

ORIGINAL

AGREEMENT OF SUBLEASE

SUBLEASE OF BUILDING 525

**AT THE
FORMER ALAMEDA NAVAL AIR STATION**

BETWEEN

**ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY,
A JOINT POWERS AUTHORITY ESTABLISHED BY
THE CITY OF ALAMEDA
AND THE CITY IMPROVEMENT COMMISSION
UNDER THE CALIFORNIA JOINT EXERCISE OF POWERS ACT**

AS

SUBLESSOR

AND

**AUCTIONS BY THE BAY, INC.
A CALIFORNIA CORPORATION,**

AS

SUBTENANT

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AGREEMENT OF SUBLEASE
BETWEEN
THE ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY
AND
AUCTIONS BY THE BAY, INC.
FOR THE
SUBLEASE OF BUILDING 525
AT THE
FORMER ALAMEDA NAVAL AIR STATION

THIS SUBLEASE is made this 19th day of Aug., 2001 (the "Sublease Execution Date"), by and between the Alameda Reuse and Redevelopment Authority, a Joint Powers Authority established by the City of Alameda and the City Improvement Commission under the California Joint Exercise of Powers Act as set forth in Title 1, Division 7, Chapter 5, Article 1 of the Government Code of the State of California (Government Code §6500 et seq.) (Sublessor) and Auctions By The Bay, Inc., a California corporation (Subtenant).

RECITALS

WHEREAS, the UNITED STATES OF AMERICA, acting by and through the Department of the Navy ("Government"), is the owner of real and personal property commonly referred to as the former Naval Air Station Alameda ("Station"), which was closed as a military installation and is subject to disposal pursuant to and in accordance with the Defense Base Closure and Realignment Act of 1991, as amended (Pub. Law No. 101-510); and

WHEREAS, Sublessor and Government have agreed upon a method of conveyance of said property as set forth in the Economic Development Conveyance Memorandum of Agreement ("EDC MOA") dated June 6, 2000; and

WHEREAS, prior to the conditions for a deed transfer of the property to Sublessor being met, immediate possession of all or portions of the Station has been granted by Government to Sublessor pursuant to a Lease in Furtherance of Conveyance ("LIFOC") dated June 6, 2000; and

WHEREAS, Government has determined that it will be in the public interest to lease the Leased Premised herein described to Sublessor, upon the terms and conditions set forth in the LIFOC; and

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WHEREAS, Sublessor and Subtenant have agreed to make and enter into this Sublease, whereby Subtenant will lease from Sublessor the Leased Premises, hereinafter described in more detail in Section 1 of this Sublease; and

WHEREAS, the parties intend the Sublease to remain in full force and effect during the Term, which may include a period of time after the Leased Premises are conveyed by the Government to the Sublessor.

NOW, THEREFORE, in consideration of the terms, covenants and conditions hereinafter set forth, Sublessor and Subtenant hereby agree as follows:

1. LEASED PREMISES. Sublessor does hereby lease, rent, and demise to Subtenant and Subtenant does hereby hire and rent from Sublessor, the following:

Building 525. That certain building known as Building 525 which contains approximately 23,208 square feet of rentable area, together with the improvements and fixtures situated therein shown and described on Exhibit A.

Parking. Subtenant shall have non-exclusive use of the parking lot on the southeast corner of W. Essex Drive and Todd Street; the lot on the northeast corner of Todd Street and W. Redline Avenue; and the lot immediately west of Building 525. These parking lots shall be shared with tenants from Building 18 and from Building 94, and are shown on Exhibit B.

The Building and all improvements and fixtures thereon and the equipment described on Exhibit A are collectively referred to in this Sublease as the "Leased Premises."

1.1 Sublease Subject to LIFOC. Notwithstanding anything otherwise stated herein, the obligation of Sublessor to lease the Leased Premises under this Sublease, and to perform the covenants of Sublessor under this Sublease, and the obligation of Subtenant to so hire and lease the Leased Premises under this Sublease, and to perform the covenants of Subtenant under this Sublease, are each expressly conditioned upon the LIFOC between Sublessor and the Government. The parties hereto understand that the Government, as Lessor, and Sublessor, as Lessee, have entered into the LIFOC containing the provisions, terms and conditions set forth in Exhibit C attached hereto.

1.1.1 This Sublease is subject and subordinate to the LIFOC between the Government, as the Lessor thereunder, and Sublessor, as the Lessee thereunder, which was executed on June 6, 2000, a signed copy of which is attached hereto as Exhibit C. Subtenant acknowledges that Sublessor's rights to the Leased Premises arise solely under the LIFOC and the EDC MOA.

1.1.2 Notwithstanding any provision of this Sublease, Sublessor and Subtenant hereby agree as follows: (i) Subtenant will not do or permit anything to be done in or on the Leased Premises which will cause the occurrence of a default by Sublessor under the LIFOC; (ii) if the LIFOC expires or is terminated for any reason without Sublessor and/or the

master developer of the Station acquiring fee title to the Leased Premises, then this Sublease shall thereupon terminate without any liability to Sublessor (unless such expiration or termination is caused by a default of Sublessor under the LIFOC), in which event Subtenant's sole remedy against Sublessor shall be the right to receive the unamortized Qualified Shell Improvement Costs pursuant to Section 40.2, as if such date were the scheduled expiration date of the Term, as defined in Section 2; provided, this Sublease shall remain in full force and effect in the event of a termination of the LIFOC upon Sublessor's and/or the master developer's acquisition of fee title to the Leased Premises from the Government.

1.1.3 Sublessor shall have no liability to Subtenant for Government's defaults under the LIFOC. Subtenant agrees that Sublessor shall not be obligated to perform any of the Government's obligations under the LIFOC, except to the extent that such obligations are expressly made obligations of Sublessor under this Sublease. Subtenant further agrees that neither this Sublease nor any obligation hereunder, including the payment of Base Rent or Additional Rent, shall be affected by Government's default under the LIFOC, except to the extent that the LIFOC is terminated, or unless such default causes Sublessor to breach the covenant of quiet enjoyment in favor of Subtenant contained herein. Sublessor reserves all rights to enforce the LIFOC, but agrees to make reasonable and diligent efforts to enforce Government's obligations under the LIFOC to the extent that Subtenant is a material beneficiary thereof.

1.1.4 In the event of any conflict in the rights of Subtenant under this Sublease and the rights of Sublessor under the LIFOC, the terms, conditions and covenants of the LIFOC shall control.

1.1.5 Subtenant represents that it received, read and is familiar with the terms of the copy of the LIFOC delivered to it by Sublessor. Notwithstanding the foregoing, or anything otherwise stated herein, it is expressly understood that all obligations of Subtenant relative to this Sublease and its use and occupancy of the Leased Premises are contained in this Sublease, and that Subtenant shall have no other or further obligations to Sublessor or to the Government which are not expressly set forth in this Sublease.

2. TERM. Subject to Sections 2.1, 2.2, and 2.3, the initial term of this Sublease ("Initial Term") shall be for five (5) years commencing on the Sublease Execution Date, unless sooner terminated as herein provided.

2.1 Joint Inspection. Prior to execution of this Sublease, a joint inspection of the Leased Premises has been conducted pursuant to Section 6 of the LIFOC and Section 6 of this Sublease ("Joint Inspection").

2.2 Commencement of Possession. Subject to the provisions of this Section 2.2, Sublessor shall deliver possession of the Leased Premises and the premises leased under the Building 18 Sublease (referenced in Section 40.1) to Subtenant on the Sublease Execution Date. If Sublessor is unable to give possession of the Leased Premises and/or the premises under the Building 18 Sublease on the Sublease Execution Date because the Leased Premises and/or the premises under the Building 18 Sublease is/are not ready for occupancy, and/or because Sublessor has not performed its obligations required by this Sublease and/or the

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Building 18 Sublease before delivering possession of the Leased Premises and/or the premises under the Building 18 Sublease to Subtenant, Sublessor shall not be subject to any liability for the failure to give possession on that date, and no such failure to give possession on the Sublease Execution Date shall in any way affect the validity of this Sublease or the obligations of Subtenant hereunder; provided, if Sublessor does not deliver possession of the Leased Premises and the premises under the Building 18 Sublease to Subtenant on or before the ninetieth (90th) day following the Sublease Execution Date, Subtenant shall have the election to terminate this Sublease at any time thereafter but prior to the date that Sublessor delivers possession of the Leased Premises and the premises under the Building 18 Sublease to Subtenant, in which event of termination the parties shall be relieved of further obligations under this Sublease, except for obligations that have accrued prior to termination ("Surviving Obligations").

2.3 Option to Extend. Subject to the following paragraphs, at any time prior to the expiration of the Initial Term, Subtenant shall have the option to extend the Initial Term of this Sublease for an additional period of five (5) years ("Extended Term") at the Rent as indicated in Section 3.1.3. The word "Term" as used in this Sublease includes the Initial Term and Extended Term.

The provisions of the preceding paragraph to the contrary notwithstanding, no later than six (6) months prior to the expiration of the Initial Term, but not sooner than nine (9) months prior to the expiration of the Initial Term, if Subtenant has not previously exercised its option to extend the Initial Term, Sublessor shall notify Subtenant in writing of the expiration date of the Initial Term and reminding Subtenant of its unexercised option to extend the Initial Term as herein provided (such written notice referred to as "Sublessor's Reminder Notice") in which event Subtenant shall have the option to extend the Initial Term at any time prior to the expiration of the Initial Term as provided in the preceding paragraph.

If Sublessor fails to give Subtenant Sublessor's Reminder Notice within the period of time stated in the preceding paragraph but delivers Sublessor's Reminder Notice at a date later than six (6) months prior to the expiration of the Initial Term, Subtenant shall have ninety (90) days after receipt of Sublessor's Reminder Notice within which to exercise Subtenant's option to extend the Initial Term, provided:

(a) If Sublessor gives Subtenant Sublessor's Reminder Notice prior to expiration of the Initial Term but because of the timing on giving Sublessor's Reminder Notice the ninety (90)-day period extends beyond the expiration date of the Initial Term, then the Initial Term shall be automatically extended to the date that is the last day of the ninety (90)-day period regardless of when Subtenant may exercise its option to extend the Initial Term; or,

(b) If Sublessor gives Subtenant Sublessor's Reminder Notice after expiration of the Initial Term, then the expiration date of the Initial Term shall be automatically extended by a period equal to the number of days between the expiration date of the Initial Term and the date Subtenant receives Sublessor's Reminder Notice plus ninety (90) days regardless of when Subtenant exercises its option to extend the Initial Term.

The preceding paragraph to the contrary notwithstanding, if the initial term under the Building 18 Sublease is extended beyond the applicable date pursuant to the preceding

Section 2.3.6 of the Building 525 Sublease, then the expiration date of the Initial Term of this Sublease shall be automatically extended to be the same date as the expiration date of the initial term under the Building 525 Sublease.

The preceding provisions to the contrary notwithstanding, under no circumstances shall the Initial term and the Extended Term exceed ten (10) years.

3. CONSIDERATION.

3.1 **Base Rent.** Subject to the provisions of this Section 3.1, Subtenant shall pay to Sublessor as Base Rent the following sums:

(a) Three Thousand Five Hundred Dollars (\$3,500) per month for the Theatre Portion of the Leased Premises (which portion is outlined and indicated on Exhibit A) beginning on the Rental Commencement Date for the Theatre Portion of the Leased Premises (as defined in this Section) in advance on the first day of each month thereafter; plus

(b) Subject to possible adjustment as provided in the following paragraph, Five Thousand Two Hundred Dollars (\$5,200) per month for the Non-Theatre Portion of the Leased Premises (which portion is outlined and indicated on Exhibit A) beginning on the Rental Commencement Date of the Non-Theatre Portion of the Leased Premises (as defined in this Section) in advance on the first day of each month thereafter.

No later than sixty (60) days following the date Subtenant first occupies the Non-Theatre Portion of the Leased Premises, Subtenant shall have the election, in its sole discretion, to measure the rentable square footage of the Non-Theatre Portion of the Leased Premises. If it is determined that the rentable square footage of the Non-Theatre Portion of the Leased Premises is more or less than eight thousand (8,000) rentable square feet, then monthly Base Rent for the Non-Theatre Portion of the Leased Premises shall be recalculated by multiplying the rentable square footage of the Non-Theatre Portion of the Leased Premises by Sixty Five Cents (\$0.65). The parties shall execute a memorandum stating the new amount of Base Rent for the Non-Theatre Portion of the Leased Premises if it is adjusted pursuant to this paragraph. If the adjusted Base Rent is less than Five Thousand Two Hundred Dollars (\$5,200), Subtenant shall receive a credit against the next installment(s) of Base Rent for any previous overpayment of Base Rent, and if the adjusted Base Rent is more than Five Thousand Two Hundred Dollars (\$5,200), Subtenant shall pay any underpayment of Base Rent at the time the next payment of Base Rent is due.

Base Rent shall be paid without prior notice or demand, and, except as may be authorized under Sections 3.2 and 3.3, without any setoff, counterclaim, or deduction whatsoever. Base Rent shall be paid at Sublessor's offices, or such other place as Sublessor shall direct. If the Term ends on a day other than the last day of the calendar month, Base Rent for any such partial month shall be prorated at the rate of one-thirtieth ($1/30^{th}$) of the monthly Base Rent for each day of the last partial month of the Term. As an additional consideration for this Sublease, beginning on the Sublease Execution Date, Subtenant shall pay any and all Taxes levied or imposed against the Leased Premises during the Term in accordance with the provisions of Section 27.

The "Rental Commencement Date for the Theatre Portion of the Leased Premises" is the date that is the earlier of the following: (a) the date that Subtenant commences its business in the Theatre Portion of the Leased Premises to the public by conducting its first auction preview; (b) two hundred forty (240) days following the date that Sublessor delivers possession of the Leased Premises pursuant to Section 2.2 and the premises under the Building 525 Sublease; or (c) sixty (60) days following the date the City of Alameda issues certificates of occupancy covering the Leased Premises and the premises under the Building 525 Sublease after Subtenant has completed construction of its Initial Improvements under this Sublease and the Building 525 Sublease. When the Rental Commencement Date for the Theatre Portion of the Leased Premises is ascertained, the parties shall execute a memorandum stating the Rental Commencement Date for the Theatre Portion of the Leased Premises. If the Rental Commencement Date for the Theatre Portion of the Leased Premises is a day other than the first day of a month, Base Rent for the Theatre Portion of the Leased Premises shall be prorated at the rate of one thirtieth ($1/30^{\text{th}}$) of the Monthly Base Rent for each day within the first partial month.

The "Rental Commencement Date for the Non-Theatre Portion of the Leased Premises" is the date that is the earlier of the following: (a) the date that Subtenant occupies and commences its business operations in the Non-Theatre Portion of the Leased Premises; or (b) sixty (60) days following the date that Sublessor delivers possession of the Leased Premises pursuant to Section 2.2 and the premises under the Building 525 Sublease. When the Rental Commencement Date for the Non-Theatre Portion of the Leased Premises is ascertained, the parties shall execute a memorandum stating the Rental Commencement Date for the Non-Theatre Portion of the Leased Premises. If the Rental Commencement Date for the Non-Theatre Portion of the Leased Premises is a day other than the first day of a month, Base Rent for the Non-Theatre Portion of the Leased Premises shall be prorated at the rate of one-thirtieth ($1/30^{\text{th}}$) of the Monthly Base Rent for each day within the first partial month.

Base Rent shall be subject to increase on each anniversary date following the Sublease Execution Date (the "Adjustment Date(s)") as provided in the following paragraphs.

The base for computing the adjustment is the Consumer Price Index for all Urban Consumers (base year 1982-84) for San Francisco-Oakland-San Jose, California CMSA, published by the United States Department of Labor, Bureau of Labor Statistics (the "Index") which is published and in effect on the Sublease Execution Date ("Beginning Index"). If the Index which is published and in effect on the Adjustment Date ("Extension Index") has increased over the Beginning Index, the monthly Base Rent thereafter until the next such adjustment shall be determined by multiplying Eight Thousand Seven Hundred Dollars (\$8,700), as possibly changed as provided in the second paragraph of this Section, by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index; provided, however, on each Adjustment Date, monthly Base Rent shall be increased by a minimum of three percent (3%) of the monthly Base Rent payable immediately before the Adjustment Date in question, and not to exceed six percent (6%) of the monthly Base Rent payable immediately before the Adjustment Date in question.

If the Index is changed so that the base year differs from that referenced in the preceding paragraph, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is

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property in Alameda County to set the amount of Monthly Fair Rental Value of the Leased Premises. If one party does not appoint an appraiser within the fifteen (15) day period, the single appraiser appointed shall be the sole appraiser and shall set the amount of Monthly Fair Rental Value of the Leased Premises within thirty (30) days following the date such appraiser is appointed.

Within thirty (30) days following the appointment of the second appraiser, each appraiser shall submit to the other appraiser and Sublessor and Subtenant its determination of the Monthly Fair Rental Value of the Leased Premises. If the two appraisals are within ten percent (10%) of each other, then the Fair Rental Value of the Leased Premises shall be the average of the two appraisals. If only one appraiser submits its appraisal within the thirty (30) day period, the single appraisal shall be the Fair Rental Value of the Leased Premises for the purpose of this Section 3.2.1.

If the two appraisals referenced in the preceding paragraph are not within ten percent (10%) of each other, the two appraisers shall attempt to select a third appraiser meeting the qualification set forth in this Section within ten (10) days after the last day the two appraisers are given to set the Monthly Fair Rental Value of the Leased Premises. If the appraisers are unable to agree on a third appraiser, either party by giving ten (10) days' notice to the other party can file an action in the Alameda County Superior Court solely for the purpose of selecting a third appraiser. Each of the parties shall bear one-half of the cost of appointing the third appraiser and of the third appraiser's fee. The third appraiser, however selected, shall be a person who has not previously acted in any capacity for or against either party. The third appraiser must not know the amounts of the proposed amounts of Monthly Fair Rental Value of the Leased Premises submitted by the two appraisals.

