



*cc members*

May 27, 1981

PARKING AUTHORITY  
Performing Arts Center Garage  
99-year Lease

Margaret Brady  
Director  
Parking Authority  
450 McAllister Street  
Room 603  
San Francisco, CA

Dear Mrs. Brady:

Attached for your file is a fully executed copy of the 99-year Lease granted by CALTRANS for the Performing Arts Center Garage.

As soon as the City can acquire the property and property rights from the Redevelopment Agency, the PAC Garage land package will be complete.

Sincerely,

WALLACE WORTMAN  
Director of Property

AJD:rc  
attachment

cc: Robert Kenealey, Deputy  
City Attorney

1981  
MAY 28 4 51 PM '81  
OFFICE OF THE DIRECTOR OF PROPERTY

LONG-TERM BUILDING DEVELOPMENT LEASE

		<u>Page</u>
Article 1	SUMMARY OF LEASE PROVISIONS	1
Article 2	PREMISES	3
Article 3	TERM	5
Article 4	RENT	5
	4.1 Minimum Monthly Rent	5
	4.2 Reevaluation of Transfer	5
Article 5	USE	5
	5.1 Specified Use	5
	5.2 Condition of Premises	5
	5.3 Compliance with Law	6
	5.4 Petroleum Products	7
	5.5 Explosives and Flammable Materials	7
	5.6 Signs	7
	5.7 Landlord's Rules and Regulations	8
	5.8 Wrecked Vehicles	8
	5.9 Vending	8
Article 6	COMMENCEMENT AND COMPLETION OF INITIAL CONSTRUCTION	8
	6.1 Commencement of Construction	8
	6.2 Completion of Construction and Occupancy of Improvements	9
Article 7	REQUIREMENTS FOR CONSTRUCTION OR ALTERATION OF IMPROVEMENTS	9
	7.1 Encroachment Permit	9
	7.2 Standard of Construction	10
	7.3 "As Built" Plans	10
	7.4 Ownership of Improvements	10
Article 8	MAINTENANCE AND REPAIRS	11
	8.1 Tenant's Obligations	11
	8.2 Retention of Existing Improvements	12
	8.3 Landlord's Rights	12
Article 9	INSURANCE	13
	9.1 Exemption of Landlord from Liability	13
	9.2 Self Insurance Provision	13
	9.3 Waiver of Subrogation	13
Article 10	DAMAGE OR DESTRUCTION	14
Article 11	PAYMENT OF TAXES	15
Article 12	RIGHT OF ENTRY	16
Article 13	CONDEMNATION	17
	13.1 Termination of Lease as Part Condemned	17
	13.2 Nonsubstantial Taking	17
	13.3 Substantial Taking	17
	13.4 Compensation	18

	<u>Page</u>
Article 14 UTILITIES	19
Article 15 LIENS	19
15.1 Exemption of Landlord from Liability	19
15.2 Tenant's Obligations	20
Article 16 DEFAULT	21
16.1 Default	21
16.2 Landlord's Remedies	22
16.3 Landlord's Right to Cure Tenant's Default	24
Article 17 ASSIGNMENTS, SUBLEASES AND ENCUMBRANCES	24
17.1 Voluntary Assignment, Subleases and Encumbrances	24
17.2 Encumbrances	24
Article 18 FAIR EMPLOYMENT PRACTICES	24
Article 19 ADDITIONAL PROVISIONS	25
19.1 Quiet Enjoyment	25
19.2 Captions, Attachments, Defined Terms	26
19.3 Entire Agreement	26
19.4 Severability	27
19.5 Costs of Suit	27
19.6 Time, Joint and Several Liability	28
19.7 Binding Effect; Choice of Law	28
19.8 Waiver	28
19.9 Surrender of Premises	29
19.10 Holding Over	29
19.11 Recording	29
19.12 Notices	30
19.13 No Reservation	30
19.14 Corporate Authority	30
Article 20 CERTIFICATION OF FUNDS	31

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION  
AIRSPACE GROUND LEASE

THIS LEASE is made and entered into this 27th day of February, 1981, by and between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, hereinafter called "Landlord," and Parking Authority of the City and County of San Francisco hereinafter called "Tenant."

W I T N E S S E T H

For and in consideration of the rental and of the covenants and agreements hereinafter set forth to be kept and performed by the Tenant, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises herein described for the terms, at the rental and subject to and upon all of the terms, covenants and agreements hereinafter set forth.

ARTICLE 1. SUMMARY OF LEASE PROVISIONS

Date: February 27, 1981

Landlord: State of California, Department of Transportation

Tenant: Parking Authority of City and County of San Francisco

Premises: Located in the City of San Francisco

County of San Francisco, State of California.

commonly known as 04-SF-101-58 (FLA), more

particularly described in Article 2.

