; Substantial Completion. Landlord shall keep City apprised on a regular basis of the status of plan preparation, permit issuance and the progress of construction. From time to time during the design and construction of the Leasehold Improvements, City shall have the right upon reasonable advance oral or written notice to Landlord to enter the Suite 810 Premises at reasonable times to inspect the Suite 810 Premises, provided such inspections do not unreasonably interfere with the construction. Landlord or its representative may accompany City during any such inspection. When construction progress so permits, but not less than fifteen (15) days in advance of completion, Landlord shall notify City of the approximate date on which the Leasehold Improvement Work will be substantially completed in accordance with the Construction Documents. Landlord shall revise such notice of

the approximate substantial completion date as appropriate from time to time and shall promptly notify City when the Leasehold Improvement Work is in fact substantially completed and the Suite 810 Premises are ready for occupancy by City. On such date or other mutually agreeable date as soon as practicable thereafter, City and its authorized representatives shall have the right to accompany Landlord or its architect on an inspection of the Suite 810 Premises.

The Leasehold Improvement Work shall be deemed to be "**Substantially Completed**" for purposes of this Third Amendment when the Leasehold Improvements shall have been sufficiently completed in accordance with the approved Construction Documents so that City can occupy the Suite 810 Premises and conduct its business for its intended uses, Landlord has procured a temporary or final certificate of occupancy for the Suite 810 Premises and City, through its Director of Property, shall have approved the Leasehold Improvements. City may, at its option, approve the Leasehold Improvements even though there may remain minor details that would not interfere with City's use. Landlord shall diligently pursue to completion all such details. Notwithstanding the foregoing, City shall have the right to present to Landlord within thirty (30) days after acceptance of the Suite 810 Premises, or as soon thereafter as practicable, a written punchlist consisting of any items that have not been finished in accordance with the Construction Documents. Landlord shall promptly complete all defective or incomplete items identified in such punchlist, and shall in any event complete all items within thirty (30) days after the delivery of such list. City's failure to include any item on such list shall not alter the Landlord's responsibility hereunder to complete all Leasehold Improvement Work in accordance with the approved Construction Documents, nor constitute any waiver of any latent defects.

No approval by City or any of its Agents of the Pricing Plans, Construction Documents or completion of the Leasehold Improvement Work for purposes of this Lease shall be deemed to constitute approval of any governmental or regulatory authority with jurisdiction over the Suite 810 Premises, and nothing herein shall limit Landlord's obligations to obtain all such approvals.

Subject to any Unavoidable Delays (as defined in the Lease), City shall be responsible for any delay in the construction of the Leasehold Improvement Work due solely and directly to any of the following (collectively, "**Tenant Delays**"); (i) a delay in granting its reasonable approval of plans and specifications (beyond the period granted therefor), (ii) City's material changes in the Final Construction Documents after City has approved them, (iii) a delay in excess of one week in delivery of data or telephone cables provided that Landlord has given City a minimum of four (4) weeks prior notice of the desired delivery date, and (iv) a delay in excess of one week in Tenant's installation of furniture systems. The Leasehold Improvement Work shall be considered to be Substantially Completed for purposes of the determination of the Substitution Date on the date by which the Leasehold Improvement Work would have been completed if there had been no such Tenant Delay. Notwithstanding the foregoing, City shall be responsible only to the extent any delays are actually caused by Tenant Delays.

7. **LANDLORD'S RIGHT TO RELOCATE STORAGE PREMISES.** During the Term or any extension thereof, Landlord shall have the right upon not less than ninety (90) days prior written notice to City to relocate the Storage Premises to an area (the "**Relocated Storage Premises**") in Landlord's Commercial Parcel of the Building provided that (i) the

Relocated Storage Premises are reasonably the same size as the Storage Premises, and (ii) Landlord shall be responsible for all costs to move City's property from the Storage Premises to the Relocated Storage Premises. City shall pay the same amount of Base Rent for the Relocated Storage Premises as is payable under the Lease for the Storage Premises, and no Additional Rent shall be payable with respect to the Relocated Storage Premises. City acknowledges that the Relocated Storage Premises may not be in the garage area of the Building. In the event of that City does not want to lease the Relocated Storage Premises, City shall have the right to terminate the Storage Premises from the Lease (and reduce the Base Rent owed accordingly) by written notice to Landlord.

8. **LANDLORD'S ADDRESS.** Effective as of the Effective Date, Landlord's address set forth in the Lease for notices and payment of rent and other amounts due under the Lease is deleted in its entirety and replaced by the following:

Landlord's notice address:

BRCP 1390 Market, LLC
c/o Broadreach Capital Partners
248 Homer Avenue
Palo Alto, California 94301
Attention: Asset Manager

With copy to:

Transwestern
1390 Market Street, Suite 316
San Francisco, California 94102

Landlord's address for rent and other payments:

BRCP 1390 Market, LLC
c/o Transwestern
P.O. Box 51864
Los Angeles, California 90051-6191

9. **ADDITIONAL PROVISIONS.** The Lease is amended and updated to include the provisions in Exhibit B-3, which replace the corresponding language, if any, in the Lease.

10. **NO BROKERS.** Tenant represents and warrants that it has not dealt with any real estate broker in connection with this Third Amendment, and no compensation is due to Tenant's broker in connection with this Third Amendment. Tenant agrees to indemnify and hold Landlord harmless for any loss, cost, liability or expense incurred by Landlord as a result of a claim for brokerage commissions or finder's fee from any broker based on the act or omission of Tenant in breach of the foregoing warranty. Landlord agrees to indemnify and hold Tenant harmless for any loss, cost, liability or expense incurred by Tenant as a result of a claim for brokerage commissions or finder's fee from any broker claiming to have represented Landlord in connection with this Third Amendment.

11. **DEFINED TERMS.** All capitalized terms used but not defined in this Third Amendment will have the meanings set forth for such terms in the Lease. All terms that are defined in this Third Amendment and used in any provisions that are added to the Lease pursuant to this Third Amendment will have the meanings in the Lease set forth for such terms in this Third Amendment.

12. **WHOLE AGREEMENT.** This Third Amendment sets forth the entire agreement between the parties with respect to the matters set forth herein. There have been no additional oral or written representations or agreements. Except as amended herein, there shall be no other changes or modifications to the Lease between the parties and the Lease and the terms and provision contained therein shall remain in full force and effect.

13. **MISCELLANEOUS.** This Third Amendment shall be binding upon the parties hereto, their heirs, successors and assigns. Except as modified hereby, there shall be no other changes or modifications to this Third Amendment or to the Lease unless in writing and executed by the parties hereto. No reference to this Third Amendment is necessary in any instrument or document at any time referring to the Lease. Any future reference to the Lease shall be deemed a reference to such document as amended hereby. This Third Amendment shall be governed by, construed and enforced in accordance with the laws of the State of California.

14. **CONFIRMATION OF LEASE.** As amended by this Third Amendment, Landlord and Tenant confirm and ratify in all respects the terms and conditions of the Lease, and further confirm that, except as provided in Section 6 of this Third Amendment, there are no outstanding tenant improvement obligations of Landlord regarding the Premises. The execution of this Third Amendment shall not constitute a waiver of relinquishment of any rights which Landlord or Tenant may have relating to the Lease.

15. **NO JOINT VENTURE.** This Third Amendment or any activity by Tenant hereunder does not create a partnership or joint venture between Tenant and Landlord relating to the Lease or otherwise. This Third Amendment does not constitute authorization or approval by the City of any activity conducted by Landlord.

16. **COUNTERPARTS.** This Third Amendment may be executed in one or more counterparts, each of which shall be deemed an original, including transmittals by facsimile, all of which together shall constitute one and the same instrument.

17. **EFFECTIVE DATE.** This Third Amendment shall become effective on the later date that this Third Amendment is (i) fully executed and delivered by both parties or (ii) authorized by a Resolution by City's Board of Supervisors and Mayor in their sole discretion.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS THIRD AMENDMENT, LANDLORD ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY HERETO UNLESS AND UNTIL CITY'S BOARD OF SUPERVISORS SHALL HAVE DULY ADOPTED A RESOLUTION APPROVING THIS THIRD AMENDMENT AND AUTHORIZING CONSUMMATION OF THE TRANSACTION CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT

UPON ADOPTION OF SUCH A RESOLUTION, AND THIS THIRD AMENDMENT SHALL BE NULL AND VOID UNLESS CITY'S MAYOR AND BOARD OF SUPERVISORS APPROVE THIS THIRD AMENDMENT, IN THEIR RESPECTIVE SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ADOPTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

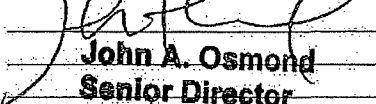
IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Third Amendment as of the day and year first above written.

LANDLORD

BRCP 1390 Market, LLC,
a Delaware limited liability company

By: **BRCP Realty II, L.P.,**
a Delaware limited partnership
Its: Sole Member

By: **BRCP Gen-Par II, LLC,**
a Delaware limited liability company
Its: General Partner

By: 
Name: **John A. Osmond**
Its: **Senior Director**

TENANT

City and County of San Francisco,
a municipal corporation

By: 
JOHN UPDIKE, Director of Real Estate

**RECOMMENDED:
DEPARTMENT OF PUBLIC HEALTH**

By: 
Barbara Garcia, Director

**APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney**

By: 
Anita E. Wood
Deputy City Attorney

EXHIBIT A-3
Depiction of Suite 810 Premises

[Attached]



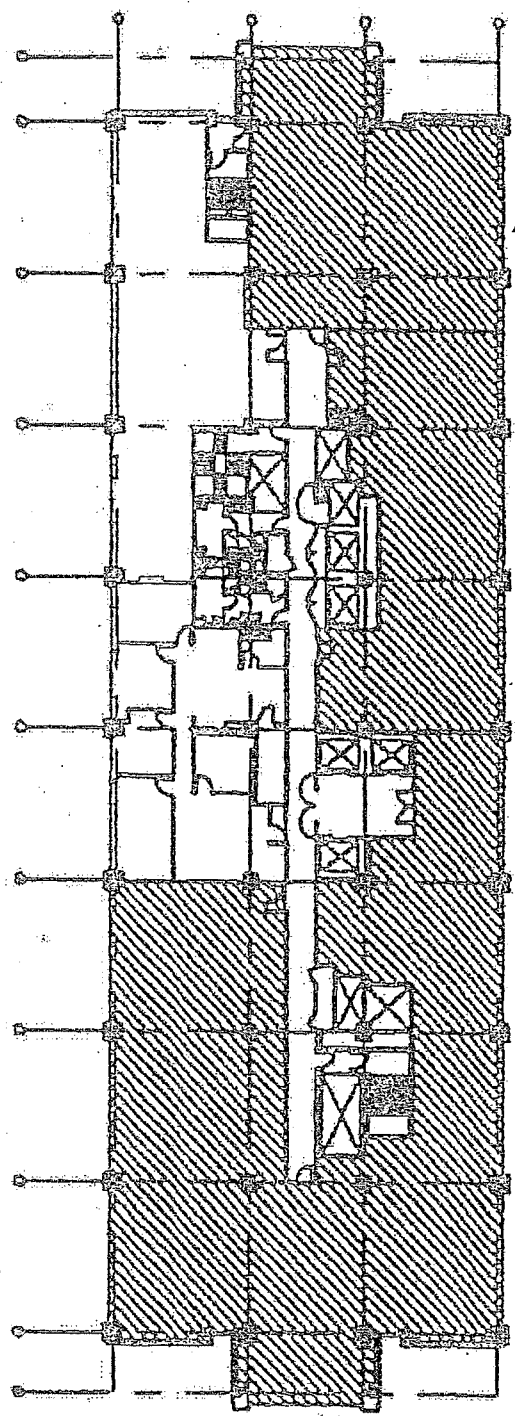
1 8TH FLOOR - EXISTING CONDITIONS
SCALE: N15

Broadreach
CREATING THE FUTURE

1390 MARKET
8TH FLOOR VACANCIES
Project #1: 080100
Issue Date: 12.12.12

WESKE ASSOCIATES
251 Howard Ave., Suite 250
Ann Arbor, MI 48106
Tel: 734.769.4400
Fax: 734.769.4408

KEY PLAN



F

E

D

EXHIBIT B-3
Updated City Provisions

1. Controller's Certification of Funds

The terms of this Lease shall be governed by and subject to the budgetary and fiscal provisions of the City's Charter. Notwithstanding anything to the contrary contained in this Lease, there shall be no obligation for the payment or expenditure of money by City under this Lease unless the Controller of the City and County of San Francisco first certifies, pursuant to Section 3.105 of the City's Charter, 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. Without limiting the foregoing, if in any fiscal year of City after the fiscal year in which the Term of this Lease commences, sufficient funds for the payment of Rent and any other payments required under this Lease are not appropriated, then City may terminate this Lease, without penalty, liability or expense of any kind to City, as of the last date on which sufficient funds are appropriated. City shall use its reasonable efforts to give Landlord reasonable advance notice of such termination.

2. Non-Liability of City Officials, Employees and Agents

Notwithstanding anything to the contrary in this Lease, no elective or appointive board, commission, member, officer, employee or agent of City shall be personally liable to Landlord, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Landlord, its successors and assigns, or for any obligation of City under this Lease.

3. MacBride Principles - Northern Ireland

The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Landlord acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

4. Prevailing Wages for Construction Work

Landlord agrees that any person performing labor in the construction of the Leasehold Improvements or other improvements to the Premises, which Landlord provides under this Lease, shall be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the San Francisco Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California. Landlord shall include, in any contract for construction of such Leasehold Improvements or other improvements to the Premises, 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 shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing labor in the construction of any Leasehold Improvements or other improvements to the Premises.

5. Non Discrimination in City Contracts and Benefits Ordinance

(a) Covenant Not to Discriminate

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

(b) Subcontracts

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

(c) Non-Discrimination in Benefits

Landlord does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits specified above within the United States, between employees with domestic partners and employees with spouses, and/or between domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the condition set forth in Section 12.B2(b) of the San Francisco Administrative Code.

(d) HRC Form

As a condition to this Lease, Landlord shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission (the "HRC"). Landlord hereby represents that prior to execution of the Lease: (a) Landlord executed and submitted to the HRC Form HRC-12B-101 with supporting documentation, and (b) 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 Lease as though fully set forth herein. Landlord shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Landlord understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against in

violation of the provisions of this Lease may be assessed against Landlord and/or deducted from any payments due Landlord.

6. Tropical Hardwood and Virgin Redwood Ban

(a) Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, neither Landlord nor any of its contractors shall provide any items to City in the construction of the Leasehold Improvements or otherwise in the performance of this Lease which are tropical hardwood, tropical hardwood wood products, virgin redwood, or virgin redwood wood products.

(b) The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood products.

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

7. Bicycle Storage Facilities

Article 1.5, Section 155.1, of the San Francisco Planning Code (the "Planning 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 the City, the existing bicycle facilities located in the garage. In the event public and/or private donations, grants or other funds for additional facilities become available, at any time during the Term of this Lease including any extension thereof, City may, by giving a 60-day advanced written notice to Landlord, install additional compliant bicycle storage in the Building garage provided the garage owner approves the same. Landlord agrees to use commercially reasonable efforts to obtain such approval. If parking spaces are lost, City shall pay the monthly rent value for any such parking spaces used for such bicycle parking, and Landlord also agrees that City may install bicycle racks in other location(s) in front of the Building, which are required to meet the Class 1 and/or Class 2 requirements of the Planning Code. Landlord, at no cost to Landlord, shall reasonably cooperate with City regarding the location of such spaces in furtherance of the implementation of such requirements of the Planning Code. The above notwithstanding, City acknowledges that Landlord does not own the entire building and only has limited rights to the parking garage and the common areas.

8. Resource-Efficient City Buildings and Pilot Projects

Landlord acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 707 relating to resource-efficient City buildings and resource-efficient pilot projects. Landlord hereby agrees that it shall comply with all applicable provisions of such code sections.

9. Certification by Landlord

By executing this Lease, Landlord certifies that neither Landlord nor any of its officers or members have been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. In the event Landlord or any

of its officers or members have been so suspended, disbarred, disciplined or prohibited from contracting with any governmental agency, it shall immediately notify the City of same and the reasons therefore together with any relevant facts or information requested by City. Any such suspension, disbarment, discipline or prohibition may result in the termination or suspension of this Lease. Landlord acknowledges that this certification is a material term of this Lease.

10. Sunshine Ordinance

In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between City and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

11. Conflicts of Interest

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

12. Notification of Limitations on Contributions

Through its execution of this Lease, Landlord acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Landlord acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Landlord further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Landlord's board of directors, chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Landlord; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Landlord. Additionally, Landlord acknowledges that Landlord must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Landlord further agrees to provide to City the names of each person, entity or committee described above."

13. Preservative-Treated Wood Containing Arsenic

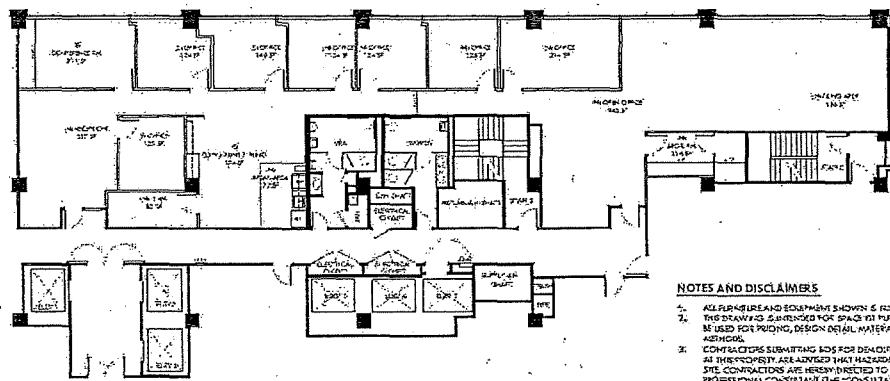
As of July 1, 2003, Landlord may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code, Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The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

14. Graffiti Removal

(a) Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values; business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

(b) Landlord shall use good faith and commercially reasonable efforts to remove all graffiti from the Building and from any real property owned or leased by Landlord in the City and County of San Francisco within forty eight (48) hours of the earlier of Landlord's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require Landlord to breach any lease or other agreement that it may have concerning its use of the real property. The term "**graffiti**" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

(c) Any failure of Landlord to comply with this section of this Lease shall constitute a breach of this Lease.

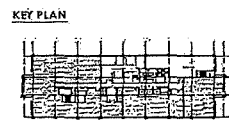


WALL LEGEND

	EXISTING CORE PARTITION OR WALL
	EXISTING PARTITION OR WALL
	NEW ADDITION

INVENTORY

(S) BOSS WORKSTATION	(R) RECEPTION
(B) BOSS WORKSTATIONS	(P) PRDS AREA
(O) OFFICES	(T) T.O.A.
(M) MEETING ROOMS	(T) T.O.R.N.
(C) CONFERENCE ROOM	(T) T.O.S. AREA
	(T) T.O.M. AREA / HALL



NOTES AND DISCLAIMERS

1. ALL PURPOSES AND EMBLEMMENT SHOWN & ALL THE SERVICES & SERVICES FOR SPACE FOR PURPOSES ONLY AND SHOULD NOT BE USED FOR PLANNING, DESIGN, DETAIL MATERIAL TAKE OFFS OR CONSTRUCTION METHODS.
2. CONTRACTORS SUBMITTING BIDS FOR DEMOLITION AND/OR CONSTRUCTION PROJECTS AT THIS PROPERTY ARE ADVISED THAT HAZARDOUS MATERIALS MAY BE PRESENT AT THE SITE. CONTRACTORS ARE HEREBY ADVISED TO ENGAGE THE SERVICES OF A PROFESSIONAL CONSULTANT (THE "CONSULTANT") LICENSED TO INVESTIGATE AND IF NECESSARY ASSESS OR REMOVE HAZARDOUS MATERIALS. IS ADVISED OR MEET WITH THE OWNER AND THE CONSULTANT TO PRESENT OPTIONS FOR HANDLING, REMOVAL OR OTHERWISE ALIQUOT THE HAZARDOUS MATERIALS (IC CODES) WITHIN AND ALL CONDITIONS IMPOSED BY OWNER'S HAZARDOUS MATERIALS MANAGEMENT PLAN (HMM) PROVIDED TO THE OWNER. ALL DISCOVERY, SPECIFIC, CLASSIFICATION AND ALL OTHER DOCUMENTATION REQUIRED BY LAW RELATIVE TO THE CONSULTANT'S WORK WITH HAZARDOUS MATERIALS.
3. WESKE ASSOCIATES HAS NO EXPERTISE OR PROFESSIONAL TRAINING IN THE TREATMENT, REMOVAL OR INCAPACITATION OF HAZARDOUS MATERIALS OR SOLIDS THAT ARE CONTAMINATED WITH HAZARDOUS MATERIALS. ANY AND ALL ISSUES RELATED TO HAZARDOUS MATERIALS ARE OUTSIDE THE PURVIEW OF WESKE ASSOCIATES' WORK, AND ARE EXPRESSLY EXCLUDED FROM ANY CONTRACT, CLAIM, REMEDY, OR RESPONSIBILITY, WRITTEN OR IMPLIED.