Within thirty (30) days after the selection of the third appraiser, the third appraiser shall submit to the parties and the two appraisers, a statement of the third appraiser's individual and separate valuation of the Monthly Fair Rental Value of the Leased Premises. The third appraiser must also certify under penalty of perjury in the statement that he or she does not know either of the amounts of the proposed amounts of Monthly Fair Rental Value of the Leased Premises submitted by Sublessor and Subtenant. The Monthly Fair Rental Value of the Leased Premises shall be the average of the two appraisals (out of the three appraisals) that are the closest to each other.

For purposes of this Section, the phrase "Monthly Fair Rental Value of the Leased Premises" shall mean the amount of monthly rent that a ready, willing, and able tenant is willing to pay for the Leased Premises taking into account, in addition to all other relevant factors, the fact that the Extended Term is five (5) years and that monthly Base Rent during such Extended Term shall be subject to annual adjustments as provided in Section 3.2.2, considering the uses permitted under this Sublease, but assuming, however, that the Leased Premises is in the physical condition as delivered to Subtenant pursuant to Section 2.2, without taking into account the value of any alterations, improvements, and additions that Subtenant shall have made to the Leased Premises.

When monthly Base Rent for the first twelve (12) full months of the Extended Term is established as herein provided, the parties shall execute an amendment to this

Sublease stating the new amount of monthly Base Rent; provided, the execution of such an amendment is not a condition precedent to Subtenant's obligation to pay the new amount of monthly Base Rent.

Monthly Base Rent for the Extended Term shall take effect as of the first day of the Extended Term. However, if monthly Base Rent has not been determined as of the first day of the Extended Term, Subtenant shall continue to pay the monthly Base Rent then in effect for the last month of the Initial Term until the new monthly Base Rent for the Extended Term has been determined pursuant to this Section. Subtenant shall pay any deficiency within thirty (30) days after the new monthly Base Rent for the Extended Term has been determined if the new monthly Base Rent is greater than the amount subtenant had been paying, otherwise Sublessor shall credit any overpayment made by Subtenant to the next installment(s) of monthly Base Rent if the new monthly Base Rent is less than the amount Subtenant had been paying.

3.2.2 Periodic Adjustment of Monthly Base Rent During Extended Term. Monthly Base Rent during the Extended Term shall be subject to increase on each anniversary date of the commencement of the Extended Term ("Adjustment Date(s)") as follows: The basis for computing an adjustment is the Index (defined in Section 3.1) which is published and in effect on the first day of the Extended Term ("Beginning Index"). If the Index published and in effect on an Adjustment Date ("Extension Index") has increased over the Beginning Index, the monthly Base Rent thereafter until the net such adjustment shall be determined by multiplying the amount of monthly Base Rent that is payable during the first twelve (12) full months of the Extended Term by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index; provided, however, on each Adjustment Date, monthly Base Rent shall be increased by a minimum of three percent (3%) of the monthly Base Rent payable immediately before the Adjustment Date in question, and not to exceed six percent (6%) of the monthly Base Rent payable immediately before the Adjustment Date in question.

If the Index is changed so that the base year referenced in Section 3.1 changes, the Index shall be converted as provided in Section 3.1.

3.3 Base Rent Offset. Sublessor shall permit Subtenant to receive a partial offset from monthly payments of Base Rent equal to the actual cost of certain physical improvements made by Subtenant to the Leased Premises ("Qualified Shell Improvement Costs"), as provided in Section 3.3.13.3. The costs of the following items of work performed by Subtenant will qualify as Qualified Shell Improvement Costs:

3.3.1 Installation of fire sprinkler systems or renovation, upgrade or repair of existing fire sprinkler systems.

3.3.2 Work, including demolition, required to comply with written requirements or requests made by the City of Alameda concerning occupancy of the Leased Premises.

3.3.3 Extension of electrical service to and inside the Leased Premises (the costs of extending the electrical distribution system within interior of the Leased Premises is

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not an "extension of electrical service to the Leased Premises" under this provision), and repairing the existing electrical system and facilities.

3.3.4 All costs of upgrades for work to the Leased Premises required under the Americans With Disabilities Act, other applicable Laws required to be complied with as a condition to the issuance of a certificate of occupancy, and as required by the City of Alameda Building Department, including, without limitation, renovation of restrooms to comply with the Americans With Disabilities Act, and the installation of heating, ventilating, and air-conditioning systems and facilities.

3.3.5 Work within the Leased Premises, to correct safety or health hazards, identified in the Joint Inspection, which Subtenant has agreed to correct pursuant to the agreement required under Section 6.1, or otherwise requested by Subtenant and approved by Sublessor.

3.3.6 The installation and repair of fire alarm and security systems required by the City of Alameda Fire Department pertaining to the building shell of the Leased Premises, and not any that is required by virtue of any office space upgrades within the Leased Premises.

3.3.7 Work to verify, establish, and repair utilities, including water, gas, sewer and telephone connections to the Leased Premises.

3.3.8 Structural or seismic upgrade work pertaining to the building shell of the Leased Premises, and not any that relates to any office space upgrades within the Leased Premises, as required by the Government or the City of Alameda Building Department, or otherwise approved by Sublessor.

3.3.9 Roof repairs and/or replacements to the roof.

3.3.10 Exterior structural work, including waterproofing exterior walls (provided that any exterior repainting and any other so-called exterior "cosmetic" work shall not constitute a Qualified Shell Improvement Cost, and Subtenant shall not be required to do any exterior repainting and/or make any exterior cosmetic work to the Leased Premises at any time during the Initial Term and the Extended Term).

3.3.11 Work not listed under Sections 3.3.1 through 3.3.10 that Subtenant has claimed in writing to Sublessor qualifies as Qualified Shell Improvement Costs as being part of building shell improvements related to general requirements for use and occupancy of the Building, and not being for specific occupancy requirements of Subtenant or parties occupying through Subtenant, and which Sublessor has approved as so qualifying.

3.3.12 All architectural, design, plan, permit and inspection fees and expenses incurred by Subtenant in connection with the work described in Sections 3.3.1 through 3.3.11.

3.3.13 To qualify any costs for Qualified Shell Improvement Costs, Subtenant must comply with the following:

3.3.13.1 Subject to the following paragraph, Subtenant must provide to Sublessor plans or descriptions of the proposed work, in form and content reasonably acceptable to Sublessor, in advance of commencement of such work, in accordance with the applicable requirements of **Section 8**. Sublessor shall notify Subtenant in writing, within ten (10) working days of receipt of such plans or descriptions, whether or not, in Sublessor's reasonable opinion, such proposed work qualifies as Qualified Shell Improvement Costs. If Sublessor fails to approve or reject such proposed work as Qualified Shell Improvement Costs within ten (10) working days of receipt of Subtenant's plans or description, then the costs of such work as shown on the plans or description submitted shall be deemed to qualify as Qualified Shell Improvement Costs. If Sublessor notifies Subtenant that such proposed work does not qualify as Qualified Shell Improvement Costs, such notice shall set forth in reasonable detail the reasons for Sublessor's decision. Sublessor may only reject work as qualifying for Qualified Shell Improvement Costs if such work does not come within any of the provisions of **Sections 3.3.1 through 3.3.11**.

The provisions of the preceding paragraph to the contrary notwithstanding, the parties agree that the items of work and the scope of work set forth on **Exhibit D** qualify as Qualified Shell Improvement Costs.

3.3.13.2 Subtenant shall provide to Sublessor an itemized statement of such Qualified Shell Improvement Costs along with such documentation as reasonably required by Sublessor evidencing and verifying that Subtenant has completed the work and that Subtenant has expended the funds for such Qualified Shell Improvement Costs.

3.3.13.3 For purposes of the credit against monthly Base Rent as provided in this Section, the total amount of Qualified Shell Improvement Costs shall not exceed the lesser of the actual costs incurred by Subtenant or One Hundred Seventy-Five Thousand Dollars (\$175,000).

When the Qualified Shell Improvement Costs have been determined, such amount shall be amortized on a straight line monthly basis, at an interest rate as provided in the following paragraph, over the number of full months for the remainder of the Term (both Initial Term and Extended Term) following the Rental Commencement Date. The monthly amount so determined shall be credited to monthly Base Rent payable during the Term, subject to the adjustment provisions of this Section.

The annual interest rate on the uncredited amount of the Qualified Shell Improvement Costs is an amount equal to the Prime Rate (as defined in this Section) on the Rental Commencement Date and on each Adjustment Date as provided in this Section plus one percent (1%), as calculated from time-to-time as provided in the following paragraph. Such interest rate is referred to as the "Applicable Interest Rate."

The Applicable Interest Rate shall be subject to change as of the first day of the thirteenth (13th) full month following the Rental Commencement Date, and each twelve (12) months thereafter ("Adjustment Date(s)").

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If on an Adjustment Date the Applicable Interest Rate is different from the previous Applicable Interest Rate, then the Applicable Interest Rate for the next twelve (12) months shall be the new Applicable Interest Rate and the monthly amount to be credited against monthly Base Rent shall be recalculated as a result in the change of the Applicable Interest Rate.

The "Prime Rate" is the Prime Rate published in the Money Rates section of the Wall Street Journal.

3.3.13.4 All fixtures installed by Subtenant shall remain sole property of Subtenant.

3.4 [Deleted]

3.5 [Deleted]

3.6 **Security Deposit.** Security deposit shall be waived.

3.7 **Additional Rent.** All sums payable by Subtenant to Sublessor under this Sublease not otherwise payable as Base Rent, and the sums payable pursuant to Sections 12 and 26 of this Sublease, shall be deemed additional rent ("Additional Rent"). For the purposes of this Sublease, Base Rent and Additional Rent are hereinafter collectively referred to as "Rent."

3.8 **Default Rate.** If any portion of Rent shall be due and unpaid for more than five (5) days after written notice from Sublessor that the same is past due, it shall thereafter bear interest at the per annum rate equal to two percent (2%) greater than the prime rate of interest announced from time to time by the Wall Street Journal (the "Default Rate"), from the due date until the date of payment by Subtenant.

3.9 **Late Charge.** If any payment of Rent or any part thereof to be made by Subtenant to Sublessor pursuant to the terms of this Sublease shall become overdue for a period in excess of five (5) days after written notice from Sublessor that the same is past due, a late charge of five cents for each dollar overdue shall be paid by Subtenant for the purpose of defraying the expense incident to handling such delinquent payment, together with interest from the date such payment or part thereof was due at the Default Rate. Nothing herein or in the imposition or acceptance of a late charge by Sublessor shall be construed as a waiver of any rights of Sublessor arising out of any default of Subtenant; the right to collect any late charge or interest is separate and apart from any rights or remedies of Sublessor relating to any default by Subtenant.

3.10 **Survival.** The obligation of Subtenant with respect to the payment of Rent shall survive the expiration or termination of the Term of this Sublease. The obligation of Sublessor to pay any sum to Subtenant pursuant to this Sublease shall survive expiration or termination of the Term of this Sublease.

3.11 **Net Lease.** Subtenant hereby acknowledges and agrees that this Sublease is intended to be a triple net lease to Sublessor, as such term is commonly used for the leasing of industrial properties, except as expressly otherwise provided in this Sublease, such that Sublessor

is not responsible for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the Leased Premises, or the use and occupancy thereof, or the contents thereof or the business carried on therein, except as otherwise provided in this Sublease, and that Subtenant shall pay all charges, impositions, costs and expenses of every nature and kind relating to the Leased Premises, except as expressly otherwise provided in this Sublease. As set forth in this Sublease, all costs of maintenance and repair of the Leased Premises, all costs of insuring the Leased Premises, and all Taxes, as that term is defined in Section 26, allocated to the Leased Premises shall be paid by Subtenant, except as expressly otherwise provided in this Sublease. Notwithstanding anything contained in this Sublease to the contrary, Subtenant shall have no obligation to make any capital or extraordinary improvements or repairs to the Leased Premises or to perform any environmental remediation of or at the Leased Premises, except as and to the extent provided in Section 13, or to the extent any of the same is necessitated by Subtenant's negligence or willful misconduct or results from Subtenant's misuse of hazardous materials and substances.

4. USE OF LEASED PREMISES. The sole purpose for which the Leased Premises may be used by Subtenant and its directors, officers, employees, agents, and contractors ("Authorized Representatives"), licensees, and invitees, is for use as a warehouse, pre-sale viewing of antiques and other merchandise, auction house purposes, ancillary office uses, and any other uses permitted by the City of Alameda Use Permit.

4.1 No Other Uses. The Leased Premises shall not be used for any purposes other than those described in the preceding paragraph without the prior written approval of the Government and Sublessor, which approval Sublessor will not unreasonably withhold or delay.

4.2 Compliance With ROD and Other Governmental Documents. Any use or uses of the Leased Premises shall comply with all terms and conditions of the LIFOC, this Sublease, and the Alameda Reuse and Redevelopment Plan, subject to the uses being consistent with the National Environmental Policy Act (NEPA) Record of Decision ("ROD") for the disposal and reuse of the former Naval Air Station Alameda, and all conditions expressed therein as well as all conditions expressed in any Categorical Exclusion or other environmental action with respect to the uses of the Leased Premises prepared for compliance with the National Environmental Protection Act. A copy of the Categorical Exclusion is attached as Exhibit E. A copy of the ROD is available for review at Sublessor's offices during normal business hours.

4.3 No Commitment for Future Conveyance. Subject to Section 38, Subtenant understands and acknowledges that this Sublease is not and does not constitute a commitment by Sublessor or Government to create any priority with regard to the ultimate disposal of the Leased Premises, in whole or in part, to Subtenant.

4.4 Use of Hazardous or Toxic Materials. In accordance with 10 U.S.C. 2692, Subtenant is prohibited from storing or disposing non-DOD-owned toxic or Hazardous Materials, which includes materials that are of an explosive, flammable, or pyrotechnic in nature, on a military installation, except to the extent authorized by a statutory exception to 10 U.S.C. 2692 or as authorized by the Secretary of Defense or his or her designee. In the event that Subtenant desires to store or dispose of any such non-DOD-owned toxic or Hazardous Materials, which includes materials that are of an explosive, flammable, or

pyrotechnic in nature, on a military installation, except to the extent authorized by a statutory exception to 10 U.S.C. 2692, Subtenant shall contact Sublessor in writing and Sublessor shall coordinate with the Government the obtaining of any approvals required to be obtained from the Secretary of Defense or his or her designee.

4.5 Use Permit. Subtenant and any of its subtenants shall obtain a City of Alameda Use Permit and other applicable City permits and approvals for any intended use of the Leased Premises.

4.6 Historic or Archeological Property. Subtenant shall not undertake any activity that may affect an identified historic or archeological property, including excavation, construction, alteration, maintenance or repairs of the Leased Premises, Historic Buildings, or sites in a manner that is inconsistent with the Memorandum of Agreement Among the United States Navy, the Advisory Council on Historic Preservation, the California State Historic Preservation Officer, and the City of Alameda regarding historic properties on the former Naval Air Station Alameda, set forth as Exhibit F to the EDC MOA. Buried cultural materials may be present on the Leased Premises. If such materials are encountered, Subtenant shall stop work immediately and notify Government and Sublessor.

5. ASSIGNMENT AND SUBLETTING.

5.1 Subject to the provisions of Section 5.3, Subtenant shall not, without Sublessor's prior written reasonable consent pursuant to the provisions of Section 5.2: (a) assign this Sublease, convey all of Subtenant's interest in the Leased Premises, pledge or otherwise encumber Subtenant's leasehold interest under this Sublease, or otherwise transfer (voluntary or otherwise) its entire interest in this Sublease; or (b) sublease Subtenant's entire interest in the Leased Premises.

5.2 Subtenant's request for consent to any sublease or assignment that is required by Section 5.1 shall be in writing and shall contain the name, address, and description of the business of the proposed assignee or subtenant, its most recent financial statement and other evidence of financial responsibility, its intended use of the Leased Premises, and the terms and conditions of the proposed assignment or subletting (excluding confidential provisions and information not relevant to Sublessor's decision to consent or not consent). Within thirty (30) days from receipt of such request, Sublessor shall in writing either grant or refuse consent. Sublessor agrees that it shall not unreasonably withhold its consent to a proposed assignment or sublease.

5.3 The provisions of Section 5.1 to the contrary notwithstanding, the following transactions do not require Sublessor's consent:

5.3.1 A sublease, concession, license, or other type of occupancy agreement to a third party in connection with the conduct of Subtenant's business described in Section 4; and

5.3.2 An assignment or sublease to a parent, subsidiary, or affiliate of Subtenant, and/or in connection with a sale of substantially all of Subtenant's assets, merger, consolidation, or reorganization (other than a reorganization in bankruptcy), provided that prior

to the effective date of any such assignment or sublease, Subtenant shall deliver to Sublessor a copy of the executed assignment instrument or sublease.

5.4 If this Sublease is assigned or if the Leased Premises or any part thereof is sublet or occupied by anybody other than Subtenant, Sublessor may, after default by Subtenant, collect rent from the assignee, subtenant, or occupant, and apply the net amount collected to the Rent herein reserved. Where Sublessor's consent is required to a subletting or assignment, as provided in Section 5.1, it shall be a condition to the effectiveness thereof that a fully executed copy of the sublease or assignment instrument be furnished to Sublessor and that any assignee assumes in writing all obligations of Subtenant hereunder. No consent to any assignment, subletting or occupancy shall be deemed a waiver of any of Subtenant's covenants contained in this Sublease nor the acceptance of the assignee, subtenant or occupant as Subtenant, nor a release of Subtenant from further performance of any covenants and obligations under this Sublease.

5.5 Any consent given by Sublessor to an assignment or subletting of this Sublease shall not constitute a waiver of the necessity of such consent to any subsequent assignment or subletting if required under this Section 5.