Lease Term: Ninety Nine Years, commencing

April 1, 1981 and expiring on March 31, 2080.

(Article 3)

Rent Annual \$24,225.00 (Prepaid)

Adjustment to Rent: (Article 4)

Method: None

Frequency: None

Use: Access to Performing Arts Garage plus landscaping and site for sculpture (Article 5)

Liability Insurance: \$ Self-insured (Article 9)

Address for Notices: (Article\_\_)

To Landlord: State of California

P. O. Box 7791, Rincon Annex

San Francisco, CA 94120

To Tenant: Director of Property

450 McAllister Street, Rm. 600

San Francisco, CA 94102

References in this Article 1 to the other Articles are for convenience and designate other Articles where references to the particular item contained in the Summary of Lease Provisions appears. Each reference in this Lease to the Summary of Lease Provisions contained in this Article 1 shall be construed to incorporate all of the terms provided under the Summary of Lease Provisions. In the event of any conflict between the Summary of Lease Provisions and the balance of the Lease, the latter shall control.

## ARTICLE 2. PREMISES

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the term, at the rent, and upon the covenants and conditions hereinafter set forth, those certain premises known as Airspace Lease Area No. 04-SF-101-58 (FLA), situated in the City of San Francisco, County of San Francisco, said land or interest therein being shown on the map or plat marked, "Exhibit A," attached hereto and by this reference made a part hereof, and more particularly described as follows:

BEGINNING at a point on the easterly line of Gough Street, distant thereon 70.190 feet northerly from the northerly line of Grove Street, running thence northerly along said line of Gough Street 67.310 feet; thence at a right angle easterly 42.348 feet; thence deflecting 122° 12'58" to the right from the

preceding course and running southwesterly 51.711 feet to the southeasterly line of that certain parcel of land described in the Deed from Lillie Gunther, a widow, to the State of California, dated May 14, 1956, recorded June 15, 1956, in Book 6863 of Official Records, at Page 502, in the Office of the Recorder of the City and County of San Francisco, State of California; thence southwesterly along said southeasterly line of land described in said Deed on the arc of a curve to the left tangent to the preceding course, with radius 6,946 feet, central angle  $0^{\circ}13'46''$ , an arc distance of 27.812 feet to said easterly line of Gough Street and the point of Beginning. Being a portion of Western Addition Block 138. Being also a portion of lot 26 in Assessor's Block 792. Containing 1,424 square feet, more or less.

EXCEPTING THEREFROM all those portions of the above-described property occupied by the supports and foundations of the bridge or viaduct if any. [ALSO EXCEPTING THEREFROM all that portion of said property above a horizontal plane 8 feet below the underside or soffit, whichever is lower, of the viaduct which plane extends to the vertical boundaries of the above-described property, as shown on the diagram marked "Exhibit B," attached hereto and by this reference made a part hereof.]

ARTICLE 3. TERM

The term of this Lease shall be for Ninety-nine  
(99) years, commencing April 1, 1981, and expiring  
March 31, 2080.

ARTICLE 4. RENT

4.1 Rental

LESSEE agrees to pay LESSOR as rent for the leased premises the sum of \$24,225.00, representing the rent for the entire ninety-nine (99) year period. Said rent is due and payable in advance and will be delivered to Landlord at the address to which notices to Landlord are given.

4.2 Reevaluation on Transfer

Landlord expressly reserves the right to establish a new minimum monthly rental as a condition to Landlord's approval of any assignment of this lease of all or any portion of the leased premises.

ARTICLE 5. USE

5.1 Specified Use

The premises shall be used and occupied by Tenant only for the purpose of access to Performing Arts Garage plus landscaping and site for sculpture as described in Tenant's Offer and Proposal approved by the Department of Transportation Airspace Advisory Committee on February 4, 1981, and for no other purpose whatsoever without obtaining the prior written consent of Landlord the concurrence of the Federal Highway Administration.

5.2 Condition of Premises

Tenant hereby accepts the Premises in their condition existing as of the date of the execution hereof, subject to all applicable zoning, municipal, county, state and federal laws,



ordinances and regulations governing and regulating the use of the Premises, and accepts this Lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the condition of the Premises or the suitability thereof for the conduct of Tenant's business, nor has Landlord agreed to undertake any modification, alteration or improvement to the Premises except as provided in this Lease.

### 5.3 Compliance with Law

Tenant shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, zoning restriction, ordinance or governmental rule or regulation or requirements of duly constituted public authorities now in force or which may hereafter be in force and with the requirements of the State Fire Marshal or other similar body now or hereafter constituted relating to or affecting the condition, use of occupancy of the Premises. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any law, statute, ordinance or governmental rule, regulation or requirement, shall be conclusive of that fact as between Landlord and Tenant. Tenant shall not allow the Premises to be used for any unlawful purpose, nor shall Tenant cause, maintain, or permit any nuisance in, on or about the Premises. Tenant shall not commit or suffer to be

committed any waste in or upon the Premises.