1D TEST FIT - SUITES 810, 815
SCALE 3/32" = 1'-0"

WESKE ASSOCIATES
1390 MARKET STREET
SAN FRANCISCO, CA 94102
415.774.8800
www.weske.com

1390 MARKET
SAN FRANCISCO
94102
31A.766.0200, CA
TAMM W. GARDNER
415.774.8800



AMENDED IN COMMITTEE

5/22/13

FILE NO. 130295

RESOLUTION NO. 174-13

1 [Lease Renewal and Amendment - Real Property at 1390 Market Street - BRCP 1390 Market,
2 LLC - \$82,818.07 monthly]

3 **Resolution authorizing the five-year renewal and amendment of a lease of**
4 **approximately 27,826 square feet of space at 1390 Market Street with BRCP 1390**
5 **Market, LLC, as Landlord for use by the Department of Public Health at the monthly**
6 **cost of \$82,818.07 for the period of December 1, 2013, through November 30, 2018.**

7
8 WHEREAS, The Department of Public Health - Environmental Health Section (DPH -
9 EHS) has occupied space since 1997 at the building commonly known as Fox Plaza, 1390
10 Market Street (Premises), San Francisco pursuant to a lease with Calfox, Inc. dated
11 September 9, 1996, authorized by Resolution No. 699-96; and

12 WHEREAS, BRCP 1390 Market, LLC, is successor in interest to Calfox; and

13 WHEREAS, The current lease term for DPH - EHS was extended through November
14 30, 2013, by Resolution No. 74-08 for Premises consisting of 25,939 sq. ft.; and

15 WHEREAS, The DPH - EHS, over the past five years of the current lease term, has
16 taken on new responsibilities for its Automated Point of Sale Inspection Program pursuant to
17 Board of Supervisors Ordinance No. 195-10, and added 5 full time employees to conduct
18 price verification inspections to test the point-of-sale systems to verify the accuracy of the
19 transactions; and

20 WHEREAS, The DPH - EHS, over the past five years of the current lease term, has
21 also added 7 other full time employees for additional regulatory responsibilities, including 3
22 employees in the Healthy Housing Program to comply with new local legislation, 1 employee
23 as requested by Supervisor Chu to increase inspections to deter illegal activity in massage
24 businesses, 1 employee to enforce new local tobacco legislation, 1 employee for enforcing
25

1 federal standards around menu labeling, and 1 employee for inspections and issues around
2 bed bugs; and

3 WHEREAS, Such additional staff at DPH - EHS are currently scattered throughout
4 Premises and DPH - EHS desires to consolidate and co-locate the additional staff into
5 cohesive units for better teamwork, supervision and other operational efficiencies.

6 WHEREAS, The Real Estate Division and the Landlord have negotiated the renewal of
7 the lease for five additional years through November 30, 2018, and the expansion of the
8 Premises by 1,887 sq. ft.; and

9 WHEREAS, Such terms for extension and expansion are subject to enactment of a
10 resolution by the Board of Supervisors and the Mayor, in their respective sole and absolute
11 discretion; now, therefore, be it

12 RESOLVED, That in accordance with the recommendation of the Director of the
13 Department of Public Health and the Director of Property, Real Estate Division, the Director of
14 Property is hereby authorized to take all actions on behalf of the City and County of San
15 Francisco, as tenant, to extend and expand the Lease (copy of lease amendment on file in
16 File No. 130295 with the Clerk of the Board) with BRCP 1390 Market, LLC ("Landlord"), for
17 the building commonly known as Fox Plaza, 1390 Market Street, San Francisco, California,
18 for the area of approximately 27,826 sq. ft., on the terms and conditions set forth herein, and
19 on a form approved by the City Attorney; and, be it

20 FURTHER RESOLVED, That the Lease extension shall be for a term of five years
21 through November 30, 2018, for Premises consisting of 27,826 sq. ft. at a monthly rental of
22 \$82,818.07, (approximately \$35.72 per sq. ft. annually), fully serviced except that City shall
23 continue to pay for separately metered electricity on approximately 14,549 sq. ft. while the
24 Landlord shall pay for the other utilities, janitorial services, building maintenance, and repairs;

25

1 City shall also pay for the typical tenant expenses including standard operating expense
2 increases over a 2013 Base Year; and, be it

3 FURTHER RESOLVED, That in the event Substantial Completion of the Tenant
4 Improvements for the expansion Premises consisting of 1,887 sq. ft., occurs prior to
5 November 30, 2013, (expected to be August 1, 2013) the expansion premises shall be added
6 to the existing Lease at the additional monthly rental of \$6,006.95 (approximately \$38.20 per
7 sq. ft. annually), so that after the addition of expansion Premises and beginning December 1,
8 2103 the base monthly rent shall be a total of \$82,818.07 or approximately \$35.72 per sq.ft.
9 annually on the total premises of 27,826 sq. ft.; and, be it

10 FURTHER RESOLVED, That the Lease shall continue to include the lease clause,
11 indemnifying, holding harmless, and defending Landlord and its agents from and against any
12 and all claims, costs and expenses, including without limitation, reasonable attorneys' fees,
13 incurred as a result of any default by the City in the performance of any of its material
14 obligations under the Lease, or any negligent acts or omissions of the City or its agents, in,
15 on, or about the Premises or the property on which the Premises are located, excluding those
16 claims, costs and expenses incurred as a result of the negligence or willful misconduct of the
17 Landlord or its agents; and, be it

18 FURTHER RESOLVED, That all actions heretofore taken by the officers of the City
19 with respect to such Lease are hereby approved, confirmed and ratified; and, be it

20 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of
21 Property to enter into any amendments or modifications to the Lease (including, without
22 limitation, the exhibits) that the Director of Property determines, in consultation with the City
23 Attorney, are in the best interest of the City, do not increase the rent or otherwise materially
24 increase the obligations or liabilities of the City, are necessary or advisable to effectuate the
25

1 purposes of the Lease renewal or this resolution; and are in compliance with all applicable
2 laws, including the City Charter; and, be it

3 FURTHER RESOLVED, That the City shall occupy the entire Premises for the full term
4 of the Lease unless funds for the Department of Public Health's rental payments are not
5 appropriated in any subsequent fiscal year at which time the City may terminate the Lease
6 with advance notice to Landlord. Said Lease shall be subject to certification as to funds by
7 the Controller, pursuant to Section 6.302 of the City Charter.

8 \$954,064.29 Available
9 (1 month @ \$70,062.00)
10 (4 months at \$76,068.95)
11 (7 months @ \$82,818.07)
12 HCHPBADMINGF

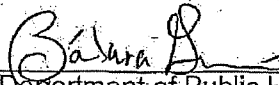
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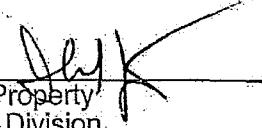
see
R. Fund
Official
Office

13 
14 Controller

15 Subject to the enactment of the Annual Appropriation
16 Ordinance for Fiscal Year 2013/2014.

17 RECOMMENDED:

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19 Department of Public Health

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21 Director of Property
22 Real Estate Division

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Real Estate Division
BOARD OF SUPERVISORS



City and County of San Francisco

Tails
Resolution

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

File Number: 130295

Date Passed: June 04, 2013

Resolution authorizing the five year renewal and amendment of a lease of approximately 27,826 square feet of space at 1390 Market Street with BRCP 1390 Market, LLC, as Landlord, for use by the Department of Public Health at the monthly cost of \$82,818.07 for the period of December 1, 2013, through November 30, 2018.

May 22, 2013 Budget and Finance Sub-Committee - AMENDED

May 22, 2013 Budget and Finance Sub-Committee - RECOMMENDED AS AMENDED

June 04, 2013 Board of Supervisors - ADOPTED

Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

File No. 130295

I hereby certify that the foregoing
Resolution was ADOPTED on 6/4/2013 by
the Board of Supervisors of the City and
County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor

6/13/13
Date Approved

SECOND AMENDMENT TO LEASE

DPH

THIS SECOND AMENDMENT TO LEASE (this "First Amendment") is made and entered into as of June 26, 2006, by and between API Fox Plaza, LLC, a Delaware limited liability company ("Landlord") and the City and County of San Francisco, a municipal corporation ("Tenant" or "City").

RECITALS

- A. Calfox, Inc., as managing agent for Polk Market Co., a predecessor-in-interest to Landlord ("Original Landlord"), and Tenant entered into that certain Office Lease dated September 9, 1996, as amended by that certain First Amendment dated as of November 23, 2003 (the "Lease") for premises known as Suite 230 on the 2nd floor (the "Second Floor Pad Premises"), Suite 210 (the "Second Floor Tower Premises"), Suites 820 and 910 on the 8th and 9th floors, (together the "Tower Premises", together with Storage Spaces C, D, and E and the Second Floor Pad Premises, the "Original Premises"), all in a building known as Fox Plaza, 1390 Market Street, San Francisco, CA (the "Building").
- B. The City exercised the first extension option, and therefore the Lease's expires November 30, 2008. The Lease provides City with one (1) additional five year option to extend the Term (the "Extension Option", as defined in the Lease).
- C. Landlord is the successor-in-interest to Original Landlord and is the current owner of the Building. Landlord intends to subdivide the Building and land and sell that portion of the Building and land that contains the Second Floor Pad Premises (the "Transfer Parcel"). As a result, Landlord desires to relocate the Second Floor Pad Premises, at Landlord's sole cost, to certain non-residential portions (generally located on the 1st floor through the 12th floor) of the tower portion of the Building ("Landlord's Commercial Parcel").
- D. Landlord and Tenant now wish to amend the Lease to (i) permit Landlord to relocate the Second Floor Premises before commencement of the remaining Option Term, at Landlord's sole cost, to space approved by City within Landlord's Commercial Parcel (the "Relocation Premises"), (ii) add an additional option to extend the Term, and (iii) make certain other modifications to the Lease more particularly set forth below.

AMENDMENT

NOW THEREFORE, in consideration of the mutual agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

I. **EXTENSION OPTION.** Effective on the date of this First Amendment, Paragraph 4(C) of the Lease shall be deleted and replaced with the following:

"C. **Extension Option.** City shall have two (2) remaining options to extend the Term for an additional term (each an "Extended Term", and collectively the "Extended Terms") of five (5) years each commencing upon the expiration of the existing Term, or November 30, 2008 ("Extension Options"). Upon commencement of the an Extended Term, all references in the Lease to the Term shall mean the Term as extended by that Extended Term.

(a) City's lease of the Premises during an Extended Term shall be on all of the terms and conditions set forth in the Lease, except that (i) the Base Monthly Rental shall be adjusted to ninety-five percent (95%) of Market Rental Value in accordance with Paragraph 6(C) hereof, (ii) the date for Landlord's good faith estimate of Base Monthly Rental for the first Extension Option shall be December 1, 2007 and for the second Extension Option shall be December 1, 2012, (iii) the Base Year and the Base Tax Year, for purposes of determining City's Additional Rent, shall be calendar 2009; (iv) subject to

Landlord's completion of the relocation as set forth below, the Second Floor Pad Premises shall be deleted from the Premises and the Relocation Premises shall be added to the Premises; and (v) City shall not be responsible for any increase in Direct Taxes or other costs or expenses resulting from any sale, transfer or subdivision of any interest in or title to the Building or the land on which the Building is located during calendar years 2006, 2007, or 2008.

(b) Upon City's exercise of the first Extension Option, Landlord shall relocate the Second Floor Premises to the Relocation Premises on or before the start of the Extended Term in accordance with the terms set forth in this Lease Amendment. The Relocation Premises shall be located in one contiguous space of Landlord's Commercial Parcel in space reasonably acceptable to City and as determined by space planning to replicate the functions currently located in the Second Floor Pad Premises. Landlord shall use good faith efforts to provide Relocation Premises adjacent to or near City's existing Tower Premises. The Relocation Premises shall contain a contiguous rentable area no greater or less than one hundred percent (100%) of the Second Floor Pad Premises without City's prior consent, which City may withhold in its sole discretion. Landlord shall be responsible for obtaining any necessary approvals for proposed uses of the Relocation Premises prior to Tenant's occupancy, including but not limited to approval by the San Francisco Department of Building Inspection and the Fire Marshall.

(c) The Relocation Premises shall be altered, at Landlord's sole cost, to provide turnkey improvements pursuant to plans approved by City. Landlord shall complete all improvements in accordance with applicable law and the approved plans, and Landlord shall obtain final building permit sign-offs and any additional required approvals before commencing the relocation of Tenant from the Second Floor Pad Premises to the Relocation Premises. Tenant shall have no obligation to vacate the Second Floor Pad Premises unless and until all necessary approvals and permits have been obtained and construction is substantially completed. No later than September 1, 2007, Landlord and Landlord's architect shall submit space plans and basic construction specifications for the Relocation Premises to City for its approval. Landlord shall use good faith efforts to produce acceptable space plans and specifications prior to December 1, 2007. Such plans shall provide at least the same quantity and quality of tenant improvements as are currently located in the Second Pad Floor Premises, including security improvements, offices and conference rooms, and specialized facilities. Such plans shall also include or provide: (i) labeled or color coded 2 data and 2 telephone "CAT 5e" or better wiring for each room, equipment and each work station terminated to City's telecommunication or data equipment as the case may be; (ii) turnkey electrical outlets including additional dedicated outlets as required and a minimum of 1 floor plex electrical outlet for each room, equipment, and work station; (iii) for the relocation of City furniture and workstations, and if such relocation can not be accomplished so as to provide the same aesthetics, layouts or use, then Landlord shall provide new or like new furniture and workstations; (iv) HVAC designed to meet ASHRAE standards for City's build out and, notwithstanding the foregoing, HVAC zoning of not less than 1 zone per 1200 rentable square feet, appropriate locations of thermostats and air supply and return vents; and (v) in the event that City chooses to perform the telecommunication and data wiring for the Relocated Premises, then Landlord shall provide to City a rent credit in the amount of City's actual costs for the telecommunication and data wiring and related equipment for the month immediately following City's expenditure and each successive month until exhaustion of the credit.

(d) At the start of the Extended Term, Landlord shall provide to City a credit against Base Rent in the amount of \$1000 for City's reprinting business cards and letterhead. Landlord shall pay all other costs of relocating City to the Relocation Premises including but not limited to moving costs and City's reasonable supervision costs. City shall only be responsible for clearing desks and work surfaces and for disconnecting computers and wiring. Such relocation shall occur over weekends in accordance with a schedule reasonably acceptable to both parties, and be accomplished so as to minimize the disruption to the business of Tenant.

(e) In addition to the improvements to the Relocation Premises, Landlord shall also be required to make the following improvements to the Tower Premises at Landlord's sole cost (the "Additional Improvements"): (i) new "green label" carpet squares and paint throughout the Tower Premises, reasonably acceptable to City; (ii) upgrades to the HVAC system to a standard equivalent to that done for Suites 900-903 and as recommended by the American Society of Heating, Refrigerating and Air-

Conditioning Engineers (ASHRAE); and (iii) such additional improvements as may be requested by City at the time of exercise of the Extension Option, and as may be agreed to or changed by the parties thereafter following consultation with Landlord's architects or agents, with a tenant allowance of \$100,000, provided City may request additional work above the allowance if City agrees to pay Landlord for the work above the allowance. Landlord shall complete the Additional Improvements after normal working hours pursuant to a schedule approved by City, but in no event later than November 30, 2008, and such work shall be completed in a manner designed to minimize any disruption to City's business.

(f) City may exercise the Extension Option (s), if at all, by giving written notice to Landlord no later than January 1, 2008 for the first Extension Option and January 1 2013 for the second Extension Option; provided, however, if Landlord has not completed the space plans and specifications for the Relocation Premises and the Tower Premises by January 1, 2008 for the first Extension Option, then City shall have the right to extend the notice date for the first Extension Option to the date that is ten (10) days following Landlord's completion of such plans and specifications reasonably acceptable to City. If City is in material default hereunder on the date of giving such notice and fails to cure such default following notice as provided herein, Landlord may reject such exercise by delivering written notice thereof to City promptly after any such failure to cure. If, for any reason, the Relocation Premises are not ready for City's occupancy by the start of the first Extended Term, the Lease shall continue on all of the terms and conditions set forth herein, including but not limited to the Base Rent set forth in subparagraph (a) above, provided, City shall not be required to vacate the Second Floor Pad Premises and move into the Relocation Premises until the Relocation Premises are (i) substantially complete and ready for City's occupancy, and (ii) Landlord has completed the relocation of City. If, for any reason, the Relocation Premises or the Additional Improvements to the Tower Premises are not ready for City's occupancy by the June 30, 2009, City shall have the right to terminate the Lease anytime thereafter, without cost or penalty, by providing Landlord with thirty (30) days' advance written notice.

(g) Landlord acknowledges and agrees that City's notice of its intent to exercise each Extension Option shall be subject to enactment of a resolution by the Board of Supervisors and the Mayor, in their respective sole and absolute discretion, approving and authorizing the same no later than ninety (90) days after the date such notice of exercise is given. If such approval and authorization is not received by Landlord on or before such date(s), City's Extension Option shall terminate and City shall have no further option to extend the Term.

(h) Upon the relocation of City from the Second Floor Pad Premises to the Relocated Premises in accordance with this section, Landlord and Tenant agree to execute an amendment to the Lease reflecting the change in the description of the Premises. Any such amendment shall be ministerial, and shall not require the prior approval of the City's Board of Supervisors, although it shall be subject to the prior written approval of City's Director of Real Estate and the City Attorney."

2. **LANDLORD'S ADDRESS.** Effective as of the date of this First Amendment, Landlord's address for payment of Rent and for notices given pursuant to the Lease is:

1390 Market Street, Suite 108, San Francisco, CA 94102, or at such other place as Landlord may designate in writing.

3. **LANDLORD'S LIABILITY.** It is agreed by and between the parties hereto that Landlord shall be responsible for all aspects of the performance of the Lease and if the Extension Option is exercised, the successful completion of the terms herein, including the relocation provisions. After a successful relocation of City to the Relocation Premises and Landlord's subdivision and transfer of the Transfer Parcel, City shall have all rights and remedies for a Landlord default as set forth in the Lease, provided, City shall have no right to seek attachment against or to place a lien on the Transfer Parcel.

4. **NO BROKERS.** Tenant represents and warrants that it has not dealt with any real estate broker in connection with this First Amendment, and no compensation is due to Tenant's broker in connection with this First Amendment. Tenant agrees to indemnify and hold Landlord harmless for any loss, cost, liability or expense incurred by Landlord as a result of a claim for brokerage commissions or finder's fee from any broker based on the

act or omission of Tenant in breach of the foregoing warranty. Landlord represents and warrants that it has not dealt with any real estate broker in connection with this First Amendment, and no compensation is due to Landlord's broker in connection with this First Amendment. Landlord agrees to indemnify and hold Tenant harmless for any loss, cost, liability or expense incurred by Tenant as a result of a claim for brokerage commissions or finder's fee from any broker based on the act or omission of Landlord in breach of the foregoing warranty.

5. **DEFINED TERMS.** All capitalized terms used but not defined in this First Amendment will have the meanings set forth for such terms in the Lease. All terms that are defined in this First Amendment and used in any provisions that are added to the Lease pursuant to this First Amendment will have the meanings in the Lease set forth for such terms in this First Amendment.

6. **WHOLE AGREEMENT.** This First Amendment sets forth the entire agreement between the parties with respect to the matters set forth herein. There have been no additional oral or written representations or agreements. Except as amended herein, there shall be no other changes or modifications to the Lease between the parties and the Lease and the terms and provision contained therein shall remain in full force and effect.

7. **MISCELLANEOUS.** This First Amendment shall be binding upon the parties hereto, their heirs, successors and assigns. Except as modified hereby, there shall be no other changes or modifications to this First Amendment or to the Lease unless in writing and executed by the parties hereto. No reference to this First Amendment is necessary in any instrument or document at any time referring to the Lease. Any future reference to the Lease shall be deemed a reference to such document as amended hereby. This First Amendment shall be governed by, construed and enforced in accordance with the laws of the State of California.

8. **CONFIRMATION OF LEASE.** As amended by this First Amendment, Landlord and Tenant confirm and ratify in all respects the terms and conditions of the Lease, and further confirm that, except as provided in Section 1 of this First Amendment, there are no outstanding tenant improvement obligations of Landlord regarding the Premises. The execution of this First Amendment shall not constitute a waiver of relinquishment of any rights which Landlord or Tenant may have relating to the Lease.

9. **NO JOINT VENTURE.** This First Amendment or any activity by Tenant hereunder does not create a partnership or joint venture between Tenant and Landlord relating to the Lease or otherwise. This First Amendment does not constitute authorization or approval by the City of any activity conducted by Landlord.

10. **COUNTERPARTS.** This First Amendment may be executed in one or more counterparts, each of which shall be deemed an original, including transmittals by facsimile, all of which together shall constitute one and the same instrument.

11. **EFFECTIVE DATE.** This First Amendment shall become effective on the date that this First Amendment is fully executed and delivered by both parties.

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this First Amendment as of the day and year first above written.

LANDLORD

API Fox Plaza, LLC, a Delaware limited liability company

By: W. Robert Smith

Name: W. ROBERT SMITH

Its: SENIOR VP.

TENANT

City and County of San Francisco, a municipal corporation

By: Amy L. Brown

Name: Amy Brown, Director of Real Estate

RECOMMENDED:

DEPARTMENT OF PUBLIC HEALTH

By: Mitch Katz

Mitch Katz, Director

**APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney**

By: Dennis J. Herrera
Deputy City Attorney

FILE NO. 030179

RESOLUTION NO. 159-03

1 [Lease of Real Property]

2

3 Resolution authorizing the exercise of a five year option to extend the lease of
4 approximately 25,939 square feet of space at 1390 Market Street for the Department of
5 Public Health.