6. JOINT INSPECTION REPORT. Prior to execution of this Sublease, a joint inspection of the Leased Premises was conducted by representatives of Sublessor and the Government, and Subtenant. A report of the condition of the Leased Premises, including any deficiencies which were found to exist, the "Joint Inspection Report," is attached as Exhibit G to this Sublease, and is incorporated into this Sublease by this reference.

6.1 Correction of Safety and Health Hazards. Any safety or health hazards identified during the Joint Inspection shall be corrected prior to use and occupancy of the Leased Premises. Responsibility and expense for correcting any such hazards shall have been determined by mutual agreement between Sublessor, Government and Subtenant before commencement of this Sublease, failing which agreement shall result in this Sublease and the Building 18 Sublease not being effective. Subtenant shall have the option, but not the obligation, to correct any condition identified in the Joint Inspection Report, on behalf of Sublessor, so as to avoid any termination of the LIFOC pursuant to Section 14 thereof.

6.2 Subsequent Discoveries. If during any subsequent inspection prior to the Rental Commencement Date Subtenant finds that the Leased Premises and/or the premises covered by the Building 18 Sublease is/are not in fact in a condition reasonably suitable for the use intended by Subtenant, and will not for whatever reason be rendered reasonably suitable for such use by the Government, or Sublessor, then Subtenant may terminate this Sublease, without incurring any liability to Sublessor, upon thirty (30) days written notice to Sublessor, in which event the parties shall be relieved of further obligations except for Surviving Obligations.

6.3 Warranty by Government or Sublessor. Subject to Sections 6.1 and 6.2 and other Sections of this Sublease concerning the physical condition of the Leased Premises, the Leased Premises are delivered to Subtenant by Sublessor "as is, where is," and, as such, Sublessor and the Government make no warranty as to such facilities and property either as to their usability generally or as to their fitness for any particular purpose. Without limiting

application of the foregoing, Subtenant specifically acknowledges that the roof of the Leased Premises may be defective and may leak and require repair during the Term of this Sublease. In addition to the hold harmless and indemnification provisions contained elsewhere in this Sublease, Subtenant agrees to hold Sublessor harmless for any damage to any property resulting from or related in any way to the defective roof, including, without limitation, damage from water and other elements leaking through the roof and into the Leased Premises, and from any interruption of its business, loss of income or other financial loss resulting from or related in any way to Sublessor's decision to, and Sublessor's actual repair of, the roof. Should this Sublease terminate and not be succeeded by either another lease or sublease, or a conveyance of title to the Leased Premises, or by active negotiation for either lease or conveyance, Subtenant shall turn over to Government the Leased Premises in no less than substantially the same physical condition in which the Leased Premises were received by Subtenant, except for reasonable wear and tear, damage or destruction pursuant to Section 14.4.1, and Sublessor's repair and maintenance obligations. The Joint Inspection Report shall be used, among other things, as the measurement of the condition of the Leased Premises on the Sublease Effective Date.

6.4 Possession of Leased Premises. Subject to Sections 6.1 and 6.2 and other Sections of this Sublease concerning the physical condition of the Leased Premises, Subtenant's taking possession of the Leased Premises shall be conclusive evidence that the Leased Premises were in satisfactory condition when Subtenant took possession, except as to latent defects. No promises of Sublessor to alter, remodel, repair or improve the Leased Premises and no representation respecting the condition of the Leased Premises have been made by Sublessor to Subtenant, except as expressly stated in this Sublease.

7. [DELETED]

8. ALTERATIONS.

8.1 Subtenant shall have the right to construct and install those improvements and alterations listed on Exhibit H ("Initial Improvements") pursuant to the applicable provisions of Section 8.2.

Subtenant shall not make any subsequent interior structural alterations, improvements, or additions to the Leased Premises, and/or any exterior alterations, improvements, or additions whether they are structural or non-structural (collectively the "Work"), without Sublessor's prior written consent in each and every instance, which consent will not be unreasonably withheld or delayed. All Work shall be at Subtenant's sole cost. Any Work which adds to, removes, or otherwise alters the structural components of the Leased Premises, including the roof, any support structures, foundations, and other life safety systems of the Leased Premises, shall be deemed to be structural in nature unless Sublessor states in writing otherwise. In the event Subtenant desires to perform any Work, Subtenant shall first submit to Sublessor a written description of the proposed Work, and, if Sublessor requires, plans and specifications relating thereto, and obtain Sublessor's written consent prior to commencing it. Approval of Work may not be conditioned upon providing Sublessor and the Government with a performance and payment bond satisfactory to them in all respects if such bond is reasonably necessary to protect the interests of the Government and Sublessor, in addition to other requirements reasonably necessary to protect the interests of the Government and Sublessor.

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8.2 Because of the possibility that the Leased Premises will ultimately be under the jurisdiction of the City of Alameda for compliance with health and safety regulations and requirements, prior to undertaking or doing any Initial Improvements and Work on the Leased Premises, or any portion thereof, Subtenant agrees to submit an application to the City of Alameda Leased Premises Department if an application is required, and, if also required by the City, to other City departments, for review and obtaining approval of such plans and proposals for such Initial Improvements and Work to the Leased Premises. In addition to the application to the City of Alameda Building Department, if required, Subtenant shall also submit a narrative description of all proposed Work on the Leased Premises, with the projected schedule and costs thereof, and an analysis of how and why the Work will or will not be visible from the exterior of the Leased Premises, or affect any historically significant features, or be substantially likely to adversely affect the environmental clean-up of the Station, or the environment, or adversely impact the structure of the Leased Premises. All Work shall be done at the expense of Subtenant without any costs or obligation to Sublessor. No Work shall be undertaken by Subtenant on the Leased Premises, unless such Work has been approved by the City Building Department if approval is required, or such review has been waived in writing. In addition, there shall be no Work performed on the Leased Premises without prior written authorization from the Government under the LIFOC to the extent required, and in the manner set forth, in Section 8 thereof, and Sublessor shall exercise commercially reasonable efforts to obtain the Government's consent.

8.2.1 Actual location of utility lines is approximate at the Station. In the event Subtenant intends to perform Work requiring excavation below the surface of the Leased Premises (whether inside or outside of the Leased Premises), or construction of a permanent structure on the Leased Premises, Subtenant must determine actual location of utilities using standard methods (i.e., potholing, metal fish line, etc.) and submit this information with an application to excavate or application to build a permanent structure to the City of Alameda Public Works Department for approval. The application should include a site plan showing the location of utilities and that construction will not take place above the utility line or within the utility easement, specifically showing that no permanent structures will be constructed in these areas.

8.3 At the expiration or termination of the Term, all improvements, whether temporary or permanent in character, made by Sublessor or Subtenant in or upon the Leased Premises shall become Sublessor's property and shall remain upon the Leased Premises at the expiration or termination of the Term of this Sublease without compensation to Subtenant, except Subtenant shall have the right to remove movable office furniture, trade fixtures, fixtures, office and professional equipment, vintage theatre fixtures, artwork, alarm systems, and any Work approved by Sublessor as to which, at the time of such approval, Sublessor stated, in writing, that such Work may be removed at the expiration or termination of the Term.

8.4 The Government has provided to Sublessor an asbestos survey for the Leased Premises. Before Subtenant undertakes any alterations, modifications, or any other Work which will disturb any known friable or non-friable asbestos in the Leased Premises, Subtenant, as part of its improvement plan submittal, shall set forth a plan stating how it will handle any such asbestos, which plan must be reviewed and approved by Sublessor and the Government before any such work which will disturb the asbestos in the Leased Premises can commence.

The Government's asbestos survey for the Leased Premises is available for review by Subtenant at Sublessor's offices during normal business hours.

9. ACCESS BY GOVERNMENT AND SUBLESSOR. In addition to access required under Section 13, the Government and Sublessor shall be allowed access to the Leased Premises at all reasonable times throughout the Term of this Sublease, for any reasonable purposes upon prior written notice to Subtenant. The Government and Sublessor will normally give Subtenant a minimum 24-hour prior notice of an intention to enter the Leased Premises, unless the entry is required on an emergency basis for safety, environmental, operations or security purposes. Unless an emergency situation, all such entry by the Government shall be accompanied by an Authorized Representative of Subtenant. Subtenant shall ensure that a telephone roster is maintained at all times for on-call persons representing Subtenant who will be available on short notice, 24 hours a day, 365 days per year, and possess and have authority to use all keys necessary to gain access to the Leased Premises, to facilitate entry in time of emergency. Subtenant shall have no claim against Sublessor for the exercise by the Government of its right of access as herein provided. Subtenant shall have no claim against Sublessor for the exercise of Sublessor's right of access as herein provided, except for damage or injury caused by the willful acts and/or gross negligence of Sublessor. Nothing in this Section 9 shall be construed as requiring Subtenant to provide Sublessor keys to the Leased Premises.

9.1 Portions of the utilities systems serving the Station may be located within the Leased Premises. Subtenant agrees to allow the Government, Sublessor and their utility suppliers reasonable access to the Leased Premises for operation, maintenance, repair and replacement of these utilities systems as may be required. In executing operation, maintenance, repair or replacement of these systems, Sublessor agrees to take all reasonable steps to limit interference with the use of the Leased Premises by Subtenant.

10. UTILITIES.

10.1 Provision of Utilities. Utilities will not be furnished to Subtenant by Sublessor. The obtaining of such utility services is solely the responsibility of Subtenant.

10.2 Heating of Leased Premises. Subtenant acknowledges that the Government's pre-existing steam heating facilities will not be operable for the Leased Premises during the entire Term of this Sublease. Subtenant acknowledges that Subtenant will be responsible for providing heating to the Leased Premises.

10.3 No Warranty. Subtenant acknowledges that pursuant to the provisions of the LIFOC, the Government in no way warrants the conditions or adequacy of its utility systems for the purposes intended by Subtenant.

10.4 Acceptance of Utility Services. Subtenant agrees that it will accept needed utility services from any private or municipal supplier, who should during the Term of this Sublease, become capable of delivering such services to the Leased Premises at commercial rates. Subtenant agrees that it will investigate the feasibility of obtaining needed utility services directly from private or municipal suppliers.

10.5 New Utilities. Subtenant agrees that any costs required to provide and maintain "new utilities" to the Premises following Sublease commencement shall be the sole responsibility of Subtenant. "New utilities" shall include utility services and utility systems that were not available to the Premises on the Sublease Commencement Date, including telecommunications.

11. NO INTERFERENCE WITH GOVERNMENT OPERATIONS. Subtenant shall not conduct operations, nor make any alterations, that would interfere with or otherwise restrict Government operations or environmental clean-up or restoration actions by the Government, Environmental Protection Agency (EPA), State of California, or their contractors. Environmental clean-up, restoration, or testing activities by these parties shall take priority over Subtenant's use of the Leased Premises in the event of conflict. The Government has agreed in the LIFOC to make every reasonable effort to develop a plan to conduct any remediation of environmental contamination in a manner that minimizes interference with Sublessor's or Subtenant's use of the Leased Premises, and to provide reasonable and timely prior written notice of Government operations that may or will interfere with Sublessor's or Subtenant's use of the Leased Premises. Any work by Sublessor or Subtenant in the proximity of Operable Units that are part of a National Priorities List (NPL) site may require written approval by the Government's Remedial Project Manager. In the event any activities by the Government, as herein provided, materially interferes with Subtenant's business and operations at the Leased Premises, Rent shall be abated or reduced based upon the extent to which Subtenant's business and operations are interfered, and if such interference occurs for longer than thirty (30) days, Subtenant shall have the election at any time thereafter to terminate this Sublease, in which event the parties shall be relieved of future obligations under this Sublease except Surviving Obligations.

12. PROTECTION AND MAINTENANCE SERVICES. Subject to the provisions of Section 14.4.1, and the specific provisions of Section 12.1, the services to be provided by Subtenant shall include the furnishing of all labor, supervision, materials, supplies, and equipment necessary to provide the structural (including roof) maintenance; plumbing maintenance; electrical maintenance; maintenance of heating and cooling systems; maintenance of exterior utility systems that serve only the Leased Premises; maintenance of pavement and grounds immediately adjacent to the Leased Premises (including grass cutting, shrub trimming, and tree removal); pest control; security within the Leased Premises; refuse collection, removal, and disposal; and utilities maintenance on the Leased Premises necessary for the protection of Government property. For specifics as to such protection and maintenance required to be provided by Subtenant hereunder the following provisions shall apply.

12.1 Maintenance - Subtenant's Obligations. The degree of maintenance services to be furnished by Subtenant shall be that which is sufficient to maintain weather tightness, structural stability, protection from fire hazards or erosion, and elimination of safety and health hazards, which arise during the Term and which are not caused by the actions of Sublessor, the Government or their respective Authorized Representatives, so that the Leased Premises, facilities, and related personal property being serviced will remain in the condition in which they exist at the Sublease Execution Date as documented in the Joint Inspection Report, ordinary wear and tear excepted. Both Sublessor and Government, upon due notice, may inspect the Leased Premises, facilities, and related personal property to insure performance of the

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maintenance set forth herein. Should this Sublease terminate and not be succeeded by either another lease, or a conveyance of title to the Leased Premises, or by active negotiation for either lease or conveyance, Subtenant shall turn over to Sublessor the premises, facilities, and related personal property in the same condition in which they were received, except reasonable wear and tear, damage or destruction pursuant to Section 14.4.1, and/or damage or injury caused by the acts or omissions of Sublessor and its Authorized Representatives.

The provisions of the preceding paragraph to the contrary notwithstanding:

(a) If prior to the Rental Commencement Date Subtenant discovers structural matters in the Leased Premises that will adversely affect the Initial Improvements and/or Subtenant's use and occupancy of the Leased Premises, Subtenant shall have the election to terminate this Sublease, in which event the parties shall be relieved of further obligations under this Sublease except for Surviving Obligations.

(b) In connection with Subtenant's obligations to maintain the structural stability of the Leased Premises, Subtenant shall not be required to retrofit in any manner the Leased Premises that may be necessary in order to maintain the structural stability of the Leased Premises.

12.2 Maintenance - Sublessor's Obligations. Subject to the provisions of Section 12.1, Sublessor shall repair and maintain in good condition during the Term the following: (a) common exterior utility systems; and (b) damage or injury to the Leased Premises caused by the acts or omissions of Sublessor and its Authorized Representatives.

In the event Sublessor shall enter into a sublease (or subleases) with another subtenant(s) that grants a subtenant the right to use on a nonexclusive basis one or more of the parking lots described in Section 1, any such sublease shall require the subtenant to periodically reimburse Subtenant for the subtenant's share of costs and expenses incurred by Subtenant in maintaining and repairing any such parking lots (including costs and expenses in resurfacing, restriping, and maintaining landscaping). Such costs and expenses shall be shared on a pro rata basis (based upon respective rentable square footage) among the subtenants (including Subtenant) using a parking lot. A subtenant shall be required in its sublease to reimburse Subtenant for the subtenant's share of such costs and expenses within fifteen (15) days following receipt of a statement from Subtenant covering costs and expenses then payable.

12.3 Housekeeping. Debris and unused materials shall be promptly removed from the Leased Premises. At expiration or termination of the Term, Leased Premises shall be left without containers, Subtenant's equipment, and other undesirable materials, and in a reasonably acceptable clean condition.

12.4 Security Protection. Subtenant shall provide for all security and safety within the Leased Premises. Any crimes or other offenses, involving damage to or theft of Government property shall be reported to the appropriate authorities for their investigation and disposition and to the Government and Sublessor as property owner and lessor, respectively.

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12.5 Services. Subtenant shall be responsible, at its cost and expense, for obtaining and providing any and all other services which may be required in connection with Subtenant's use or occupancy of the Leased Premises.

13. ENVIRONMENTAL PROTECTION PROVISIONS.

13.1 Subtenant and its Authorized Representatives shall comply with all applicable Federal, state and local laws, regulations and standards (collectively, "Laws") that are or may become applicable to Subtenant's activities on the Leased Premises; provided: (a) Subtenant shall not be required to make any additions and/or improvements to the Leased Premises required by any such Laws unless required as a result of Subtenant's specific business and operations at the Leased Premises; and (b) Subtenant shall not be required to remediate (including removal) in any manner whatsoever hazardous materials and substances at the Leased Premises unless the hazardous materials and substances are introduced into the Leased Premises by Subtenant or its Authorized Representatives.

13.2 Subtenant and its Authorized Representatives shall be solely responsible for obtaining at their cost and sole expense any environmental permits required for its business and operations under this Sublease, independent of any existing permits held by Sublessor or Government. Subtenant shall not conduct operations or activities under any environmental permit that names Sublessor or Government as a secondary discharger or co-permittee. Subtenant shall provide prior written notice to Sublessor and Government of all environmental permits and permit applications required for any of Subtenant's business, operations, or activities. Subtenant acknowledges that neither Sublessor nor Government will consent to being named a secondary discharger or co-permittee for any operations or activities of Subtenant, its contractors, assigns or subtenants.

13.3 Subtenant acknowledges that Government's rights under the LIFO C specifically include the right for Government officials to inspect upon reasonable notice the Leased Premises for compliance with environmental, safety and occupational health laws and regulations, whether or not Government is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections. Sublessor shall also have the right to inspect upon reasonable notice the Leased Premises for compliance with environmental, safety, and occupational health laws and regulations, regardless of whether the Government or Sublessor is responsible for enforcing or complying with them. Government or Sublessor normally will give Subtenant twenty-four (24) hours prior notice of its intention to enter Leased Premises unless it determines the entry is required for exigent circumstances related to health, safety, or security. Subtenant shall have no claim against Sublessor for the exercise by the Government of its right of access as herein provided. Subtenant shall have no claim against Sublessor for the exercise of its right of access as herein provided, except for damage or injury caused by the willful acts and/or gross negligence of Sublessor.