#### 5.4 Petroleum Products

Tenant shall not install facilities for, nor operate on the land above or below a highway or freeway, a gasoline or petroleum supply station, nor shall the transportation of gasoline or petroleum products be permitted under the viaduct structures.

#### 5.5. Explosives and Flammable Materials

The premises shall not be used for the manufacture of flammable materials or explosives, or for any storage of flammable materials, explosives, or other materials or other purposes deemed by Landlord to be a potential fire or other hazard to the transportation facility. The operation and maintenance of the leased premises shall be subject to regulations of Landlord so as to protect against fire or other hazard impairing the use, safety and appearance of the transportation facility. The occupancy and use of the area shall not be such as will permit hazardous or unreasonably objectionable smoke, fumes, vapors or odors to rise above the surface of the traveled way of the transportation facility.

#### 5.6 Signs

Tenant shall not construct, erect, maintain or permit any sign, banner or flag upon the premises without the prior written approval of Landlord. The term "sign" means any card, cloth, paper, metal, painted or wooden sign of any character placed for any purpose on or to the ground or any tree, wall, bush, rock, fence, building, structure, trailer or thing.

Landlord may remove any unapproved sign, banner or flag existing on the premises and Tenant shall be liable to and shall reimburse Landlord for the cost of such removal.

#### 5.7 Landlord's Rules and Regulations

Tenant shall faithfully observe and comply with the rules and regulations that Landlord shall from time to time promulgate. Landlord reserves the right from time to time to make reasonable modifications to said rules and regulations for the protection of the Transportation facility. The additions and modifications to those rules and regulations shall be for the note protection of the transportation facility and shall be binding upon Tenant upon delivery of a copy of them to Tenant.

#### 5.8 Wrecked Vehicles

Tenant shall not park or store wrecked or inoperable vehicles of any kind on the leased premises.

#### 5.9 Vending

Tenant shall not conduct or permit the vending or sale of any goods or services upon the leased premises except as specifically permitted under paragraph 5.1.

### ARTICLE 6. COMMENCEMENT AND COMPLETION OF INITIAL CONSTRUCTION

#### 6.1 Commencement of Construction

Tenant shall commence construction of the approved improvements on the premises within 365 calendar days of the date of execution of this lease. For the purpose of this Article construction shall be deemed to have commenced upon the issuance

by Landlord of an encroachment permit under paragraph 7.1. In the event construction is not commenced within the time set forth herein, this lease shall, at the option of Landlord, be considered a default under the terms of this lease.

#### 6.2 Completion of Construction and Occupancy of Improvement

Construction of the improvements shall be completed consistent with the approved construction plans within 365 calendar days after the commencement of construction. Tenant shall not occupy or use any of the improvements until he has received final building approval and a Certificate of Occupancy from the appropriate local agency and Landlord has issued to him an executed Encroachment Permit Completion Notice. In the event Tenant violates any of the provisions of this paragraph, this lease may be terminated by Landlord and be of no further force and effect.

### ARTICLE 7. REQUIREMENTS FOR CONSTRUCTION OR ALTERATION OF IMPROVEMENTS

#### 7.1 Encroachment Permit

Tenant, prior to construction or alteration of any improvements on or of the leased premises shall obtain an executed encroachment permit from Landlord.

Issuance by Landlord of an encroachment permit shall be contingent upon Tenant's providing the following:

- (a) Final construction plans and detailed specifications. All such plans and specifications submitted by tenant to landlord shall be subject to Landlord's review and approval.

Tenant agrees to diligently apply for and meet all requirements for issuance of an encroachment permit and Landlord agrees to not unreasonably withhold issuance of said encroachment permit.

#### 7.2 Standard of Construction

Tenant agrees that any improvements or construction upon the premises shall: (a) be consistent with all fire safety requirements, (b) be subject to the approval of Landlord and the concurrence of the Federal Highway Administration, and (c) in every respect comply with the laws, ordinances and regulations, federal, state, municipal or otherwise, that may govern construction of the same. Tenant shall save Landlord harmless of and from any loss or damage by reason of the construction of said new improvements.

#### 7.3 "As-Built" Plans

Within ninety (90) days after completion of construction of the improvements or alterations, Tenant shall furnish Landlord, at Tenant's expense, one set of Mylar or Cronoflex "As-Built" plans, according to a scale and size designated by Landlord, showing said improvements as constructed in detail, including the location of underground and aboveground utility lines.