6

7 WHEREAS, The City and Calfox, Inc., Landlord, executed the seven year lease dated
8 September 9, 1996, authorized by Resolution 699-96 for Premises consisting of 25,939 sq. ft.
9 at the building commonly known as Fox Plaza, 1390 Market Street; and

10 WHEREAS, Such Lease expires on November 30, 2003 and contains an option to
11 extend the terms for 5 years on the same terms and conditions except that the Base Monthly
12 Rental is to be adjusted to 95% of the market rental value; and

13 WHEREAS, Pursuant to the terms of such option, the Real Estate Division and the
14 Landlord have negotiated such 95% of fair market rental, considering all factors; and

15 WHEREAS, Such terms for the option are subject to enactment of a resolution by the
16 Board of Supervisors and the Mayor, in their respective sole and absolute direction, approving
17 and authorizing such exercise; now, therefore, be it

18 RESOLVED, That in accordance with the recommendation of the Director of the
19 Department of Public Health and the Director of Property, the Director of Property is hereby
20 authorized to take all actions on behalf of the City and County of San Francisco, as tenant, to
21 extend the Lease (a copy of the original lease is on file with the Clerk of the Board) with
22 Calfox, Inc. ("Landlord"), for the building commonly known as Fox Plaza, 1390 Market Street,
23 San Francisco, California, for the area of approximately 25,939 sq. ft. (the "Premises") on the
24 terms and conditions set forth herein, and on a form approved by the City Attorney; and, be it

25

Real Estate Division
BOARD OF SUPERVISORS

Page 1
1/31/2003

1 FURTHER RESOLVED, That the Lease extension shall be for a term of 5 years at a
2 monthly rental of \$44,019.92, (approximately \$20.36 per sq. ft. annually), fully serviced except
3 that City shall continue to pay for separately metered electricity on approximately 14,539 sq.
4 ft. The Landlord shall pay for the other utilities, janitorial services, and building maintenance
5 and repairs. City shall pay for the standard operating expense increases over a new 2003
6 Base Year; and, be it

7 FURTHER RESOLVED, That the Lease shall continue to include the lease clause,
8 indemnifying, holding harmless, and defending Landlord and its agents from and against any
9 and all claims, costs and expenses, including without limitation, reasonable attorneys' fees,
10 incurred as a result of any default by the City in the performance of any of its material
11 obligations under the Lease, or any negligent acts or omissions of the City or its agents, in,
12 on, or about the Premises or the property on which the Premises are located, excluding those
13 claims, costs and expenses incurred as a result of the negligence or willful misconduct of the
14 Landlord or its agents; and, be it

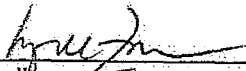
15 FURTHER RESOLVED, That all actions heretofore taken by the officers of the City
16 with respect to such Lease are hereby approved, confirmed and ratified; and, be it

17 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of
18 Property to enter into any amendments or modifications to the Lease (including, without
19 limitation, the exhibits) that the Director of Property determines, in consultation with the City
20 Attorney, are in the best interest of the City, do not increase the rent or otherwise materially
21 increase the obligations or liabilities of the City, are necessary or advisable to effectuate the
22 purposes of the Lease renewal or this resolution, and are in compliance with all applicable
23 laws, including the City Charter; and, be it

24 FURTHER RESOLVED, That the City shall occupy the entire Premises for the full term
25 of the Lease unless funds for the Department of Public Health's rental payments are not

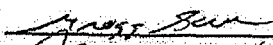
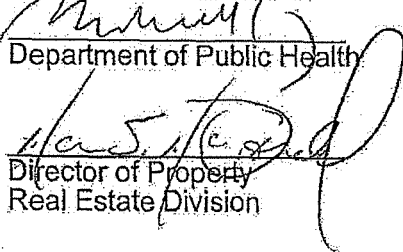
1 appropriated in any subsequent fiscal year at which time the City may terminate the Lease
2 with advance notice to Landlord. Said Lease shall be subject to certification as to funds by
3 the Controller, pursuant to Section 6.302 of the City Charter.

4
5 \$518,874.84 Available
6 (5 mos. @\$42, 147.08)
7 (7 mos. @\$44,019.92)
8 HCHPBADMINGF
9 HCHPBADMINGR
10 HCHPBHAZWTPJ
11 HCHPBWATERPJ
12 HCHBPUBSVSR
13 HCHPHLEAD-GF

14 
15 _____
16 Controller

17 Subject to the enactment of the Annual Appropriation
18 Ordinance for Fiscal Year 2003/2004.

19 **RECOMMENDED:**

20 
21 _____
22 Department of Public Health
23 
24 _____
25 Director of Property
Real Estate Division

Real Estate Division
BOARD OF SUPERVISORS



City and County of San Francisco

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

Tails
Resolution

File Number: 030179

Date Passed:

Resolution authorizing the exercise of a five year option to extend the lease of approximately 25,939 square feet of space at 1390 Market Street for the Department of Public Health.

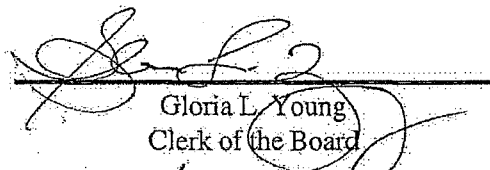
March 18, 2003 Board of Supervisors — ADOPTED

Ayes: 10 - Ammiano, Duffy, Gonzalez, Hall, Ma, Maxwell, McGoldrick, Newsom, Peskin, Sandoval

Excused: 1 - Daly

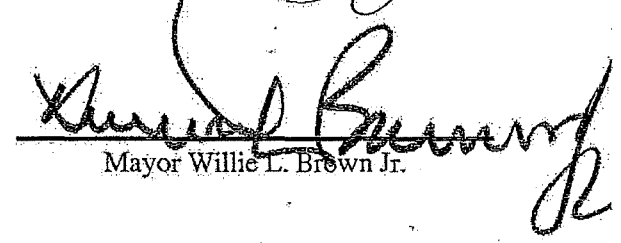
File No. 030179

I hereby certify that the foregoing Resolution was ADOPTED on March 18, 2003 by the Board of Supervisors of the City and County of San Francisco.


Gloria L. Young
Clerk of the Board

MAR 28 2003

Date Approved


Mayor Willie L. Brown Jr.

FIRST LEASE AMENDMENT

This First Lease Amendment ("Amendment"), dated as of November 23, 2003 is by and between FP 2001 Co. LLC, successor in interest to Polk Market Co. ("Landlord"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), as lessee. The rights and responsibilities of Calfox, Inc. as Managing Agent of Polk Market Co. under the Lease have been assigned to Landlord.

Recitals

A. Landlord and City entered into a lease dated September 9, 1996 ("the Lease") for approximately 25,526 square feet of office space and approximately 413 feet of storage space (the "Premises") at Fox Plaza, 1390 Market Street, San Francisco, California commonly known and numbered Suites 210, 230, 820 and 910, and as Storage Spaces C, D and E for use as the Administrative offices of San Francisco Public Health Department, Bureau of Environmental Health Management. Such Lease expires on November 30, 2003.

B. City currently pays the following base rent pursuant to the Lease:

<u>Suites</u>	<u>Square Footage</u>	<u>Annual Rent</u>	<u>Monthly Rent</u>
210	14,549	\$229,146.75	\$19,095.96
230	3,247	\$ 52,387.50	\$ 4,365.63
820	2,759	\$ 46,744.50	\$ 3,895.38
910	4,971	\$ 81,988.50	\$ 6,832.38
Total	25,526	\$410,267.25	\$34,188.94

<u>Storage Spaces</u>	<u>Annual Rent</u>
C,D & E	\$ 3,386.60

C. City and Landlord have agreed that City will exercise its' first option to extend the Initial Term, as defined in Paragraph 4(C) of the Lease, and will pay \$523,283 per annum and \$43,606.92 per month for Suites 210, 230, 820 and 910 for the period December 1, 2003 through November 30, 2008.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and City hereby agree to amend the Lease as follows:

Agreement

1. **Recitals.** The Foregoing recitals are true and correct and are incorporated herein by reference.
2. **Defined Terms.** All capitalized items not defined herein have the same meaning as set forth in the Lease.
3. **Term.** The Term of this Lease shall be extended for a period of five (5) years to expire on November 30, 2008.
4. **Rent.** Effective December 1, 2003 and continuing through November 30, 2008 the base rent shall be as follows:

<u>Suites</u>	<u>Square Footage</u>	<u>Annual Rent</u>	<u>Monthly Rent</u>
210	14,549	\$298,254.50	\$24,854.54
230	3,247	\$ 66,564.19	\$ 5,547.02
820	2,759	\$ 56,561.60	\$ 4,713.47
910	4,971	\$101,902.71	\$ 8,491.89
Total	25,526	\$523,283.00	\$43,606.92

<u>Storage Spaces</u>	<u>Square Footage</u>	<u>Annual Rent</u>	<u>Monthly Rent</u>
C,D & E	413	\$ 4,407.96	\$ 367.33
TOTAL		\$527,690.96	\$ 43,974.25

5. **Additional Rent.** Effective December 1, 2003 the Base Year for the Premises set forth in Paragraph 6 (B) (5) and in the Basic Lease Information shall be changed to 2003.

6. **Tenant Improvements.** Notwithstanding the provisions of Paragraph 4(C)(1), Landlord, at Landlord's sole cost, shall perform the following work: Shampoo and trim existing Carpet.

7. **No Further Amendments: Conflicts.** All the terms and conditions of the Lease remain in full force and effect except as expressly amended herein. The Lease as amended by this Amendment constitutes the entire agreement between Landlord and City and may not be modified except by an instrument in writing duly executed by the parties hereto. In the event of any conflict between the terms of the Lease and the terms of this Amendment, the terms of this Amendment shall control.

8. **Effective Date: Approval.** The date on which this Amendment 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 Amendment in accordance with all applicable laws and (ii) this Amendment is duly executed by the parties hereto.

9. **Expansion.** Paragraph 30 (EXPANSION) of the Lease provided City with two (2) expansion opportunities in the Building. Landlord and City hereby agree and acknowledge that City declined to exercise the expansion opportunities and, therefore, they are of no further force or effect.

10. **Landlord Access to Sprinkler.** Landlord is required by law to install sprinklers in the Premises before the initial extended term expires. Landlord, at no cost to the City, shall install such sprinklers in the highest professional and workmanlike manner and in such a way to minimize any disruption to Tenant's business and activities. Such installation shall be done:

- (1) after hours and on weekends; after hours week day work shall mean after 6:00pm and completely vacated by 7:00 am.

- (2) with advance notice: Landlord shall provide Tenant at least 30 days in advance, a written work schedule and timeline. Landlord and Tenant shall meet weekly and such schedule shall be updated as necessary.
- (3) in accordance with all applicable laws including but not limited to those dealing with asbestos; Landlord shall hire a qualified industrial hygienist, to monitor the installation and, at City's request, provide copies of reports given to Landlord.
- (4) with particular emphasis on taking all commercially reasonable measures to prevent dust on any Tenant surfaces or disruption to Tenants normal work routine.

Landlord shall indemnify City for damages, if any, caused by such work.

11. **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 this Amendment Landlord executed and submitted to the Human Rights Commission ("HRC") Form HRC-128-101 with supporting documentation.

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

The provisions of Chapters 128 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 Amendment 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 128.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be, assessed against Landlord and/or deducted from any payments due Landlord.

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

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

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

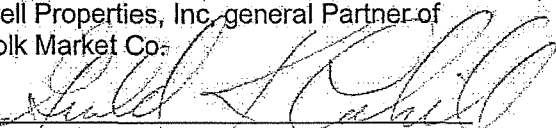
SIGNATURE BLOCKS ON THE NEXT PAGE

LANDLORD:

FP 2001 CO., LLC
A Delaware limited liability company

By Polk Market Co., its sole member

By Fell Properties, Inc. general Partner of
Polk Market Co.

By 
Gerald K. Cahill, President

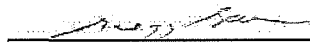
TENANT:

CITY AND COUNTY OF SAN FRANCISCO
a municipal corporation


Director of Property

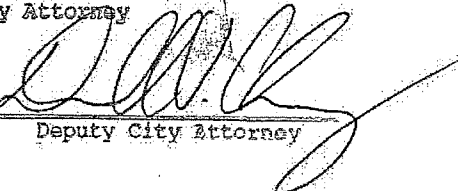
Pursuant to Resolution 159-03

RECOMMENDED:


Public Health Department

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: 
Deputy City Attorney

OFFICE LEASE

between

CALFOX, INC.,
Managing Agent for Owner,
as Landlord.

and

CITY AND COUNTY OF SAN FRANCISCO,
as Tenant

For the lease of

Fox Plaza, 1390 Market Street,
Suites 210, 230, 820, 910, and Storage Spaces C, D and E
San Francisco, California

September 9, 1996

OFFICE LEASE

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BASIC LEASE INFORMATION

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

Lease Reference Date: September 9, 1996

Landlord: CALFOX, INC., as managing agent for building owner, Polk Market Co.

Tenant: CITY AND COUNTY OF SAN FRANCISCO

Building (Paragraph 2): Fox Plaza
1390 Market St.
San Francisco, CA

Premises (Paragraphs 2 and 35): Suites 210 and 230 on the 2nd floor
Suite 820 on the 8th floor
Suite 910 on the 9th floor
Storage Spaces C, D and E on the parking garage level

Rentable Area of Premises (Paragraphs 2 and 35): approx. 25,526 square feet of office space
approx. 413 square feet of storage space

Initial Term (Paragraph 4): Commencement Date:
Substantial Completion of the First Delivered Suite:

Expiration Date:
November 30, 2003

Extension Options (Paragraph 4): Two successive options to extend for periods of five (5) years each on the same terms and conditions except that the Base Monthly Rental shall be equal to 95% of the Market Rental Value of the Premises then demised, but in no event shall the Base Monthly Rental be less than the fully escalated rent for the last month of the term plus increases in Additional Rent for City's share of Operating Costs & Direct Taxes. Landlord to provide building standard carpet and paint throughout the Premises at the commencement of each extended term.

Base Rent (Paragraph 6):

City will pay annual rent of \$413,653.85; monthly payments of \$34,471.15 throughout the Initial Term. A breakdown by floor and for the storage spaces is as follows:

	<u>Annual Rent</u>
Suite 210	\$229,146.75
Suite 230	\$ 52,387.50
Suite 820	\$ 46,744.50
Suite 910	\$ 81,988.50
Storage Spaces (C, D and E)	\$ 3,386.60

Additional Rent (Paragraph 6):

City pays its pro-rata share of increases in operating expenses and direct taxes of the office portion of the building.

Base Year (Paragraph 6):

Calendar year 1996

City's Percentage Share (Paragraph 6):

13.13%

Use (Paragraph 10):

Administrative offices of the San Francisco Public Health Department, Bureau of Environmental Health Management. Public visitation and processing will be primarily confined to the second floor tower section of the Premises.

Tenant Improvements (Paragraph 5 and Work Letter):

Tenant Improvements according to Exhibit F

Utilities and Services (Paragraph 18):

Fully serviced lease for all office suites, except for Suite 210 where electricity for power other than central mechanical, elevator and common area power separately metered, and paid for by City. No services except electricity to storage space.

Notice Address of Landlord
(Paragraph 31):

425 California Street,
Suite 2300
San Francisco, CA 94104
Fax No.: (415) 677-0699

Key Contact for Landlord:

Daniel W. Aljoe

Telephone No.:

(415) 986-0600

Notice Address for Tenant
(Paragraph 31):

Real Estate Department
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Attn: Anthony J. DeLucchi, Director of
Property
Fax No.: (415) 554-9216

and to:

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

Key Contact for Tenant:

Benjamin Gale

Telephone No.:

(415) 554-2795

Alternate Contact
for Tenant:

Charlie Dunn

Telephone No.:

(415) 554-9861

Brokers:

None

Other Noteworthy Provisions:

Expansion opportunity for Suites 906-908 on the
ninth floor and Suite 201 on the second floor
(Paragraph 30).

Right to rent forty (40) monthly, unreserved
parking spaces (Paragraph 32).

OFFICE LEASE

1. **PARTIES.** THIS LEASE, dated for reference purposes only as of September 9, 1996, is made by and between CALFOX, INC., a California corporation, as managing agent for owner, Polk Market Co., ("Landlord"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("Tenant" or "City").

2. **PREMISES.** Landlord does hereby lease to Tenant, and Tenant does hereby lease from Landlord, those certain premises situated in the City and County of San Francisco, State of California, known as Suites 210 and 230 on the second floor, Suite 820 on the eighth floor, Suite 910 on the ninth floor and storage spaces C, D and E on the parking garage level of that certain building known as Fox Plaza, 1390 Market Street (the "Building"), and as shown on the floor plans attached hereto as Exhibit "A," hereinafter called the "Premises."

Tenant shall have the non-exclusive right to use and enjoy the elevator lobbies, corridors, sidewalks, elevators, stairways and other public areas of the Building and land upon which the Building is located (collectively, the "Common Areas") and the non-exclusive right of access to and from the Premises by the entrances of the Building. The Common Areas shall be subject to the exclusive control and management of Landlord, and Tenant shall use the Common Areas in accordance with the restrictions contained herein and the Rules and Regulations as provided in paragraph 11 below. Landlord may, from time to time, alter, eliminate, relocate or reserve for private use any of the Common Areas and may temporarily close or restrict the use of any Common Areas as needed for repairs, provided that any and all such changes shall not materially interfere with Tenant's use and enjoyment of the Premises or Tenant's ability to conduct normal administrative office operations in the Premises.

3. **COVENANTS.** It is mutually agreed that the letting hereunder is upon and subject to the following terms, covenants and conditions. Tenant covenants, as a material part of the consideration for this Lease, to keep and perform each and all of the terms, covenants and conditions by it to be kept or performed, and this Lease is made upon the condition of such performance.

4. **TERM.** A. The Premises are leased for an initial term (the "Initial Term") commencing on the date as Landlord shall have delivered either Suites 210, 910 or 820 of the Premises to City with the Leasehold Improvements having been Substantially Completed (as defined in the attached Work Letter) pursuant to Paragraph 5 [Tenant Improvements] hereof and the attached Work Letter. Landlord will deliver the second floor portion of the Premises in its entirety and will not deliver it in increments as the increments are Substantially Completed unless so instructed by City, in writing, to do so. The Term of this Lease shall end on November 30, 2003, or such earlier date on which this Lease terminates pursuant hereto, provided that City shall have the right to extend the Initial Term pursuant to Paragraph 4(C) [Extension Options], below. The word "Term" as used herein shall refer to the

Initial Term and any Extended Terms if City exercises any of the Extension Options as provided hereinbelow.

The dates on which the Term commences and terminates pursuant hereto are referred to respectively as the "Commencement Date" and the "Expiration Date." After the Commencement Date occurs, Landlord shall deliver to City a notice substantially in the form of Exhibit B attached hereto, confirming the actual Commencement Date and Expiration Date, but Landlord's failure to do so shall not affect the commencement of the Initial Term.

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

C. Extension Options. City shall have the right to extend the Initial Term of this Lease (collectively, the "Extension Options") for the additional terms set forth below (collectively, the "Extended Terms") as follows:

(1) Five-Year Extension Options. City shall have an option to extend the Initial Term for two (2) additional terms (the "Five-Year Extended Terms"), the first of which shall be a five (5) year term commencing upon the expiration of the Initial Term and the second of which shall be a five (5) year term commencing upon the expiration of the first Five-Year Extended Term (such options are referred to herein as the "Five-Year Extension Options"). City's lease of the Premises during each of the Five-Year Extension Terms shall be on all of the terms and conditions set forth in this Lease, except that the Basic Monthly Rent shall be adjusted to ninety-five percent (95%) of Market Rental Value in accordance with Paragraph 6.C. hereof. Additionally, City shall pay Additional Rent for its share of increased Operating Expenses and Direct Taxes as described below, and Landlord will provide building standard carpet and paint throughout the Premises under Lease at the

commencement of each of the Five-Year Extended Terms; provide, however, that, if the determination of Market Rental Value as set forth in Paragraph 6.C. herein does not direct Landlord to provide any tenant improvements to the Premises upon the commencement of such Five-Year Extended Term, the rent shall be adjusted to include such tenant improvements provided by Landlord. City may exercise the Five-Year Extension Options, if at all, by giving written notice to Landlord no later than December 1, 2002 for the first Five-Year Extension Option and no later than December 1, 2007 for the second Five-Year Extended Term; provided, however, if City is in material default hereunder on the date of giving such notice and fails to cure such default as provided herein, Landlord may reject such exercise by delivering written notice thereof to City promptly after such failure to cure.

Landlord acknowledges and agrees that City's notice of its intent to exercise any of the Additional Extension Options shall be subject to enactment of a resolution by the Board of Supervisors and the Mayor, in their respective sole and absolute discretion, approving and authorizing such exercise, within ninety (90) days after the date such notice of exercise is given. If such approval and authorization is not received by Landlord within ninety (90) days after the date such notice of exercise is given, City's Five-Year Extension Options shall cease and City shall have no further options to extend the Term.

5. **TENANT IMPROVEMENTS.** Landlord shall furnish and install the Tenant Improvements set forth in the Exhibit F Work Letter at Landlord's expense.

6. **RENT.** A. **Base Rent.** Beginning on the Commencement Date, City shall pay to Landlord during the Initial Term the annual Base Rent specified in the Basic Lease Information (the "Base Rent") for the Premises or that portion of the Premises that has been delivered with the Leasehold Improvements Substantially Completed. The portions of the Premises that may be separately delivered and Base Rent correlated to each such portion are identified in the Basic Lease Information. The Base Rent shall be payable in equal consecutive monthly payments on or before the first day of each month, in advance, at the address specified for Landlord in the Basic Lease Information, or other place as Landlord may designate in writing upon not less than thirty (30) days' advance notice. City shall pay the Base Rent without any prior demand and without any deductions or setoff except as otherwise expressly provided in this Lease. If the Commencement Date occurs on a day other than the first day of a calendar month or the Expiration Date occurs on a day other than the last day of a calendar month, then the monthly payment of the Base Rent for such fractional month shall be prorated based on a thirty (30) day month.

B. **Additional Rent**

(1) As Additional Rent, Tenant shall pay to Landlord during the Terms at the times hereinafter set forth, an amount equal to (a) Tenant's Share specified herein below of any increase in Operating Expenses of the Office Portion of the Building (defined below in this paragraph) paid or incurred by Landlord on account of the operating or maintenance of the Building above such Operating Expenses paid or incurred by Landlord during the Base Year specified herein below and (b) Tenant's Share specified

hereinbelow of any increase in Direct Taxes (defined below in this paragraph) for the Office Portion of the Building paid or incurred by Landlord in any calendar year in excess of those paid or incurred in the Base Tax Year specified herein below, (all such rentals, charges and sums other than minimum monthly rent being referred to in this lease as "Additional Rent," whether or not the same may be designated Additional Rent). If such amounts are not paid at the time they are due and payable under this Lease, they shall nevertheless be collectable as Additional Rent with the next installment of the Base Monthly Rental. Nothing herein contained shall be deemed to suspend or excuse the payment of any amount of money or charge at the time the same becomes due and payable hereunder, except as otherwise expressly provided in this Lease. Where the time for payment of any Additional Rent is not specified herein, the same shall be due and payable twenty-one (21) days after receipt of Landlord's invoice. If at any time during the Term of the Lease, less than ninety-five percent (95%) of the total rentable area of the Office Portion of the Building is occupied, the Operating Expenses and Direct Taxes shall be adjusted by Landlord to reasonably approximate the Operating Expenses and Direct Taxes which would have been incurred if the Office Portion of the Building had been at least ninety-five percent (95%) occupied.