13.4 Subtenant acknowledges that the Station has been identified as a National Priorities List (NPL) Site under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) of 1980, as amended, and acknowledges that Sublessor has provided it with a copy of the Installation Federal Facility Agreement (FFA) entered into by the United States Environmental Protection Agency (EPA) Region, the state equivalent, and the Military

Department. Sublessor will provide Subtenant with a copy of any amendments thereto. Subtenant agrees that should any conflict arise between the terms of such agreement as it presently exists or may be amended ("FFA," "Interagency Agreement" or "IAG") and the provisions of this Sublease, the terms of the FFA or IAG will take precedence; provided, Subtenant shall not be required to remediate (including removal) in any manner whatsoever hazardous substances at the Leased Premises unless the hazardous materials and substances are introduced into the Leased Premises by Subtenant and/or its Authorized Representatives. Subtenant further agrees that notwithstanding any other provision of this Sublease, Government assumes no liability to Subtenant or its assigns or subtenants should implementation of the FFA interfere with Subtenant's use of Leased Premises. Subtenant shall have no claim on account of any such interference against Sublessor or Government or any officer, agent, employee, contractor or subcontractor thereof, except that Rent shall be abated or reduced based upon the extent of such interference with Subtenant's business and operations, and if such interference materially interferes with Subtenant's business and operations for longer than thirty (30) days, Subtenant shall have the election at any time thereafter to terminate this Sublease, in which event the parties shall be relieved of further obligations under this Sublease except for Surviving Obligations.

13.5 Government, EPA (for NPL sites) and the State (for non-NPL sites) and their Authorized Representatives have the right, upon reasonable notice to Sublessor and to Subtenant, to enter upon Leased Premises for the purposes enumerated in this **Section 13.5** and for such other purposes consistent with any provisions of the cleanup program (including but not limited to the BRAC Cleanup Plan, IRP, FFA, or IAG):

13.5.1 to conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test pitting, testing soil borings and other activities related to the cleanup program;

13.5.2 to inspect field activities of Government and its contractors and subcontractors in implementing the cleanup program;

13.5.3 to conduct any test or survey required by EPA or applicable state equivalent relating to the implementation of the cleanup program;

13.5.4 to construct, operate, maintain or undertake any other response or remedial action as required or necessary under the cleanup program, including but not limited to monitoring wells, pumping wells and treatment facilities.

Subtenant agrees to comply with the provisions of any health or safety plan in effect under the IRP or the FFA during the course of any of the above described response or remedial actions. Any inspection, survey, investigation or other response or remedial action will, to the extent practicable, be coordinated with representatives designated by Sublessor and Subtenant. If any of the activities permitted by this **Section 13.5** interfere with Subtenant's business and operations, Rent shall be abated or reduced based upon the extent of such interference with Subtenant's business and operations, and if such interference materially interferes with Subtenant's business and operations for longer than thirty (30) days, Subtenant shall have the election at any time thereafter to terminate this Sublease, in which event the

parties shall be relieved of further obligations under this Sublease except for Surviving Obligations.

Subtenant shall have no claim against Sublessor for the exercise by the Government of its right of access as herein provided. Subtenant shall have no claim against Sublessor for the exercise of its right of access as herein provided; except for damage or injury caused by the willful acts and/or gross negligence of Sublessor.

13.6 Subtenant shall comply with all applicable Federal, state and local occupational safety and health regulations.

13.7 Subtenant shall provide to Sublessor, in the event of any assignment or further sublease of the Leased Premises that requires Sublessor's consent pursuant to **Section 5.1**, in order that Sublessor may provide to EPA and applicable state equivalent by certified mail a copy of the agreement or sublease of Leased Premises (as the case may be) within fourteen (14) calendar days after the effective date of such transaction. Sublessor and Subtenant may delete the financial terms and any other proprietary information from the copy of any agreement of sublease furnished pursuant to this condition.

13.8 Subtenant shall strictly comply with the hazardous waste permit requirements under the Resource Conservation and Recovery Act or its applicable state equivalent. Except as specifically authorized by Government in writing, Subtenant must provide at its own expense such hazardous waste management facilities complying with all laws and regulations. Government hazardous waste management facilities will not be available to Subtenant. Any violation of the requirements of this condition shall be deemed a material breach of this Sublease.

13.9 DoD component accumulation points for hazardous and other waste will not be used by Subtenant. Neither will Subtenant permit its hazardous wastes to be commingled with hazardous waste of DoD Component.

13.10 Subtenant shall not conduct or permit any subtenant or Authorized Representative to undertake any subsurface excavation, digging, drilling or other disturbance of the surface without the prior written approval of Sublessor and Government.

13.11 If Subtenant intends to make any improvements or repairs that require the removal of ACM, an appropriate asbestos disposal plan must be incorporated into the plans and specifications and submitted to Sublessor and Government. The asbestos disposal plan will identify the proposed disposal site for the ACM, or in the event the site has not been identified, will provide for disposal at a licensed facility authorized to receive it.

13.11.1 ACM which, from and after the Sublease Execution Date, became damaged or deteriorated through the passage of time, as the result of a natural disaster, or as a consequence of Subtenant's activities under this Sublease, including, but not limited to, any emergency, will be abated by Subtenant at its sole cost and expense. Notwithstanding **Section 13.11**, in an emergency, Subtenant shall notify Government and Sublessor as soon as practicable of its emergency ACM responses. Subtenant shall be responsible for monitoring the

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condition of existing ACM on Leased Premises for deterioration or damage and accomplishing repairs or abatement pursuant to the applicable conditions of this Sublease.

13.11.2 Subtenant is hereby advised that the buildings and other painted structures in the Leased Premises are potentially painted with Lead Based Paints (LBP). Such buildings and structures shall not be suitable for occupancy for residential purposes until any inspections and abatement required by applicable law have been completed. Subtenant may, at its sole cost and expense, have a State Certified LBP Inspector complete a LBP inspection and abatement and provide an abated certification to Sublessor and Government, at which time with written Sublessor and Government approval, the specified premises can be used for residential purposes.

13.11.3 Subject to Sections 13.11.1, and 13.11.2, Subtenant shall manage at its sole cost and expense any ACM and LBP and comply with all applicable Federal, State and local laws.

13.12 In addition to the provisions of Section 16, Subtenant shall, and does hereby agree to, indemnify and hold harmless Government and Sublessor from any costs, expenses, liabilities, fines or penalties resulting from discharges, emissions, spills, storage or disposal arising from Subtenant's occupancy, use or operations, or any other action by Subtenant or its contractors, employees, agents, assigns, or subtenants giving rise to Government or Sublessor liability, civil or criminal, or any action by Subtenant or its contractors, employees, agents, assigns, or subtenants giving rise to responsibility under Federal, State or local environmental laws. Subtenant's obligations hereunder shall apply whenever Government or Sublessor incurs costs or liabilities for Subtenant's activities or for the activities of Subtenant's contractors, employees, agents, assigns, or subtenants as provided hereunder. This provision shall survive the expiration or termination of this Sublease.

13.13 Storage, treatment or disposal of toxic or hazardous materials on Leased Premises is prohibited excepted as authorized by Government in accordance with 10 U.S.C. § 2692.

13.14 The responsibility of the Government to indemnify and hold harmless Sublessor and Subtenant against toxic torts and other environmental claims shall be in accordance with Public Law 102-484, Section 330, as amended.

13.15 Subtenant and Sublessor are prohibited from interfering with any predator management or animal control activities.

13.16 Subtenant shall maintain copies of any permit applications made to any Federal, State or local regulatory agencies and shall provide copies to Sublessor or Government on reasonable request. Subtenant shall promptly notify Sublessor and Government of any notices of violation or noncompliance received by Subtenant from any such agency, concerning environmental matters or hazardous substances or hazardous waste on, about, or pertaining to the Leased Premises.

13.17 Subtenant shall be responsible for reporting, containment, removal and clean up of any land, air or water pollution that occurs on any Leased Premises solely as a result

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of Subtenant's use of the Leased Premises, and the use of the Leased Premises by Subtenant's Authorized Representatives.

14. TERMINATION.

14.1 Termination by Government of the LIFOC for Breach. The Government has the right to terminate the LIFOC on account of the breach by the Lessee thereof of any of the terms and conditions of the LIFOC. In the event of a breach involving the performance of any obligation under the LIFOC, the LIFOC provides that Sublessor, as the Lessee thereunder, shall be afforded thirty (30) days from the receipt of the Government's notice of intent to terminate, to complete the performance of the obligation or otherwise cure the subject breach and avoid termination of the LIFOC. Sublessor agrees to immediately, and in any event within twenty-four (24) hours after Sublessor's receipt, except when it arrives on a weekend or holiday, in which event it shall be delivered by the next business day, provide a copy of any such notice to Subtenant. In the event that any such notice is delivered to Sublessor as the Lessee under the LIFOC, for any such breach occasioned or caused by the action, negligence or inaction of Subtenant, or any party acting on behalf of or through Subtenant, for an obligation, covenant or undertaking of Subtenant under this Sublease, then Subtenant shall complete the performance of the obligation or otherwise cure the subject breach and avoid termination of this Sublease and the LIFOC. Subtenant shall cure such breach within thirty days from the date of receipt of the Government's notice of intent to terminate by Sublessor; provided, if the nature of the default is such that it cannot reasonably be cured within thirty (30) days, the commencement of the cure within the thirty (30) day period shall be deemed a cure of the default if in fact the default is ultimately cured. If Subtenant should fail to cure within the grace periods provided above, and the Government does not terminate the LIFOC under the provisions of the LIFOC, then Sublessor shall have the option to terminate this Sublease, without the necessity of providing further notice or rights of cure to Subtenant.

14.2 In the event that the Government shall elect to terminate the LIFOC on account of the breach by Subtenant of any of the terms and conditions hereof or of the LIFOC to be performed by Subtenant, Subtenant shall indemnify Sublessor against any claims the Government may have against Sublessor for any of the following under the LIFOC:

14.2.1 The costs incurred by the Government in resuming possession of the Leased Premises.

14.2.2 The costs incurred in performing by the Government of any of Subtenant's obligations under this Sublease.

14.2.3 An amount equal to the aggregate of any maintenance obligations, and charges assumed hereunder and not therefor paid or satisfied, which amounts shall be due and payable at the time when such obligations, and charges would have accrued or become due and payable under this Sublease.

14.3 Termination by Government for Other Than Breach. In addition to the right to terminate the LIFOC for breach, the Government is entitled to terminate the LIFOC for its convenience under the following terms and conditions:

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14.3.1 Upon reasonable determination that the interim uses of the Lessee under the LIFO or the interim uses of Subtenant under this Sublease for the remaining duration of the Term of this Sublease are incompatible with the Government's final disposal decision as embodied in the NEPA Record of Decision, with respect to the required subsequent uses of the Leased Premises, which subsequent uses must be effected during the balance remaining on the Term of this Sublease, and a finding is made that the continued use and occupation of the Leased Premises through the end of the remaining Sublease Term cannot be permitted because of such irreconcilable incompatibility, unless the parties to this Sublease make such modifications to this Sublease as are reasonably required to make the uses compatible for the period of time remaining on the Sublease Term.

14.3.2 In the event of a National Emergency as declared by the President or the Congress of the United States and the Government makes a reasonable determination that such National Emergency requires the use by the United States of America of the Leased Premises, or such National Emergency otherwise necessitates the use of the Station and such use will materially interfere with the Lessee's use under the LIFO or any Subtenant's use of the Leased Premises.

14.3.3 In the event of a termination for the Government's convenience as set forth in the LIFO, Sublessor as Lessee under the LIFO, is to be provided with no less than 30 days written notice of such termination and shall immediately provide Subtenant with a copy of any notification it receives from the Government relative to such termination. Sublessor shall meet and confer with Subtenant and the Government to determine what is a reasonable time for Subtenant to vacate the Leased Premises, considering the factors of the nature of the exiting uses of Subtenant, the consequences which would be affected if such termination is required and the losses and penalties which would be engendered if such termination is required. Sublessor shall provide Subtenant with as long and reasonable time as are under the facts and circumstances acceptable to the Government relative to such termination. In the event of such termination, Subtenant and Sublessor as Lessee under the LIFO shall have only such remedies as are otherwise available under the law with respect to compensation from the Government for such termination. Subtenant shall not seek and shall not have any claim against Sublessor for any such termination for convenience by the Government, except to the extent that Sublessor obtains recovery therefor from the Government for itself or on behalf of Subtenant.

14.4 Termination by Subtenant. The following provisions shall apply in the event of termination by Subtenant.

14.4.1 Damage and Destruction. Subtenant shall have the right to terminate this Sublease upon thirty (30) days written notice to Sublessor in the event of damage to or destruction of all or a portion of the Leased Premises, in which event Subtenant shall assign to Sublessor any insurance proceeds payable under the insurance described in **Section 17.2.1**. Subtenant shall also have the right to terminate this Sublease if Subtenant terminates the Building 18 Sublease as a result of damage or destruction to all or part of the Leased Premises under the Building 18 Sublease. The effective date of termination shall be the date of the damage or destruction.

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If Subtenant does not terminate this Sublease as provided in the preceding paragraph, Subtenant shall reconstruct the Leased Premises, and Rent shall be reduced or abated based upon the extent to which the damage or destruction interferes with Subtenant's business and operations at the Leased Premises, it being agreed that Sublessor shall not be liable to Subtenant for any losses of business it sustains during any period of damage or destruction and reconstruction of the Leased Premises.

If Subtenant terminates this Sublease as provided in the first paragraph of this Section, the parties shall be relieved of future obligations under this Sublease except for Surviving Obligations.

Any disputes under this Section 14.4.1 shall be resolved by arbitration pursuant to Section 39.

14.5 Termination for Lack of Utility Service. Subtenant may terminate this Sublease upon thirty (30) days' notice if domestic water, waste water, electrical, gas, or telephone service is not available to it. Subtenant may also terminate this Sublease if, upon abandonment of the base-wide fire protection system, Subtenant cannot retrofit the sprinkler system, if any, at the Leased Premises, or provide other measures to comply with fire code requirements applicable to Subtenant's use at the Leased Premises. The cost of any retrofit or other measures shall be the sole responsibility of Subtenant at its cost. Subtenant shall also have the right to terminate this Sublease if Subtenant terminates the Building 18 Sublease pursuant to Section 14.5 of the Building 18 Sublease. The effective date of termination shall be the date any such utilities are unavailable or the abandonment of the base fire protection system. If Subtenant terminates this Sublease as provided in the first paragraph of this Section, the parties shall be relieved of future obligations under this Sublease except for Surviving Obligations. Any disputes under this Section 14.5 shall be resolved by arbitration pursuant to Section 39.

14.6 Termination Based On Use Permit. If Subtenant can no longer conduct a substantial part of its business and operations at the Leased Premises, and/or the premises under the Building 18 Sublease as a result of the termination of all or part of Tenant's Use Permit from the City of Alameda, and is not caused by Subtenant's violation of the Use Permit, Subtenant shall have the election to terminate this Sublease in which event the parties shall be relieved of future obligation under this Sublease except for Surviving Obligations.

15. VACATION OF LEASED PREMISES. In the event environmental contamination is discovered on the Leased Premises which creates, in the Government's determination, an imminent and substantial endangerment to human health or the environment which necessitates evacuation of Leased Premises, then notwithstanding any other termination rights and procedures contained in this Sublease, the Government may require Sublessor to require that Subtenant vacate the Leased Premises immediately upon notice from Government of the existence of such a condition. The Government shall not be liable for the exercise of authority, which is in conformity with this subsection, except as detailed in Section 15 of the LIFOC. Government's exercise of this right herein to order the Leased Premises immediately vacated does not alone constitute a termination of the LIFOC, but such right may be exercised in conjunction with any other termination rights provided for in the LIFOC or by law.

In the event the Government's exercise of its rights under this Section 15 materially interferes with Subtenant's business and operations at the Leased Premises, Rent shall be abated or reduced based upon the extent to which Subtenant's business and operations are interfered, and if such interference occurs for longer than thirty (30) days, Subtenant shall have the election at any time thereafter to terminate this Sublease, in which event the parties shall be relieved of future obligations under this Sublease except Surviving Obligations.

16. INDEMNIFICATION BY SUBTENANT AND OF SUBTENANT.

16.1 Indemnification By Subtenant of Sublessor. Subtenant shall indemnify, defend and save Sublessor harmless and shall pay all costs, expenses and reasonable attorneys' fees for all trial and appellate levels and post judgment proceedings in connection with any fines, suits, actions, damages, liability, causes of action of every nature whatsoever arising or growing out of, or in any manner connected with, the occupation or use of the Leased Premises by Subtenant and Subtenant's employees, agents, servants, guests, invitees, contractors, or sublessees. These include, but are not limited to, any fines, claims, demands and causes of action of every nature whatsoever which may be made upon, sustained, or incurred by Sublessor by reason of any breach, violation, omission or non-performance of any term, covenant or condition of this Sublease on the part of Subtenant or Subtenant's employees, agents, servants, guests, invitees, contractors, or sublessees. However, this indemnity shall not extend to damages due to the sole fault or negligence of Government or Sublessor or their contractors. This covenant shall survive the termination of this Sublease.

16.2 Indemnification By Subtenant of Government. Subtenant shall indemnify, defend and save Government harmless and shall pay all costs, expenses and reasonable attorneys' fees for all trial and appellate levels and post judgment proceedings in connection with any fines, suits, actions, damages, liability, causes of action of every nature whatsoever arising or growing out of, or in any manner connected with, the occupation or use of the Leased Premises by Subtenant and Subtenant's employees, agents, servants, guests, invitees, contractors, or sublessees. These include, but are not limited to, any fines, claims, demands and causes of action of every nature whatsoever which may be made upon, sustained, or incurred by Government by reason of any breach, violation, omission or non-performance of any term, covenant or condition of this Sublease on the part of Subtenant or Subtenant's employees, agents, servants, guests, consignors, customers, invitees, contractors, or sublessees. However, this indemnity shall not extend to damages due to the sole fault or negligence of Government or Sublessor or their employees, agents, servants, guests, consignors, customers, invitees, contractors, or sublessees. This covenant shall survive the termination of this Sublease.