#### 7.4 Ownership of Improvements

At the expiration or termination of this lease, all buildings, structures and improvements constructed on the premises by Tenant shall vest in Landlord. Tenant shall deliver said buildings, structures and improvements to Landlord in good

condition and repair, reasonable wear and tear expected, without compensation to Tenant, any subtenant or third party free and clear of all claims to or against them by Tenant, any subtenant or third party, and Tenant shall defend and hold Landlord harmless from all liability arising from such claims or from the exercise by Landlord of its right under this paragraph. In the event said buildings, structures and improvements are not delivered to Landlord in good condition and repair, Landlord shall make the necessary maintenance and repairs and Tenant shall be liable to and shall reimburse Landlord for any such expenditures made. Landlord may elect within 30 days before the expiration of the term, or within 60 days after the termination of the term, to require Tenant to remove any improvements which Tenant has constructed on the premises. If Landlord so elects, Tenant at its cost shall restore the premises to the condition designated by Landlord in its election, before the last day of the term, or within 120 days after notice of election is given, whichever is later.

## ARTICLE 8. MAINTENANCE AND REPAIRS

### 8.1 Tenant's Obligations

Tenant, at its own cost and expense, shall maintain the leased premises, improvements and Landscaping thereon, including fences, and guardrails heretofore, or hereafter erected, in good repair and in compliance with all requirements of law. Tenant shall take all steps necessary to protect effectively the fences,

guardrails, and the piers and columns, if any, of the viaduct from damage incident to Tenant's use of said premises and improvements, all without expense to Landlord.

Tenant shall designate in writing to Landlord a representative who shall be responsible for the day-to-day operation and level of maintenance, cleanliness and general order.

#### 8.2 Retention of Existing Improvements

Landlord may at its option retain existing State improvements including fencing, lighting and irrigation facilities. If Landlord elects to retain any improvements, Tenant shall remove same and deliver same to Landlord's nearest maintenance station at no cost to Landlord.

#### 8.3 Landlord's Rights

In the event Tenant fails to perform Tenant's obligations under this Article, Landlord shall give Tenant notice to do such acts as are reasonably required to so maintain the premises. If Tenant fails to do the work and diligently prosecute it to completion, the Landlord shall have the right, but not the obligation, to do such acts and expend such funds at the expense of Tenant, as are reasonably required to perform such work. Any amount so expended by Landlord shall be paid by Tenant promptly after demand. Landlord shall have no liability to Tenant for any damage, inconvenience or interference with the use of the premises by Tenant as a result of performing any such work.

## ARTICLE 9. INSURANCE

### 9.1 Exemption of Landlord from Liability

This lease is made upon the express condition that Landlord is to be free from all liability and claims for damages by reason of any injury to any person or persons, including Tenant, or property of any kind whatsoever and to whomsoever belonging, including Tenant, from any cause or causes resulting from the operations or use of the premises by Tenant, its agents, customers or business invitees. Tenant hereby covenants and agrees to indemnify and save harmless Landlord from all liability, loss, cost and obligation on account of any such injuries or losses.

### 9.2 Self Insurance Provision

It is understood and agreed that the City and County of San Francisco is self insured and tenant specifically agrees that it is responsible for any liability incident to the use of the leased premises or resulting from the injury to or death of any person or injury or damage to any property in or about the leased premises and tenant further agrees to protect the Landlord from any and all claims for damage to property or injury to, or death of any person, or any other cause incident to the use of the leased premises.

### 9.3 Waiver of Subrogation

Landlord and Tenant each hereby waive any and all rights of recovery against the other, or against the officers, employees, agents and representatives of the other, for loss of or damage to



such waiving party or its property or the property of others under its control to the extent that such loss or damage is insured against under any insurance policy in force at the time of such loss or damages. The insuring party shall upon obtaining the policies of insurance required hereunder, give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in the lease.

#### ARTICLE 10. DAMAGE OR DESTRUCTION

If during the term of this lease any building or improvement on, it or appurtenant to the land at the commencement of the term or thereafter erected thereon shall be destroyed or damaged in whole or in part by fire or other cause, or shall be declared unsafe or unfit for use or occupancy by a public entity with the authority to make and enforce such declaration, Tenant shall give to Landlord immediate notice thereof, and Tenant shall within thirty (30) days commence, and diligently pursue to completion, the repair, replacement or reconstruction of the same, at least to the extent of the value and as nearly as possible to the character of the buildings and improvements existing immediately prior to such occurrence; and Landlord shall in no event be called upon to repair, replace or rebuild any such buildings or improvements. Tenant shall continue to pay rent hereunder during the period said improvements shall be damaged or destroyed.