At or within a reasonable time after the commencement of any calendar year subsequent to the Base Year, Landlord shall notify Tenant in writing of Landlord's estimate of the amount of any increase in Operating Expenses for such calendar year over Operating Expenses for the Base Year, the amount of any increase in Direct Taxes over those paid or incurred in the Base Year and of the amount of such estimated increases payable by Tenant. Such statement shall specify in reasonable detail the basis of Landlord's estimates. Tenant shall pay to Landlord on the first day of each calendar month, one-twelfth (1/12) of the amount of such estimated increases in Operating Expenses and Direct Taxes payable by Tenant hereunder. Statements of the amount of actual Operating Expenses for the preceding calendar year, of Direct Taxes for the appropriate fiscal year and the amount of such increases payable by Tenant shall be given to Tenant by April 1st of each succeeding calendar year subsequent to the Base Year. All amounts payable by Tenant as shown on such statement, less any amounts theretofore paid by Tenant on account of Landlord's estimate of increases in Operating Expenses and Direct Taxes made pursuant to this paragraph, shall be paid by Tenant upon delivery of such statement to Tenant. In the event that Tenant has paid in any given year estimated increases beyond those later determined from actual reconciliation, then such over-payment shall be applied toward the next installments of Base Monthly Rental and Additional Rent until satisfied in full or, if the Lease terminates before all of such over-payment has been applied to Base Monthly Rental and Additional Rent due and payable hereunder, the balance of the over-payment shall be promptly refunded to Tenant.

(2) The amount of any increase in Operating Expenses and Direct Taxes payable by Tenant for the calendar year in which this Lease terminates shall be prorated on the basis which the number of days from and including the commencement of such calendar year to and including the date on which this Lease terminates bears to 365 and shall be due and payable when rendered notwithstanding termination of this lease.

(3) The term "Operating Expenses" as used herein shall mean all reasonable direct costs of operation, maintenance and management of the Office Portion of the Building (as hereinafter defined) which directly benefit the Building's operation, are generally accepted office building operational expenses and conform with generally accepted accounting practices. The term "Operating Expenses" as used herein shall exclude those costs which are the exclusive responsibility of Tenant or any other tenant of the building under this lease or other applicable leases including, without limitation, utility costs paid by Tenant pursuant to paragraph 18 hereof and maintenance costs paid by Tenant pursuant to Paragraph 36 hereof, which costs shall be clearly excluded on Landlord's statements to Tenant. By way of illustration, but not limitation, Operating Expenses shall include the direct and reasonable cost or charges for the following items: power, heat, light, water, sewer, steam, and other utilities (including without limitation any temporary or permanent utility surcharge or other exaction, whether now or hereafter imposed), waste disposal, janitorial services, stationary engineering services, lobby attendant services, window cleaning, air conditioning, materials and supplies, equipment and tools and service agreements on elevators, equipment, insurance premiums, licenses, permits and inspections, wages and salaries, related employee benefits and payroll taxes, accounting and legal expenses, management fees, depreciation on personal property, including, without limitation, window coverings, provided by Landlord and carpeting in public corridors and Common Areas, amortization of the capital cost of operating cost saving installations, depreciation or amortization of required capital improvements to Common Areas or Building systems serving Common Areas imposed by governmental regulation, and the cost of contesting the validity or applicability of any governmental enactments which may affect Operating Expenses. The cost of real estate brokerage commissions and promotions, and legal fees for document review and evictions shall not be included as Operating Expenses. Notwithstanding anything to the contrary above, Operating Expenses shall exclude those items described on the attached Exhibit "E."

The term "Direct Taxes" as used herein shall mean the Office Portion of the Building's share of all real property taxes and assessments, imposition, levies and fees on the Building and the land on which the Building is situated and shall also include all personal property taxes levied on the property used in the operation of the Building; taxes of every kind and nature whatsoever levied and assessed in lieu of, in substitution for, or in addition to, existing or additional real property taxes on the Building or land, whether or not now customary or within the contemplation of the parties hereto, other than taxes associated with Tenant equipment, furniture, fixtures and other personal property to the extent that Landlord is reimbursed therefor by Tenant or by an other tenant of the Building; taxes upon the gross or net rental income of Landlord derived from the Building and land (excluding, however, state and federal personal or corporate income taxes measured by the income of Landlord from all sources) and a reasonable cost to Landlord of contesting the amount or validity or applicability of any of the aforementioned taxes. Net recoveries through protest, appeals or other actions taken by Landlord in its discretion, after deduction of all costs and expenses, including counsel and other fees, shall be deducted from Direct Taxes for the year of receipt. Notwithstanding the foregoing, Direct Taxes shall exclude (i) franchise, transfer, inheritance, or capital stock taxes or income taxes measured by the net income of Landlord from

all sources unless, due to a change in the method of taxation, any of such taxes is levied or assessed against Landlord as a substitute for, or as an addition to, in whole or in part, any other tax that would otherwise include reasonable legal fees, costs, and disbursements incurred in connection with proceedings to contest, determine, or reduce Direct Taxes, (ii) any penalties, fines, interest or charges attributable to the late payment of any taxes, except to the extent the same is attributable to Tenant's failure to pay its portion of Direct Taxes hereunder, (iii) any personal property taxes payable by Tenant hereunder or by any other tenant or occupant of the Building. Any increase in "Direct Taxes" resulting from the re-assessment of the Building which is attributable to the sale or transfer of any interest in or title to the Building shall not be passed on to Tenant.

In calculating Operating Expenses of the Office Portion of the Building and Direct Taxes of the Office Portion of the Building, the parties recognize that the Building is a multi-use facility with large residential and retail areas. Certain expenses are shared by residential and retail areas and actual usage cannot be determined. The parties agree to the following allocations of total Building Operating Expenses and Direct Taxes to the Office Portion of the Building:

(i) Real estate taxes, licenses, gross receipts tax, landscaping, insurance, management fee, water, waste disposal, gas, administrative salaries and expense, public area maintenance and life safety maintenance: 40.06%

(ii) Electrical: From total electric charges paid by Landlord, deduct (a) apartment consumption, (b) apartment related equipment electric consumption listed on Rent Board Utility Pass Through, (c) retail and office tenant electrical reimbursements, (d) garage consumption, and (e) for Suite 210 only 39.9% of total electric charges, the percentage to which City and Landlord have stipulated as representing electrical costs for lighting and power outlets in office spaces of the Building. The remaining electrical cost shall be allocated to Office Portion.

(iii) Other expenses and taxes shall be prorated to Office Portion of the Building based upon invoice or identified use. If an item cannot be specifically identified to an area of the building, the proration method set forth in (i) above shall be used.

(4) The annual determination and statement of Operating Expenses and Direct Taxes as those terms are defined in subparagraph "C" above shall be made in reasonable detail and shall be certified by an accounting or auditing officer designated by Landlord. A copy of such determination shall be made available to Tenant upon demand. If Tenant contests such statement in writing within sixty (60) days after receipt thereof, Tenant shall have the right to audit the books and records of Landlord pertaining directly to the determination of Operating Expenses and Direct Taxes as are relevant to the Operating Expenses and Direct Taxes in question at the offices of Landlord and during regular business hours. Tenant shall keep (and shall cause its agents and employees conducting the audit to keep)

confidential any and all information contained in such books and records, except to the extent disclosure of such information is required by ordinance, statute, regulation, a court order or decision, or any other law. Any investigation of Operating Expenses and Direct Taxes conducted by Tenant shall be conducted for it by Tenant's Controller or by a so-called "Big Eight" accounting firm under a compensation arrangement that does not provide for incentive payments based upon the amount of savings that the audit procures. If Tenant does not give notice of intent to examine Operating Expenses and Direct Taxes within such sixty (60) day period, then the annual determination and statement of Operating Expenses and Direct Taxes as furnished by Landlord shall be conclusive and binding upon Tenant. The audit shall be binding on the parties; if the audit determines an over-payment by Tenant, Landlord shall promptly refund the amount of such overpayment to Tenant; if the audit determines an underpayment by Tenant, Tenant shall promptly pay the amount of such underpayment to Landlord. Should the audit determine an overcharging by Landlord of three (3%) percent or more of the amount determined by the audit to be chargeable to Tenant, then Landlord shall pay the cost of the audit; should the variance between the amount charged by Landlord and the amount determined by the audit to be chargeable to Tenant have a variance of less than three (3%) percent, then Tenant shall pay the cost of the audit. Landlord shall maintain at the Building in a safe and orderly manner all of its records pertaining to this Lease and Direct Taxes and Operating Expenses and any other charges paid by Tenant pursuant hereto, for a period of not less than three (3) years following expiration of the Term of this Lease. Landlord shall maintain such records on a current basis, and in sufficient detail to facilitate adequate audit and review thereof. All such books and records shall be available for inspection, copying and audit by Tenant and its representatives, at Tenant's expense, in accordance with the audit provisions above.

(5) The Base Year referred to hereinabove is defined as calendar year 1996; the Base Tax Year referred to hereinabove is defined as the tax payments payable during calendar year 1996, except that: (1) any tax or assessment resulting from a new tax or from an assessment district imposed after the date of execution of the herein Lease and which has an initial assessment date prior to January 1, 1997 shall be excluded from Direct Taxes of the Base Year and (2) in the event that Landlord is unable to deliver Suite 210 by January 31, 1997 plus the number of days of delay, if any, caused by City, labor stoppage, substantial material shortage for which there are no substitutions or natural disaster, the Base Year for Suite 210 shall be 1997 instead of 1996.

Tenant's Share, as referred to hereinabove, is defined as:

<u>Premises</u>	<u>Tenant's Share</u>	<u>Tenant's Rentable Area</u>
Suite 210	7.48%	14,549 s.f.
Suites 230, 820, 910	5.65%	10,977 s.f.

For purposes hereof, the Premises contain the rentable area of 25,526 square feet and the Office Portion of the Building contains a total rentable area of 194,361 square feet. As used herein,

the term "rentable area" shall mean that measurement of useable interior floor area computed in accordance with the "Standard Method for Measuring Floor Area in Office Buildings, the American National Standard" (ANSI Z65.1 1980, reaffirmed 1989), approved June 21, 1989 by American National Standard Institute Incorporated, and adopted by Building Owners and Managers Association International in 1980, multiplied by a load factor of 1.18.

The "Office Portion of the Building," as referred to herein, is defined as that portion of the Building on the first to the 12th floors, excluding the retail area on the first and second floors containing a rentable area of 38,077 square feet and the residential portion of the Building above the 12th floor and excluding the building garage.

C. Determination of Market Rental Value.

At the commencement of each of the Extended Terms, the Base Rent shall be adjusted to ninety-five percent (95%) of the Market Rental Value (the "Market Rental Value") for the Premises then demised. Market Rental Value shall be defined as the probable rental for space of comparable size and location to the Premises then being offered for rent in other buildings similar in age, location and quality to the Premises situated within the Civic Center area of San Francisco ("Reference Area"). The other provisions of this Lease to the contrary notwithstanding, in no event shall the Base Rent be reduced below the Base Rent and Additional Rent for the lease year prior to commencement of such Extended Terms. The term Market Rental Value shall mean the base rental for such comparable space, taking into account (i) any additional rental and all other payments and escalations payable hereunder including the Base Year and portions of the Premises that are separately metered, (ii) floor location and size of the premises covered by leases of such comparable space, (iii) the duration of the renewal term and the term of such comparable leases, (iv) free rent given under such comparable leases, moving allowances, lease take-over/assumptions and any other tenant concessions, and (v) building standard tenant improvement allowances and other allowances, if any, given under such comparable leases, the quality of property management of the comparable space, the time the particular rate under consideration became or is to become effective and any other relevant terms or conditions.

Landlord, no later than: (1) January 1, 2003 for the first Five-Year Extended Term; (2) January 1, 2008 for the second Five-Year Extended Term; (3) December 1, 1997 for the First Expansion Opportunity, as hereinafter defined; and (4) December 1, 1998 for the Second Expansion Opportunity, as hereinafter defined, shall provide City with a preliminary notice of Landlord's good faith best estimate of the Base Monthly Rental for the respective Extended Term or Expansion Opportunity as of the respective commencement date. Such Landlord's estimate of Base Monthly Rental will be provided to City for City's internal budgeting program only. Such estimate shall not be binding upon either City or Landlord.

Then, Landlord, not less than six (6) months before the commencement of each of the Extended Terms and within sixty (60) days of receipt of the RFL Notice pursuant to Paragraph 30 herein, shall submit to City in writing Landlord's determination of Market Rental Value for the Premises. The amount of Market Rental Value

submitted by Landlord shall become the monthly rental for the applicable period of said Lease term thirty (30) days after Landlord gives said determination in writing to City unless before the expiration of said thirty (30) day period City gives written notification to Landlord of City's determination of Market Rental Value. Such dispute shall be resolved as follows:

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

(2) If within this thirty (30) day period Landlord and City cannot reach agreement as to the Market Rental Value, they shall have thirty (30) days to meet and select an arbitrator who will determine the Market Rental Value. The arbitrator shall be a person who holds the senior professional designation awarded by one of the following professional groups: the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers, the American Society of Real Estate Counselors, the Institute of Real Estate Management, or the then pre-eminent real estate appraisal, counseling or management professional organization. In addition, the appraiser-arbitrator shall have at least five (5) years of current experience, within the Central Business District area of San Francisco, in the appraisal of market rental value in office buildings. If the parties are unable to agree upon such a person within thirty (30) days after the thirty (30) day period specified in subparagraph (a) above for the determination of Market Rental Value, then either party shall have the right to apply to the Presiding Judge of the Superior Court of the City and County of San Francisco, acting in his or her private, non-judicial capacity, to make the appointment. The appointment made by such Judge shall be final and binding upon the parties.

(3) The arbitration proceeding shall be conducted in accordance with American Arbitration Association rules or any other procedures to which the parties may agree with the arbitrator (except that the arbitrator shall be bound by the rules of law) and shall take place in San Francisco, California. As soon as convenient after appointment, the arbitrator shall meet with City and Landlord to hear evidence and argument on the determination of Market Rental Value. The arbitrator shall not be bound by the rules of evidence in the conduct of such proceeding, although the arbitrator shall take account of said rules in considering the weight of the evidence. The decision of the arbitrator shall conform to law and the arbitrator shall be entitled to retain an independent attorney to advise him or her as to such questions of law that may arise during the proceeding. In making a decision, the sole function of the arbitrator shall be to select Market Rental Value as proposed by City or Landlord. The arbitrator shall have no right to fashion an independent or different Market Rental Value nor to amend the terms of this Lease.

(4) Costs. Each party shall pay one-half (1/2) of the fees and costs of the arbitrator and all of its own costs and attorneys' fees in connection with the arbitration; provided, however, that at the end of the arbitration proceeding, the arbitrator shall award reasonable and necessary costs and attorneys' fees up to \$4,000 to the

prevailing party. The arbitrator's costs shall include the costs and fees of any attorney retained by the arbitrator.

(5) In the event that a final determination of the Market Rental Value of the Premises is not arrived at until after the applicable Lease Term shall have commenced, Tenant shall pay the greater of (1) Landlord's written submittal of Landlord's determination of the Market Rental Value, or (2) the same monthly rental per rentable square foot of the Premises monthly throughout the applicable Lease Term as was paid in the immediately preceding period, until such final determination is arrived at. Within thirty (30) days after such final determination is arrived at and the Board of Supervisors has approved such Extension Option or Expansion Option, Landlord shall pay to Tenant, retroactively for the period until the date of such determination, the excess rental (if any) actually received by Landlord over the rental payable pursuant to such determination.

(6) If City's Director of Property does not approve of the Market Rental Value as determined by the arbitration procedure specified above, the Director of Property shall revoke the exercise of the respective Extension Option or Expansion Opportunity by City.

7. SURRENDER.

Tenant agrees to surrender the Premises at the termination of the tenancy herein created, in the same condition as herein agreed they have been received, except for reasonable use and wear thereof and damage by the act of God, the elements, fire or any other casualty not caused by Tenant. Upon termination of this Lease, Tenant shall remove from the Premises all of its personal property described in paragraph 14 below and any Tenant Work City is required to remove from the Premises pursuant to the provisions of paragraph 14 hereof. Tenant shall repair or pay for the cost of repairing any damage to the Premises or the Building resulting from such removal. Tenant shall not be obligated to remove or demolish any of the Tenant Improvements. The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger and shall at the option of Landlord, terminate all of any existing subleases or subtenancies, or may, at the option of Landlord, operate as an assignment to him of any or all such subleases or subtenancies, in the absence of any other agreement between Landlord and Tenant or such subtenants.

8. HOLDING OVER.

If Tenant holds possession of the Premises after the Term of this Lease, Tenant shall, at the option of Landlord to be exercised by Landlord's giving written notice to Tenant, become a tenant from month to month upon the terms and conditions herein specified, so far as applicable, at a Base Monthly Rental equal to prevailing fair market rent but in no event less than 125% of the sum of Base Monthly Rental and Additional Rent payable for the final month of the Term, payable as if the Term of this Lease had been extended. Tenant shall continue to be such tenant until thirty (30) days after Tenant shall have given to Landlord or Landlord shall have given to Tenant a written notice of intention to terminate such month-to-month tenancy. Unless Landlord shall consent to the holdover tenancy as provided above, Tenant shall be a tenant at sufferance only, whether or not

Landlord shall accept any rent from Tenant while Tenant is so holding over.

9. **DELIVERY OF POSSESSION.** In the event of the inability of Landlord to deliver possession of the Premises at the time of the commencement of the Term of this Lease in the condition required hereunder, neither Landlord nor its agents shall be liable for any damage caused thereby, nor shall this Lease thereby become void or voidable, nor shall the Term herein specified be in any way extended, but in such event Tenant shall not be liable for any Base Monthly Rental, Additional Rent or other charges until such time as Landlord can deliver possession in accordance with the provisions of this Lease. However, if Landlord is unable to deliver possession of all of the Premises to City as required hereunder on or before June 30, 1997, then City may, at its option, terminate this Lease in its entirety or, at City's option, terminate the Lease as to that portion of the Premises which has not been delivered, without any further liability hereunder, upon written notice to Landlord not later than August 1, 1997.

10. **USE.** The Premises are to be used for administrative offices of the San Francisco Public Health Department, Bureau of Environmental Health Management and for no other purpose without the written consent of Landlord. The Premises shall not be used for a medical, counseling clinic or drug treatment facility or for an employment agency or high volume public visitation. Landlord is familiar with City's current operations and finds such operations acceptable. There will be some public visitation and processing, and City has agreed to limit such functions primarily to the second floor tower section of the Premises. Rental is based upon normal, weekday hours of operation. Any laboratory work would be subject to safeguarding of Building tenants' and employees' health and protection of building systems; any reasonable additional costs related to such protection or ventilation would be reimbursed by Tenant. Tenant shall not do or permit anything to be done in or about the Premises, nor bring nor keep anything therein which will in any way materially increase or cause a cancellation or a policy exclusion of fire or other insurance upon the Building, or any of its contents, or which shall violate any law, ordinance, rule or regulation affecting the occupancy and use of the Premises, which is or may hereafter be enacted or promulgated by any public authority, or obstruct or interfere with the rights of other tenants of the Building, or injure or annoy them, nor use, nor allow the Premises, to be used, for any improper, immoral, unlawful or objectionable purpose, or for any kind of eating house, or for sleeping purposes, or for washing clothes, or cooking therein (except for microwave cooking in the kitchens), and nothing shall be prepared, manufactured, or mixed in the Premises which would emit an odor into the corridors of the Building. Tenant shall be solely responsible and liable for any medical wastes. Tenant will not, without the written consent of Landlord, either (1) use any apparatus or device in connection with the Premises which will injure, vibrate or shake the Premises or materially increase the amount of electricity or water usually furnished or supplied to the Premises, or (2) connect with the water pipes any apparatus or device for the purpose of using water.

Landlord shall maintain the Building in a good, clean and safe manner and shall not permit any other tenants of the Building to disturb

or interfere with Tenant's use of the Premises or permit to be done in or about the Building anything that is illegal, will be dangerous to life or limb or will constitute a nuisance to Tenant, its agents, contractors, officers, employees and invitees.

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

11. **RULES.**

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

12. **ASSIGNMENT AND SUBLETTING.** Tenant will not assign, mortgage or hypothecate this Lease, or any interest therein, or permit the use of the Premises by any person or persons other than Tenant, or sublet the Premises, or any part thereof, without the written consent of Landlord, provided that Tenant may assign this Lease or sublet the Premises to any other department or agency of the City and County of San Francisco for administrative office use by giving Landlord written notice thereof so long as such administrative office use by any such other City department or agency shall not (i) include psychological or substance abuse counseling, medical treatment, correctional, police or probation work as part of the business.

conducted on the Premises, (ii) involve substantial walk-in visitation from the general public without appointments (such as a welfare or recorder's office) or (iii) cause a material increase in the demands upon the utilities, services or Common Areas of the Building. Consent to any assignment or subletting requiring Landlord's consent as provided above shall not operate as a waiver of the necessity for such a consent to any subsequent assignment or subletting, and the terms of such consent shall be binding upon any person holding by under or through Tenant. Landlord shall not unreasonably withhold its consent to subletting or assigning the Premises, subject to the following provisions:

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

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

(c) Any notice by Tenant to Landlord pursuant to subparagraph 12(a) of a proposed assignment or subletting that requires Landlord's consent, shall be accompanied by a payment of \$350 as a non-refundable fee for Landlord's time and the processing of Tenant's request for Landlord's consent. In the event that Tenant should sublease to another tenant, Tenant shall pay to Landlord monthly on or before the first of each month one-half of the excess rent received from such subtenant or subtenants over and above the concurrent underlying rent payable by Tenant to Landlord for that portion of the Premises being sublet to such other tenant or tenants. Tenant shall furnish Landlord with a true signed copy of such sublease or subleases and any supplementary agreements or amendments thereto, within five (5) days after their respective execution.