16.3 Indemnification By Sublessor of Subtenant. Sublessor shall hold harmless, indemnify and defend Subtenant and its officers, directors, agents, employees, and representatives, from and against any suit, claim, demand, action, liability, judgment, cost, expenses or other fee arising out of any claim for injury or damage ("Claim") that results from, or is in any manner predicated upon activities of Sublessor on the Leased Premises during the Term of this Sublease, except to the extent such Claim arises from or is attributable to the sole fault or negligence of Subtenant or the Government.

17. SUBTENANT TO BEAR ALL RISK; INSURANCE PROVISIONS.

17.1 All Risk. Except as otherwise provided in this Sublease, Subtenant shall, in any event and without prejudice to any other rights of the Government and Sublessor, bear all risk of loss or damage to the Leased Premises, Initial Improvements, any subsequent Work, and to Subtenant's other property upon the Leased Premises, arising from any cause whatsoever, or in any manner connected with the occupation or use by Subtenant and its Authorized Representatives of the Leased Premises, or by a risk customarily covered by insurance in the locality in which the Leased Premises is situated (excluding earthquake and flood), including sudden and accidental pollution coverage, even where such loss or damage stems from causes beyond Subtenant's control. The provisions of Section 14.4.1 shall govern with regard to damage or destruction of the Leased Premises.

17.2 Subtenant's Insurance. During the Term of this Sublease, Subtenant shall at its expense carry and maintain:

17.2.1 All-risk property and casualty insurance covering the Building in an amount equal to the then replacement value of the Building. The parties agree that Subtenant shall not be required to carry and maintain earthquake and flood insurance.

17.2.2 All-risk property and casualty insurance covering the Initial Improvements, any subsequent Work, and Subtenant's other personal property in an amount equal to the then replacement value. The parties agree that Subtenant shall not be required to carry and maintain earthquake and flood loss insurance.

17.2.3 Public liability and property damage insurance, including but not limited to, insurance against assumed or contractual liability under this Sublease, with respect to the Leased Premises, to afford protection with limits of liability in amounts not less than Three Million Dollars (\$3,000,000) in the event of bodily injury and death to any number of persons in any one accident and property damage. Such liability insurance shall name Sublessor and the Government as additional loss payees or additionally named insureds.

17.2.4 If and to the extent required by law, workers' compensation or similar insurance in the form and amounts required by law.

17.3 Subtenant's Contractor's Insurance. During the Term this Sublease shall be in effect, any contractor performing work on the Leased Premises shall carry and maintain the insurance required below:

17.3.1 Comprehensive general liability insurance, including, but not limited to, contractor's liability coverage and contractual liability coverage, of not less than \$500,000 per occurrence with respect to personal injury or death, and with respect to property damage.

17.3.2 Automobile liability coverage of not less than \$200,000 per person and not less than \$500,000 per occurrence, and not less than \$20,000 per occurrence for property damage.

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17.3.3 Workers' compensation or similar insurance in the form and amounts required by law.

17.4 Policy Provisions. All insurance which this Sublease requires Subtenant to carry and maintain or cause to be carried and maintained shall be in such form, for such amounts as provided herein, for such periods of time, and with such insurers as the Government and Sublessor may reasonably require and approve. All policies or certificates issued by the respective insurers for public liability and all-risk property insurance shall name each Sublessor and the Government as an additional insured or loss payee (provided the insurance proceeds shall be made available if Subtenant elects to reconstruct the Leased Premises as provided in **Section 14.4.1**), provide that any losses shall be payable notwithstanding any act or failure to act or negligence of the Government, shall provide that no cancellation, reduction in amount, or material change in coverage thereof shall be effective until at least thirty (30) days after receipt by Sublessor and the Government of written notice thereof, shall provide that the insurer shall have no right of subrogation against the Government or Sublessor, except, as to Sublessor, to the extent that bodily injury, including death or property damage is caused by the acts or omissions of Sublessor and its Authorized Representatives. In no circumstances will Subtenant be entitled to assign to any third party rights of action which Subtenant may have against the Government. Subtenant shall have the right to maintain so-called blanket policies of insurance in fulfilling its obligations under this **Section 17.2**, provided that the coverage required by this **Section 17.2** shall not be reduced or diminished as a result of claims related to properties other than the Leased Premises.

17.5 Delivery of Policies. Subtenant shall deliver or cause to be delivered promptly to Sublessor and the Government a certificate of insurance evidencing the insurance required by this Lease and shall also endeavor to deliver no later than thirty (30) days prior to the expiration of any such policy, a certificate of insurance evidencing each renewal policy covering the same risks.

17.6 Damage and Destruction and Use of Insurance Proceeds. In the event of damage or loss to the Leased Premises that Subtenant elects to reconstruct as provided in **Section 14.4.1**, the following shall apply:

17.6.1 Subtenant shall take all appropriate steps to erect necessary structures to preclude unauthorized access to the Leased Premises and otherwise mitigate hazardous and unsafe conditions within the Leased Premises caused by the damage and destruction.

17.6.2 Subtenant shall proceed to repair and replace the damaged and destroyed structures and improvements on the Leased Premises, utilizing the proceeds of the insurance policies required by **Section 17.2.1**.

17.6.3 If Subtenant elects to terminate this Sublease in accordance with **Section 14.4.1** and so notifies Sublessor, Sublessor shall then have the option, to be exercised by notice to Subtenant within thirty (30) days of receipt of Subtenant's notice of termination, of accepting an assignment of the proceeds of the insurance policy.

17.6.4 If Subtenant elects to reconstruct the Leased Premises, Subtenant shall promptly obtain all necessary permits for, and carry out, the complete demolition of the damaged improvements and structures within the Leased Premises, remove all debris from the Leased Premises, clear the Leased Premises of all damaged improvements, remove all safety hazards caused by the calamity and demolition, and replace the structures and improvements in a substantially similar condition as at the commencement of this Sublease.

18. LABOR PROVISIONS.

18.1 **Equal Opportunity.** During the Term of this Sublease, and with respect only to employment or employees at the Leased Premises, Subtenant agrees as follows:

18.1.1 Subtenant will not discriminate against any employee of Subtenant or applicant for employment because of race, color, religion, sex, or national origin. The employees of Subtenant shall be treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, selection for training, including apprenticeship. Subtenant agrees to post in conspicuous places, notices to be provided by the applicable government agencies, setting forth the provisions of this nondiscrimination provision.

18.1.2 Subtenant will, in all solicitations or advertisements for employees placed by or on behalf of Subtenant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

18.1.3 Subtenant will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by the Government, advising the labor union or worker's representative of Subtenant's commitments under this Equal Opportunity Clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

18.1.4 Subtenant will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor of the United States of America.

18.1.5 Subtenant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor or pursuant thereto, and will permit access to its books, records, and accounts by the Government and the Secretary of Labor for purposes of investigating to ascertain compliance with such rules, regulations, and orders.

18.1.6 In the event of Subtenant's noncompliance with the Equal Opportunity Clause of this Sublease or with any said rules, regulations, or orders, this Sublease may be terminated by Sublessor after notice and opportunity to cure as provided in Section 36. Subtenant may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended by

Executive Order 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

18.1.7 Subtenant will include the above provisions in every sublease or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, so that such provisions will be binding upon each sublessee. Subtenant will take such action with respect to any sublessee or purchase order as the Government may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event Subtenant becomes involved in, or is threatened with, litigation with a sublessee as a result of such direction by the Government, Subtenant may request the United States to enter into such litigation to protect the interests of the United States.

18.2 **Convict Labor.** In connection with the performance of work required by this Sublease, Subtenant agrees not to employ any person undergoing a sentence of imprisonment at hard labor.

19. **SUBMISSION OF NOTICES.** All notices, demands, requests, consents, or approvals which may or are required to be given by either party to the other shall be in writing and shall be deemed given when sent by United States Certified or Registered Mail, postage prepaid, or by reputable overnight delivery service or personal delivery as follows:

19.1 If for Subtenant, addressed to Subtenant c/o Grand Lake Theatre, 3200 Grand Avenue, Oakland, California 94610, or at such other place as Subtenant may from time to time designate by notice to Sublessor.

19.2 If for Sublessor, addressed to Sublessor at:

Executive Director
Alameda Reuse and Redevelopment Authority
950 W. Mall Square, Suite 100
Alameda, CA 94501-7552

(Facsimile: 510-769-0694)

19.3 If for Government, addressed to:

Commanding Officer
Southwest Division
Engineering Field Division
Naval Facilities Engineering Command
1220 Pacific Highway
San Diego, CA 92132-5189

(Facsimile: 619-532-3830)

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19.4 Notwithstanding the addresses provided in Sections 19.1 through 19.3 of this Section, any party may from time to time designate an alternate and/or additional address by notice.

20. **AUDIT.** This Sublease shall be subject to audit by Sublessor and by any and all cognizant Government agencies. Subtenant shall make available to such agencies for use in connection with such audits all records which it maintains with respect to this Sublease and copies of all reports required to be filed hereunder, subject to Subtenant's right to contest any demands for production of records made by any Government agencies. Subtenant will make these materials available for a period of three (3) years after termination or expiration of this Sublease.

21. **AGREEMENT.** This Sublease shall not be modified unless in writing and signed by both parties. No oral statements or representation made by, or for, on behalf of either party shall be a part of this Sublease. Should a conflict arise between the provisions of this Sublease and any exhibit hereto, or any other agreement between Sublessor and Subtenant, the provisions of this Sublease shall take precedence.

22. **FAILURE TO INSIST ON COMPLIANCE.** The failure of Sublessor to insist, in any one or more instances, upon performance of any of the terms, covenants, or conditions of this Sublease shall not be construed as a waiver or relinquishment of Sublessor's right to the future performance of any such terms, covenants, or conditions and Subtenant's right to the future performance of any such terms, covenants, or conditions and Subtenant's obligations in respect of such future performance shall continue in full force and effect.

23. **DISPUTE RESOLUTION.** Any disputes arising under this Sublease that involve or relate to the Government or the Government's interpretation of the LIFOC that are subject to resolution under the Contracts Disputes Act, 431 U.S.C. Section 601 et seq. pursuant to the provisions of Section 23 of the LIFOC shall be resolved under that Act. All other disputes that may arise under this Sublease shall be resolved in accordance with the provisions of the laws of the State of California.

24. **COVENANT AGAINST CONTINGENT FEES.** Subtenant warrants that no person or agency has been employed or retained to solicit or secure this Sublease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by Subtenant for the purpose of securing business. For breach or violation of this warranty, Sublessor shall have the right to annul this Sublease without liability or in its discretion to require Subtenant to pay, in addition to the rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

25. **OFFICIALS NOT TO BENEFIT.** No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Sublease or to any benefit to arise therefrom, but this proviso shall not be construed to extend to this Sublease if made with a corporation for its general benefit.

26. LIENS. Subtenant shall promptly discharge or cause to be discharged any valid lien, right in rem, claim, or demand of any kind on the Leased Premises, except one in favor of the Government, or Sublessor, which at any time may arise or exist with respect to the Leased Premises or materials or equipment furnished therefor, or any part thereof, and if the same shall not be promptly discharged by Subtenant, or should Subtenant be declared bankrupt or make an assignment on behalf of creditors, or should the leasehold estate be taken by execution, Sublessor reserves the right to take possession of the Leased Premises after notice and opportunity to cure as provided in Section 36, without any liability to Subtenant or any subtenant thereof. If Subtenant breaches the foregoing, Subtenant shall be responsible for any costs incurred by the Government in securing clear title to its property. Provided, Subtenant shall have the right to contest any such lien, and Subtenant shall indemnify and hold harmless the Government and Sublessor from any loss, costs, and/or liabilities resulting from such context.

27. TAXES. Subtenant shall pay all Taxes (as hereinafter defined) levied or imposed against the Leased Premises commencing on the Sublease Execution Date and for the remainder of the Term. Taxes shall mean all taxes, assessments and governmental charges, whether federal, state, county or municipal, and whether general or special, ordinary or extraordinary, foreseen or unforeseen, imposed upon the Rent, the Leased Premises, and any possessory interest therein, whether or not directly paid by Sublessor. Taxes shall not include income taxes, excess profit taxes, franchise taxes, or other taxes imposed or measured on or by the income of Sublessor from the operation of the Leased Premises, provided, however, that if, due to a future change in the method of taxation or assessment, any income, profit, franchise or other tax, however designated, shall be imposed in substitution, in whole or in part, for (or in lieu of) any tax, assessment or charge which would otherwise be included within the definition of Taxes, such other tax shall be deemed to be included within Taxes as defined herein to the extent of such substitution. There shall be added to Taxes the expenses of any contests (administrative or otherwise) of Taxes incurred during the taxing year, but only to the extent such contests result in a reduction of Taxes for such year or any other year during the Term. Subtenant shall pay to the appropriate governmental authority any use, possessory interest, and/or occupancy tax applicable to the Leased Premises. In the event that Sublessor is required by law to collect such tax, Subtenant shall pay such use and occupancy tax to Sublessor as Additional Rent, and Sublessor shall remit any amounts so paid to Sublessor to the appropriate governmental authority.

27.1 The interest created by this Sublease may at some time be subject to property taxation under the laws of the State of California. If property taxes are imposed, the party in whom the possessory interest is vested may be subject to the payment of the taxes levied on such interest. This notice is included in this Sublease pursuant to the requirements of Section 107.6(a) of the Revenue and Taxation Code of the State of California.

27.2 Subtenant shall pay the Taxes directly imposed upon it in accordance with the requirements of the taxing entity. Subtenant shall pay the Taxes originally imposed upon Sublessor, if any, when due in accordance with the requirements of the taxing entity, and Sublessor shall provide Sublessee with a copy of the applicable tax bill prior to Subtenant's payment thereof.

27.3 All Taxes imposed upon Sublessor and payable by Subtenant with respect to the Leased Premises shall be prorated on a per diem basis for any partial tax year from and

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after the Sublease Execution Date included in the Term. Subtenant's obligation to pay Taxes during the last year of the Term shall survive the termination of this Sublease.

27.4 The provisions of this Section 26 to the contrary notwithstanding, Subtenant shall have the right to contest the amount and/or validity of any Taxes and Subtenant shall indemnify and hold harmless the Government and Sublessor from any loss, cost, and/or liabilities resulting from such contest.

28. SUBJECTION TO EXISTING AND FUTURE EASEMENTS AND RIGHTS-OF-WAY. Subtenant acknowledges that the LIFOC, and this Sublease, are subject to all outstanding easements and rights-of-way for location of any type of facility over, across, in, and upon the Leased Premises or any portion thereof and to the right of Government (under Section 28 of the LIFOC), to grant such additional easements and rights-of-way over, across, in and upon the Leased Premises as it shall determine to be in the public interest; provided that any such additional easement or right-of-way shall be conditioned upon the assumption by the grantee thereof of liability to Sublessor for such damages as Sublessor shall suffer for property destroyed or property rendered unusable on account of the grantee's exercise of its rights thereunder. There is reserved to the rights of the holders of such easements and rights-of-way as are presently outstanding or which may hereafter be granted, to any workers officially engaged in the construction, installation, maintenance, operation, repair or replacement of facilities located thereon, and to any Federal, state or local official engaged in the official inspection thereof, such reasonable rights of ingress and egress over Leased Premises as shall be necessary for the performance of their duties with regard to such facilities.

29. ADMINISTRATION. Except as may be otherwise provided in the LIFOC or this Sublease, the Government shall, under the direction of the Command described in addendum (a) to the LIFOC, have complete charge of the administration of the LIFOC and any interests the Government has under this Sublease, and shall exercise full supervision and general direction thereof insofar as the interests of the Government are affected.

30. SURRENDER. Upon the expiration or termination of the Term of this Sublease, Subtenant shall quietly and peacefully remove itself and its property from the Leased Premises and surrender the possession thereof to Sublessor pursuant to the provisions of Section 8.3. Sublessor or the Government may, in its discretion, declare any property which has not been removed from the Leased Premises upon expiration or termination provided for above, as abandoned property upon an additional thirty (30) calendar days notice.

31. QUIET POSSESSION. Upon Subtenant paying the Rent reserved hereunder and observing and performing all of the covenants, conditions and provisions on Subtenant's part to be observed and performed hereunder, Subtenant shall have quiet possession of the Leased Premises for the entire Term hereof, subject to all the provisions of this Sublease.

32. CERTAIN RIGHTS RESERVED TO SUBLESSOR. Sublessor reserves the following rights:

32.1 On reasonable prior written notice to Subtenant, no less than 48 hours in advance, to show the Leased Premises to prospective tenants during the last nine months of the

Term, and to any prospective purchaser, mortgagee, or assignee of any mortgage or ground lease on the Leased Premises and to others having a legitimate interest in the Leased Premises at any time during the Term.

32.2 At any time in the event of an emergency, and otherwise at reasonable times, to take any and all measures, including making any inspections, repairs, alterations, additions, and improvements to the Leased Premises, as may be necessary or desirable for the safety, protection, or preservation of the Leased Premises, or Sublessor's interests, or as may be necessary or desirable in the operation or improvement of the Leased Premises, or in order to comply with all laws, orders, and requirements of governmental or other authorities, using reasonable efforts not to interfere with the use and occupancy of the Leased Premises by Subtenant. Sublessor shall not be in default hereunder nor have any liability to Subtenant, nor shall Subtenant have any right to terminate this Sublease or claim an offset against or reduction in Rent payable hereunder, due to any damage, annoyance or inconvenience resulting from any such inspections, repairs, alterations, additions or improvements, or the failure of Sublessor to make any such inspections, repairs, alterations, additions or improvements; provided however that Sublessor shall be liable for its gross negligence or willful misconduct. Subtenant shall reasonably cooperate with Sublessor or Sublessor's agents or contractors in carrying out any such inspections, repairs, alterations, additions or improvements.