ARTICLE 11. PAYMENT OF TAXES

Tenant agrees to pay and discharge, or cause to be paid and discharged when due, before the same become delinquent, all taxes, assessments, impositions, levies and charges of every kind, nature and description, whether general or special, ordinary or extraordinary, which may at any time or from time to time during the term of this lease by or according to any law or governmental, legal, political, or other authority whatsoever, directly or indirectly, taxed, levied, charged, assessed or imposed upon or against, or which shall be or may be or become a lien upon said premises or any buildings, improvements or structures at any time located thereon; or any estate, right, title, or interest of Tenant in and to said premises, buildings, improvements or structures. Tenant shall pay when due, before delinquency, personal property taxes on fixtures, equipment and facilities owned by Tenant, whether or not the same have become so fixed to the land as to comprise a part of the real estate. Tenant further agrees that any such obligation, including possessory interest tax that the city or county may impose upon Tenant's interest herein, shall not reduce any rent due Landlord hereunder and any such obligation shall become the liability of and be paid by Tenant. In the event Tenant shall fail to discharge any of the above obligations, Landlord may, at his option, discharge the same and the amount so paid by Landlord shall be added to the rentals next accruing under this lease; provided that Tenant shall have the privilege at its (his) own expense and before delinquency occurs of contesting, objecting to or opposing the legality or validity

or amount of such taxes. Any default in the payment of said obligations shall, at the option of Landlord, be considered a default under the terms of this lease.

#### ARTICLE 12. RIGHT OF ENTRY

Landlord, through its agents or representatives, and other city, county, state and federal agencies, through their agents or representatives, shall have full right and authority to enter in and upon the premises and any building or improvements situated thereon at any and all reasonable times during the term of this lease for the purpose of inspecting the same without interference or hindrance by Tenant, its agents or representatives.

Landlord further reserves the right of entry for the purpose of inspecting the premises, or the doing of any and all acts necessary or proper on said premises in connection with the protection, maintenance, reconstruction, and operation of the freeway structures and its appurtenances; provided, further, that Landlord reserves the further right, at its discretion, to immediate possession of the same in case of any national or other emergency, or for the purpose of preventing sabotage, and for the protection of said freeway structures, in which event the term of this lease shall be extended for a period equal to the emergency occupancy by Landlord, and during said period Tenant shall be relieved, to the degree of interference, from the performance of

conditions or covenants specified herein. Landlord further reserves the right of entry by any authorized officer, engineer, employee, contractor or agent of the Landlord for the purpose of performing any maintenance activities upon the property which Tenant has failed to perform.

## ARTICLE 13. CONDEMNATION

### 13.1 Termination of Lease as to Part Condemned

In the event the whole or any part of the premises is condemned by a public entity in the lawful exercise of the power of eminent domain, this lease shall cease as to the part condemned upon the date possession of that part is taken by the public entity.

### 13.2 Nonsubstantial Taking

If only a part is condemned and the taking of that part does not substantially impair the capacity of the remainder to be used for the purposes required in this lease, Tenant shall continue to be bound by the terms, covenants, and conditions of this lease; provided, however, that the minimum annual rent shall be reduced in proportion to the relationship that the compensation paid by the public entity for the portion of the premises condemned bears to the value of the whole of the premises as of the date possession of the part is taken by the public entity.

### 13.3 Substantial Taking

If only a part is condemned and the taking of the part substantially impairs the capacity of the remainder to be used for the purposes required in this lease, Tenant may elect to:

- (a) Terminate this lease and be absolved of obligations hereunder which have not accrued at the date possession is taken by the public entity;
- or
- (b) Continue to occupy the remainder of the premises and remain bound by the terms, covenants, and conditions of this lease. If Tenant elects to continue to occupy the remainder, the minimum monthly rent shall be reduced in proportion to the relationship that the compensation paid by the public entity for the portion of the premises condemned bears to the value of the whole of the premises as of the date possession of the part is taken by the public entity.

Tenant shall give notice in writing of its election hereunder within thirty (30) days of the date possession of the part is taken by the public entity.

#### 13.4 Compensation

The leased premises shall be considered a single parcel, and Tenant shall be compensated based upon the value of its (his) interest in said single parcel and the improvements constructed thereon without regard to adjoining uses or ownership.

Landlord shall be entitled to receive and shall receive all compensation for the condemnation of all or any portion of the premises by exercise of eminent domain except as hereinafter provided. Tenant shall be entitled to that portion of said compensation which is the value of the loss of use of Tenant-constructed improvements for the remainder to the lease term. The amount to which Tenant shall be entitled hereunder shall not exceed the actual cost of improvements constructed by Tenant, reduced in proportion to the relationship that the expired lease term bears to the original lease term.