13. **SALE.** If Landlord sells or conveys the Building containing the Premises and the successor-in-interest of Landlord expressly assumes the terms, covenants and conditions of this Lease in writing, then upon notice to Tenant of the name and address of Landlord's successor, Landlord shall be released thereby from any future liability upon any of such terms, covenants and conditions upon receipt of a copy of such assumption, and Tenant agrees to look solely to the responsibility of such successor-in-interest of Landlord for claims arising on or after the date of the transfer.

14. **MAINTENANCE AND REPAIRS; ALTERATIONS.** Tenant has examined and inspected and knows the condition of the Premises and every part thereof and, subject to the provisions of paragraph 5 hereof, the Work Letter and the Plan (Exhibits "F" and "G"), accepts the Premises in their present "as is" condition. Tenant shall maintain the interior portions of the Premises and shall keep the Premises in good working order and in a safe and sanitary condition, subject to Landlord's obligations hereunder and except for ordinary wear and tear and damage by casualty. Tenant shall not alter, repair or change the Premises without the prior written consent of Landlord. However, installation of furnishings, fixtures, equipment or decorative improvements, none of which affect the Building systems or structural integrity of the Premises, shall not constitute an alteration requiring Landlord's consent for purposes hereof. Tenant waives the provisions of California Civil Code Section 1932(1), 1941 and 1942 with regard to Landlord's obligation for tenantability of the Premises and Tenant's right to make repairs at Landlord's expense. Tenant, with prior written approval by Landlord, shall have the right during the Term hereof to make alterations, attach fixtures and erect additions or structures ("Tenant Work") in or upon the Premises provided the same shall not be detrimental to the structural integrity or appearance of the Building. All Tenant Work shall at once become part of the realty and belong to Landlord. Movable furniture and equipment and other items of personal property shall remain the property of Tenant. However at Landlord's election, Tenant shall, at Tenant's expense, remove any or all Tenant Work and restore the Premises to the condition before the last day of the Term if Landlord requires such removal at the time of Landlord's consent to any such Tenant Work as provided below. At least thirty (30) days before the commencement of Tenant Work, Tenant shall submit to Landlord reproducible plans, specifications, and product samples of the proposed Tenant Work for Landlord's review and consent. Tenant shall be responsible to assure that the Tenant Work shall include properly engineered modifications to Landlord's air conditioning, lighting, fire sprinkler and life safety

systems and shall comply with all governmental regulations, including life safety, handicap and seismic requirements applicable to such Tenant Work, which compliance shall be done at Tenant's sole cost and expense. Repair of all damage or injury done to the Premises by Tenant, or by any person who may be in or upon the Premises with the consent of Tenant, shall be paid for by Tenant. To the extent permissible under applicable laws, Tenant shall not at any time prior to or during the Term hereof, either directly or indirectly, use any contractors, labor or materials whose use would conflict with union contractors or labor engaged by Tenant or by Landlord or by others in the construction, maintenance, or operation of the demised Premises or the Building.

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

15. DAMAGE OR DESTRUCTION. If during the Term the Premises or any major Building System, e.g. mechanical or electrical, is totally or partially damaged or destroyed from any cause, rendering the Premises totally or partially inaccessible, untenable or unusable, Landlord shall restore the Premises (including the Tenant Improvements) to substantially the same condition as they were in immediately before destruction, provided the restoration can be made under the existing laws, after Landlord obtains all necessary permits for such restoration, but in no event shall the restorations be completed later than two hundred ten (210) days after the date of destruction.

In such event, this Lease shall remain in full force and effect; provided, however, unless such damage is the result of the negligence or willful misconduct of Tenant or Tenant's employees or invitees, Tenant shall be entitled to a proportionate reduction of Base Monthly Rental and Additional Rent while such repairs to be

made hereunder by Landlord are being made. Such proportionate reduction shall be based upon the extent to which such damage and the making of such repairs by Landlord shall interfere with Tenant's ability to conduct normal administrative office operations in the Premises.

Within thirty (30) business days after the date of such damage, Landlord shall notify Tenant whether or not, in Landlord's reasonable judgment made in good faith, such repairs can be made within two hundred ten (210) days after the date of such damage. If such repairs cannot be made within such two hundred ten (210) day period, then either party may, by written notice to the other given at any time within one hundred (100) business days after the date of such notice, terminate this Lease as of the date specified in such notice, which date shall be not less than thirty (30) nor more ninety (90) business days after the date of Landlord's notice. If Tenant fails to terminate this Lease and if restoration is permitted under the existing laws, Landlord, at its election, can either terminate this Lease by written notice to Tenant within fifteen (15) days after the date for Tenant to elect to terminate this Lease as provided above, or restore the Premises within a reasonable time and this Lease shall continue in full force and effect. If the existing laws do not permit the restoration, either party can terminate this Lease immediately by giving notice to the other party. In case of termination, the Base Monthly Rental and Additional Rent shall be reduced by a proportionate amount based upon the extent to which such damage interferes with the conduct of City's business in the Premises, and City shall pay such reduced Base Monthly Rental and Additional Rent up to the date of termination. Landlord shall refund to City any Base Monthly Rental and Additional Rent previously paid for any period of time subsequent to such date of termination.

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

Tenant hereby agrees that Landlord shall not be liable for injury to Tenant's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of Tenant, Tenant's employees, agents or contractors, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes,

sprinklers, wires, appliances, plumbing, air-conditioning or lighting fixtures, or from any other cause, whether such damage or injury results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant except to the extent that such events are the result of Landlord's or its employees, contractors, agents or authorized representatives' willful misconduct or negligent acts or omissions or breach of Landlord's obligations hereunder. Landlord shall not be liable for any damages arising from any act or neglect of any other tenant of the Building.

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

If at any time during the last six (6) months of the Term of this Lease there is substantial damage (that is damage that would take more than two 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 a 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 and consistent with standards in comparable quality office buildings 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, 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, 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. Notwithstanding the above, services shall be provided to Storage Spaces D, E, and F only as set forth in Paragraph 34 hereof.

Suite 210 shall be separately metered for electricity for power other than central mechanical, elevator and common area power, at Landlord's sole expense. 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 average 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 three (3) or more consecutive days after notice from Tenant if such failure is in the reasonable control of Landlord, or a period of five (5) or more consecutive days after notice from Tenant if such failure is not within the reasonable control of Landlord, then the Base Monthly Rental and additional charges hereunder shall be abated based on 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 its 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 ninety (90) days of the date such services were interrupted and such failure materially interferes with Tenant's ability to conduct normal administrative office operations in the Premises, then Tenant may, without limiting any of its other rights or remedies hereunder or at law or in equity, by written notice given to Landlord within one hundred (100) days after the date such Essential Services were disrupted, terminate this Lease as of the date specified in such notice, which date shall be not 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 reasonable 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 Monthly Base Rent and Additional Rent hereunder, any commercially reasonable real estate commissions paid by Landlord in connection with such subletting and the commercially reasonable cost of such subletting and such alterations and repairs incurred by Landlord and the amount, if any, by which the Monthly Base Rent 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 \$5,000,000 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 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 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.
have the following meanings:

For purposes hereof, the following terms shall

"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.
a) If there is a Taking of any portion (but less than all) of the Premises, then this Lease shall terminate in its entirety if all of the following exist: (i) 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), (ii) 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 (iii) City elects to terminate.

b) In the case of a partial taking of a substantial portion of the Building and subsection a) above does not apply, City and Landlord shall each have the right to terminate this Lease by written notice to the other within thirty (30) days after such date, provided that as a condition to City's right to terminate, the portion of the Building taken shall, in City's reasonable judgment, render the Premises unsuitable for continued use by City for its intended purposes or otherwise materially adversely affect City's normal operations in the Premises.

c) Either party electing to terminate under the provisions of this paragraph shall do so by giving written notice to the other party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth day after such written notice is given or the Date of Taking.

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 for the suite(s) on the floor(s) involved in the taking 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 for the suite(s) on the floor(s) involved prior to the Date of Taking, (b) Tenant's Share for purposes of determining Additional Rent shall be reduced to reflect the amount of area of the Premises taken, and (c) Landlord shall be entitled to the entire Award in connection therewith, provided that City shall receive any Award made specifically for City's relocation expenses or the interruption of or damage to City's business or damage to City's personal property or Tenant's Work.

F. Temporary Takings. Notwithstanding anything to 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. The 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 the such Indenture of Lease ("encumbrance"), agree to attorn to the such Lessor or such holder in the event of a termination of the 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 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 for the space so affected shall be abated to the extent and for the duration of such disruption. Tenant's acknowledgement of Landlord's right to construct an additional building as provided above is made in City's 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 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 January 31, 1996, which is attached to this Lease.

Landlord hereby represents and warrants to City that, to the 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 hereinabove

with respect to the presence of asbestos-containing materials and in the attached Notice to Fox Plaza Employees and Contractors. No Hazardous Material is presently stored or located on or in the Property by Landlord or, to the best of Landlord's knowledge, by any tenant or occupant of the Property other than City, except for such substances used in such limited quantities as is customary in office use and common office cleaning products as further described in the Hazardous Materials Storage Permit Application Filing Form submitted by Landlord in March 1991, as the same may be revised, provided such storage and use is and shall be in compliance with Environmental Laws throughout the Term hereof. To the best of Landlord's knowledge, there has been no release and there is no threatened release of any Hazardous Material on, in, under or about the Property. The Property is not subject to any claim by any governmental regulatory agency or third party related to the release, or threatened release, of any Hazardous Material, and to the best of Landlord's knowledge there is no inquiry by any governmental agency (including, without limitation, the California Department of Toxic Substances Control or the Regional Water Quality Control Board) with respect to the presence of Hazardous Material on, in, under or about the Property, or the migration of Hazardous Material from or to other property. Without limiting any other provisions of this Lease, Landlord shall indemnify and hold harmless Tenant against and from any and all claims, judgements, 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, judgements, 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 & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of the Building or are naturally occurring substances on or about the Property; and petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids. 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 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 3.105 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. **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, 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 Rental as set forth 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.

27. **FUTURE ELEVATOR:** If Tenant chooses to expand into Suite 201, pursuant to Paragraph 30 hereof, Landlord shall have the right to exclude approximately 84 square feet from the second floor portion of the expanded Premises in order to install an additional elevator as shown as Space "X" on Exhibit "A," page 5, 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's Base Monthly Rental shall be reduced proportionately by the area so excluded 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 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.

28. **MISCELLANEOUS.** 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 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.

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

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.

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.

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.

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

The words "Landlord" and "Tenant" as used herein shall include the plural as well as the singular. Words used in masculine gender include the feminine and neuter. Subject to the provisions hereof relating to assignment and subletting, this Lease is intended to and does bind the heirs, executors, administrators, successors and assigns of any and all of the parties hereto. Time is of the essence of this Lease.

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.

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 San Francisco Charter Section A7.204 and Sections 6.33 through 6.45 of the San Francisco Administrative Code that relate to payment of prevailing wages.

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 use any items in the construction of the Premises which are tropical hardwoods or tropical hardwood products. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood product.

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.

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.

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. 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 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 in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

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 of 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, Landlord 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. EXPANSION.

A. The Expansion Opportunities. During the initial Term, Landlord shall provide City with two (2) expansion opportunities: one expansion opportunity for Suite 201 on the second floor of the Building and the second expansion opportunity for Suites 906 and 908 on the ninth floor of the building (the "Expansion Opportunities") at the then Market Rental Value as defined in Paragraph 6.C. The first opportunity will be Suite 201 on the second floor of the Building (the "First Expansion Opportunity"). Suite 201 consists of approximately 1,302 rentable square feet and should be available for occupancy on July 16, 1998 if City Exercises its Expansion Opportunity. The second opportunity will be for Suites 906 and 908 of the ninth floor of the Building (the "Second Expansion Opportunity"). Suites 906 and 908 consist of approximately 3,489 rentable square feet and should be available for occupancy by City on November 1, 1999 if City exercises its Expansion Opportunity. Landlord shall offer the First Expansion Opportunity by written notice to the City between January 1, 1998 and January 31, 1998 and offer the Second Expansion Opportunity by written notice to the City between April 1, 1999 and April 30, 1999 (the "Availability Notices"). Each Availability Notice shall provide City with the dates the Expansion Spaces, as described in pages six and seven of Exhibit A (the "Expansion Space"), are projected to be available for City's occupancy. Each Expansion Opportunity shall be a one-time opportunity to lease the Expansion Spaces before Landlord leases such space to a third party, including the current tenant or other tenant who has a subsequent right to lease such space or portions of such space.

B. Exercise of Expansion Opportunities. For City to effectively exercise either Expansion Opportunity, City shall, within thirty (30) days after the delivery to City of the Availability Notice, deliver to Landlord written notice (the "RFL Notice") of the exercise of City's right to lease the Expansion Space at a Base Rent to be determined in accordance with Paragraph 6.C. including the methodology for determining the Market Rental Value provided in that Paragraph. If City fails to so timely deliver to Landlord the RFL Notice, then City's Expansion Opportunity shall cease and Landlord shall have the right to lease the Expansion Space to a third party. If City exercises either of its Expansion Opportunities, Landlord shall use its best efforts to encourage prompt vacating by the occupant(s) of the Expansions Spaces.

C. Implementation of Expansion Opportunities. If City exercises its Expansion Opportunities consistent with the manner required above, effective upon the date each Expansion Space shall be available for occupancy:

(1) The Premises shall be expanded to include the Expansion space and the initial Premises (the "Expanded Premises").

(2) The Base Rent shall be increased by the Market Rental Value for the Expansions Spaces. The Market Rental Value shall be calculated in accordance with the methodology provided in Paragraph 6.C. ("Determination of Market

Rental Value"). Notwithstanding the above, in no event shall the Base Rent per rentable square foot for the Expansion Spaces be less than the Base Rent per rentable square foot for the ninth floor portion of the Premises for the final month of the Term as defined in Paragraph 4.

(3) For purposes of determining City's payment for increased Operating Expenses and Direct Taxes under Paragraph 6.2 for the Expanded Premises, the Base Year for the Expanded Premises shall be the same as the Base Year for the initial Premises. The percentage of increase in Operating Expenses and Direct Taxes for which City shall reimburse Landlord in conformance with Paragraph 6.2 above shall be increased by adding a percentage computed by dividing the rentable area of the Expansion Space by the rentable area of all office space in the Building.

D. No Material Default. City shall not be in material default under any term, covenant, condition, provision or agreement of the Lease from the date Tenant delivers the RFL Notice to the Expansion Commencement Date. If City is in material default hereunder on the date of giving such RFL Notice and fails to cure as provided in Paragraph 19 above ("Default"), Landlord shall reject such RFL Notice by delivering notice thereof to City promptly after City's failure to cure.

E. Coterminous Provisions. In the event that City elects to exercise any of the Expansion Opportunities, the Term of the Lease as applied to the Expanded Premises shall be coterminous with the Term of the Lease for the initial Premises.

F. Board of Supervisors Approval and Amendment to Lease. Landlord acknowledges and agrees that City's RFL Notices shall be subject to enactment of a resolution by the Board of Supervisors and the Mayor, in their respective sole and absolute discretion, approving and authorizing exercise of the applicable Opportunity to Expand within ninety (90) days after the date such final Market Rental Value is determined. If such approval and authorization is not given within ninety (90) days after such date, the Opportunity to Expand shall cease. Upon the Board of Supervisors' and Mayor's approval and authorization, the parties shall promptly execute an amendment to this Lease showing the Expanded Premises and stating the rent for such premises.

31. 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.

32. PARKING. During the Term and any extension thereof, provided that Tenant is not in default of the parking agreement of the garage operator for payment of parking fee, Tenant shall be provided up to forty (40) non-reserved, monthly parking spaces in the garage of the Building at the rate that Landlord commonly charges for other tenants of the Building as such rate may change from time-to-time. Tenant hereby agrees to follow all garage rules and procedures established by Landlord or Landlord's garage operator. Landlord's

obligation to make such parking spaces available to Tenant shall be subject to ordinances and regulations of the applicable governmental authority concerning off-street parking or loading facilities, either now existing or hereafter enacted.

33. **BICYCLE ORDINANCE.**

Article 1.5 of the San Francisco Planning Code ("Code") requires the provision of bicycle storage at all City leased properties at no cost to Landlord and if funds are available. In the event public and/or private donations, grants or other funds become available, at any time during the Lease or any extension thereof, City shall have the option, by giving a sixty (60) day advance written notice to Landlord, to amend this Lease to include up to two (2) parking stalls in the Building garage and an area in front of the Building to be mutually determined by Landlord and City's Planning Department which meets the Class 1 and/or Class 2 requirements of the Code to accommodate such bicycle storage facilities. Any revenue from garage spaces or storage spaces lost to accommodate this requirement shall be paid by City as additional Base Rent. In the event of storage locker installation, the storage lockers shall be considered a trade fixture and City shall have the right to remove such lockers at Lease termination provided City repairs any damage, restoring the storage locker area to its original condition. Class 2 bicycle racks shall be considered a permanent Building improvement and City shall not be required to remove said bicycle racks at Lease termination. Landlord, at no cost to Landlord, shall reasonably cooperate with City regarding the implementation of the Bicycle Ordinance.

34. **STORAGE.**

Notwithstanding any other provisions contained in this Lease, City shall use and occupy the storage spaces described under the heading Premises in the Basic Lease Information for storage purposes only, and only such lighting will be furnished as will be adequate for use as storage space and no cleaning, pest control, water, heat, janitorial, waste disposal, mechanical ventilation or air cooling will be furnished by Landlord. City shall leave a clearance of no less than eighteen (18) inches around any and all sprinkler heads. In addition to the Tenant Improvements set forth in Paragraph 5 and Exhibit F of this Lease, Landlord agrees to remove the current fencing between storage spaces D and E and to install a single four(4) plex outlet in storage space D. Such power outlet shall be a convenience outlet only and shall not be used for office equipment or space heating or cooling. Landlord will have the right to relocate City's storage to another storage location in the Building, provided (a) Landlord shall give City thirty (30) days notice prior to the effective date of such relocation, (b) the new storage space will be as accessible as and equivalent in size to the old storage space, (c) there shall be no increase in rent due to such relocation, and (d) Landlord will pay for the cost of such relocation.

35. **EXISTING LEASE.**

It is understood that City presently leases from Landlord Suite 230, which is part of the Premises under a lease dated May 23, 1994, expiring May 31, 1999 (the "existing lease"). Upon the Commencement Date of this Lease, the existing lease shall automatically terminate and shall be superseded in its entirety by this Lease. It is agreed that Tenant's occupancy of the Premises on and after the Commencement Date shall be governed solely by the provisions of this Lease. In the event that prior to the Commencement Date of this Lease City exercises its option to terminate the existing lease for any reason other

than a default of Landlord thereunder, Landlord may, at its option, terminate this Lease on or before ninety (90) days after the termination date of the existing lease by giving written notice thereof to City. In the event that City commits a material default under the existing lease and Landlord elects to terminate the existing lease, Landlord may also terminate this Lease by giving written notice to City on or before ninety (90) days after the earliest termination of the existing lease.

36. **MAINTENANCE OF CITY'S AUXILIARY POWER AC SYSTEM.** City shall reimburse Landlord for costs actually and reasonably incurred by Landlord in response to a written request from City for maintenance of City's 2nd floor switch room auxiliary power and AC system. In making any request for reimbursement of such maintenance costs, Landlord shall furnish to City copies of all invoices and statements evidencing such costs, together with such other information as City may reasonably request to verify the costs. City shall be responsible for all maintenance of City's 2nd floor A/C system. If such maintenance is completed through Landlord, City shall have the right to approve in advance all costs for such maintenance. City shall also be responsible for all monitoring, including heat sensing of the equipment in the switch room.

37. **RELOCATION.** Landlord shall have the option of relocating City from Suites 820, 910 and Suites 906 and 908 if the Expansion Opportunity is exercised pursuant to Paragraph 30 hereof to other office space on floors 2 through 12 of the Building only if such relocation is necessary and for the purpose of removing asbestos, installing a sprinkler system or complying with other governmental regulations that require substantial structural renovations and the vacating of the entire floor. To exercise such option, Landlord shall serve not less than ninety (90) days advance written notice on Tenant. Such alternate Premises shall contain same rentable area no less than 97% of the original Premises and be in the same configuration as Suites 820, 910 and Suites 906 and 908 and shall be altered to provide the same quantity and quality of Tenant Improvements as those required hereunder for Suites 820, 910 and Suites 906 and 908. 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, such relocation shall occur over a single weekend and be accomplished so as to minimize the disruption to the business of City, and shall reimburse City for all reasonable and necessary costs including but not limited to weekend moving costs, up to \$1,000 for city's move supervision, data and telephone relocation, and new letterhead and business cards. Subject to the foregoing, Base Monthly Rental for the alternate office space shall be the same as that for Suites 820, 910 and Suites 906 and 908.

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

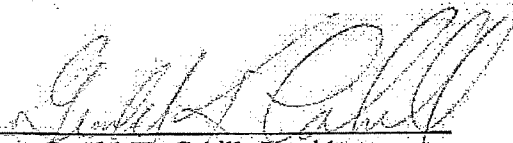
- Exhibit A - Floor Plans, eight pages
- Exhibit B - Notice of Lease Commencement
- Exhibit C - Janitorial Standards
- Exhibit D - Rules and Regulations dated August 4, 1992

- Exhibit E - Exclusions from Operating Costs
- Exhibit F - Work Letter including Schedules I and II
- Exhibit G - Tenant Improvements - 2nd, 8th, and 9th Floor Plans
- Exhibit I - NOT USED
- Exhibit J - Notice to Fox Plaza Employees and Contractors dated January 31, 1996

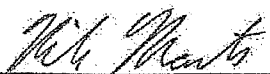
NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE THE PARTIES ACKNOWLEDGE AND AGREE THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS LEASE UNLESS AND UNTIL A RESOLUTION OF CITY'S BOARD OF SUPERVISORS SHALL HAVE BEEN DULY ENACTED APPROVING THIS LEASE, AND AUTHORIZING 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.