33. COVENANTS OF SUBTENANT.

33.1 Use of the Leased Premises. Subtenant shall not make or permit to be made any use of the Leased Premises or any part thereof (i) which would directly or indirectly violate any federal, state or local law, ordinance, rule or governmental regulation; (ii) which would invalidate or unreasonably increase the premium cost of any policy of insurance carried on the Leased Premises or covering its operation (unless such increase is paid for by Subtenant); or (iii) which will suffer or permit the Leased Premises or any part thereof to be used in any manner or permit anything to be brought into or kept therein which, in the reasonable judgment of Sublessor, shall unreasonably impair or interfere with any of the services required to be performed by Sublessor, if any, for the Leased Premises.

33.2 Exterior Signs. Subtenant shall not display, inscribe, print, maintain or affix on any place on or about the exterior of the Leased Premises any sign, notice, legend, direction, figure or advertisement, except as may be approved by Sublessor in writing, which approval will not be unreasonably withheld or delayed, and, if required, by local governing authorities.

33.3 Overloading. Subtenant shall not overload any floor.

33.4 Machinery. Subtenant shall not install or operate any machinery, refrigerating or heating device or air-conditioning apparatus in or about the Leased Premises which would impose unreasonable substantial additional loads on the facilities of the buildings.

33.5 No Obstruction. The exits, entrances, elevators and stairways of the Leased Premises shall not be obstructed by Subtenant or used for any purpose other than for ingress to and egress from the Leased Premises. Subtenant and its Authorized Representatives

shall not go upon the roof of the Leased Premises without Sublessor's prior consent except where necessary for Subtenant to inspect the roof and to perform maintenance to the roof as required by this Sublease.

33.6 No Animals. Subtenant shall not permit any animals, except those required to be allowed by law, such as guide dogs, to be brought in or kept in or about the Leased Premises without Sublessor's prior written consent.

33.7 Applicable Rules and Regulations. Subtenant shall comply with all Laws that are applicable or may become applicable to Subtenant's activities on the Leased Premises, including those rules and regulations promulgated by Sublessor pursuant to Section 34. These include, but are not limited to, laws and regulations on the environment, construction of facilities, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business (e.g., wetlands [EO 11990] and floodplains [EO 11988], Section 106 consultation under the National Historic Preservation Act and air quality conformity determinations under the Clean Air Act). Subtenant is responsible for obtaining and paying for permits required for its operations under the Sublease.

The provisions of the preceding paragraph to the contrary notwithstanding, Subtenant shall not be obligated to construct and/or install at the Leased Premises any improvements and/or additions required by such Laws unless required because of Subtenant's use and occupancy of the Leased Premises.

33.8 Outside Storage Prohibited. Outside storage or activities are not permitted unless expressly authorized in writing by Sublessor. Any outside storage authorized by Sublessor shall be properly screened.

34. RULES AND REGULATIONS. Sublessor shall have the right to make such non-discriminatory rules and regulations as in the reasonable judgment of Sublessor may from time to time be necessary for the safety, appearance, care and cleanliness of the Leased Premises and for the preservation of good order therein, provided that such rules do not unreasonably interfere with the operations of Subtenant which otherwise comply with the terms of this Sublease, and provided, further, that Rent will not be increased by such rules and regulations.

35. HOLDING OVER. If Subtenant retains possession of the Leased Premises or any part thereof after the expiration or termination of the Term without Sublessor's consent, Subtenant shall pay to Sublessor immediately on demand, a monthly sum equal to one hundred fifty percent (150%) of the amount of the monthly Base Rent for the last full calendar month of the Term for the time Subtenant thus remains in possession, any Additional Rent, and, in addition thereto, shall pay Sublessor for all direct damages sustained by reason of Subtenant's retention of possession. The provisions of this Section do not exclude Sublessor's rights to re-entry or any other right under this Sublease.

36. DEFAULT. It shall constitute an event of default (Event of Default) under this Sublease if any of the events describes in the following subsections occurs.

36.1 Subtenant fails to pay when due Base Rent, Additional Rent, or other amounts due hereunder and such failure continues for a period of five (5) days after written notice to Subtenant from Sublessor.

36.2 Subtenant assigns or sublets, or purports to assign or sublet the Leased Premises or any part thereof other than in the manner and upon the conditions set forth in Section 5.

36.3 Subtenant fails to perform or observe any of its other obligations, covenants, or agreements hereunder within twenty (20) working days after written notice of any such failure has been given by or on behalf of Sublessor, or, if more than twenty (20) working days is required to cure such failure, within the twenty (20) working days, Subtenant shall advise the Sublessor in writing of Subtenant's intended course of action to cure and the estimated date as to when the action will be completed, and if Subtenant fails to commence such cure as promptly as practical as stated in its notice to Sublessor and thereafter diligently to pursue such cure and thereafter fails to diligently pursue such a cure and complete such cure within a reasonable time thereafter.

36.4 Subtenant liquidates its business, becomes insolvent, makes an assignment for the benefit of creditors, files or has filed against it a petition of bankruptcy, bill in equity, or other proceedings for the appointment of a receiver or other custodian for its property, or if proceedings for reorganization or composition with creditors under any law are instituted by or against Subtenant or if any levy or sale or execution of any kind is made upon or of any property of Subtenant in the Leased Premises, which is not released within sixty (60) days.

36.5 Subtenant abandons or vacates the Leased Premises.

36.6 Subtenant fails to vacate the Leased Premises at the end of the Term of this Sublease unless this Sublease is otherwise renewed or extended.

37. SUBLESSOR'S REMEDIES.

37.1 If an Event of Default hereunder shall have occurred, Sublessor may, at its option, exercise any one or more of the following remedies:

37.1.1 **Termination of Sublease.** Sublessor may terminate this Sublease, by written notice to Subtenant, without any right by Subtenant to reinstate its rights by payment of Rent due or other performance of the terms and conditions hereof. Upon such termination, Subtenant shall immediately surrender possession of the Leased Premises to Sublessor, and Sublessor shall immediately become entitled to receive from Subtenant an amount equal to 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 the award exceeds the amount of rental loss for the same period that Subtenant proves could be reasonably avoided, as computed pursuant to Subsection (b) of Section 1951.2 of the California Civil Code.

37.1.2 **Reletting.** With or without terminating this Sublease, as Sublessor may elect, Sublessor may re-enter and repossess the Leased Premises, or any part thereof, and lease them to any other person upon such terms as Sublessor shall deem reasonable, for a term

within or beyond the Term; provided, that any such reletting prior to termination shall be for the account of Subtenant, and Subtenant shall remain liable for (i) all Base Rent, Additional Rent and other sums which would be payable under this Sublease by Subtenant in the absence of such expiration, termination or repossession, less (ii) the net proceeds, if any, of any reletting effected for the account of Subtenant after deducting from such proceeds all of Sublessor's expenses, reasonable attorneys' fees and expenses, employees' expenses, alteration costs, expenses of preparation for such reletting and all costs and expenses, direct or indirect, incurred as a result of Subtenant's breach of this Sublease. If the Leased Premises are, at the time of default, sublet or leased by Subtenant to others, Sublessor may, as Subtenant's agent, collect rents due from any subtenant or other tenant and apply such rents to the Rent and other amounts due hereunder without in any way affecting Subtenant's obligation to Sublessor hereunder. Such agency, being given for security, is hereby declared to be irrevocable.

37.1.3 Removal of Contents by Sublessor. After the occurrence of an Event of Default, with respect to any portion of the Leased Premises which is vacant or which is not physically occupied by Subtenant, Sublessor may remove property therefrom, and store such property in a public warehouse or elsewhere at the cost of and for the account of Subtenant, in such manner as may be permitted by applicable law, without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby.

37.2 Survival of Subtenant's Obligations. No early expiration or termination of the Term of this Sublease (except as expressly provided herein) and no repossession of the Leased Premises or any part thereof shall relieve Subtenant of its liabilities and obligations to pay rent hereunder, all of which shall survive such expiration, termination or repossession, and Sublessor may, at its option, sue for and collect all Rent and other charges due hereunder at any time as when such charges accrue.

37.3 Not Exclusive Right. No right or remedy herein conferred upon or reserved to Sublessor is intended to be exclusive of any other right or remedy herein or by law provided, but each shall be cumulative and in addition to every other right or remedy given herein or now or hereafter existing at law or in equity or by statute.

37.4 Expenses. In the event that Sublessor commences suit for the repossession of the Leased Premises, for the recovery of Rent or any other amount due under the provisions of this Sublease, or because of the breach of any other covenant herein contained on the part of Subtenant to be kept or performed, and a breach shall be established, Subtenant shall pay to Sublessor all expenses incurred in connection therewith, including reasonable attorneys' fees in the event Sublessor prevails. In the event that Subtenant commences suit because of the breach of any covenant herein contained on the part of Sublessor to be kept or performed, and a breach shall be established, Sublessor shall pay to Subtenant all expenses incurred in connection therewith, including reasonable attorneys' fees in the event Subtenant prevails.

38. SEVERABILITY. If any of the provisions of this Sublease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Sublease, or the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not

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be affected thereby, and every provision of this Sublease shall be valid and enforceable to the fullest extent permitted by law.

39. SUBTENANT'S RIGHT OF FIRST REFUSAL. If Sublessor determines to sell (which includes an exchange) the Leased Premises to a third party, Sublessor shall notify Subtenant of the material terms on which Sublessor will be willing to sell ("Sublessor's Notice"). The material terms shall include, without limitation, purchase price, terms of payment if other than a cash sale, environmental conditions, and any warranties and representation of the seller. If Subtenant within thirty (30) working days after receipt of Sublessor's Notice, indicates in writing its agreement to purchase the Leased Premises on the terms stated in Sublessor's Notice (as modified by the provisions of the following paragraph), Sublessor shall sell and convey the Leased Premises, and Subtenant shall purchase the Leased Premises, on the terms stated in Sublessor's Notice, as modified herein. If Subtenant does not indicate its agreement within the thirty (30) days, Sublessor thereafter shall have the right to sell and convey the Leased Premises to a third party on substantially the same terms stated in Sublessor's Notice. A purchase price within ninety-five percent (95%) of the purchase price set forth in Sublessor's Notice is substantially the same as the purchase price in Sublessor's Notice for the purposes of this paragraph. If the terms and conditions of a proposed sale of the Leased Premises to a third party are not substantially the same as in Sublessor's Notice, the provisions of this Section shall again apply. In any event, if Sublessor does not sell and convey the Leased Premises within one hundred eighty (180) days following Sublessor's Notice, any further transaction shall be deemed a new determination by Sublessor to sell the Leased Premises and the provisions of this Section shall be applicable.

The provisions of the preceding paragraph to the contrary notwithstanding, if Subtenant elects to purchase the Leased Premises, close of escrow shall occur no later than ninety (90) days following the date that Subtenant notifies Sublessor of Subtenant's election to purchase the Leased Premises, or earlier date at Subtenant's election, and the sale shall be conditioned upon Subtenant obtaining a firm commitment for financing to acquire the Leased Premises within forty-five (45) days following Subtenant's notice to Sublessor, which condition may be waived only by Subtenant.

40. PROVISIONS RELATING TO TERMINATION OF SUBLEASE.

40.1 Termination of Building 18 Sublease. The parties acknowledge that at the time the parties are entering into this Sublease, the parties are also entering into another sublease of a portion of Building 18 at the Station for the conduct of a portion of Subtenant's business (such other sublease is referred to as the "Building 18 Sublease").

In the event the Building 18 Sublease terminates for any reason other than due to the default of Subtenant, Subtenant shall have the election at any time after termination of the Building 18 Sublease to terminate this Sublease, in which event the parties shall be relieved of future obligations under this Sublease except for Surviving Obligations, and any prepaid but unearned Rent shall be repaid to Subtenant by Sublessor.

40.2 Repayment Qualified Shell Improvement Costs. In the event this Sublease terminates solely as a result of Sublessor's default of its obligations under this Sublease

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and/or the Building 18 Sublease, Sublessor shall pay to Subtenant, within thirty (30) days following the date that Sublessor receives a statement from Subtenant, the then unamortized Qualified Shell Improvement Costs as of the date of termination. This Section 40.2 shall not preclude Subtenant from pursuing its right to an award from any condemning authorities in connection with the condemnation of all or part of the Leased Premises.

41. **NEW SUBLEASE.** In the event that this Sublease is terminated pursuant to Sections 11, 13.4, 13.5, 14.3, or 15, and within twenty-four (24) months following the date of termination the Leased Premises are available for occupancy, Sublessor shall notify Subtenant of that fact and Subtenant shall have the election for a period of ninety (90) days following receipt of Sublessor's notice to elect to require Sublessor to enter into a new Sublease for the Leased Premises and a new Building 18 Sublease on the same provisions as contained in this Sublease and the Building 18 Sublease except the Terms (Initial Terms and/or Extended Terms) of the new Sublease and Building 18 Sublease shall be extended for a period of time equal to the period of time between the date of termination of this Sublease and the Building 18 Sublease and the date that the new Sublease and Building 18 Sublease are executed. The parties shall enter into the new Sublease and Building 18 Sublease within a commercially reasonable time.

IN WITNESS WHEREOF, Sublessor and Subtenant have respectively signed and sealed this Sublease as of the day and year first above written.

SUBTENANT:

AUCTIONS BY THE BAY, INC., a California corporation

By:

Its:

and

By:

Its:

SUBLESSOR:

ALAMEDA REUSE AND
REDEVELOPMENT AUTHORITY, an
agency of the City of Alameda

By:

James M. Fint
Executive Director

RECOMMENDED FOR APPROVAL:

Doug Yount
Development Services Director


SIGNATURES CONTINUES ON THE NEXT PAGE

RECOMMENDED FOR APPROVAL:



Edward S. Levine
Facilities and Property Manager

APPROVED AS TO FORM:


Terry Highsmith
Assistant City Attorney
T. Highsmith
Highsmith

This is a detailed architectural floor plan of the first floor. The plan shows a large, mostly empty rectangular space on the left, which appears to be a main hall or auditorium. To the right of this large space is a series of smaller, interconnected rooms and corridors. These rooms are furnished with various pieces of furniture, including desks, chairs, and bookshelves, suggesting they are offices or study areas. The layout is complex, with multiple doorways and internal walls creating a network of spaces. The drawing is a black and white line art, typical of architectural blueprints.

[illegible]

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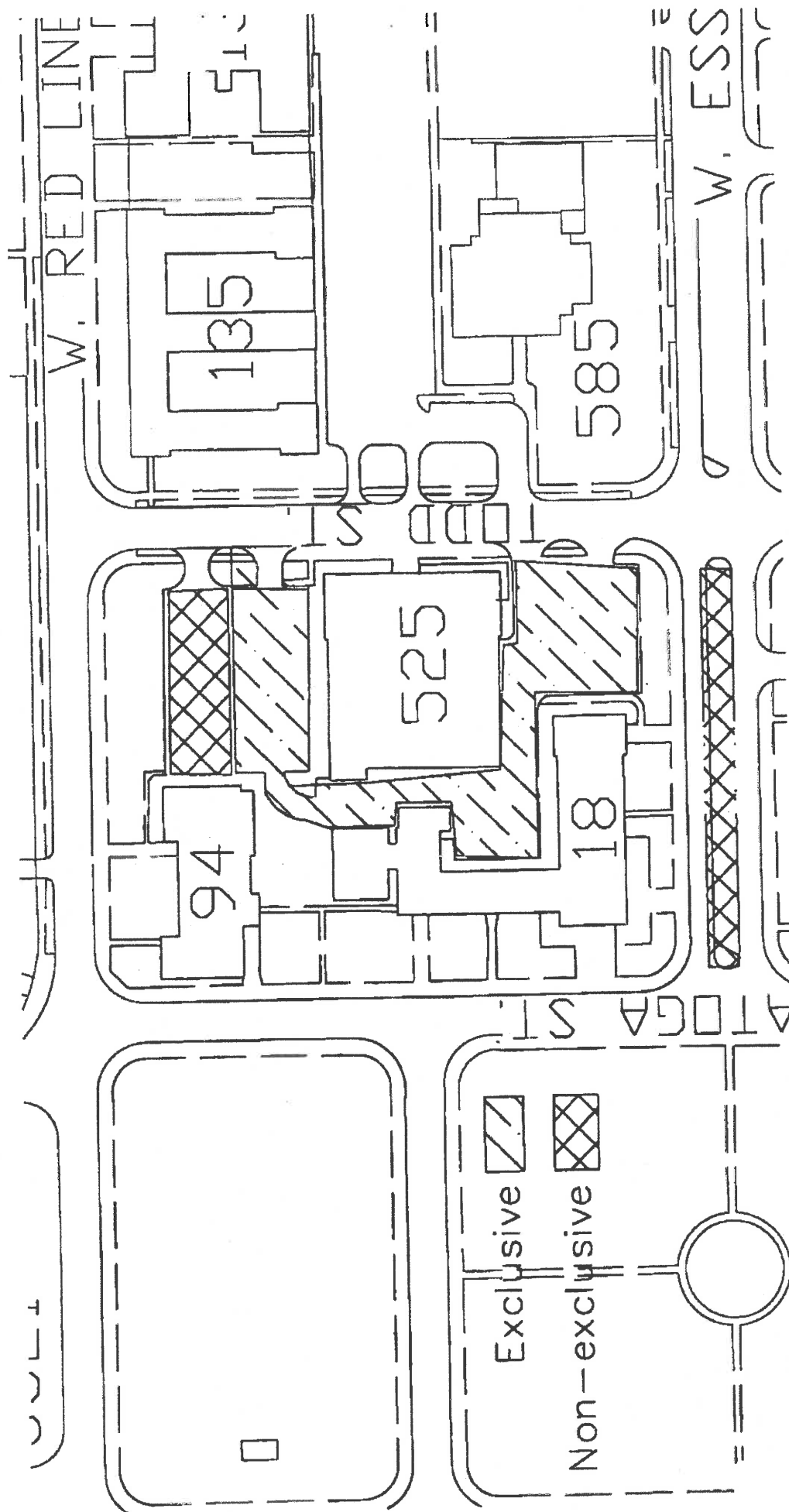


Exhibit B

LEASE IN FURTHERANCE

OF CONVEYANCE

BETWEEN

THE UNITED STATES OF AMERICA

AND

THE ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY

FOR

THE FORMER NAVAL AIR STATION ALAMEDA

ACR

Exhibit D

Approved Qualified Shell Improvements: Building 525

- 1) Installation of fire sprinkler systems or renovation, upgrade or repair of existing fire sprinkler systems.
- 2) Work, including demolition, required to comply with written requirements or requests made by the City of Alameda concerning occupancy of the Leased Premises.
- 3) Extension of electrical service to and inside the Leased Premises (the costs of extending the electrical distribution system within the interior of the Leased Premises is not an "extension of electrical service to and inside the Leased Premises" under this provision), and repairing the existing electrical system and facilities.
- 4) All costs of upgrades for work to the Leased Premises required under the Americans With Disabilities Act, other applicable Laws required to be complied with as a condition of the issuance of a certificate of occupancy and as required by the City of Alameda Building Department, including without limitation, renovation of restrooms to comply with the Americans With Disabilities Act, and the installation of heating ventilation and air-conditioning systems and facilities.
- 5) The installation and repair of fire alarm and security systems required by the City of Alameda Fire Department pertaining to the building shell of the Building.
- 6) Work to verify, establish and repair utilities, including water, gas, sewer and telephone connections to the Leased Premises.
- 7) Structural or seismic upgrade work pertaining to the building shell of the Building, as required by the Government or the City of Alameda Building Department, or otherwise approved by sublessor..
- 8) Roof repairs and or replacements to the roof.
- 9) Exterior structural work, including waterproofing exterior walls (provided that any exterior repainting and any other so-called exterior "cosmetic" work shall not constitute a Qualified Shell Improvement Cost, and subtenant shall not be required to do any exterior repainting and/or make any exterior cosmetic work to the Building at any time during the Initial Term and Extended Term).
- 10) Work not listed under Sections 3.2.1 through 3.2.10 that subtenant has claimed in writing to sublessor qualifies as Qualified Shell Improvement Costs as being part of the building shell improvements related to general requirements for use and occupancy of the Building, and not being for specific occupancy requirements of the subtenant or parties occupying through subtenant, and which sublessor has approved as so qualifying.
- 11) Repair or replace any Exterior doors or panic hardware as needed to secure premises and provide safe exiting.