#### ARTICLE 14. UTILITIES

Tenant shall pay prior to delinquency for all water, gas, heat, light, power, telephone, sewage, air conditioning and ventilating, scavenger, janitorial and landscaping and all other materials and utilities supplied to the premises. Landlord shall not be liable in damages or otherwise for any failure or interruption of any utility service furnished to the premises, and no such failure or interruption shall entitle Tenant to terminate this lease.

#### ARTICLE 15. LIENS

##### 15.1 Exemption of Landlord from Liability

Tenant shall at all times indemnify and save Landlord harmless from all claims for labor or materials in connection with

construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the premises, and from the cost of defending against such claims, including attorney fees.

#### 15.2 Tenant's Obligations

In the event a lien is imposed upon the premises as a result of such construction, repair, alteration, or installation, Tenant shall either:

1. Record a valid Release of Lien, or
2. Deposit sufficient cash with Landlord to cover the amount of the claim on the lien in question and authorize payment to the extent of said deposit to any subsequent judgment holder that may arise as a matter of public record from litigation with regard to lien holder claim, or
3. Procure and record a bond in accordance with Section 3143 of the Civil Code, which frees the premises from the claim of the lien and from any action brought to foreclose the lien.

Should Tenant fail to accomplish one of the three optional actions within a reasonable time after the filing of such a lien, the lease shall be in default and shall be subject to immediate termination.

ARTICLE 16. DEFAULT

16.1 Default

The occurrence of any of the following shall constitute a material default and breach of this lease by Tenant.

a. Any failure by Tenant to pay rent or any other monetary sums required to be paid hereunder, where such failure continues for three (3) days after written notice thereof has been given by Landlord to Tenant.

b. A failure by Tenant to observe and perform any other provisions of this lease to be observed or performed by Tenant, where such failure continues for thirty (30) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of such default is such that it cannot be reasonably cured within such thirty (30) day period, Tenant shall not be deemed to be in default if Tenant shall within such period commence such cure and thereafter diligently prosecute the same to completion.

c. The making by Tenant of any general assignment or general arrangement for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against tenant the same is dismissed with sixty (60) days); the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets, where possession is not restored to Tenant within forty-five (45) days; or the attachment,



execution or other judicial seizure of substantially all of Tenant's assets, were such seizure is not discharged within thirty (30) days.

#### 16.2 Landlord's Remedies

In the event of any material default of breach by Tenant, Landlord may at any time thereafter, without limiting Landlord in the exercise of any right of remedy at law or in equity which Landlord may have by reason of such default or breach:

a. Maintain this lease in full force and effect and recover the rent and other monetary charges as they become due, without terminating Tenant's right to possession, irrespective of whether Tenant shall have abandoned the premises. In the event Landlord elects not to terminate the lease, Landlord shall have the right to attempt to re-let the premises at such rent and upon such conditions and for such a term, and to do all acts necessary to maintain or preserve the premises as Landlord deems reasonable and necessary without being deemed to have elected to terminate the lease, including removal of all persons and property from the premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant. In the event any such re-letting occurs, this lease shall terminate automatically upon the new tenant taking possession of the premises. Notwithstanding that Landlord fails to elect to terminate the lease initially, Landlord at any time during the term of this lease may elect to terminate this lease by virtue of such previous default of Tenant.

b. Terminate Tenant's right to possession by any lawful means, in which case this lease shall terminate and Tenant shall immediately surrender possession of the premises to Landlord. In such event Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default including without limitation thereto, the following: (i) the worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus (ii) the worth as the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that is proved could have been reasonably avoided; plus (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that is proved could be reasonably avoided; plus (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform his obligations under this lease or which in the ordinary course of events would be likely to result therefrom; plus (v) at Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable State law. Upon any such re-entry Landlord shall have the right to make any reasonable repairs, alterations or modifications to the premises, which Landlord in its sole discretion deems reasonable and necessary. As used in subparagraphs (i) and (ii), above, the "worth at the time of award" is computed by allowing interest at a

rate equal to the Federal Reserve Bank discount rate per annum from the date of default. As used in subparagraph (iii), above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank at the time of award. The term "rent" as used in this Article shall be deemed to be and to mean rent to be paid pursuant to Article 4 and all other monetary sums required to be paid by Tenant pursuant to the terms of this lease.

### 16.3 Landlord's Right to Cure Tenant's Default

At any time after Tenant is in default or material breach of this lease, Landlord may cure such default or breach at Tenant's cost. If landlord at any time, by reason of such default or breach, pays any sum or does any act that requires the payment of any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord at the time the sum is paid by Landlord shall be additional rent.