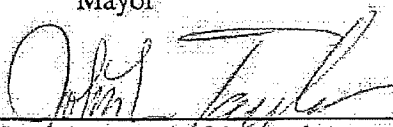
IN WITNESS WHEREOF, the parties hereto have executed this Lease, in triplicate, as of the date first above written.

LANDLORD:
CALFOX, INC.,
a California corporation,
as Managing Agent for Owner, Polk Market Co.

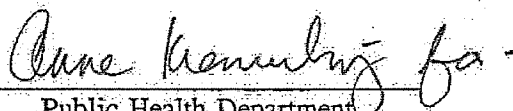
By 
Gerald K. Cahill, President

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


Mayor


Clerk of the Board of Supervisors

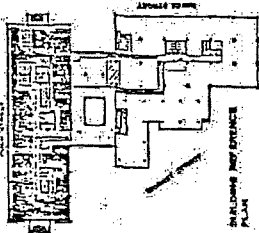
RECOMMENDED:


Public Health Department

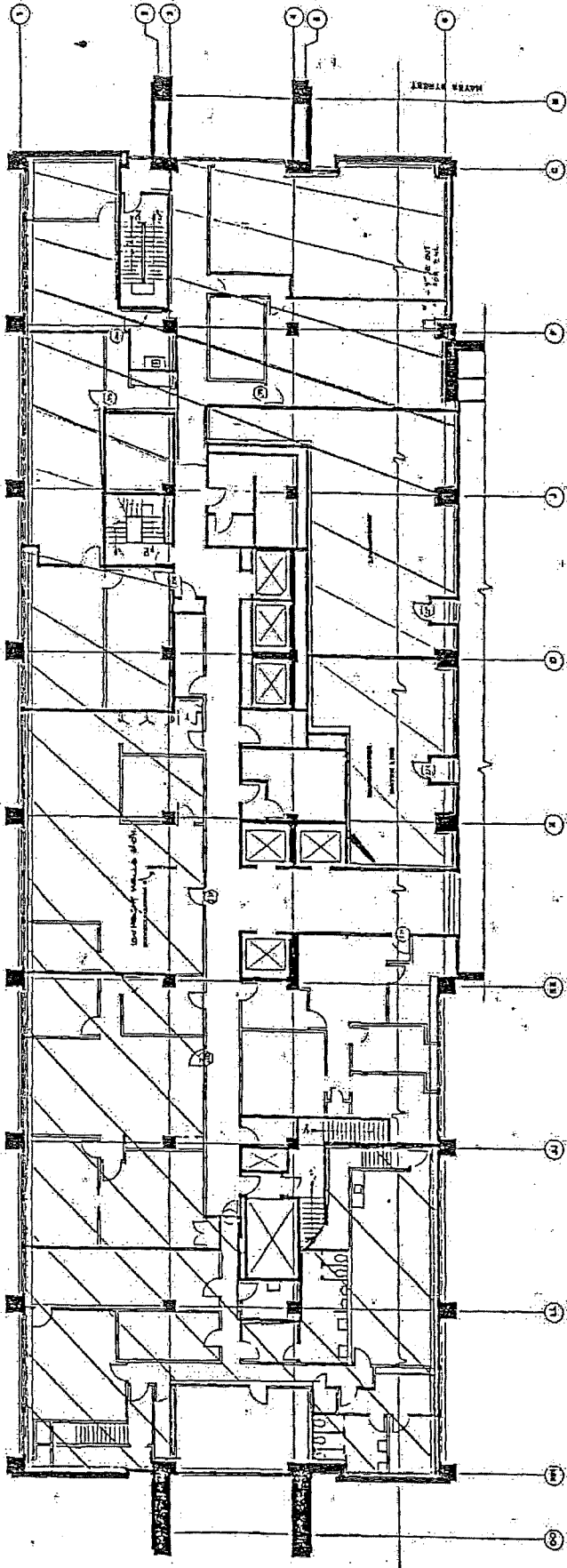

Director of Property

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

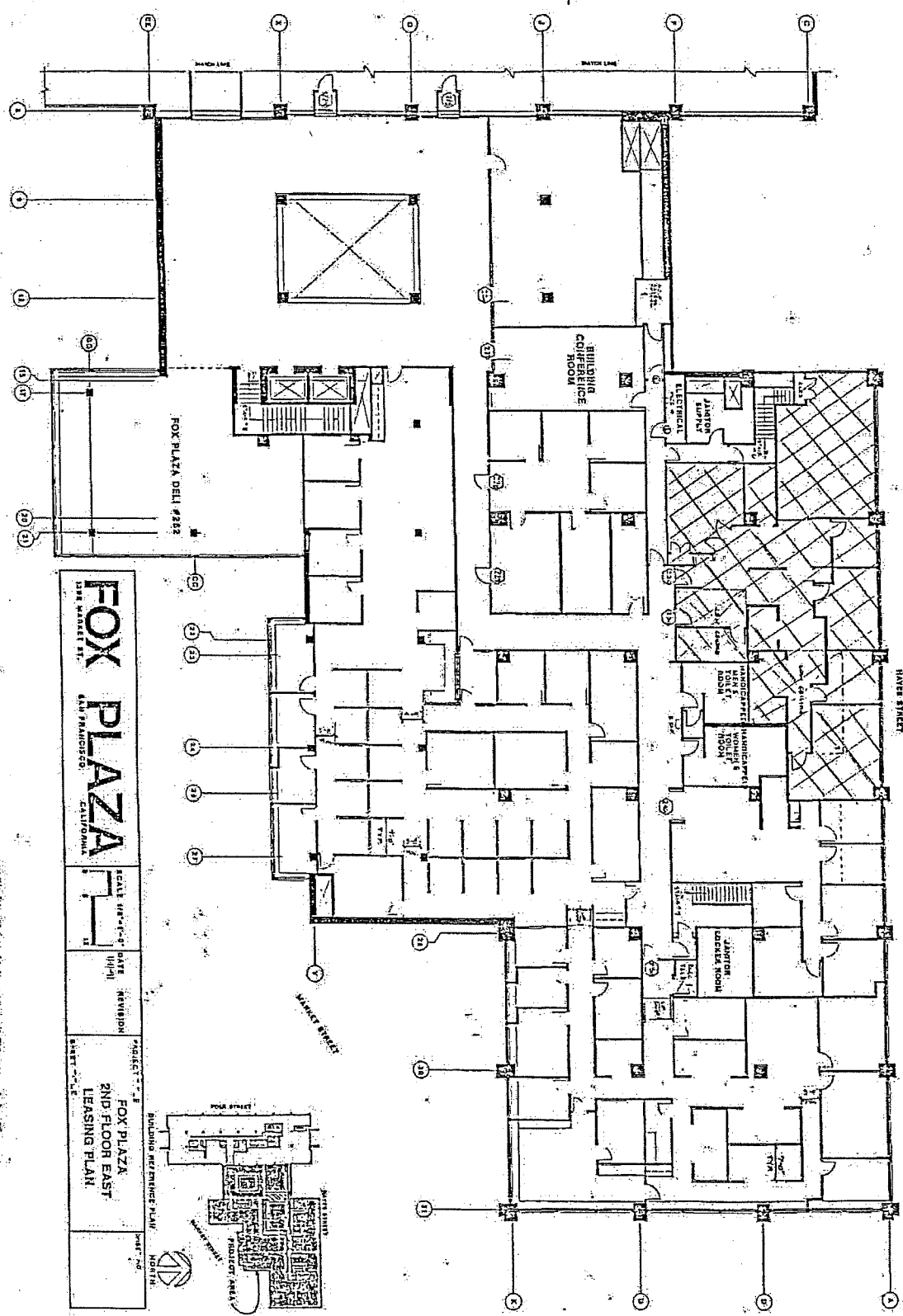
By 
Deputy City Attorney



POLAR STREET



<p>FOX PLAZA 1300 MARKET ST. SAN FRANCISCO, CALIFORNIA</p>	<p>SCALE 1/8" = 1'-0"</p>	<p>DATE 7-13-47</p>	<p>DESIGNER WETTON</p>	<p>EXHIBIT 'A'</p>	<p>2 FLOOR</p>
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FOX PLAZA
 1204 MARKET ST.
 SAN FRANCISCO, CALIFORNIA

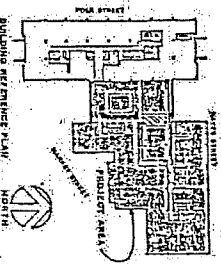



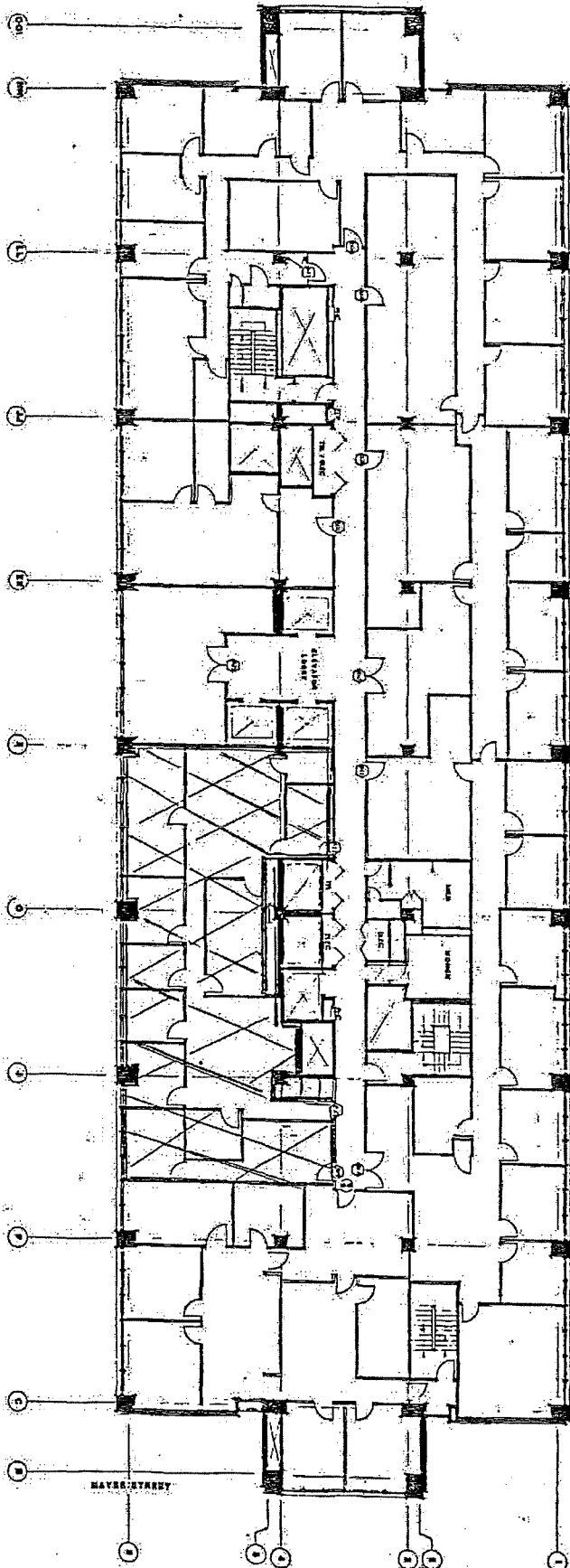


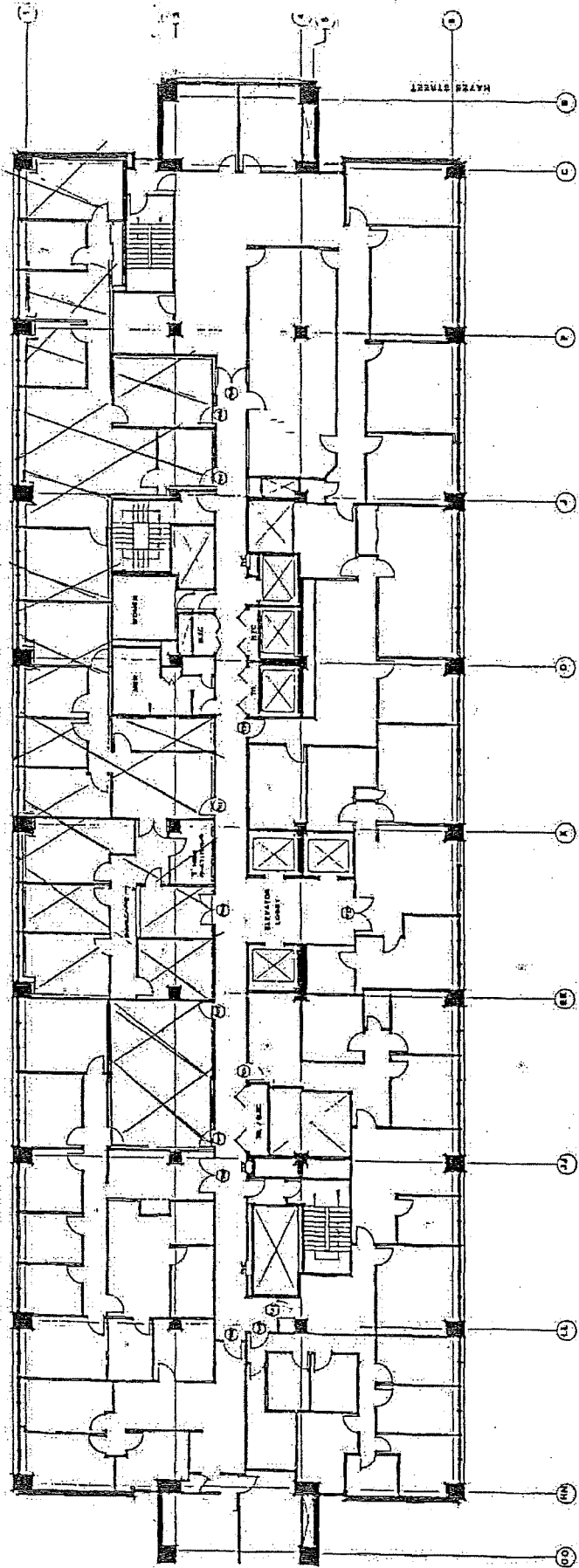
EXHIBIT A

FOX PLAZA <small>1330 MARKET ST. SAN FRANCISCO CALIFORNIA</small>		 <small>MONTH</small>	<small>SCALE</small>  <small>1/8" = 1'-0"</small>	<small>DATE</small> <small>1-2-57</small>	<small>REVISIONS</small>		8 <small>FLOOR</small>
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POUL STREET

POLK STREET



HAYES STREET

FOX PLAZA
 1380 MARKET ST. SAN FRANCISCO CALIFORNIA



SCALE 3/8" = 1'-0"
 0 1 10 20

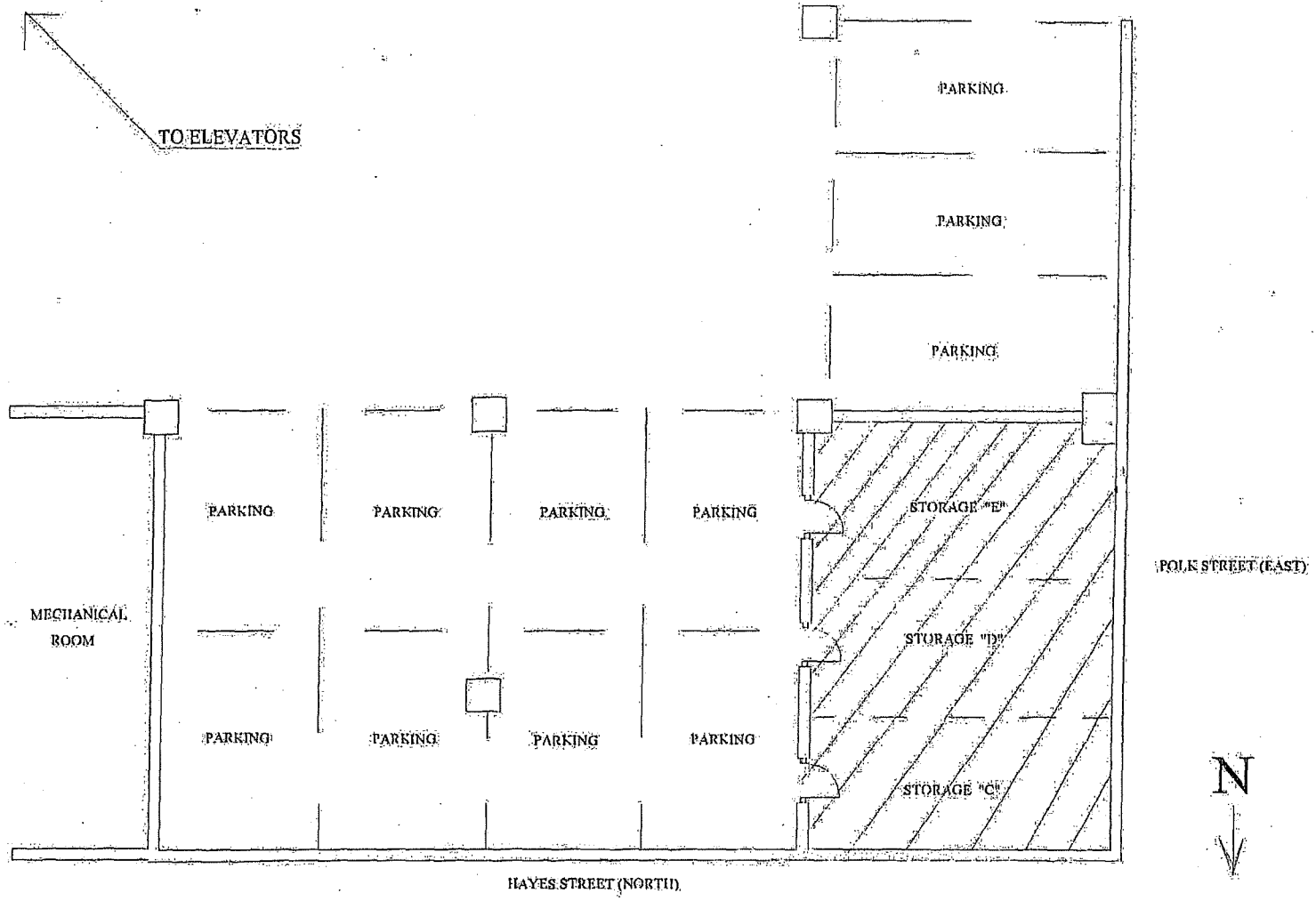
DATE

REVISIONS

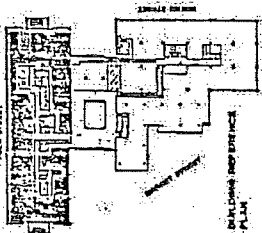
EXHIBIT 'A'

9
 FLOOR

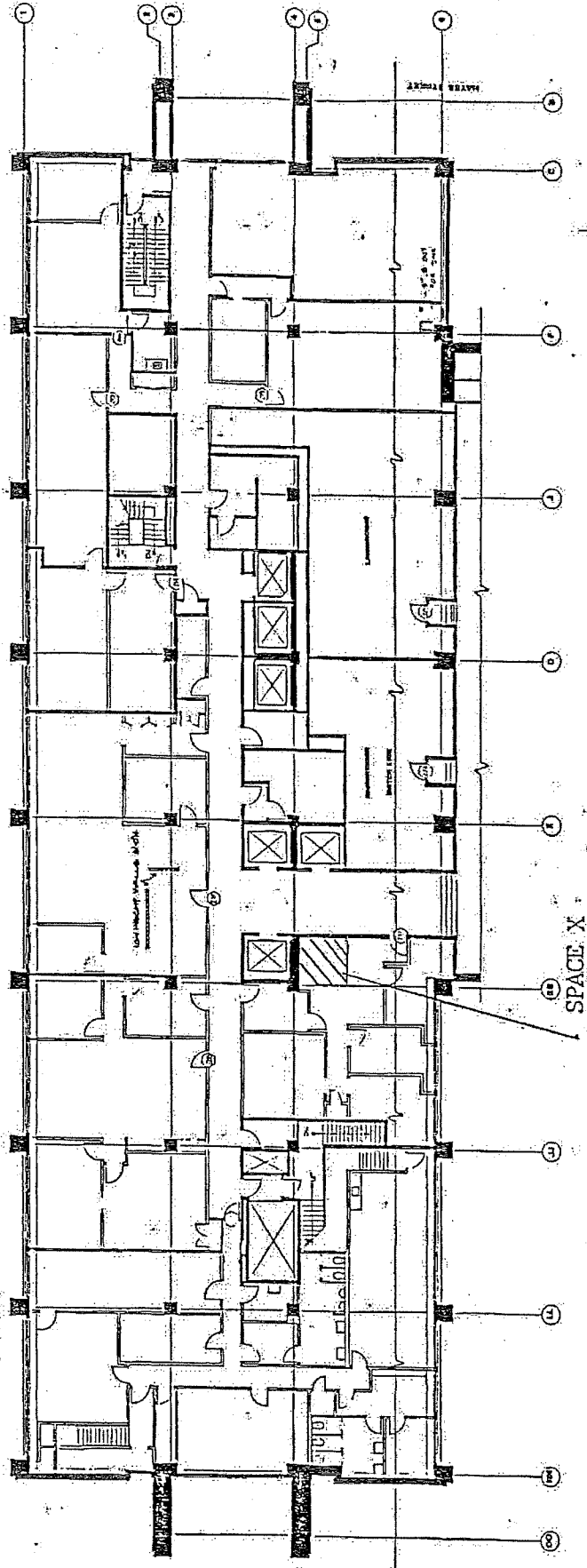
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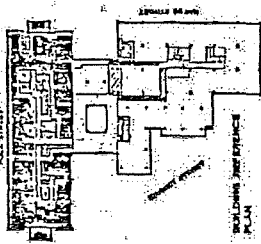
FOX PLAZA 1390 MARKET STREET SAN FRANCISCO CALIFORNIA	STORAGE SPACE C, D, E FOR: DEPARTMENT OF PUBLIC HEALTH NOT TO SCALE JULY 9, 1996	LEVEL
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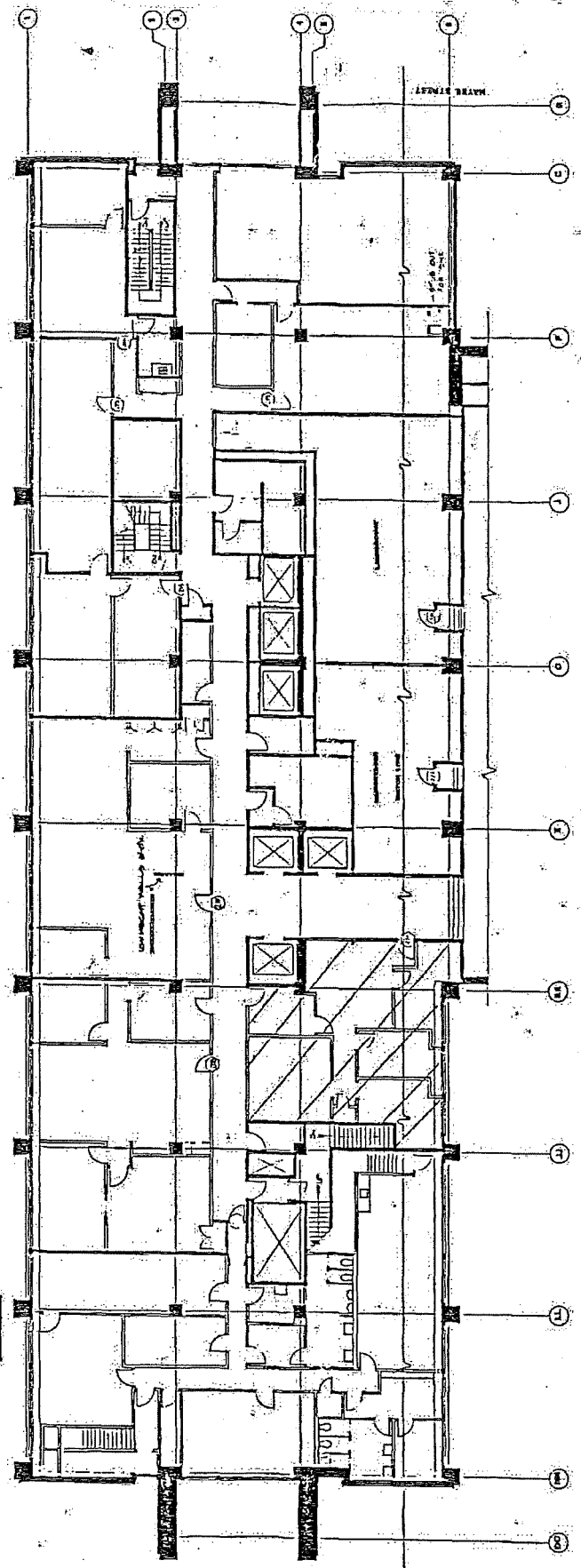
POLICE STREET