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- 12) Repair or replace any exterior stairways or exit landings as needed to provide safe egress from premises. All architectural, design, plan, permit and inspection fees and expenses incurred by subtenant in connection with the work described.
- 13) Repair or re-glaze any broken or compromised windows or entry points in premises.
- 14) All Architectural, design, plan, permit and inspection fees and expenses incurred by subtenant in connection with the work described in this exhibit.

ACR



DEPARTMENT OF THE NAVY
ENGINEERING FIELD ACTIVITY, WEST
NAVAL FACILITIES ENGINEERING COMMAND
800 COMMODORE DRIVE
SAN BRUNO, CALIFORNIA 94066-5006

IN REPLY REFER TO:

5090.1B
185JH/EP7-1152
2.1 NOV 1996

MEMORANDUM

From: John H. Kennedy, EFA West Code 185
To: Distribution

Subj: CATEGORICAL EXCLUSION FOR THE PROPOSED LARGE PARCEL LEASE
AT NAVAL AIR STATION ALAMEDA

Encl: (1) Categorical Exclusion for subject action

1. Attached as enclosure (1) is the National Environmental Policy Act (NEPA) Categorical Exclusion (Cat Ex) for the Proposed Large Parcel Lease of Zones 6, 7 (partial), 11, 13, 14, 16 (partial), 17, 18, 19 and 22 at Naval Air Station (NAS) Alameda.
2. Assuming that the proposed action does not change or expand significantly from that described in enclosure (1), that no new significant environmental information becomes available, and that all notifications, requirements or restrictions included in the Cat Ex are followed, this completes the NEPA documentation process for the proposed lease action. However, additional NEPA review will be required prior to each sub-lease executed by the Alameda Reuse and Redevelopment Authority (ARRA) under the lease, to ensure consistency with this Cat Ex.
3. For additional information, contact Mr. Jerry Hemstock, EFA West Code 18522, at telephone (415) 244-3023.

John H. Kennedy
John H. Kennedy
Head, Environmental Planning Branch

Copy to:

Dave Ryan (Alameda Base Closure Manager, EFA West 61)
CDR John Pedersen (Alameda Base Closure Officer)
CDR Don Orndoff (Officer-In-Charge, Alameda Caretaker Site Office)
Ed Levine (ARRA Facilities Manager)
Colette Meunier (Alameda Planning Director)

Acn

Exhibit E

3. DESCRIPTION OF THE PROPOSED ACTION AND ALTERNATIVES. The proposed action is the lease of Zones 6, 13, 14, 16 (partial), 17, 19 and 22 located in the central and southeastern portions at NAS Alameda as shown in Attachment (1). The following provides summary information on the zones:

Zone 6 - Western Hangar Zone. Past use of this area focused on aircraft related activities, including parking, washdown, fueling and maintenance. There are 25 buildings and structures in the zone, including major hangars, as well as minor structures used primarily for storage, administration and related support services. Open space is primarily covered with asphalt paving.

Zone 13 - Central Light Industrial Zone. The area includes 28 buildings and 3 minor structures. Past uses in the zone centered on light industrial uses, including laboratories, electronics shops, plating operations, storage, administrative offices, vehicle storage and fueling and a range of maintenance activities. Open space is primarily covered with asphalt paving.

Zone 14 - Central Warehouse Zone. The zone contains 4 large warehouses and a flammable material storage facility. Open space is used for vehicle parking, and is completely paved with the exception of a small landscaped area near Building 8 (Parcel 74).

Zone 16 (Partial) - Housing Zone. One of three housing areas comprising Zone 16, commonly known as East Housing, and located outside and adjacent to the main base area. Open space area includes pedestrian and vehicle accessways, parking lots and grassy or landscaped residential/recreational areas.

Zone 17 - Engine Testing and Hazardous Materials Storage Zone. Past uses in this area centered on aircraft engine testing and overhaul activities, and the storage of fuel and other hazardous materials. The area includes 27 buildings and 4 structures. Open space areas are mostly paved and include numerous roads and parking areas, a recycling yard, hazardous materials storage areas and a painting and sandblasting area.

Zone 19 - Dock Services Support Zone. Past use of the property centered on dock support activities. The area includes 21 buildings, including warehouses for equipment and material storage, a rigging shop, a guard station, sewage pump station, transformer substation, an aircraft maintenance hangar and a steam plant. Open space is mainly paved and used for parking and for equipment and material storage.

Zone 22 - Southeastern Refinery and Heavy Industrial Zone. The area includes 28 buildings used as warehouses, engine and missile overhaul, storage administrative offices, aircraft stripping and related support services. Open spaces mostly paved, and used for vehicle parking and material storage.

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Zone 13 - Central Light Industrial Zone. The area includes 28 buildings and 3 minor structures. Past uses in the zone centered on light industrial uses, including laboratories, electronics shops, plating operations, storage, administrative offices, vehicle storage and fueling and a range of maintenance activities. Open space is primarily covered with asphalt paving.

Zone 14 - Central Warehouse Zone. The zone contains 4 large warehouses and a flammable material storage facility. Open space is used for vehicle parking, and is completely paved with the exception of a small landscaped area near Building 8 (Parcel 74).

Zone 16 (Partial) - Housing Zone. One of three housing areas comprising Zone 16, commonly known as East Housing, and located outside and adjacent to the main base area. Open space area includes pedestrian and vehicle accessways, parking lots and grassy or landscaped residential/recreational areas.

Zone 17 - Engine Testing and Hazardous Materials Storage Zone. Past uses in this area centered on aircraft engine testing and overhaul activities, and the storage of fuel and other hazardous materials. The area includes 27 buildings and 4 structures. Open space areas are mostly paved and include numerous roads and parking areas, a recycling yard, hazardous materials storage areas and a painting and sandblasting area.

Zone 19 - Dock Services Support Zone. Past use of the property centered on dock support activities. The area includes 21 buildings, including warehouses for equipment and material storage, a rigging shop, a guard station, sewage pump station, transformer substation, an aircraft maintenance hangar and a steam plant. Open space is mainly paved and used for parking and for equipment and material storage.

Zone 22 - Southeastern Refinery and Heavy Industrial Zone. The area includes 28 buildings used as warehouses, engine and missile overhaul, storage administrative offices, aircraft stripping and related support services. Open spaces mostly paved, and used for vehicle parking and material storage.

The proposed action would lease property within the aforementioned zones to the ARRA for a period of fifteen years. The ARRA would then sub-lease or otherwise occupy portions of the property which have been identified as suitable for use or occupancy. Uses allowed under the proposed lease would be limited to those which represent no substantial change from past Navy land use and use intensity, and which are consistent with the NAS Alameda Community Reuse Plan.

No alternatives were considered for this action nor were any required given the lack of environmental effects. Taking no action would result in the property being held in an inactive "caretaker" status by the Navy.

4. APPLICABLE CATEGORICAL EXCLUSION. The categorical exclusion appropriate to this proposed action is Number 19 (OPNAVINST 5090.IB, 2-4.2 (19)) stated as follows:

(19) Transfer of real property from the military to another military department or to another Federal agency, and the granting of leases (including leases granted under the agricultural outleasing program where the soil conservation plans are incorporated), permits and easements where there is no substantial change in land use, or where subsequent land use would otherwise be categorically excluded.

5. IMPACT EVALUATION FACTORS: A categorical exclusion may not be used if the proposed action might result in certain specific impacts (OPNAVINST 5090.IB, 2-4.1). These restrictions on the use of categorical exclusions shall be incorporated into the proposed lease. The lease shall include a provision allowing termination of the lease if sub-lease uses exceed the limits of the categorical exclusion. These impacts would not result from implementation of the proposed action, and are discussed as follows:

a. Would not affect public health and safety.

The proposed lease use of the property will be limited to uses which represent no substantial change from past use by the Navy and will not adversely affect public health and safety.

Hazardous materials and wastes existing on the site proposed for lease. Because appropriate administrative, engineering and physical controls can be established and incorporated into the proposed lease to protect property users from the environmental contamination identified or suspected within the area proposed for lease, the environmental risks associated with the property can be mitigated. This conclusion was reached in coordination with Federal and state regulatory agencies on the basis of review of NAS Alameda's Environmental Baseline Survey (EBS) of October 31, 1994, a Site-Specific Environmental Baseline Survey (SSEBS) for Zones 6, 13, 14, 16 (Partial), 17, 19 and 22 dated September 24, 1996, and related documents. A Finding of Suitability to Lease (FOSL) document for this property will include specific requirements and restrictions to be included in the lease to ensure protection of human health and safety.

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Handling of hazardous materials and wastes under the proposed lease action. Property and facility use and the scope and range of operations within the zones under the proposed lease will be similar to past Navy use of the site. Therefore the proposed lease action is not anticipated to result in significantly increased or different handling of hazardous materials or wastes relative to past use of the site. The following conditions will be included in the lease:

- 1) lessee shall be prohibited from storing, treating or disposing of toxic or hazardous materials except to the extent specifically authorized pursuant to 10 U.S.C. 2692 or as authorized by the Navy;
- 2) prior to each sub-lease, the lessee shall be required to submit a report of the types and amounts of toxic or hazardous materials to be handled, stored, or generated;
- 3) lessee shall strictly comply with the hazardous waste permit requirements under the Resource Conservation and Recovery Act (RCRA), or its state equivalent, or any other applicable laws, rules or regulations;
- 4) lessee shall have a Government-approved plan for responding to hazardous waste, fuel and other chemical spills prior to the commencement of operations on the leased premises; and
- 5) lessee shall provide prior notice of all permit applications and copies of all permits and compliance/response plans to the NAS Alameda Environmental Office (Alameda Caretaker Site Office after closure).

On the basis of the above listed stipulations, the handling, storage or disposal of hazardous materials and wastes from activities allowed under the proposed lease would not significantly affect public health and safety.

Police and Fire Services. Police and fire services will be provided by the Navy until operational closure and by the City of Alameda or the Navy after operational closure. NAS Alameda has an on-site fire station and a mutual aid agreement with the City of Alameda Fire Department. Security services for leased properties would be provided by the lessee.

Seismic Condition. The property proposed for lease is located on artificial fill and is potentially susceptible to damage due to seismic activity at earthquake faults in the San Francisco Bay Area. The lessee shall be notified of this condition in the lease. This is an existing condition common in the Bay Area, and the proposed lease shall not result in a significant or increased risk to human health and safety from geologic or seismic conditions on the site.

Transportation, Traffic and Circulation. The existing NAS Alameda roadway system, designed for an operational Navy base, is adequate to handle the anticipated additional vehicles generated by the proposed lease action. The additional impact to area roads, including those such as the Webster/Posey Street Tubes and the I-880 on-ramps which are operating at or near capacity, is expected to be minimal.

b. Would not involve an action which is determined, in conjunction with the appropriate resource agency, to have the potential for significant environmental effects on wetlands, endangered or threatened species, historical or archeological resources, or hazardous waste sites.

(1) **Wetlands.** No wetlands are present on the property proposed for lease. As indicated in Attachment (2), wetlands exist elsewhere on NAS Alameda, specifically the West Beach Landfill Wetland and Runway Wetland areas. The lessee shall be prohibited from entering any wetlands area at NAS Alameda. Police services will include patrols to limit trespassing and vandalism of at NAS Alameda, including the wetlands. In addition, prior to April 1997 the Navy intends to further restrict access to the wetlands and endangered species habitat by the installation of additional fencing separating the airfield from other areas of the property. If buildings or property within Zone 6 are sub-leased or otherwise occupied prior to the installation of the caretaker fencing, the lessee shall be required to install temporary fencing, as directed by the Navy.

(2) **Biological Resources including Endangered Species.** No threatened, endangered, rare or sensitive species are present in the area proposed for lease, and therefore would not be affected by the proposed action.

The lessee is not authorized to visit endangered species habitat located elsewhere at NAS Alameda. Police services will include patrols to limit trespassing and vandalism at NAS Alameda, including threatened and endangered species habitat. In addition, prior to April 1997 the Navy intends to further restrict access to endangered species habitat by the installation of additional fencing separating the airfield from other areas of the property. If buildings or property within Zone 6 are sub-leased or otherwise occupied prior to the installation of the caretaker fencing, the lessee shall be required to install temporary fencing, as directed by the Navy.

The lessee shall be prohibited from interfering with any predator management or animal control activities at NAS Alameda, including the feeding, sheltering or maintaining of any wild, domestic or feral animal, particularly feral cats and non-native red fox. Violation of this requirement could result in the revocation of an individual's access to NAS Alameda and/or other Navy actions.

With the above-stated stipulations, no endangered, threatened, rare or sensitive species would be affected by the proposed lease. Because no species would be affected, no formal or informal Endangered Species Act Section 7 consultation with the U. S. Fish and Wildlife Service was necessary or conducted.

(3) **Historic or Archeological Resources.** As shown in Attachment (3), a portion of Zones 6, 13 and 14 are included within the NAS Alameda Historic District boundary, which was determined to qualify for listing in the National Register of Historic Places by the Navy, in consultation with the State Historic Preservation Officer (SHPO). In addition, a number of buildings within Zones 6, 13 and 14 are among the eighty-five

(85) buildings and structures which have been determined to contribute to the Historic District.

To protect Zone 6, 13 and 14 properties within the NAS Alameda Historic District, the lease will be conditioned to require the lessee and their sub-lessees to conform to uses consistent with existing use. The lease will also prohibit any excavation, or modification to the exterior of structures or facilities within the Historic District, without prior written permission from the Navy's Environmental Planning Branch at Engineering Field Activity West, San Bruno, California. This will permit the Navy to review any proposed improvements the lessee may propose, in consultation with the SHPO to determine their effects and require appropriate actions to avoid adverse effects. Repair and maintenance of all property and facilities within the Historic District will be done in kind to match existing material and design. On the basis of these stipulations, the Navy has determined that the execution of the proposed lease, and subsequent subleases of specific properties and facilities to individual tenants, will have no effect on the characteristics that qualify the NAS Alameda Historic District for listing in the Register.

By letters of 19 September 1996 (Zone 6), and 17 October 1996 (Zones 13, 14, 16 (Partial), 17, 19 and 22), the Navy requested the concurrence of the SHPO that the proposed lease would not affect National Register or eligible property, in accordance with the regulations for the "Protection of Historic Properties" (36 CFR Part 800). The SHPO has not responded to the 19 September letter within the required 15 days of receipt; however, the SHPO has responded to the Navy's 17 October letter by correspondence dated 28 October 1996, concurring with the Navy's "no effect" determination. In accordance with 36 CFR 800.5(b), no further action is required under Section 106 of the National Historic Preservation Act (NHPA). Referenced correspondence is included as Attachment (4).

(4) Hazardous Waste Sites. The proposed action would not have any significant environmental effects on hazardous waste sites on or adjacent to the proposed lease area. A base-wide Environmental Baseline Survey (EBS) and a Site-Specific EBS (SSEBS) document for Zones 6, 13, 14, 16 (Partial), 17, 19 and 22 have been prepared which identify known or suspected site contamination from the storage, release or disposal of hazardous substances and petroleum products within and adjacent to the proposed lease area. The SSEBS notes 15 Installation Restoration (IR) sites, including 3 areas showing elevated levels of benzene, toluene, ethylbenzene, and/or zylene. These three areas (Parcels 128 and 131 (IR Site 3) and Parcel 145 (IR Site 7C) will be unavailable for use pending further soils vapor studies and analysis. In addition, several other IR sites have detected hazardous constituents including volatile and semi-volatile organic compounds and metals. With the exception of the 3 parcels noted above, it was determined through the SEBS that potential health and safety risks are either below the target risk thresholds or can be effectively controlled to remain below the target thresholds at all other locations within the property proposed for lease. The lessee shall be provided with a copy of all of these EBS reports.