## ARTICLE 17. ASSIGNMENTS, SUBLEASE AND ENCUMBRANCES

### 17.1 Voluntary Assignment, Subleases and Encumbrances

Tenant shall not voluntarily assign its interest in this lease or in the premises, or allow any other person or entity (except Tenant's authorized representatives) to occupy or use all or any part of the premises, without first obtaining Landlord's written consent and the concurrence of the Federal Highway Administration, except as expressly permitted by the provisions of this Article. Tenant's failure to obtain Landlord's required written approval of any assignment shall render such assignment void. Occupancy of the leased premises by a prospective transferee, or assignee before approval of the transfer, or

by Landlord shall constitute a breach of this lease. Landlord's consent to any assignment shall not constitute a waiver of any of the terms, covenants or conditions of this lease. Such terms, covenants and conditions shall apply to each and every assignment of this lease and shall be severally binding upon each and every party thereto. Any document to transfer, or assign the leased premises or any part thereof shall incorporate directly or by reference all the provisions of this lease.

It is understood and agreed that Tenant shall have the right to sublease the premises to qualified parking garage operators for the purposes specified under Article 5.1. The Tenant shall not ask to be relieved of its primary responsibility under the terms of this lease.

#### 17.2 Encumbrance

Tenant shall not encumber the lease premises in any manner whatsoever, however, it is understood and agreed that Tenant shall have the right to sell bonds for the construction of the Performing Arts Center Garage. It is further understood and agreed that this Lease shall not be subordinate to said bonds.

#### ARTICLE 18. FAIR EMPLOYMENT PRACTICES

Tenant, for itself, its personal representatives, successors in interest, and assigns, as a part of the consider-

ation hereof, does hereby covenant and agree as a covenant running with land that: (1) no person, on the ground of race, color or national origin shall be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination in the use of said facilities, (2) that in connection with the construction of any improvements on said land and the furnishing of services thereon, no discrimination shall be practiced in the selection of employees and contractors, by contractors, in the selection and retention of first-tier subcontractors, and by first-tier subcontractors in the selection and retention of second-tier subcontractors, (3) that such discrimination shall not be practiced against the public in their access to and use of the facilities and services provided for public accommodations (such as eating, sleeping, rest, recreation, and vehicle servicing) constructed or operated on, over, or under the premises, and (4) that Tenant shall use the land in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Part 21 (49 C.F.R., Part 21) and as said regulations may be amended. In the event of breach of any of the above nondiscrimination covenants, the Landlord shall have the right to terminate this lease, and to re-enter and repossess said land and the facilities thereon, and hold the same as if said lease had never been made or issued.

#### ARTICLE 19. ADDITIONAL PROVISIONS

##### 19.1 Quiet Enjoyment

Landlord covenants and agrees with Tenant that upon

Tenant paying rent and other monetary sums due under the lease and performing its covenants and conditions, Tenant shall and may peaceably and quietly have, hold and enjoy the premises for the term, subject however, to the terms of the lease and of any of the mortgages or deeds of trust described above.

#### 19.2 Captions, Attachments, Defined Terms

The captions of the Articles of this lease are for convenience only and shall not be deemed to be relevant in resolving any questions of interpretation or construction of any section of this lease. Exhibits attached hereto, and addendums and schedules initialed by the parties, are deemed by attachment to constitute part of this lease and are incorporated herein. The words "Landlord" and "Tenant", as used herein, shall include the plural as well as the singular. Words used in neuter gender includes the masculine and feminine and words in the masculine or feminine gender include the neuter. If there be more than one Landlord or Tenant, the obligations hereunder imposed upon Landlord or Tenant shall be joint and several. If the Tenants are husband and wife, the obligations shall extend individually to their sole and separate property as well as to their community property.

#### 19.3 Entire Agreement

This instrument along with any exhibits and attachments hereto constitutes the entire agreement between Landlord and Tenant relative to the premises and this Agreement and the exhibits and attachments may be altered, amended or revoked only

by an instrument in writing signed by both Landlord and Tenant. Landlord and Tenant agree hereby that all prior or contemporaneous oral agreements between and among themselves and their agents and representatives relative to the leasing of the premises are merged in or revoked by this Agreement.

#### 19.4 Severability

If any term or provision of this lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this lease shall not be affected thereby, and each term and provision of this lease shall be valid and be enforceable to the fullest extent permitted by law.

#### 19.5 Costs of Suit

If Tenant or Landlord shall bring any action for any relief against the other, declaratory otherwise, arising out of this lease, including any suit by Landlord for the recovery of rent or possession of the premises, the losing party shall pay the successful party a reasonable sum for attorney's fees which shall be deemed to have accrued on the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Should Landlord, without fault on Landlord's part be made a party to any litigation instituted by Tenant or by any third party against Tenant, or by or against any person holding under or using the premises by license of Tenant, or for the foreclosure of any lien for labor or materials furnished to or for Tenant or any such other person or otherwise arising out of or resulting from any act

or transaction of Tenant or of any such other person, Tenant shall save and hold Landlord harmless from any judgment rendered against Landlord or the premises or any part thereof, and all costs and expenses, including reasonable attorney's fees, incurred by Landlord in connection with such litigation.