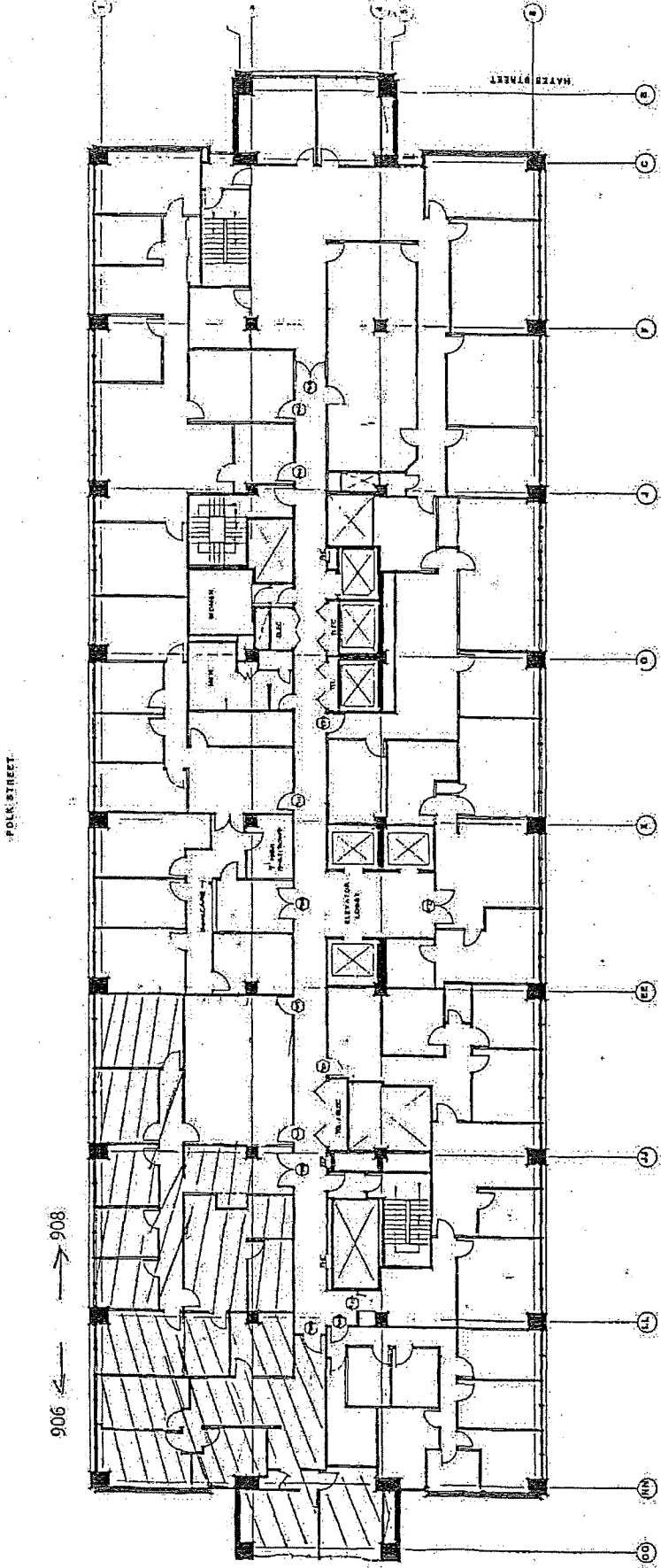
<p>FOX PLAZA 1840 MARKET ST., SAN FRANCISCO, CALIFORNIA</p>	<p>SCALE 1/4" = 1'-0"</p>	<p>DATE 11-12-57</p>	<p>INTERIOR</p>	<p>EXHIBIT "A"</p>	<p>2 FLOOR</p>
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POLE STREET



<p>FOX PLAZA 1330 MARKET ST. SAN FRANCISCO CALIFORNIA</p>		<p>SCALE: 1/4" = 1'-0"</p>	<p>DATE: 11-1-37</p>	<p>PROJECT: 11-1-37</p>	<p>PAGE: 6 OF 7</p>	<p>EXHIBIT "A"</p>	<p>2 FLOOR</p>
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<p>FOX PLAZA 1390 MARKET ST. SAN FRANCISCO CALIFORNIA</p>	<p>SCALE: 1/8" = 1'-0" 0 5 10 20</p>	<p>DATE: _____ REVISIONS: _____</p>	<p>EXHIBIT 60A PAGE 7 OF 7</p>	<p>9 FLOOR</p>
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DRAFT

EXHIBIT B

[Date]

Mr. Anthony J. DeLuca
Director of Property
Real Estate Department
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102

Re: Acknowledgement of Commencement Date, Lease Between
_____ (landlord), and the CITY AND
COUNTY OF SAN FRANCISCO (Tenant), for premises known as
located at

Dear Mr. DeLuca:

This letter will confirm that for all purposes of the Lease,
the Commencement Date (as defined in Section 3.2 of the Lease) is
_____, 199__.

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

Very truly yours,

By _____
Title _____

Accepted and Agreed:

By _____
Director of Property
Dated _____

EXHIBIT C

JANITORIAL STANDARDS

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

FIVE DAYS PER WEEK (EXCEPT HOLIDAYS)

- PREMISES:

Empty wastepaper baskets, trash containers and other receptacles.

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

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

Dust windowsills and counters.

FIVE DAYS PER WEEK (EXCEPT HOLIDAYS)

- COMMON AREAS:

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

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

Clean elevators, maintain floor covering.

LOBBIES AND ENTRYWAYS:

Maintain in first class appearance.

SEMI-ANNUALLY - WINDOWS:

Wash interior and exterior windows.

ANNUALLY - CARPETS:

Shampoo high traffic areas.

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

EXHIBIT D

RULES AND REGULATIONS OF FOX PLAZA

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

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

7. **HALLS AND STAIRWAYS:** The entries, passages, stairways and elevators shall not be obstructed by Tenant, or used for any other purpose than ingress or egress to and from their respective offices. Tenant shall not bring into or keep within the Building any animal, vehicle, or bicycle, except for see-eye dogs for any sight impaired employees or invitees of Tenant and any mechanized wheelchairs or similar devices.
8. **PLUMBING:** The wash basins, water closets and urinals shall not be used for any purpose other than those for which they were constructed.
9. **CLOSING PRECAUTIONS:** Tenant shall see that the windows, transoms and doors of the Premises are closed and securely locked before leaving the Building and Tenant shall exercise due care and caution that all water faucets or water apparatus are entirely shut off before Tenant or Tenant's employees leave the Building, and that all electricity, gas or air shall likewise be carefully shut off, so as to prevent waste or damage. Tenant shall make good all injuries sustained by other tenants or occupants of the Building or by Landlord due to any default or carelessness herein.
10. **MOVING FURNITURE, SAFES, ETC.:** No furniture, freight or equipment of any kind shall be brought into or removed from the Building without prior notice to Landlord or Landlord's agent, and all moving of same, into or out of the Building, by tenants, shall be done at such times and such manner as Landlord shall designate. Landlord shall have the right to prescribe the weight, size and position of all safes and other heavy property brought into the Building, and also the times and manner of moving the same into and out of the Building. Landlord will not be responsible for loss or for damage to any such safe or property from any cause; but all damage done to the Building by moving or maintaining any such safe, furniture, freight, equipment or property shall be repaired at the expense of Tenant. Tenant shall advise Landlord at least seven days in advance of any move.
11. **JANITOR SERVICE:** Tenant shall not employ any person or persons other than the janitor of Landlord for the purpose of cleaning the leased Premises, unless otherwise agreed. Except with the written consent of Landlord, no person shall be permitted to enter the Building for the purpose of cleaning same. Tenants shall not cause any unnecessary labor by carelessness or indifference in the preservation of good order and cleanliness. Janitor service shall not include moving of furniture, shampooing of rugs or carpets, or other special services. Janitor service will not be furnished when rooms are occupied during the regular hours when janitor service is provided. Window cleaning shall be done only at the regular and customary times determined by Landlord for such services.
12. **VIOLATION OF RULES:** Landlord reserves the right to exclude or expel from the Building any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of the Rules and Regulations of the Building.

13. **REQUIREMENTS:** The requirements of Tenant will be attended to only upon application at the Office of the Building. Employees of Landlord shall not perform any work or do anything outside of their regular duties unless under special instruction from the office, and no employee will admit any person (tenant or otherwise) to any office without specific instructions from the Office of the Building.
14. **ROOMS USED IN COMMON:** Rooms used in common by tenants including Mail areas, elevators, restrooms, corridors and exterior plaza shall be subject to these Rules and Regulations as they may apply and to any special regulations posted therein, including but not limited to "no smoking" regulations.
15. **ENTRANCE DOORS:** Landlord reserves the right to close and keep locked all entrance and exit doors of the Building during such hours as Landlord may deem to be advisable for the adequate protection of the property. All tenants, their employees, or other persons entering or leaving the Building at any time when it is so locked are required to sign the Building register when so doing, and the Security Guard in charge may refuse to admit to the Building while it is locked, Tenant or any of Tenant's employees, or any other person, without a Valid Building Pass, or other satisfactory identification showing his right to access to the Building at such time. Landlord assumes no responsibility and shall not be liable for any error in regard to any such pass or identification, or from the admission of any authorized person to the Building.
16. **ELECTRICITY:** Tenant may operate a reasonable number of typical office machines, including adding machines, personal computers, calculators, clocks, coffee machines, microwave oven, refrigerator and small copy machines. Tenant may not operate large office machines, including but not limited to mini or mainframe computers, additional air conditioning units and similar large scale equipment without Landlord's prior written approval, except that Landlord hereby approves any and all such equipment existing as of the date of the Lease.
17. **COOKING:** No cooking except microwave cooking shall be done or permitted by tenants in their respective Premises, nor shall Premises occupied by tenants be used for the storage of merchandise, washing clothing, lodging, or any improper, objectionable or immoral purposes.
18. **HEATING:** No tenant shall use or keep in the Building any kerosene, gasoline or inflammable or combustible fluid or material or use any method of heating or air conditioning other than that supplied by Landlord.
19. **VENDING MACHINES:** No vending of food or beverage dispensing machine or machines of any description shall be installed, maintained or operated upon any premise in the Building without the written permission of the Landlord.
20. **NAME:** Landlord, with prior written notice to Tenant, at anytime may change the name of the Building.

21. **FREIGHT ELEVATOR:** The Building freight elevator will be used for all deliveries of supplies, packages, equipment, furniture and other deliveries. Landlord shall set the hours for use of the freight elevator. Should Landlord permit deliveries on passenger elevators, such permission shall not be deemed a precedent for other deliveries in passenger elevators.

22. **PRECAUTIONS TO PREVENT ASBESTOS EXPOSURE:** The sprayed-on fire-proofing materials covering the structural steel throughout the Building and other items in ceiling plenum areas and the Building's telephone and electrical closets, as well as certain mineral core doors, certain vinyl tile, and pipe lagging in mechanical spaces and other areas contain asbestos. Asbestos is known to the State of California to cause cancer. In tenant spaces, this asbestos-containing material is located in the ceiling plenum (above the ceiling tiles) and in the telephone and electrical closets. Landlord has established special procedures for all repairs, maintenance, alterations, additions, modifications, improvements or other such work to be undertaken by Tenant in areas of the Building where asbestos-containing material may be present. Before Tenant or its contractors remove or otherwise disturb any ceiling tiles, or do any work in the electrical or telephone closets, Tenant must notify the Asbestos Site Manager through the Office of the Building about such work. The Asbestos Site Manager must issue Tenant a work permit before any such work begins. Tenant and its contractor(s) must strictly comply with all work permit requirements, all directions (written or oral) and all asbestos work procedures, plans and documents given them by Building Management. Tenant shall also immediately report to the Asbestos Site Manager through the Building Management Office any time Tenant observes or suspects there has been a spill or other release of asbestos containing materials.

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

EXHIBIT E

EXCLUSIONS FROM OPERATING EXPENSES

1. Costs of capital repairs, capital improvements and equipment, except for those (i) required by laws enacted on or after the date of the Lease amortized over the useful life of the improvement and/or equipment, together with interest at the prime rate published by the Wall Street Journal on the date incurred, (ii) acquired to immediately (i.e. within one year) reduce operating expenses amortized at an annual rate reasonably calculated to equal the amount of operating expenses to be saved in each calendar year throughout the Term (as determined at the time Landlord elected to proceed with the capital improvement or acquisition of the capital equipment to reduce operating expenses), together with interest at the prime rate published by the Wall Street Journal on the date project is completed;
2. Rentals for items (except when needed in connection with normal repairs and maintenance of permanent systems) which if purchased rather than rented, would constitute a capital improvement which is specifically excluded in item 1 above (excluding, however, equipment not affixed to the Building which is used in providing janitorial or similar services);
3. Costs incurred by Landlord for the repair of damage to the Building, to the extent that Landlord is reimbursed by insurance proceeds (excluding any deductible) and costs occasioned by the exercise of the right of eminent domain;
4. Costs, including, without limitation, permit, license and inspection costs, incurred with respect to the installation of improvements made for other tenants or occupants of the Building or incurred in renovating or otherwise improving, decorating, painting or redecorating vacant space for other tenants or occupants in the Building;
5. Depreciation, amortization and interest payments, except to the extent provided herein pursuant to items 1(i) and 1(ii) above and except on materials, tools, supplies and vendor-type equipment purchased by Landlord to enable Landlord to supply services Landlord might otherwise contract for with a third party where such depreciation, amortization and interest payments would otherwise have been included in the charge for such third party's services, all as determined in accordance with generally accepted accounting principles, consistently applied (as applied to commercial real estate), and when depreciation or amortization is permitted or required, the item shall be amortized over its reasonably anticipated useful life (as reasonably determined by Landlord);
6. Leasing commissions, attorneys' fees, space planning costs and all other costs and expenses in connection with negotiations with present or prospective tenants or other occupants in the Building or any present or future ground lessors or holders of any mortgages or other encumbrances affecting any of the Building or the defense of Landlord's title to the Building or the real property on which it is located;

7. Expenses in connection with services or other benefits which are not offered to City or for which City is charged directly but which are provided to another tenant or occupant of the Building;
8. Costs incurred by Landlord due to violation by Landlord or any other tenant or occupant of the Building of applicable laws, rules or regulations, the terms and conditions of any lease, ground lease, mortgage or deed of trust, or other covenants, conditions or restrictions encumbering the Building;
9. Overhead and profit increments paid to Landlord or to subsidiaries or affiliates of Landlord, or to any party as a result of a non-competitive selection process, for management, or other services, supplies or materials, to the extent the same exceed the costs of such goods and/or services rendered by unaffiliated third parties on a competitive, arms-length basis;
10. Any ground lease rental or rental under any other underlying lease;
11. Except as specifically permitted by items 1(i) and 1(ii) above, interest, principal, points and fees on debts or amortization on any mortgage, deed of trust or any other debt instrument encumbering any of the Building;
12. Any compensation paid to clerks, attendants or other persons in commercial concessions operated by Landlord or in the parking garage in the Building;
13. Except for making repairs or keeping permanent systems in operation while repairs are being made, rentals and other related expenses incurred in leasing air conditioning systems, elevators or other equipment ordinarily considered to be of a capital nature, excluding equipment not affixed to the Building which is used in providing janitorial or similar services;
14. All items and services for which City or any other tenant or occupant of the Building separately reimburses Landlord (other than through such tenant's or occupant's proportionate share of operating expenses), or which Landlord provides selectively to one or more other tenants or occupants without reimbursement, or which are not provided in reasonable proportion to the space leased by City but which Landlord provides to another tenant or other occupant of the Office Portion of the Building;
15. Advertising or promotional expenditures, and the costs of acquiring and installing signs in or on any of the Building identifying the owner of the Building or any other tenant or occupant of the Building;
16. Electric power costs for which any other office tenant or occupant directly contracts with the local public service company;
17. Services provided, taxes attributable to, and costs incurred in connection with the operation of retail, restaurant and garage operations in the Building;

18. Costs incurred in connection with capital improvements to the Building to comply with handicap, life, fire and safety codes in effect prior to the date of the Lease, and costs incurred in connection with upgrading the Building to comply with the Americans with Disabilities Act of 1990, the proposed San Francisco Sprinkler ordinance and the San Francisco Unreinforced Masonry Building Ordinance;

19. Tax penalties incurred as a result of Landlord's negligence, inability or unwillingness to make payments when due;

20. Costs arising from the presence of Hazardous Material in or about the Building including, without limitation, groundwater or soil conditions, except if such Hazardous Material is brought on to the Building by City in violation of applicable laws;

21. Landlord's charitable or political contributions;

22. To the extent the following costs arise during any applicable warranty periods, costs as a result of repairs of latent defects in the Building core and shell or improvements installed by Landlord or in the Building Systems, and any costs incurred by Landlord in the event any portion of the Building is made untenantable by fire or other casualty required to be insured against pursuant to the terms of the Lease;

23. Capital costs for sculpture, paintings or other objects of art;

24. Costs (including, without limitation, all attorneys' fees and costs of settlement, judgments and payments in lieu thereof) arising from claims, disputes or potential disputes, including, without limitation, tax disputes where the tenants of the Building would receive benefits if Landlord prevails) in connection with potential or actual claims, litigation or arbitrations pertaining to Landlord and/or the Building;

25. Landlord's general corporate overhead and general and administrative expenses not related to the operation or management of the Building; and

26. Any other expense that under AICPA generally accepted accounting principles ("GAAP") would not be considered a maintenance or operating expense.

EXHIBIT F

**ALTERATIONS TO SUITES 210, 820, 910
FOX PLAZA**

This Work Letter is part of the Office Lease dated as of September 9, 1996 (the "Lease"), executed concurrently herewith, by and between Calfox, Inc., a California corporation, as managing agent for Polk Market Co., Owner, as Landlord, and the City and County of San Francisco ("Tenant" or "City") covering certain premises described in the Lease. All terms that are capitalized but not defined herein shall have the same meanings given to them in the Lease.

Landlord, at its sole cost and expense, and through its general contractor approved by City (the "Contractor"), shall furnish and install within the Premises the improvements (the "Tenant Improvements" or "Tenant Improvement Work") shown on the Plans (as defined below) and described herein and in Schedule 1 and Schedule 2 attached hereto, all in accordance with the provisions of this letter:

1. Plans and Specifications

a. Plans. Prior to the date of the Lease, Landlord has caused its architect or space planner approved by City (the "Architect") to prepare the plan drawings and specifications for the Tenant Improvements, including the items described in Schedule 1 attached hereto (the "Plans"). A copy of such Plans, approved by City, are attached to the Lease as Exhibit G.

b. Final Plans. Based on the Plans and any further adjustments approved by City, on or before July 1, 1996, Landlord shall have caused its Architect to prepare and submit to City for its approval final plans, specifications and working drawings for the Tenant Improvements, setting forth in detail all aspects of the design, function and construction of the Tenant Improvements, in form sufficient for bidding of all elements of construction, and in conformity with all of the requirements of this Work Letter (the "Final Plans"). Such Final Plans shall be subject to approval by City, which approval shall not be unreasonably withheld or delayed.

c. Payment. The costs of preparing the Plans and the Final Plans shall be paid by Landlord.

d. Changes to Plans. If following approval City requests any change, addition or alteration in the Final Plans, Landlord shall cause the Architect to prepare plans with respect to such change, addition or alteration. As soon as practical, Landlord shall notify City of the cost that would be incurred by reason of such change, addition or alteration. If City approves the cost thereof within five (5) days of receipt from Landlord,

then Landlord's Contractor shall proceed with such change, addition or alteration as soon as reasonably practical thereafter. If City does not approve such cost within the above-mentioned five (5) day period, construction of the Premises shall proceed in accordance with the original completed and approved Final Plans and City shall pay the reasonable and actual architect fees for designing the changes. If following City's approval of the Final Plans, Landlord requests or is required to make any change, addition or alteration thereto relating to the design or specifications of the Tenant Improvements ("Landlord Change Order"), Landlord shall provide City with plans and specifications with respect to such change, addition or alteration and shall notify City of the delay in completion of the Tenant Improvements, if any, caused by such Landlord Change Order. Any such Landlord Change Order shall be subject to City's approval, which approval shall not be unreasonably withheld or delayed.