The lessee shall be advised that the Navy and regulatory agencies require access to the property to complete evaluations and conduct remediation of specific contaminated sites.

c. Does not involve effects on the human environment that are highly uncertain, involve unique or unknown risks, or that are scientifically controversial.

The proposed lease of property in Zones 6, 13, 14, 16 (Partial), 17, 19 and 22 is for use that is consistent with past Navy use and use intensity and therefore would not involve effects on the human environment that are highly uncertain, involve unique or unknown risks, or that are scientifically controversial.

d. Does not establish precedents or make decisions in principle for future actions with significant effects.

The proposed fifteen year lease of property in Zones 6, 13, 14, 16 (Partial), 17, 19 and 22 is limited to uses which are consistent with past Navy use of the site and with the NAS Alameda Community Reuse Plan, and makes no commitments or obligations external to the lease.

e. Does not threaten a violation of Federal, state or local law or requirements imposed for protection of the environment.

The proposed lease, with no significant change in use or use intensity, would not threaten a violation of Federal, state or local law or requirements imposed for the protection of the environment.

Coastal Zone Management Act. Per prior agreement with the San Francisco Bay Conservation and Development Commission (correspondence May 19, 1995), the proposed action would not involve Coastal Zone concerns since it is generally consistent with historic land use and use intensity. No further coastal zone documentation is necessary for the proposed lease of property or for subsequent sub-leases allowed under the proposed lease.

Executive Order 12898 (11 Feb 94) on Environmental Justice in Minority and Low Income Populations. Pursuant to the Executive Order, the proposed action would not have a disproportionately adverse effect on minority and low income populations. The proposed lease could create local jobs and lease revenue income from which all community residents may benefit.

Clean Air Act Conformity/Record of Non-Applicability (RONA). The proposed lease will be for activities which are similar in scope and operations to activities conducted at the site by the Navy, and is therefore considered excluded from a conformity determination under the Clean Air Act requirements (40 CFR 93.153(c)(x)-(xi)). This Categorical Exclusion shall serve as the Record of Non-applicability (RONA) for the proposed action, pursuant to 40 CFR Parts 51 and 93, and a further conformity determination is not necessary.

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7. Preparer(s). This Categorical Exclusion was prepared by Mr. Jerry Hemstock, Environmental Protection Specialist, EFA West (Code 185JH), telephone (415) 244-3023. The document has also been reviewed by EFA West personnel listed in Attachment (4).

8. Review and approval.

a. Reviewed By: Douglas R. Pomeroy
Head, BRAC and Biology Section
Environmental Planning Branch
Engineering Field Activity West
San Bruno, California

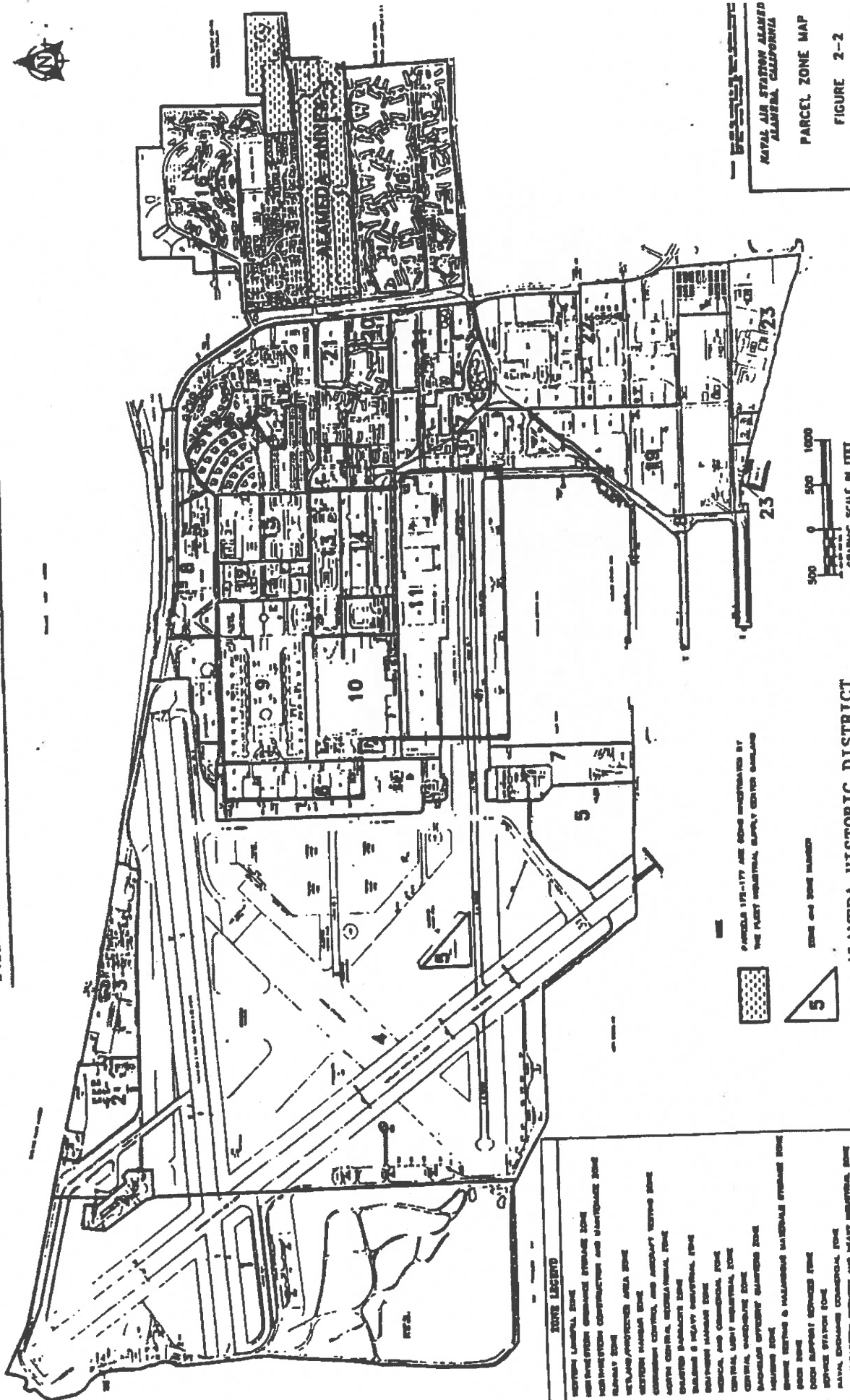
Signature William Van Packer Date 11/20/96

b. Approved By: John H. Kennedy
Head, Environmental Planning Branch
Engineering Field Activity West
San Bruno, California

Signature John H. Kennedy Date 11/21/96

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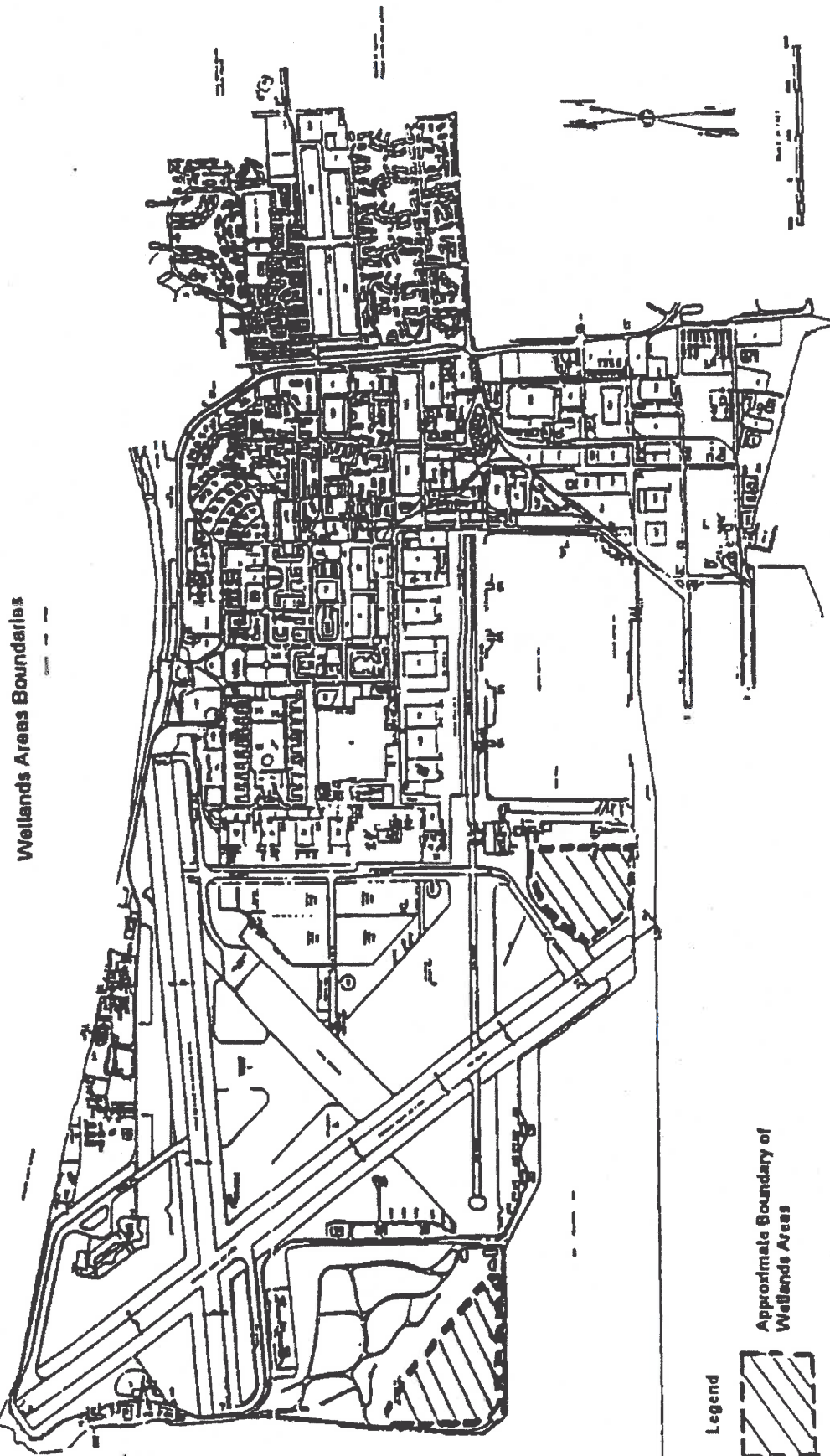
NAVAL AIR STATION ALAMEDA, CA



LARGE PARCEL LEASE NAS ALAMEDA

Attachment C1.
ACR

NAVAL AIR STATION ALAMEDA, CA



Location of Wetlands at NAS Alameda
Attachment (2)

Ken

OFFICE OF HISTORIC PRESERVATION

DEPARTMENT OF PARKS AND RECREATION

P.O. BOX 942886

SACRAMENTO 94296-0001

(916) 653-6824

FAX: (916) 653-9824



October 28, 1996

Reply To: USN961017X

Mr. Louis Wall, CR Coordinator
Environmental Planning Branch
EFA, West, Naval Facilities Engineering
Command
900 Commodore Drive
San Bruno CA 94066-5006

Re: NAS, Alameda - Leasing of Zones 13, 14, 15 partial, 17, 19, 22

Dear Mr. Wall:

In accordance with Section 800.5(b) of 36 CFR 800, regulations implementing Section 106 of the National Historic Preservation Act, the Navy has determined that subject to the specific conditions and restrictions set forth in the Navy's October 17, 1996 letter to me, the proposed leasing and any subleasing of the NAS, Alameda zones listed above, will not affect historic properties. Thank you for the opportunity to comment on the Navy's determination.

I have reviewed the information submitted in support of the Navy's determination and based upon the results of that review, I do not object to the Navy's finding.

The Navy's consideration of historic properties in the BRAC process is greatly appreciated. If you have any questions, please call Hans Kreutzberg at (916) 653-9107.

Sincerely,

Cheryl Widell
State Historic Preservation Officer

OFFICE OF HISTORIC PRESERVATION
DEPARTMENT OF PARKS AND RECREATION
P.O. BOX 942886
SACRAMENTO 94296-0001
(916) 653-6624
FAX: (916) 653-9824



October 11, 1996

Reply To: USN960926B

Mr. Louis Wall, Coordinator
Cultural Resources
Environmental Planning Branch
Department of the Navy
Engineering Field Activity, West
900 Commodore Drive
San Bruno CA 94066-5006

Re: 5090.1A; 185LW/jh; P5-1102; Interim Lease of Zone 18,
NAS, Alameda

Dear Mr. Wall:

In accordance with 36 CFR 800, regulations implementing Section 106 of the National Historic Preservation Act (NHPA), the Navy has notified me that interim leasing of Zone 18, NAS, Alameda, to the Alameda Reuse and Redevelopment Authority (ARRA) and any subsequent subleasing to other tenants will not affect the NAS, Alameda Historic District, a property determined eligible for inclusion in the National Register of Historic Places. The Navy's determination is based on a lease condition that subjects any excavation or modification within the Historic District section of Zone 18 to prior EFA, West review and approval and to subsequent Section 106 consultation as necessary. Thank you for advising me of the Navy's determination in this matter.

Based on review of the documentation accompanying your advisory, I have no objection to the Navy's determination so long as the lease's EFA, West review and approval provisions pertaining to the Historic District are implemented as necessary.

The Navy's consideration of historic properties is appreciated. If you have any questions, please call Hans Kreutzberg at (916) 653-9107.

Sincerely,

Cherilyn Widell
State Historic Preservation Officer

Ann

Attachment (3)

NATIONAL ENVIRONMENTAL POLICY ACT CATEGORICAL EXCLUSION

EFAWEST/NAVY INTERNAL REVIEW FORM

Activity: NAS ALAMEDA Date: November 96

PROPOSED ACTION: LARGE PARCEL LEASE (ZONES 6, 7, 11, 13, 14, 16, 17, 18, 19 AND 22)

EFAWEST has prepared the attached Categorical Exclusion (Cat Ex) pursuant to the National Environmental Policy Act (NEPA) for the proposed action. This form is for assuring appropriate internal Navy review prior to signing the Cat Ex.

REVIEW (SIGN, PRINT NAME AND DATE):

[Signature] 11/19/96
NEPA Manager, Code 185 Date

[Signature] 11/21/96
Cultural Resources, Lou Wall and/or Patricia Duff, Code 185 Date

[Signature] 11/20/96
Biological Resources, Doug Pomeroy and/or William Van Peeters, Code 185 Date

[Signature] 11/19/96
Environmental Baseline Survey (EBS) Manager, Code 1824 Date

[Signature] 11/21/96
Base Conversion Manager (BCM), or Deputy BCM, Code 60 Date

[Signature] 11/21/96
Caretaker Advocate, Code 65 Date

[Signature] 11/19/96
Real Estate Representative, Code 24 Date

[Signature] 11/20/96
Counsel, Code 09C Date

[Signature] 11/21/96
John H. Kennedy, Head, Environmental Planning Branch, Code 185 Date

Attachment (4)

[Signature]

EXHIBIT F
HISTORICAL PRESERVATION

Historic Preservation

Subtenant acknowledges that Building 525 is located within the bounds of a Historic District but is not a contributing building to the character of the "District".

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Exhibit H

Pre-approved Initial Improvements: Building 525

- 1) Repair and replace roof as needed.
- 2) Remove and discard Bowling Alley lanes and alter floor levels as needed.
- 3) Remove and discard suspended acoustic tile ceiling over the Bowling lanes and former ball return and seating areas.
- 4) Replace all other suspended ceiling tiles as needed.
- 5) Replace glass windows in former food service area with new exterior cinder block wall for security.
- 6) Install security roll down gates over main entrance and side exit glass doorways.
- 7) Remove all existing carpeting and replace as desired.
- 8) Scrape, patch, repair and paint any areas of premises as desired by subtenant.
- 9) Repair and upgrade men's and ladies' restrooms as desired by subtenant. This requirement will be incorporated into existing restrooms if possible.
- 10) Provide disabled access restroom(s) as required by A.D.A./ City Building Dept. requirements.
- 11) Repair or replace any exit doors or panic hardware as desired by subtenant or required by the City of Alameda.
- 12) Repair and upgrade electrical systems as needed. Provide a new transformer if required by Bureau of Electricity.
- 13) Replace exterior signage with appropriate replacement.
- 14) Repair, replace or upgrade H.V.A.C. systems as desired by subtenant.
- 15) Install telephone and computer internet systems as needed.
- 16) Install security and alarm systems as desired by subtenant.
- 17) Provide alterations, renovations or replacement of fire sprinkler system as required by City of Alameda/Fire Marshal.
- 18) Perform all required upgrades to the leased premises required by the A.D.A. and as required by the City of Alameda.
- 19) Create an appropriate wheelchair entry ramp as needed for disabled access to Building 525.
- 20) Re-glazing of windows and doors as needed.
- 21) Exterior wall repairs as needed at the discretion of the subtenant.
- 22) Install trade fixtures such as lighting, showcases, television monitors etc throughout.
- 23) Establish water, electric, gas and sewer service as needed.

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- 24) Re-stripe and clean parking lots as needed.
- 25) Repair and alter truck-loading dock and freight delivery area in rear of premises as needed to conduct subtenant business activities.
- 26) All existing kitchen and cooking equipment to be removed and discarded with possible reconfiguration of existing kitchen area.
- 27) Subtenant reserves the right to install a Bank/Walk-in vault on premises.
- 28) Repair and upgrade with possible reconfiguration of existing office rooms and a reception counter area.
- 29) Remove existing bowling lane control booth in center of mezzanine.
- 30) Perform any repairs required in the interest of general maintenance.
- 31) Perform any landscaping as needed or desired by subtenant.
- 32) Remove any non-structural walls, including concrete block walls as desired by subtenants.

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