19.6 Time, Joint and Several Liability

Time is of the essence of this lease and each and every provision hereof, except as to the conditions relating to the delivery of possession of the premises to Tenant. All the terms, covenants and conditions contained in this lease to be performed by either party if such party shall consist of more than one person or organization, shall be deemed to be joint and several, and all rights and remedies of the parties shall be cumulative and non-exclusive of any other remedy at law or in equity.

19.7 Binding Effect; Choice of Law

The parties hereto agree that all the provisions hereof are to be construed as both covenants and conditions as though the words importing such covenants and conditions were used in each separate paragraph hereof; subject to any provisions hereof restricting assignment or subletting by Tenant, all of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This lease shall be governed by the laws of the State of California.

19.8 Waiver

No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party



against whom the waiver is claimed and any waiver or the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Acceptance by Landlord of any performance by Tenant after the time the same shall have become due shall not constitute a waiver by Landlord of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by Landlord in writing.

19.9 Surrender of Premises

The voluntary or other surrender of this lease by Tenant, or a mutual cancellation thereof, shall not work a merger and shall, at the option of the Landlord, terminate all or any existing subleases or subtenancies, or may, at the option of Landlord, operate as an assignment to it of any or all such sublease or subtenancies.

19.10 Holding Over

If Tenant remains in possession of all or any part of the premises after the expiration of the term hereof, with or without the express or implied consent of Landlord, such tenancy shall be from month to month only and not a renewal hereof or an extension for any further term and in such case, rent and other monetary sums due hereunder shall be payable in the amount and at the time specified in this lease and such month to month tenancy shall be subject to every other term, covenant and agreement contained herein.

19.11 Recording

Tenant shall not record this lease without Landlord's

of Landlord, constitute a non-curable default of Tenant hereunder. Either party shall, upon request of the other, execute, acknowledge and deliver to the other a short form memorandum of this lease for recording purposes.

19.12 Notices

All notices or demands of any kind required or desired to be given by Landlord or Tenant hereunder shall be in writing and shall be deemed delivered forty-eight (48) hours after depositing the notice or demand in the United States mail, certified or registered, postage prepaid, addressed to the Landlord or Tenant respectively at the addresses set forth in Article 1.

19.13 No Reservation

Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option for lease; it is not effective as a lease or otherwise until execution and delivery by both Landlord and Tenant.

19.14 Corporate Authority

If Tenant is a corporation, each individual executing this lease on behalf of said corporation represents and warrants that he/she is duly authorized to execute and deliver this lease on behalf of said corporation in accordance with a duly adopted resolution of the Board of Directors of said corporation or in accordance with the Bylaws of said corporation, and that this lease is binding upon said corporation in accordance with its terms. If Tenant is a corporation Tenant shall, within thirty (30) days after execution of this lease, deliver to Landlord a

certified copy of resolution of the Board of Directors of said corporation authorizing or ratifying the execution of this lease.

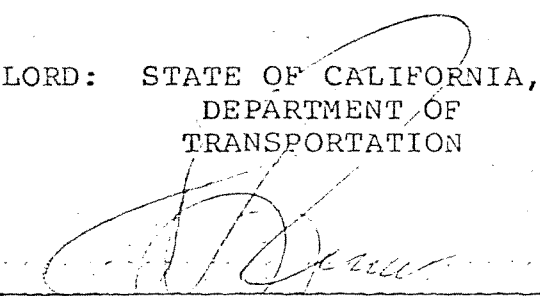
ARTICLE 20. CERTIFICATION OF FUNDS

This Lease is subject to certification as to funds by Controller pursuant to Section 6.302 of the City Charter.

In Witness Whereof Landlord and Tenant have executed this Lease as of the date first written above.

LANDLORD: STATE OF CALIFORNIA,  
DEPARTMENT OF  
TRANSPORTATION


By:

  
G. L. RUSSELE  
Deputy Director

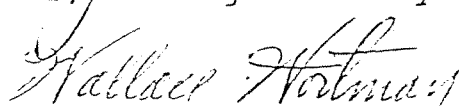
TENANT:

Parking Authority of the  
City and County of  
San Francisco

By:

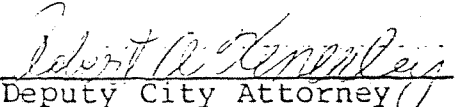
  
Margaret L. Brown  
Director, Parking Authority

By:

  
Wallace Hartman  
Director of Property

APPROVED AS TO FORM  
GEORGE AGNOST, CITY ATTORNEY,

BY:

  
Robert A. Kennerly  
Deputy City Attorney