2. Permits

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

3. Construction

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

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

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

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

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

insurance; and

iv. Landlord shall through its approved Contractor furnish and install all improvements that are required to bring the Premises, the path of travel to the Premises, and the lobby, corridors, public bathrooms on the floor of the Building in which the Premises are located into compliance at the commencement of the herein Lease with City's standards for accessibility by disabled persons, consisting of the items set forth in the attached Schedule 2. Landlord shall not be responsible for making accessible any of Tenant's furniture, workstations, shelving or equipment which Landlord does not design or install.

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

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

4. Payment for Work

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

5. Substantial Completion

a. Construction Schedule. Landlord shall perform the Tenant Improvement Work in accordance with the construction schedule attached hereto as Schedule 3. In no event shall construction of the Tenant Improvements be Substantially Completed later than June 30, 1997, subject to Tenant Delays (as hereinafter defined). Landlord shall keep City apprised of the status of permit approval and the progress of construction. From time to time during the construction of the Tenant Improvements, City shall have the right upon reasonable advance oral or written notice to Landlord to enter the Premises at reasonable times to inspect the Premises, provided such inspections do not unreasonably interfere with the construction. Landlord or its representative may accompany City during any such inspection. When construction progress so permits, but not less than fifteen (15) days in advance of completion, Landlord shall notify City of the approximate date on which the Tenant Improvement Work will be Substantially Completed in accordance with the Final Plans and the provisions hereof. Landlord shall notify City when the Tenant Improvement Work is in fact Substantially Completed and the Premises are ready for occupancy by City, and City or its representatives shall be permitted to accompany Landlord or its architect on an inspection of the Premises on such date or other mutually agreeable date soon thereafter.

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

6. Delays in Construction

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

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

b. Prevailing Wages for Construction Work. In constructing the Tenant Improvements, Landlord shall comply with the prevailing wages provisions contained in paragraph 28 of the Lease.

c. Tropical Hardwood Ban. In constructing the Tenant Improvements, Landlord shall comply with the tropical hardwood ban provisions contained in paragraph 28 of the Lease.

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

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

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

ATTACHMENTS: SCHEDULE I (2 pages)
SCHEDULE II (2 pages)

SCHEDULE I
WORK LETTER (EXHIBIT F)
SUITES 210, 820, 910 - FOX PLAZA
BUILDING STANDARD WORK

Landlord shall furnish and install building standard tenant improvements consistent with other recent City tenant improvements in the Building in Suites 210, 820, and 910 Fox Plaza in accordance with the permit drawings dated August 12, 1996 as prepared by William E. Cullen, AIA and the following:

1. Demolish and remove all existing partitions, wood panelling, doors, carpets, and plumbing fixtures not required by Tenant pursuant to the new layout of the Premises shown in the Plan.
2. Furnish and install new ceiling-height drywall partitions as shown on the Plan with interior doors in hollow metal frames to match existing doors. All drywall shall be smooth-taped and mudded, finished and ready to paint.
3. Relocate light fixtures and heating, ventilating and air conditioning systems as required by the layout in the Plan.
4. Repaint all existing and new walls and trim to match existing colors; paint ceiling tiles and grid white. Existing doors shall be finished as required to eliminate scratches.
5. Install building standard commercial 30 ounce carpet using direct glue-down method throughout the premises. Provide new rubber baseboard; color selection by Tenant. Provide building standard vinyl composition tile where indicated in the Plan; color selection by Tenant.
6. Provide building standard mini-blind window coverings on all exterior windows throughout the premises.
7. Provide wall-mounted 110 volt electrical outlets or junction box for group of pre-wired workstations as set forth on Plan, circuited as allowed by code. Junction boxes may be relocated from locations shown subject to reasonable approval of Tenant's workstation installer and at no additional cost to City. Hook up pre-wired workstation to junction box. Tenant's contractor shall be responsible for supplying all wiring from the junction box to the workstation outlets.
8. Hetch-Hetchy Power: Landlord agrees to attach the power panels in Suite 210 to a separate meter which is billed directly to the City's Hetch-Hetchy Power system.

Landlord shall furnish and install all panels, wiring, transformers, and metering related to this modification of the power distribution.

9. Data and Telephone: Within five (5) business days after the later of commencement of construction or full execution of this Lease, or as soon thereafter as practicable, Tenant or Tenant's telephone supplier shall furnish sufficient fire-rated telephone cable. Landlord shall pull, test and label such Tenant-furnished cable from telephone closet, hub or switch to (a) wall outlets or (b) J boxes for workstation groups set forth on the Plan. Tenant's contractor for data and telephone shall be solely responsible for furnishing and installing all terminations, wiring connections, telephone equipment, connections and coverplates for data and telephone, and pulling the cable from the wall J-box to the outlets in the workstation group including any printer/fax outlets shown adjacent to workstations.
10. Provide lockset at all entry doors with common lockset for all doors on a floor unless otherwise noted on the Plan.
11. Repair ceilings as required by work. Install fully finished offsets where different ceiling heights occur in the same room. Replace any broken or chipped ceiling tile.
12. Overstandard Items: The following item is deemed to be an overstandard item and shall be reimbursed by Tenant within thirty (30) days of commencement of the lease:
 - (a) Landlord shall furnish and install one, one-ton, air-cooled air conditioning unit in Switch Room 13, Suite 210 including electrical submeter. (Tenant shall be responsible for: (1) emergency alarm, (2) maintenance and repair after initial warranty period and (3) all operating costs of such unit during the term of the lease). Tenant to reimburse Landlord \$9,100.00 for the cost and installation expense of such one-ton, air-cooled air conditioning unit within thirty (30) days of Lease Commencement.
 - (b) Tenant to reimburse Landlord \$2,600 for the cost and installation expense of overstandard power, data and telephone requirements.
13. No work is to be performed by Landlord in Suite 230 except entry door refinishing and touch-up painting in the entry area.

Wherever a conflict between the Plans and this Exhibit F may exist, the Plans shall prevail. All workstation furniture, coffee bars, fax/printers and copier table stands, storage and library shelving, files, credenzas and desks, chairs, and other interior features which may be shown on said Plan are to be furnished and installed by Tenant unless otherwise noted herein.

COFA

FILE NO. 64-96-13

RESOLUTION NO. 699-96
R0196012

(Lease of Property)

AUTHORIZING A LEASE AT FOX PLAZA FOR THE DEPARTMENT OF PUBLIC HEALTH.

RESOLVED, That in accordance with the recommendation of the Director of the Department of Public Health and the Director of Property, the Mayor, the Clerk of the Board of Supervisors and the Director of Property are hereby authorized to take all actions, on behalf of the City and County of San Francisco, as Lessee, to execute a written lease and other related documents with Calfox, Inc., as Lessor, for office space commonly known as Suites 210, 230, 822 and 910 plus basement storage space and parking located at Fox Plaza, 1390 Market St., San Francisco, California, which comprises an approximate office and storage area of 25,939 square feet and up to 40 cars of monthly parking for the Department of Public Health's Bureau of Environmental Health Management on the terms and conditions contained herein and on a form approved by the City Attorney.

FURTHER RESOLVED, The lease shall commence upon substantial completion of tenant improvements (expected to be about December 1, 1996) and terminate November 30, 2001. The monthly rent for the term shall be \$34,471.16. The parking costs are estimated at approximately \$4000 per month and may vary over the term. The City shall pay its electrical costs for the 14,549 square feet of office area which can be separately metered and its prorate share of building operating expense increases over a 1996 base year. Landlord is to provide tenant improvements. The City shall pay to Landlord \$2600 for specialty electrical improvements to be provided by Landlord.

FURTHER RESOLVED, At the end of the lease term, the City shall have the option to renew.

[Real Estate]

BOARD OF SUPERVISORS

the lease for an additional 5 year term at 95% of the then fair market value.

FURTHER RESOLVED, That the lease may include an appropriate clause (in a form approved by the Director of Property and the City Attorney), indemnifying and holding harmless the Landlord, from and agreeing to defend the Landlord against any and all claims, costs and expenses, including, without limitation, reasonable attorney's fees, incurred as a result of City's use of the premises, any default by the City in the performance of any of its obligations under the lease, or any acts or omissions of City or its agents, in, on or about the premises or the property on which the premises are located, excluding those claims, costs or expenses incurred as a result of the active negligence or willful misconduct of Landlord or its agents, and be it

FURTHER RESOLVED, That all actions heretofore taken by the officers of the City with respect to such lease are hereby approved, confirmed and ratified.

Said Lease shall be subject to certification as to funds by the Controller, pursuant to Section 6.302 of the Charter.

RECOMMENDED:

Dandra Hernandez (ak)
Director, Department of Public Health

[Signature]
Director of Property
COW

\$269,296.12 Available
Appropriation No.
HCH 1G AGF AAA 03011
Index Code: HCHFBADHMGF

[Signature]
Controller
(Subject to approval of the Annual
Appropriation Ordinance)

JUL 16 1996

BOARD OF SUPERVISORS

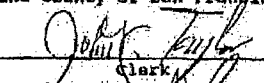
Anthony J. Delucchi
Director of Property
Real Estate Dept.
25 Van Ness Avenue, #400


Adopted - Board of Supervisors, San Francisco July 29, 1996

Ayes: Supervisors Amiano Bierman Katz Kaufman Leal Shelley
Teng Yaki

Absent: Supervisors Alioto Brown Hsieh

I hereby certify that the foregoing resolution
was adopted by the Board of Supervisors
of the City and County of San Francisco.



Clark


Mayor

File No.
64-96-15

JUL 30 1996

Date Approved

**SCHEDULE II TO
WORK LETTER (EXHIBIT F)
ACCESSIBILITY WORK PLAN**

<u>Item</u>	<u>Deficiency</u>	<u>Action</u>
1. Fire doors	Hardware does not comply	Replace existing hardware with compliant hardware.
2. Doors	Closure:	Adjust all closures after construction to meet Code.
3. Door kick plates	None exist	Install new kick plates on all entry doors and restroom doors, if required by applicable Code.
4. Light switches and outlets	Height does not comply	Relocate common area switches to 48" maximum above the finish floor. Existing power and telephone outlets to remain.
5. Fire alarm pulls	Height does not comply	Relocate to 48" maximum above the finish floor.
6. Mail slot	Height does not comply	Close-off slot.
7. Second floor counter	New counter to be constructed	Design to include 36" wide minimum section, 34" maximum from floor and gate that fully complies.
8. Accessible Elevators	Signage	Install inside elevator jam signage.
9. Accessible Elevators	Gap	Insure no more than 1.25" gap.
10. Accessible Elevators	Sensors	Insure proper height and timing.
11. Accessible Elevators	Audible equipment	Insure proper signaling.
12. Main lobby signage	Format discrepancy	Insure inclusion of all required signs in correct format.
13. Audible and visual alarms	Missing	Provide visual warning system per approved flasher KBS system to relevant areas.

SCHEDULE II TO EXHIBIT F (PAGE 2 OF 2)

Item	Deficiency	Action
14. 8th floor and 2nd floor (Tower) restrooms	Code compliance questions	Make Code compliant.
15. Directional signage	No blue, no braille/raised	Install new access direct signage at or in main lobby directory. Review relevant signage with consultant and make Code compliant.

EXHIBIT J

FOX PLAZA NOTICE TO EMPLOYEES/CONTRACTORS

California Health and Safety Code Sections 25915-25924 requires that periodic notification be given to employees and contractors regarding commercial and public buildings in which asbestos-containing material ("ACM") is present. We are providing this notice to you in compliance with this law and to provide related information.

ACM is present at the Fox Plaza Building (the "Building") as (1) sprayed-on fireproofing covering the structural steel and other structural elements in the Building; (2) part of the core of certain fire-rated doors; (3) the insulation on pipes and similar items; and (4) as a component in some of the Building's floor tiles and its adhesive. On commercial and mechanical floors, the sprayed-on fireproofing ACM can be found in the space above the suspended ceilings, in telephone and electrical closets, in mechanical rooms, and behind drywall or plaster soffits, columns, and exterior walls. On apartment floors, the sprayed-on fireproofing ACM is generally located behind plaster or drywall soffits, ceilings, columns, and exterior walls, and is located in locked electrical closets and in certain non-accessible mechanical areas.

ACM can become a health risk by moving, drilling, boring, or otherwise disturbing it. Contractors and Employees who are not specially qualified and trained in ACM work procedures should not handle or in anyway disturb ACM. If you have any reason to believe the asbestos containing materials have been disturbed or damaged, please call the Property Manager of Fox Plaza at (415) 626-6900.

Building Management has implemented a comprehensive Asbestos Management Plan which governs asbestos-related plans and work procedures for work in or to areas of the Building in which ACM is located. All work which might in any way disturb ACM must be reviewed and approved by the Building's Asbestos Control Coordinator. The existing rigorous procedures established for the work procedures meet or exceed the relevant state and federal standards. Building Management has prepared rules for tenants and for contractors, which are part of the Asbestos Management Plan and which will require tenants, contractors and other workers to (a) obtain authorization from Building Management for work in areas of the Building in which ACM is located, and (b) to perform such work in compliance with the asbestos work procedures. The Asbestos Management Plan is designed to protect the health and safety of all occupants, and to maintain good building air quality.

Asbestos exposure can cause asbestosis and other respiratory diseases, and is listed under Proposition 65, California Health and Safety Code Sections 25249.5 - 25249.13, as a chemical known to the State of California to cause cancer. There are uncertainties surrounding the level which can cause disease. The major reason for implementing the Asbestos Management Plan is to prevent airborne asbestos exposure of Building Occupants. If you would like to obtain further information regarding potential health risks or impacts of airborne asbestos, please contact the California Occupational Safety and Health Administration at (916) 920-6123 or the Federal Occupational Safety and Health Administration at (916) 978-5641.

Air monitoring measurements have been taken annually as part of a comprehensive building-wide ambient air monitoring study by an independent industrial hygiene consulting firm, Crawford FPE Group ("F.P.E."). F.P.E. has advised the Building management that because of the stringent management programs and removal procedures put in place in Fox Plaza that fiber release has been minimized. In addition to these reports, air quality measurements have also been taken during the Building's asbestos abatement projects and for various other reasons. The sampling and laboratory procedures utilized, other specifics and the results of each air monitoring study conducted to date in the Building are described in air monitoring reports which are available for your review in the Managing Agent's Office. ACM survey reports which collectively identify the presence, type and location of ACM in the Building, and include a description of the bulk sample analysis procedures, are also maintained in the Managing Agent's Office. The most recent reports are listed below. An industrial hygiene consulting firm specializing in asbestos surveys will be conducting periodic reinspections of the ACM to monitor its condition.

The Managing Agent's Office is at the office of Calfox, Inc., 425 California Street, Suite 2300, San Francisco. The asbestos-related documents covered by the asbestos notification laws are maintained there and are available for you to review and copy, at tenant's cost, upon request during regular business hours. Also upon request, these documents can be made available at the Fox Plaza Building Office. Please do not hesitate to call the Property Manager at (415) 626-6900 if you wish to arrange for access to these materials.

RECENT REPORTS

Annual Asbestos Air Sampling Survey (12/20/95 and 12/21/95)

Fox Plaza Construction Clearance Air Samples - Suites 524 and 918 (11/28/95)



Edwin M. Lee, Mayor
Naomi M. Kelly, City Administrator

John Updike
Director of Real Estate

January 4, 2018

**Lease Renewal
1390 Market St.
DPH-EHS**

Through Naomi Kelly
City Administrator

Honorable Board of Supervisors
City and County of San Francisco
City Hall, Room 244
#1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2018 JAN -5 PM 4:12
AK

Dear Board Members:

Attached for your consideration is a resolution authorizing an extension of an existing lease term for the Department of Public Health's Environmental Health Section (DPH-EHS) at Fox Plaza (1390 Market Street).

The Department of Public Health's Environmental Health Section (DPH-EHS), among other public services, provides federal, state, and local mandated services including restaurant inspections and permits, , hazardous materials/waste compliance, childhood lead prevention, consumer protection (retail and wholesale food), solid waste, water recreation, asbestos, and emergency response.

DPH-EHS has occupied space at Fox Plaza for the past 20 years. The premises consist of 27,826 sq. ft. (27,413 sq. ft. of office and 413 sq. ft. of storage). City currently pays \$82,818.07 per month (approximately \$35.72 per sq. ft. annually). City also pays approximately \$722.16 average per month in separately metered utilities (approximately \$.60 psf annually) on 14,549 sq. ft. of the Premises.

The current term expires on November 30, 2018 and contains an option to extend the term for five (5) years (through November 30, 2023) on the same terms and conditions except that the Base Monthly Rental is to be adjusted to 95% of the market rental value. However, DPH-EHS is slated to move from Fox Plaza to the new City Building at 49 South Van Ness (formerly called 1500 Mission St) in mid 2020. The exercise of the option to extend would require the City to either backfill the Fox Plaza space or pay double rent.

Under the proposed lease renewal, the renewal term is for three (3) years (December 1, 2018 through November 30, 2021) with the option to terminate at anytime after November 30, 2019 during the initial term by providing 270 days advanced written notice at no cost to the City. The proposed rent beginning December 1, 2018 is \$150,093.33 per month (approximately \$64.72 per sq. ft. average annually) and is increased 3% annually. The City will continue to pay for electricity

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on the 14,549 square feet which is separately metered. City shall also pay for the standard operating expense pass throughs over a 2019 base year.

Attachment # 1 provides how the base rent is calculated.

A MAI appraisal dated December 19, 2017 of Fair Market Rent by Mateo Advisors, John Mateo, MAI, has confirmed fair market rent of \$66 per sq. ft. fully serviced for the office area, and 12.00 per sq. ft. for the storage area with 3% annual increases. The Mateo Advisors appraisal has been confirmed by an Appraisal Review dated January 4, 2018 by Clifford & Associates, MAI.

A before and after table is Attachment #2

DPH reports that the majority of EHS's programs are fee based regulatory programs and the increase in rent will be included in its 2018/2019 fiscal budget.

Given we have negotiated a fair market rental rate with flexible termination rights without additional cost, DPH and the Real Estate Division recommend approval of the extension terms. If you have questions regarding this matter, please contact Charlie Dunn of our office at 554-9861.

Respectfully,



John Updike
Director

cc: Barbara Garcia, Director, DPH
Greg Wagner, DPH
Stephanie K.J. Cushing, DPH -EHS

Attachment #1

Summary of Spaces and Proposed Base Rent

A.

Suite	Area (RSF)	Comments
210	14,549	Net of plug load electricity
410	3,247	Fully serviced
810	4,646	Fully Serviced
910	4,971	Fully Serviced
Subtotal Office	27,413	
Storage C, D, & E (the "Storage Premises")	413	Garage level
Total Premises	27, 826	

<u>Area</u>	<u>Sq. Ft.</u>	<u>Base Annual Rent PSF</u>	<u>Base Monthly Rent</u>
Storage Premises	413 SF	\$12.00	\$413.00
Suite 210	14,549 SF	\$65.10	\$78,928.33
Suites 410, 810, 910	<u>12,864 SF</u>	\$66.00	<u>\$70,752.00</u>
Total Office and Storage	27,826 SF		\$150,093.33

Attachment #2

Table 1. Summary of Current and Proposed Lease Details

	Current Lease	Proposed Lease
Premises	27,826 square feet	No change 27,826 square feet
Base Rent (monthly)	\$82,818.07	\$150,093.33
Operating Expenses (monthly)	\$.05 for electricity on a portion of the space. Janitorial services, maintenance and all other operating costs to be paid by the landlord.	No change \$.05 for electricity on a portion of the space. Janitorial services, maintenance and all other operating costs to be paid by the landlord.
Term	December 1, 2013 to November 30, 2018	December 1, 2018 to November 30, 2021, subject to City's right to terminate
Early Termination Provision	None.	Permits early termination by City with 9 months written notice at no cost to City.
Base Rent Increase Date	NA	Annually on December 1, starting December 2019
Base Rent Increase Amount	None	3% (annually)
Extension Options	1 remaining (December 1, 2018 to November 30, 2023) at 95% of FMR	2 new for 5 years each (the first - December 1, 2021 to November 30, 2026) at 95% of FMR

FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors
Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: BRCP 1390 Market, LLC	
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i>	
<ol style="list-style-type: none"> 1. BRCP 1390 Market, LLC is a member managed LLC; BRCP Realty II, L. P. (a Delaware Limited Partnership) which is sole member of "contractor" 2. BRCP Gen-Par II, LLC (a Delaware Limited Liability Company) is General Partner of BRCP Realty II, L. P. with authority as Managing Director 3. Managing Directors of BRCP Gen-Par II are John Foster, Craig Vought, and Philip Maritz. 4. None 5. None. 	
Contractor address: 248 Homer Avenue, Palo Alto, CA 94301	
Date that contract was approved:	Amount of contract: \$6,264,780 over 5 years
Describe the nature of the contract that was approved: Renewal of an existing Lease at 1390 Market St for the Department of Public Health	
Comments:	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form (Mayor, Edwin Lee)

a board on which the City elective officer(s) serves San Francisco Board of Supervisors

Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

Filer Information <i>(Please print clearly.)</i>	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., SF, CA 94102	E-mail: <u>Board.of.Supervisors@sfgov.org</u>

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed

