

File No. 180769

Committee Item No. 7

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Sub-Committee

Date September 20, 2018

Board of Supervisors Meeting

Date _____

Cmte Board

- Motion
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- Ordinance
- Legislative Digest
- Budget and Legislative Analyst Report
- Youth Commission Report
- Introduction Form
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- MOU
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- Grant Budget
- Subcontract Budget
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- Form 126 – Ethics Commission
- Award Letter
- Application
- Public Correspondence

OTHER (Use back side if additional space is needed)

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Completed by: Linda Wong

Date September 14, 2018

Completed by: Linda Wong

Date _____

1 [Real Property Lease Amendment - 25 Van Ness Avenue, Lower Level - New Conservatory
2 Theatre Center - Monthly Base Rent \$7,983]

3 **Resolution authorizing the lease amendment to extend approximately 12,792 rentable**
4 **square feet of space at 25 Van Ness, Lower Level, to New Conservatory Theatre Center,**
5 **a California non-profit corporation, for a monthly base rent of \$7,983 for a total annual**
6 **base rent of \$95,796 for the period of October 1, 2018, through September 30, 2023.**

7
8 WHEREAS, 25 Van Ness Avenue, Assessor's Parcel Block No. 0834, Lot No. 004, City
9 and County of San Francisco, is a building owned and operated by the City and County of
10 San Francisco ("City"); and

11 WHEREAS, The lower level of 25 Van Ness Avenue contains space that is designed
12 for a theatrical use and is ADA-compliant; and

13 WHEREAS, The New Conservatory Theatre Center, a California non-profit corporation
14 ("NCTC" or "Tenant"), has been providing quality live entertainment from the lower level of 25
15 Van Ness Avenue since 1984, and the City desires to have the NCTC continue its operations
16 in that location; and

17 WHEREAS, The current lease expires September 30, 2018; and

18 WHEREAS, The current rent is \$7,826; and

19 WHEREAS, The Real Estate Division has completed negotiations with the NCTC to
20 extend and amend the current lease for another five year period and raising the rent; now,
21 therefore, be it

22 RESOLVED, That in accordance with the recommendation of the Director of Property,
23 the Director of Property is hereby authorized to take all actions, on behalf of the City, as
24 Landlord, to execute a lease with the NCTC, as Tenant, for the lower level of 25 Van Ness
25

1 Avenue, San Francisco, California (the "Lease"), substantially in the form on file with the Clerk
2 of the Board of Supervisors in File No. 180769; and, be it

3 FURTHER RESOLVED, That the term of the Lease shall be extended five years under
4 the first Extension Option with a termination date of September 30, 2023; and, be it

5 FURTHER RESOLVED, That the monthly base rent shall be adjusted to \$7,983 upon
6 commencement, full service, and that such rent shall be the same through the first Extension
7 Option term of the Lease; and, be it

8 FURTHER RESOLVED, That the Lease contains one more 5-year Extension Option
9 for renewal by Tenant at a rental rate to be adjusted at the beginning of each extension term
10 in accordance with the increase in the Consumer Price Index, subject to a minimum increase
11 of 3% per year and a maximum increase of 8% per year, as more particularly described in the
12 Lease; and, be it

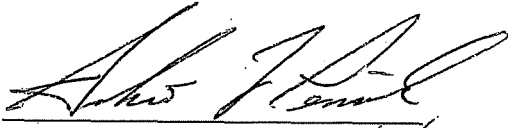
13 FURTHER RESOLVED, That other than the rent adjustment and extension of the term,
14 the Lease shall remain in full force and effect as originally agreed upon; and, be it

15 FURTHER RESOLVED, That any action heretofore by any City employee or official
16 with respect to this Lease are hereby approved, confirmed and ratified; and, be it

17 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of
18 Property to enter into any amendments or modifications to the Lease that the Director of
19 Property determines, in consultation with the City Attorney, are in the best interest of the City,
20 do not materially reduce the rent or otherwise materially increase the obligations or liabilities
21 of the City, are necessary or advisable to effectuate the purposes of the Lease and are in
22 compliance with all applicable laws, including City's Charter; and, be it

23 FURTHER RESOLVED, That within thirty days of the agreement being fully executed
24 by all parties, the Director of Real Estate shall provide the agreement to the Clerk of the Board
25 for inclusion in the file.

1 RECOMMENDED:

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4 Andrico Q. Penick *2/22/18*
5 Director of Property
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<p>Item 7 File 18-0769</p>	<p>Department: Real Estate Division (RED)</p>
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EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution approves the lease amendment between the City, as landlord, and New Conservatory Theatre Center, a California non-profit corporation, as tenant, for theater, and office space at 25 Van Ness, Lower Level. The proposed amendment to the original lease (a) revises the lease expiration date from the current expiration date of September 30, 2013, to the revised date of September 30, 2018; and (b) exercises the first extension option to extend the lease by five years from October 1, 2018 through September 30, 2023.

Key Points

- The New Conservatory Theatre Center (NCTC), a California non-profit corporation, has been providing live entertainment in theater space in the City-owned building at 25 Van Ness Avenue since 1984. In November 2008, the Board of Supervisors approved a resolution authorizing the lease between the City, as landlord, and NCTC, as tenant, of approximately 12,792 rentable square feet of space in the lower level of 25 Van Ness Avenue (File 08-1273). The term of the lease was from December 1, 2008 through September 30, 2013 with two 5-year options for renewal.

Fiscal Impact

- The annual rent paid by NCTC to the City under the proposed lease amendment is \$95,796, which remains unchanged during the five-year lease extension. Total rent paid by NCTC to the City over the five-year term is \$478,980. The parties agreed to a new rent of \$7,983 per month (or \$95,796 per year) effective October 1, 2018, which is an increase of 2 percent (rather than the 3 to 8 percent provided in the original lease agreement) from the existing rent of \$7,826 per month, because of water intrusion prevention and repairs that have been made by the tenant. The existing rent of \$7,826 is based on \$0.55 per square foot, which has not increased in the ten years and nine months since NCTC entered into the original lease in January 2008.

Policy Consideration

- After the original lease between the City and NCTC expired in September 2013, the Real Estate Division (RED) did not amend the lease to exercise the first five-year extension option, but rather agreed to a continued extension of the option exercise notice. The Real Estate Division does not have a specific policy for agreeing to continue extension options, and does not currently have other active leases with such an agreement.
- The City does not have a consistent policy to lease City-owned property to nonprofit organizations at below market rate rent.

Recommendations

- Amend the proposed resolution to (i) state that the lease consists of 14,229 square feet, (ii) delete language that the lease allows one more five-year extension option, and (iii) add that the proposed lease amendment extending the lease through September 30, 2023 is the final lease extension under the existing lease.
- Approve the proposed resolution as amended.

MANDATE STATEMENT

City Charter Section 9.118(c) states that any modification, amendment or termination of a lease that had an initial term of ten years or more, including options to extend, or that had anticipated revenues of \$1 million or more is subject to Board of Supervisors approval.

BACKGROUND

The New Conservatory Theatre Center (NCTC), a California non-profit corporation, has been providing live entertainment from the lower level of 25 Van Ness Avenue since 1984. NCTC also provides educational theatrical experiences for youth, artists, LGBTQQI (lesbian, gay, bisexual, transgender, queer, questioning, intersex), and allied communities. 25 Van Ness Avenue is a building owned and operated by the City and County of San Francisco. The lower level of 25 Van Ness Avenue contains space that is designed for theatrical use and is ADA-compliant.

In November 2008, the Board of Supervisors approved a resolution authorizing the lease between the City, as landlord, and New Conservatory Theatre Center (NCTC), a California non-profit corporation, as tenant, of approximately 12,792 rentable square feet of space in the lower level of 25 Van Ness Avenue for NCTC's theaters, offices and educational operations (File 08-1273). The term of the lease was from December 1, 2008 through September 30, 2013 with two 5-year options for renewal.

The monthly base rent was \$7,036 with no increases during the initial term. The rent was to increase by the Consumer Price Index (CPI) for a minimum of 3 percent and a maximum of 8 percent when each option to extend was exercised. The lease did not provide for further rent increases during the extension term.

Retroactive Approval of Prior Lease Extension

In January 2012, the Real Estate Division entered into a Letter of Agreement with NCTC to add 1,437 square feet to the existing 12,792 square feet of rental space, totaling 14,229 square feet. The Letter of Agreement increased the rent from \$7,036 per month (equal to \$0.55 per square foot for 12,792 square feet) to \$7,826 per month (equal to \$0.55 per square foot for 14,229 square feet).

The original lease term expired in September 2013. The lease was never amended to exercise the first five-year option to extend the lease through September 30, 2018. According to Ms. Claudia Gorham, Deputy Managing Director at the Real Estate Division, NCTC has continued to occupy the space under an agreement for a continued extension of the option exercise notice between the parties. The rent has remained unchanged at \$0.55 per square foot since the beginning of the original lease in 2008.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution approves the lease amendment between the City, as landlord, and New Conservatory Theatre Center, a California non-profit corporation, as tenant, for theater, office, at 25 Van Ness, Lower Level.

Lease Term

The proposed amendment to the original lease (a) revises the lease expiration date from the current date stated in the lease of September 30, 2013, to the revised date of September 30, 2018; and (b) exercises the first extension option to extend the lease by five years from October 1, 2018 through September 30, 2023.

While the original lease provided for two five-year options to extend through September 30, 2018 and September 30, 2023 respectively, the City never formally exercised the first extension option but rather allowed NCTC to continue to occupy the space under an agreement for a continued extension of the option exercise notice between the parties, as noted above. In order to clarify that the lease extension in the proposed lease amendment from October 1, 2018 through September 30, 2023 corresponds to the second five-year extension option in Section 26.1 of the original lease, the proposed resolution should be amended to (a) delete language that the lease allows one more five-year extension options, and (b) add that the proposed lease amendment extending the lease through September 30, 2023 is the final lease extension under the existing lease.

Leased Space

According to the proposed resolution, the leased space consists of 12,792 square feet. Because the 2012 Letter of Agreement added 1,437 square feet to the leased space, the proposed resolution should be amended to state that the lease consists of 14,229 square feet.

Rent Increase

The proposed amendment increases the rent by 2 percent from \$7,826 per month (or \$0.55 per square foot for 14,229 square feet) to \$7,983 per month (or \$0.56 per square foot for 14,229 square feet). There are no further rent increases during the five-year extension term.

The terms of the current and amended lease at 25 Van Ness, Lower Level are summarized in Table 1 below.

Table 1. Terms of Current and Amended Lease at 25 Van Ness, Lower Level

	Current Lease	Amended Lease
Premises	25 Van Ness, Lower Level	25 Van Ness, Lower Level
Square Footage	12,792	14,229
Term	Expires September 2013	Extends the lease term retroactively to September 2018 Adds one five-year term to September 2023
Tenant Improvements	Not Applicable	Not Applicable
Monthly Base Rent	\$7,826	\$7,983
Annual Base Rent Increases	None	None
Utilities and Services, Property Taxes, and Operating Costs	City pays utilities and services ¹ and property taxes. Tenant pays its own operating costs.	No change
Option to Extend	Two (2) five-year options	One (1) five-year option
Base Rent Increase on Exercise of Option	CPI of 3 – 8 percent	CPI of 2 – 4 percent

FISCAL IMPACT

The annual rent paid by NCTC to the City under the proposed lease amendment is \$95,796, which remains unchanged during the five-year lease extension. Total rent paid by NCTC to the City over the five-year term is \$478,980.

According to Ms. Gorham, the parties agreed to a new rent of \$7,983 per month (or \$95,796 per year) effective October 1, 2018, which is an increase of 2 percent (rather than the 3 to 8 percent provided in the original lease agreement) from the existing rent of \$7,826 per month, because of water intrusion prevention and repairs that have been made by the tenant.² As noted above, the existing rent of \$7,826 is based on \$0.55 per square foot, which has not increased in the ten years and nine months since NCTC entered into the original lease in January 2008.

According to Ms. Gorham, there are no other comparable non-profit theaters in similar City property. Ms. Gorham states that because few non-profit theater sites exist in San Francisco, the Real Estate Division was not able to compare the rent under the proposed lease

¹ According to Ms. Gorham, utilities for 25 Van Ness as a whole were estimated to be \$17,403.52 in 2017. Services (janitorial, monthly recology) were estimated to be \$33,060 in 2017.

² According to Ms. Gorham, there were water intrusion events and issues resulting from the proximity to Hayes Creek. Generally, the tenant replaced flood damaged carpet, paint, and put on a coating and absorbent, as well as waterproofed other areas of the space.

amendment to comparable properties. Per City Administrative Code Section 23.30,³ an appraisal report is not required.

POLICY CONSIDERATION

After the original lease between the City and NCTC expired in September 2013, the Real Estate Division did not amend the lease to exercise the first five-year extension option but rather agreed to a continued extension of the option exercise notice. According to Ms. Gorham, the Real Estate Division does not have a specific policy for agreeing to continue extension options, and does not currently have other active leases with such an agreement.

The City does not have a consistent policy to lease City-owned property to nonprofit organizations at below market rate rent

The proposed extension to the lease between NCTC and the City for the theater and associated space is for \$0.56 per square foot, which is likely below market rate although the Real Estate Division was not able to identify comparable leases. According to the Budget and Legislative Analyst's April 2017 performance audit of the City's Real Estate Division, a large number of City-owned properties are leased by non-profit organizations with varying lease terms and rents. Our review of existing leases found 17 non-profit leases that paid no or nominal rent, while another 11 non-profit leases paid rent ranging from \$5,820 to \$84,432 per year, depending on the size of the space. The City does not have standards on subsidizing the rents of non-profit organizations. The Budget and Legislative Analyst recommended in the audit that the Director of the Real Estate should recommend to the Board of Supervisors policies for non-profit leases of City properties, including criteria for setting rent at below market rate or waiving rent altogether. According to Ms. Gorham, the Real Estate Division has not implemented this recommendation. The Real Estate Division attempts to provide space to non-profits if the space is not needed for City departments, and has an unwritten practice to not unnecessarily displace an existing non-profit from a City-owned building.

RECOMMENDATIONS

1. Amend the proposed resolution to (i) state that the lease consists of 14,229 square feet, (ii) delete language that the lease allows one more five-year extension option, and (iii) add that the proposed lease amendment extending the lease through September 30, 2023 is the final lease extension under the existing lease.
2. Approve the proposed resolution as amended.

³ Per City Administrative Code Section 23.30, third party appraisals of leases are not required if the rent is less than \$45 per square foot, or if the use of the lease site furthers a "proper public purpose".

AMENDMENT TO PERFORMANCE SPACE LEASE

This Amendment to Performance Space Lease (this "**Amendment**"), dated for reference purposes only as of June [], 2018, amends that certain Performance Space Lease, dated for reference purposes only as of December 1, 2008 (the "**Lease**"), between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**") and the NEW CONSERVATORY THEATER CENTER, a California non-profit corporation ("**Tenant**"). All terms used herein but not defined herein shall have the meaning given to such terms in the Lease.

Recitals

A. The Lease provides for City's lease to Tenant of a portion of the basement of the building located at 25 Van Ness Avenue, San Francisco, California 94102 (the "**Premises**") on the terms and conditions described therein.

B. The Lease currently provides for an Expiration Date of September 30, 2013, subject to the Extension Options described in Section 26.1.

C. Before exercising the Extension Options, due to prior water intrusion issues Tenant desired, and City agreed, to await to the results of the City's investigation of the Building's structural systems and evaluation of the hydrological conditions affecting the Building, during which time the Lease continued on a month-to-month basis.

D. Tenant has made renovations to the theatre lobby of the Premises, which the Parties acknowledge are a benefit to the Building, including carpeting and paint, for which Tenant received rent credit, which rent credit period expired with the January 2018 rent payment.

E. City and Tenant have received the results of the hydrological investigation, and now desire to amend the Expiration Date of the Lease and to memorialize Tenant's exercise its first Extension Option, all as provided in this Amendment.

Agreement

In consideration of the foregoing and the agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

1. **Expiration Date.** The Expiration Date specified in Section 1 of the Lease, currently September 30, 2013, is hereby amended to read "September 30, 2018."

2. **First Extension Option.** Notwithstanding anything to the contrary contained in the Lease, by this Amendment Tenant gives notice to City, of Tenant's exercise of its first Extension Option for an Extension Term commencing on the date immediately following the Expiration Date, as amended by this Amendment, and City acknowledges Tenant's exercise. For the avoidance of doubt, the Extension Term will commence on October 1, 2018 and end on September 30, 2023, unless further extended as provided in Section 26.1 of the Lease.

3. Base Rent as of First Extension Option. Commencing on October 1, 2018, the Base Rent during the first Extension Option will be calculated as set forth in Section 4.2 of the Lease and will be at least **\$7,983.00**.

4. Base Rent Adjustments. Notwithstanding anything to the contrary in Section 4.2, the Base Rent payable under this Lease starting on the first day of the second Extension Option shall be adjusted in accordance with Section 4.2, except that the Beginning Index shall be the Index published most immediately preceding the previous Adjustment Date and, if for any year the CPI is less than 2%, the CPI used will be 2%. If for any year the CPI is greater than 4%, the CPI used will be 4%.

5. Continuing Occupancy. Tenant acknowledges and agrees that its possession of the Premises commencing on the Extension Term commencement date is a continuation of Tenant's possession of the Premises under the Lease. Tenant is familiar with the condition of the Premises, and Tenant agrees to accept the Premises as of the Extension Term commencement date in their existing condition, "as is," without any obligation of Landlord to repair, remodel, improve or alter the Premises, to perform any other construction or other work of improvement upon the Premises or to provide Tenant with any construction or refurbishing allowance whatsoever. As of the date of this Amendment, Tenant represents and warrants to Landlord that Tenant is not aware of any dangerous conditions or other defects existing in or about the Premises or the Building, and that, unless Tenant provides Landlord with written notice to the contrary before the Extension Term commencement date, that representation and warranty will be true on and as of the Extension Term commencement date as if the it were made on and as of that date.

6. Valid Amendment; Effective Date. City and Tenant agree that this Amendment satisfies the provisions of Section 27.3 of the Lease and is a valid and effective amendment to the Lease on the date upon which: (i) City's Board of Supervisors and the Mayor, in their sole and absolute discretion, adopt a resolution approving this Amendment in accordance with all applicable laws and (ii) this Amendment is duly executed and delivered by the parties hereto.

7. Full Force and Effect. The Lease, as amended hereby, shall be deemed to have been amended as of the Effective Date, and shall remain in full force and effect in accordance with its terms.

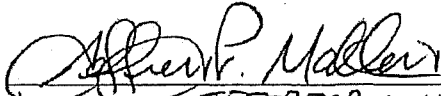
8. Counterparts. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

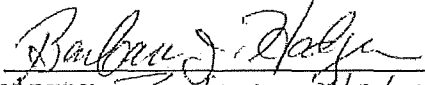
[Signatures Follow]

RED 6.6.18

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

TENANT: New Conservatory Theatre Center,
a California non-profit corporation

By: 
Printed name: JEFFREY P. MALLOY
Its: BOARD CHAIR


By: 
Printed name: Barbara Heizer
Its: Executive Director

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

By: _____
Andrico Q. Penick
Acting Director of Property

APPROVED AS TO FORM:

DENNIS HERRERA
City Attorney

By: 
Deputy City Attorney



John Updike
Acting Director of Real Estate



LETTER OF AGREEMENT BETWEEN CITY AND COUNTY OF SAN FRANCISCO REAL ESTATE DIVISION AND NEW CONSERVATORY THEATRE CENTER FOR A PORTION OF THE BASEMENT (SUITE 40) AT 25 VAN NESS AVENUE, SAN FRANCISCO, CA 94102

Overall Agreement

This letter of agreement (LOA) between the CITY AND COUNTY OF SAN FRANCISCO REAL ESTATE DIVISION ("RED") AND NEW CONSERVATORY ("NCTC") THEATRE CENTER formalizes the responsibilities and cost and associated with the use of the extended portion of the basement (Suite 40) at 25 Van Ness Avenue totaling 1,437 square feet attached as Exhibit "A" and incorporated herein. The cost for this additional space should be at the same rate of the lease between the parties hereto, attached as Exhibit "B" (the "lease") said rate is .55/sf per month.

Responsibilities of Parties

Overall rental increase for NCTC with consideration of this LOA and the Lease, will be from \$7,036/month to \$7,826.39/month starting January 1, 2012 and extending until expiration. RED shall remove e all existing records, replace corroded ceiling tiles and restore the bathroom and thermostats to working condition. The shelving unit currently located in the space shall remain for use by NCTC.

Term

This LOA shall become effective on the date of execution by both parties. Termination of this LOA shall be 18 months from date of execution unless modified by Parties.

ACCEPTED:

John Updike, Acting Director of Real Estate

Date

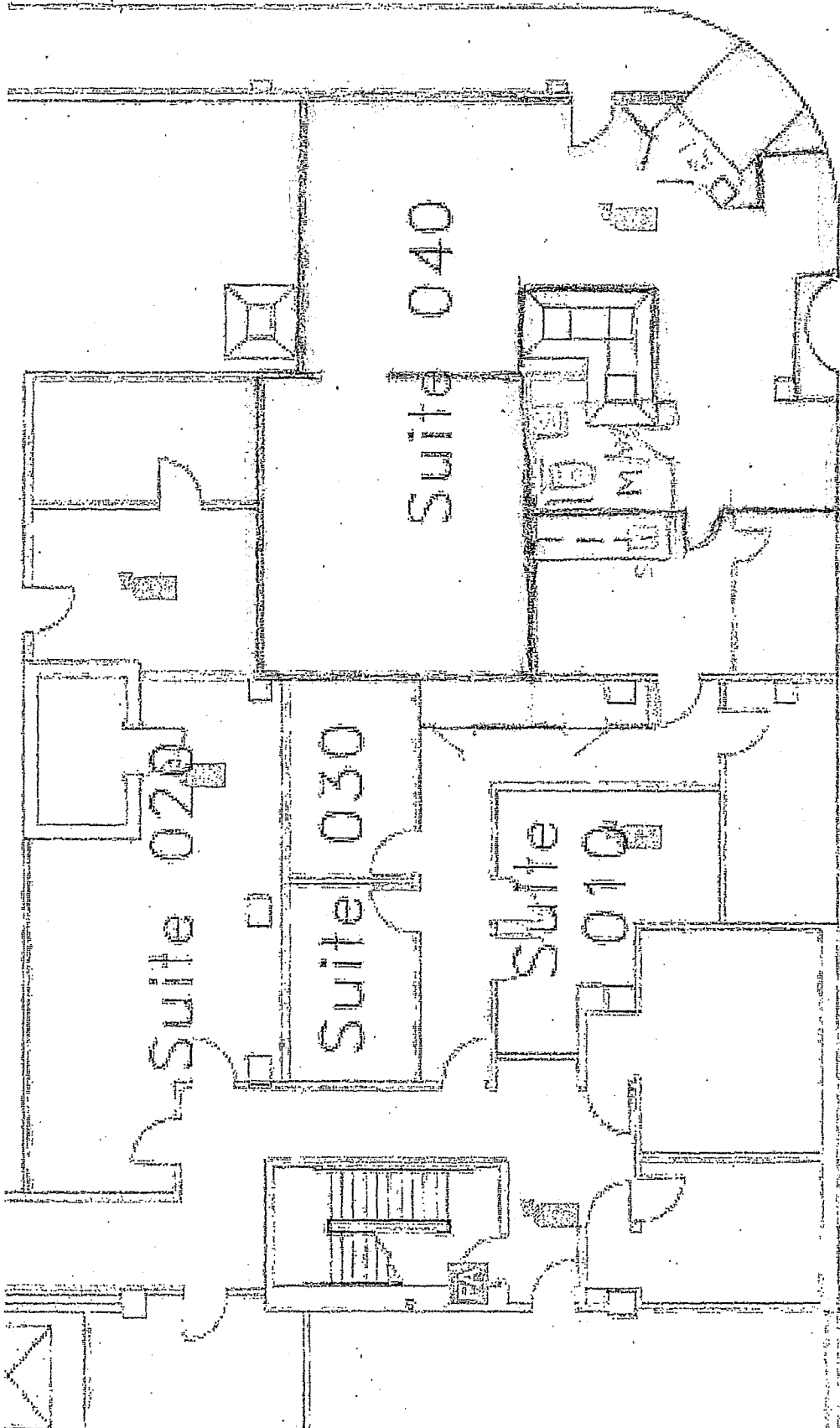
11/17/2011

Ed Decker, Founding Artistic and Executive Director

Date

12/2/2011

"EXHIBIT A"



"EXHIBIT B"

PERFORMANCE SPACE LEASE

between

CITY AND COUNTY OF SAN FRANCISCO,
as Landlord

and

NEW CONSERVATORY THEATRE CENTER, a California non-profit corporation,

as Tenant

For the lease of

A Portion of the Basement of

25 Van Ness Avenue

San Francisco, California 94102

December 1, 2008

" 7 1 5 1 4 X 3 "

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PERFORMANCE SPACE LEASE

THIS PERFORMANCE SPACE LEASE (this "Lease"), dated for reference purposes only as of December 1, 2008, is between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Landlord"), and the NEW CONSERVATORY THEATRE CENTER, a California non-profit corporation ("Tenant").

City and Tenant hereby covenant and agree as follows:

1. BASIC LEASE INFORMATION

The following is a summary of basic lease information (the "Basic Lease Information"). Each item below shall be deemed to incorporate all of the terms in this Lease pertaining to such item. In the event of any conflict between the information in this Section and any more specific provision of this Lease, the more specific provision shall control.

Lease Reference Date:	December 1, 2008
Landlord:	CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation
Tenant:	NEW CONSERVATORY THEATRE CENTER, a California non-profit corporation
Building (Section 2.1):	25 Van Ness San Francisco, California
Premises (Section 2.1):	Space in the Basement (lower level) of the Building, as shown on the floor plan attached as <u>Exhibit A</u> .
Rentable Area of Premises (Section 2.1):	Approximately 12,792 rentable square feet
Term (Section 3.1):	Four (4) Years, Ten (10) Months
Extension Options (Section 26.1):	Tenant shall have two 5-year options to extend the Lease, subject to adjustment of Base Rent as set forth in Section 4.2 and in accordance with the provisions of Section 26.1.
Commencement Date:	December 1, 2008
Expiration Date:	September 30, 2013 (subject to Extension Option of Section 26.1)
Initial Monthly Base Rent (Section 4.1):	\$7,036.00 per month

Use (Section 5.1):	Operation of a theatre, related performance space activities, administrative offices and related activities all as more particularly described in Section 5.1 below
Tenant Improvements (Section 6.1):	None
Utilities and Services (Section 10.1):	Tenant to pay for telephone charges (local and long distance) within the Premises. City to pay for standard heating, air conditioning, lighting, refuse removal (from designated containers), water and sewer consistent with current operations.
Security Deposit (Section 23.1):	\$7,036.00
Notice Address of City (Section 27.1):	Attn: Director of Property Real Estate Division 25 Van Ness Avenue, Suite 400 San Francisco, California 94102 Fax No.: (415) 552-9216
with a copy to:	Attn: Real Estate & Finance Team Office of the City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, California 94102-4682 Fax No.: (415) 554-4755
Key Contact for City:	Allan Lucas, Building Manager
Telephone No.:	(415) 554-9850 Fax No.: (415) 552-9216
Notice Address for Tenant (Section 27.1):	New Conservatory Theatre Center 25 Van Ness Avenue, Lower Level San Francisco, CA 94102-6988 Gibson, Dunn & Crutcher LLP Attn: Neil H. Sekhri <i>If before January 1, 2009:</i> One Montgomery Street, San Francisco, CA 94104
With a copy to:	<i>From January 1, 2009</i> 555 Mission Street, 31st Floor San Francisco, CA 94105 Fax No.: (415) 374-8435

Key Contact for Tenant:

Ed Decker, Executive Director

Telephone No.:

Telephone: (415) 861-4914

Fax: (415) 861-6988

2. PREMISES; AS IS CONDITION

2.1. Lease Premises

Subject to the provisions of this Lease, City leases to Tenant and Tenant leases from City those premises in the building (the "Building") identified in the Basic Lease Information and shown on the floor plan(s) attached hereto as Exhibit A (the "Premises"). The Premises are located on the floor of the Building specified in the Basic Lease Information. The rentable area of the Premises specified in the Basic Lease Information shall be conclusive for all purposes hereof. The Building, land upon which the Building is located and all other improvements on and appurtenances to such land are referred to collectively as the "Property."

2.2. As Is Condition

TENANT ACKNOWLEDGES AND AGREES THAT THE PREMISES ARE BEING LEASED AND ACCEPTED IN THEIR "AS IS" CONDITION, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, AND SUBJECT TO ALL APPLICABLE LAWS, RULES AND ORDINANCES GOVERNING THEIR USE, OCCUPANCY AND POSSESSION. TENANT REPRESENTS AND WARRANTS TO CITY THAT TENANT HAS INVESTIGATED AND INSPECTED, EITHER INDEPENDENTLY OR THROUGH AGENTS OF TENANT'S OWN CHOOSING, THE CONDITION OF THE PREMISES AND THE SUITABILITY OF THE PREMISES FOR TENANT'S INTENDED USE. TENANT HAS DETERMINED, BASED SOLELY ON ITS OWN INVESTIGATION, THAT THE PREMISES ARE SUITABLE FOR TENANT'S BUSINESS AND INTENDED USE, SUBJECT TO SECTION 8.3 HEREUNDER RELATED TO WATER INTRUSION. TENANT ACKNOWLEDGES AND AGREES THAT NEITHER CITY NOR ANY OF ITS AGENTS HAVE MADE, AND CITY HEREBY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE RENTABLE AREA OF THE PREMISES, THE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PREMISES OR THE PROPERTY, THE PRESENT OR FUTURE SUITABILITY OF THE PREMISES FOR TENANT'S BUSINESS, OR ANY OTHER MATTER WHATSOEVER RELATING TO THE PREMISES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

3. TERM

3.1. Lease Term

The Premises are leased for a term (the "Term") commencing on the Commencement Date specified in the Basic Lease Information and ending on the Expiration Date specified in the Basic Lease Information, unless sooner terminated pursuant to the provisions of this Lease or

extended pursuant to the Extension Options set forth in Section 26.1 (Option to Extend Term). All references to the "Term" shall include the Extension Terms, if applicable.

3.2. Possession

Tenant shall receive possession to the Premises upon the Commencement Date of this Lease. Tenant hereby accepts the Premises in their existing as-is condition, as provided in Section 2.2 above, and acknowledges that City has no obligation to make any improvements, repairs or alterations thereto except as may otherwise be provided during the Lease Term pursuant to Section 8 hereof.

4. RENT

4.1. Base Rent

Throughout the Term beginning on the Commencement Date, Tenant shall pay to City the monthly Base Rent (the "Base Rent") specified in the Basic Lease Information. The Base Rent shall be paid to City in advance, without prior demand and without any deduction, setoff or counterclaim whatsoever, on or before the first day of each month during the Term. All sums payable by Tenant to City hereunder shall be paid in cash or by good check to the City and County of San Francisco in care of the Director of Property at the primary address for City specified in the Basic Lease Information, or such other place as City may designate in writing. Payments made by check must be drawn either on a California financial institution or on a financial institution that is a member of the federal reserve system. If Tenant pays by check and such check is not honored, then City may require Tenant to make all future payments in cash or by cashier's check. If the Commencement Date occurs on a day other than the first day of a calendar month, or the Expiration Date occurs on a day other than the last day of a calendar month, then the Base Rent for such fractional month shall be prorated based on a thirty (30) day month.

4.2. Adjustments in Base Rent

If the Tenant exercises the option to extend the Lease as specified in Section 26.1, then the Base Rent payable under this Lease starting on the first day of each Extension Option and each one year anniversary thereafter (each, an "Adjustment Date") shall be adjusted as follows:

The Consumer Price Index Urban Wage Earners and Clerical Workers (base years 1982-1984=100) for San Francisco-Oakland-San Jose area published by the United States Department of Labor, Bureau of Labor Statistics ("Index") published most immediately preceding the Adjustment Date ("Adjustment Index") shall be compared with the Index published most immediately preceding the Commencement Date ("Beginning Index"). If for any year, the CPI is less than 3%, the CPI used will be 3%. If for any year the CPI is greater than 8%, the CPI used will be 8%.

If the Adjustment Index has increased over the Beginning Index, the Base Rent due on and after the applicable Adjustment Date shall be set by multiplying the initial Base Rent as of the Commencement Date by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Beginning Index, as shown below:

Adjustment Index

Beginning Index

x Base Rent (in effect on Commencement Date) = adjusted Base Rent

In no event shall the monthly Base Rent on or after the Adjustment Date be less than the monthly Base Rent in effect immediately prior to the Adjustment Date.

If the Index is changed so that the base year differs from that used as of the date most immediately preceding the Commencement Date, 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 discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

4.3. Additional Charges

Tenant shall pay to City any and all charges and other amounts required under this Lease as additional rent (collectively, "Additional Charges"). All such Additional Charges shall be payable to City at the same place and the same manner as the Base Rent is payable. City shall have the same remedies for a default in the payment of any Additional Charges as for a default in the payment of Base Rent. As used in this Lease, the term "Rent" shall include the Base Rent, Additional Charges and any other amounts Tenant is obligated to pay hereunder, whether or not any such amounts are specifically characterized as rent.

4.4. Late Charges

If Tenant fails to pay any Rent or any portion of Rent within five (5) business days following the due date, such unpaid amount shall be subject to a late payment charge equal to six percent (6%) of the unpaid amount in each instance. The late payment charge has been agreed upon by City and Tenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that City will incur as a result of any such failure by Tenant, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate City for its damages resulting from such failure to pay and shall be paid to City together with such unpaid amount.

4.5. Default Interest

Any Rent, if not paid within five (5) business days following the due date, shall bear interest from the due date until paid at the rate of ten percent (10%) per year or, if a higher rate is legally permissible, at the highest rate an individual is permitted to charge under law (the "Interest Rate"). However, interest shall not be payable on late charges incurred by Tenant nor on any amounts on which late charges are paid by Tenant to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Tenant.

5. USE

5.1. Permitted Use

Tenant shall use and continuously occupy the Premises during the Term solely for the operation of a theatre and theatre-related uses, other performance spaces, an acting school, concession sales at times when the theatre is open for performances of food, drink (including on-premises consumption of wine and liquor in accordance with all applicable permits and laws) and performance-related merchandise, reception area, and related public relations and administrative offices, and for no other purpose without the prior written consent of City, not to be unreasonably withheld. In connection with concession sales and receptions, cooking and baking must be performed off-site, although warming of prepared foods shall be permitted on site, provided that no cooking odors are emitted from the Premises which are noticeable in other areas of the Building. If at any time during the Term City determines, in City's sole discretion, that the odors emitted from the Premises and noticeable in other areas of the Building are too intense, City may notify Tenant thereof and Tenant shall thereupon promptly correct the problem to City's satisfaction. Tenant shall not sell any merchandise other than food, drinks or other promotional items related to the theatre operation without the Director of Property's prior consent, which consent may be given or withheld in his or her sole discretion. Without limiting the foregoing, the sale of such items as lottery tickets and the use of electronic game machines is prohibited.

5.2. Standards of Operation; Appearance of Theatre

Tenant covenants that it will operate Tenant's business in the Premises in a first-class manner as a quality theatre establishment in accordance with reputable business standards and practices. Tenant will carry on its business diligently and continuously at the Premises throughout the Term. Tenant shall carefully supervise and control the operation of its business in the Premises, and shall employ a competent and adequate staff therefor, all of whom shall be Tenant's employees, independent contractors or agents and none of whom shall be deemed for any purpose whatsoever to be City's employees. Any material change in the character of Tenant's business or use which is made without the prior written consent of City, which may be withheld in City's sole discretion, shall constitute a default under this Lease. Tenant shall install and maintain at all times in the Premises furnishings, fittings and equipment adequate, appropriate and properly laid out to sustain Tenant's business. All displays, arrangements, signage and advertising located outside the Premises shall be subject to the requirements regarding Signage in Section 28 hereof.

5.3. Health and Safety; Janitorial Services; Clean-Up

Tenant shall maintain high standards of sanitation and shall maintain the Premises at all times in a clean and sanitary manner in compliance with all applicable health and sanitation laws and with any reasonable health and safety guidelines promulgated by City, and shall clean with reasonable frequency.

5.4. No Unlawful Uses, Nuisances or Waste

Without limiting the foregoing, Tenant shall not use, occupy or permit the use or occupancy of any of the Premises in any unlawful manner or for any illegal purpose, or permit

any offensive, noisy or hazardous use or any waste on or about the Premises. Tenant shall take all precautions to eliminate any nuisances or hazards relating to its activities on or about the Premises, including, but not limited to, odors. The presence of such nuisances or hazards shall be determined in the sole opinion of the Building Manager. Tenant shall not conduct any business, place any sales display, or advertise in any manner in areas outside the Premises that are located on or about the Property, except as otherwise permitted under Section 28 (Signage).

6. TENANT IMPROVEMENTS

6.1. Tenant Improvement Work

There shall be no tenant improvement work required in connection with this Lease.

7. ALTERATIONS

7.1. Tenant's Alterations

(a) General

Tenant shall not make or permit any alterations to the Building or to the heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security and other mechanical, electrical, communications systems of the Building ("Building Systems"), and shall not make or permit any alterations, installations, additions or improvements, structural or otherwise (collectively, "Alterations"), in, to or about the Premises, without City's prior written consent in each instance not to be unreasonably withheld. All permitted Alterations, if any, shall be done at Tenant's expense in accordance with plans and specifications approved by City, only by duly licensed and bonded contractors or mechanics approved by City, and subject to any conditions that City may reasonably impose. No Alterations may be made which would be visible from the exterior of the Building. If the cost of any Alterations is in excess of Fifteen Thousand Dollars (\$15,000), then Tenant shall pay to City a reasonable hourly administrative fee for the City's review based on number of hours for review, not to exceed five percent (5%) of the total "hard" costs of the work to compensate City for the costs of review. City approval or denial shall be provided by the Director of Property.

(b) Asbestos

Without limiting Section 25.2 (No Hazardous Materials) below, in the event that asbestos-containing materials ("ACM") are determined to exist in or about the Premises, Tenant shall ensure that all Alterations and any asbestos related work, as defined in California Health & Safety Code Section 25914.1(b), is performed in compliance with all laws relating to asbestos, including but not limited to California Occupational Safety and Health (OSHA) regulations found in Title 8 of the California Code of Regulations, Sections 1502 and 1529. Additionally, Tenant shall distribute notifications to all employees and contractors as required pursuant to California Health & Safety Code Sections 25915 et seq. informing them of the existence of ACM and that moving, drilling, boring, or otherwise disturbing ACM may present a health risk and should not be attempted by an unqualified employee. No Alterations affecting ACM-containing areas or any asbestos related work shall be performed without City's prior written consent in each instance.

(c) Tenant's Alterations that Disturb or Remove Lead-Based Paint

Tenant covenants and agrees that it and its Agents or Invitees (as such terms are defined in Section 27.5 (Parties and their Agents) below) shall comply with all requirements of Section 3423 of the San Francisco Building Code and all other applicable local, state, and Federal laws, including but not limited to the California and United States Occupational Health and Safety Acts and their implementing regulations, when Tenant's Alterations or repairs disturb or remove exterior or interior lead-based or presumed lead-based paint. Tenant covenants and agrees that it and its Agents or Invitees shall comply with the requirements of Title 17 of the California Code of Regulations when undertaking measures designed to reduce or eliminate lead hazards. Under this Lease, exterior or interior paint on buildings and steel structures built before January 1, 1979 is presumed to be lead-based paint unless a lead-based paint test, as defined by Section 3423 of the San Francisco Building Code, indicates an absence of lead-based paint on the exterior or interior surfaces of such buildings and/or steel structures. Under this Lease, lead-based paint is "disturbed or removed" if an alteration or repair involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on a surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface:

7.2. Title to Improvements

Except for Tenant's Personal Property (as described in the next section), or as may be specifically provided to the contrary in the approved plans, all appurtenances, fixtures, improvements, equipment, additions, and other property attached or affixed to or installed in the Premises at the Commencement Date or during the Term, including, without limitation, any Alterations, shall be and remain City's property. Tenant may not remove any such property at any time during or after the Term unless City so requests as further provided in Section 24 (Surrender), below.

7.3. Tenant's Personal Property

All furniture, trade fixtures, equipment and articles of movable personal property installed in the Premises by Tenant or its Agents, without expense to City, and that can be removed without structural or other damage to the Premises (collectively, "Tenant's Personal Property") shall be and remain Tenant's property. Without limiting the foregoing, all theatre equipment, lights, sound equipment and theatre seating shall be considered Tenant's Personal Property. Tenant may remove its Personal Property at any time during the Term, subject to the provisions of Section 24 (Surrender of Premises), below. Tenant shall pay any taxes or other impositions levied or assessed upon Tenant's Personal Property, at least ten (10) days prior to delinquency, and shall deliver satisfactory evidence of such payment to City upon request.

7.4. City's Alterations of the Building and Building Systems

City reserves the right at any time to make alterations, additions, repairs, deletions or improvements to the common areas or any other part of the Building or the Building Systems, provided that any such alterations or additions shall not materially adversely affect the functional utilization of the Premises for the uses permitted hereunder.

8. REPAIRS AND MAINTENANCE

8.1. City's Repairs

Except as otherwise provided in Section 8.3 hereof, City shall repair and maintain the Building Systems, the elevators, the common areas and the structural portions of the Building, including without limitation, periodically sealing the streets, sidewalks and gutters abutting the Building in an attempt to prevent water intrusion; provided, however, Tenant shall reimburse City for any damage, excluding normal wear and tear, caused by any act or omission of Tenant, its assignees, subtenants, or licensees (as such terms are defined in Section 27.5 (Parties and their Agents) below). For the purpose of making any such repairs, City may use structures in the Premises where reasonably required by the character of the work to be performed, provided that such work shall not block the main entrance to the Premises nor unreasonably interfere with Tenant's business. Except as otherwise provided in Section 8.3, if City's performance of its repair obligations or its failure to carry out its repair obligations hereunder impairs Tenant's ability to carry on its business in the Premises for a period of five (5) or more consecutive business days, then Tenant shall have the right, as Tenant's sole remedy, to abate the Rent based on the extent such failure impairs Tenant's ability to carry on its business in the Premises. Subject to the preceding sentence, except to the extent arising out of the gross negligence or wilful misconduct of City, its agents or contractors, a default by City of its obligations hereunder, or as otherwise provided in Section 8.3, Tenant waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises or any other loss occasioned thereby.

8.2. Tenant's Repairs

Except as otherwise limited by Section 8.3 hereof, Tenant shall promptly make all repairs and replacements within the Premises: (a) at no cost to the City, (b) by licensed contractors or qualified mechanics approved by City, (c) so that the same shall be at least equal in quality, value and utility to the original work or installation, (d) in a manner and using equipment and materials that will not interfere with or impair the operations, use or occupation of the Building or the Building Systems, and (e) in accordance with any applicable Building Rules and Regulations (as defined in Section 23.1 (Rules and Regulations)) and all applicable laws, rules and regulations. Except as otherwise expressly provided in Section 8.3 of this Lease, Tenant hereby waives all rights to make repairs at City's expense under Sections 1941 and 1942 of the California Civil Code or under any similar law, statute or ordinance now or hereafter in effect. If City determines in its reasonable judgment that the Premises is not being maintained as required hereunder, City may retain the services of a maintenance company selected by City to perform such maintenance and Tenant shall reimburse City for the cost thereof upon demand.

8.3 Limitation on Repair Obligations for Water Intrusion.

a. Limitation on Liability for Repairs. The parties acknowledge that the structural condition of the Building allows for periodic flooding and water intrusion into the Premises from groundwater and stormwater. Such water intrusion requires regular maintenance and repair work within the Premises to mitigate the water intrusion, which work may materially interfere with Tenant's operations. If in any "Lease Year" (i.e., the period between the Commencement Date or any one year anniversary thereof during the Term or Extended Term and the first anniversary of such date), the Premises experiences flooding or water intrusion due

to groundwater or stormwater seeping through the Building's foundation or walls (but not due to failure of other Building Systems such as plumbing or HVAC, or water seeping into the Premises from the streets, sidewalks or gutters abutting the Building that could have been prevented by sealing those streets, sidewalks or gutters, all of which are within City's repair obligations of Section 8.1), Tenant shall perform minor mitigation and repair (e.g. patching, vacuuming, pumping minor flooding) within the Premises as needed. To the extent that such damage is material (anticipated cost in excess of \$1,000), Tenant shall promptly notify City and City shall undertake the repairs. If City fails to commence such repairs in a timely manner so that Tenant risks further property damage or cancellation of performances or bookings, Tenant shall have the right to perform such repairs on City's behalf. For purposes of this Section 8.3, "Water Damage Costs" shall mean all costs actually incurred as a result of such flooding or water intrusion, including labor (both third-party contractors and the hourly salary plus benefits rate for Tenant's employees performing such work), materials, damage to the Premises or Tenant's Personal Property (including, without limitation, damage to carpeting, seating, theatre sets and costumes) and loss of income due to cancellation of performances or bookings. Water Damage Costs shall be allocated between Tenant and City in accordance with Sections 8.3.b and 8.3.c.

b. Tenant's Responsibility for Costs. Tenant shall be responsible for the first Eleven Thousand and no/100 Dollars (\$11,000) of Water Damage Costs (including the costs of minor mitigation and repair required in Section 8.3.a) incurred by Tenant or City in any Lease Year ("Tenant's Costs"). The parties acknowledge that the Base Rent hereunder is based on a discounted rate that reflects the condition of the Building and the Premises, Tenant's assumption of Tenant's Costs hereunder, inconvenience to Tenant's staff from responding to water intrusion and flooding episodes, and the risk of property damage and interruption to Tenant's operations, including cancellation of public performances and theatre bookings. Tenant shall pay Tenant's Costs incurred by Tenant directly and shall not be entitled to apply any of Tenant's Costs against Base Rent or other Additional Charges due under this Lease. To the extent that City incurs any Tenant's Costs, Tenant shall reimburse City for such Tenant's Costs within thirty (30) days after receipt of an itemized statement in accordance with Section 8.3.e. If in any Lease Year, the amount of Water Damage Costs is less than the full amount allocated to Tenant's Costs, any unallocated amounts will not carry over or be credited against subsequent years.

c. City's Responsibility for Costs. To the extent Water Damage Costs incurred by Tenant or City in any Lease Year exceed the amount of Tenant's Costs, City shall be responsible for any such excess amount up to an aggregate of Eleven Thousand and no/100 Dollars (\$11,000) in any Lease Year ("City's Costs"). To the extent that Tenant incurs any portion of City's Costs (either through labor and material expenses incurred by Tenant, property damage, or lost income) in any Lease Year, such amount shall be credited against Base Rent due hereunder until fully recovered, subject to Landlord's prior receipt and approval of an itemized statement in accordance with Section 8.3.e. In the event that insufficient Lease Term remains for Tenant to recover all outstanding City's Costs incurred by Tenant through a credit against Base Rent, Tenant shall, at its sole option, have the right to either perform the work and take a credit against Base Rent until the expiration of the Lease Term, or elect not to perform the work and terminate the Lease upon written notice to City. If in any Lease Year, the amount of Water Damage Costs actually incurred is less than the full amount allocated to City's Costs, any unallocated amounts will not carry over or be credited against subsequent years.

10. UTILITIES AND SERVICES

10.1. Utilities and Services

City shall provide to the Premises the basic Building utilities and services, subject to the terms and conditions contained therein. Tenant shall be responsible for furnishing, at no cost to the City, any utilities or services other than or in excess of the standard utilities and services that Tenant may need for its use of the Premises.

10.2. Water and Energy Conservation; Mandatory or Voluntary Restrictions

In the event any law, ordinance, code or governmental or regulatory guideline imposes mandatory or voluntary controls on City or the Property or any part thereof, relating to the use or conservation of energy, water, gas, light or electricity or the reduction of automobile or other emissions, or the provision of any other utility or service provided with respect to this Lease, or in the event City is required or elects to make alterations to any part of the Building in order to comply with such mandatory or voluntary controls or guidelines, such compliance and the making of such alterations shall in no event entitle Tenant to any damages, relieve Tenant of the obligation to pay the full Base Rent and Additional Charges reserved hereunder or to perform each of its other covenants hereunder or constitute or be construed as a constructive or other eviction of Tenant. City shall have the right at any time to install a water meter in the Premises or otherwise to measure the amount of water consumed on the Premises. Tenant shall reimburse City for the reasonable cost of such installation if such meter shows Tenant consumes more than a commercially reasonable amount of water given the use of the Premises as a theatre.

10.3. Excess Use

If Tenant requires any utilities or services to be provided by City hereunder in excess of the standard utilities and services for the Premises, Tenant shall first procure City's written consent, which City may give or withhold in its sole discretion. In the case of City's consent, Tenant shall pay to City, as additional rent, the cost of such excess usage. Failure of City to bill Tenant for such excess utilities or services shall not impair City's right to bill Tenant for such costs at a later date. Without limiting the foregoing, Tenant shall not without Director of Property written approval: (a) connect or use any apparatus, device or equipment that will require a dedicated circuit or that will impair the proper functioning or capacity of the Building Systems; or (b) connect any apparatus, device or equipment through electrical outlets except in the manner for which such outlets are designed and without the use of any device intended to increase the plug capacity of any electrical outlet; or (c) maintain at any time an electrical demand load deemed to be in excess of normal load from a theatre use, in the sole and absolute discretion of the Director of Property. If at any time during the Term City has reason to believe that Tenant may be using any utility or service in excess of the amount therefore allowed to the Premises pursuant to the standard building utilities or services, City shall have the right to install a separate meter in the Premises or to take other appropriate steps to measure the amount of utility or service used in the Premises. The cost of such meter and all corrective measures, and the installation and maintenance thereof, shall be paid for by Tenant if the meter shows Tenant's usage of utilities or services are in excess of the standard utilities and services.

d. Water Damage Costs in Excess of Parties' Liability. To the extent that an event of flooding or water intrusion occurs due to groundwater or stormwater seeping through the Building's foundation or walls and the amount of Water Damage Costs exceeds or is reasonably anticipated to exceed an aggregate amount of Twenty Two Thousand and no/100 Dollars (\$22,000) in any Lease Year, the parties shall meet and confer in good faith to reach a fair and equitable allocation of repair obligations and cost responsibilities; provided, however, that if after good faith negotiations, the parties are unable to agree on a program to repair and allocate costs within forty-five (45) days of the first meeting, then either party may terminate this Lease by thirty-days' prior written notice to the other, and Base Rent from the date of such notice until termination shall be abated in its entirety.

e. Itemized Statement of Water Damage Costs. Within thirty (30) days after any Water Damage Costs are incurred by Tenant or City, the Party incurring Water Damage Costs shall furnish the other Party with an itemized statement of all such Water Damage Costs, certified by an officer of Tenant or an authorized employee of City, as applicable, to be true and accurate as to expenditures, and accompanied by invoices, cancelled checks or other proof of payment reasonably satisfactory to City or Tenant, as applicable.

9. LIENS AND ENCUMBRANCES

9.1. Liens

Tenant shall keep the Premises and the rest of the Property free from any liens arising out of any work performed, material furnished or obligations incurred by or for Tenant. In the event Tenant does not, within five (5) business days following actual knowledge of any such lien, cause the lien to be released of record by payment or posting of a proper bond, City shall have, in addition to all other remedies, the right, but not the obligation, to cause the lien to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by City and all expenses incurred by it in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to City by Tenant upon demand. City shall have the right to post on the Premises any notices that City may deem proper for the protection of City, the Premises, and the Building, from mechanics' and materialmen's liens. Except in the case of emergency repairs, Tenant shall give to City at least fifteen (15) days' prior written notice of commencement of any Alteration, repair or construction on the Premises. Tenant agrees to indemnify, defend and hold City and its Agents harmless from and against any claims for mechanic's, materialmen's or other liens in connection with any Alterations, repairs or construction on the Premises, or materials furnished or obligations incurred by or for Tenant.

9.2. Encumbrances

Tenant shall not create, permit or suffer any liens or encumbrances affecting any portion of the Premises, the Property or City's interest therein or under this Lease.

10.4. Floor Load

Without City's prior written consent, which City may give or refuse in its sole discretion, Tenant shall not place or install in the Premises any equipment that weighs in excess of the normal load-bearing capacity of the floors of the Building. If City consents to the placement or installation of any such machine or equipment in the Premises, Tenant, at no cost to the City, shall reinforce the floor of the Premises, pursuant to plans and specifications approved by City and otherwise in compliance with Section 7.1 (Tenant's Alterations), to the extent necessary to assure that no damage to the Premises or the Building or weakening of any structural supports will be occasioned thereby.

10.5. Interruption of Services

City's obligation to provide utilities and services for the Premises are subject to the Rules and Regulations of the Building, applicable Legal Requirements (as defined below) (including the rules or actions of the public utility company furnishing the utility or service), and shutdowns for maintenance and repairs, for security purposes, or due to strikes, lockouts, labor disputes, fire or other casualty, acts of God, or other causes beyond the control of City. In the event of an interruption in, or failure or inability to provide any service or utility for the Premises for any reason, such interruption, failure or inability shall not constitute an eviction of Tenant, constructive or otherwise, or impose upon City any liability whatsoever, including, but not limited to, liability for consequential damages or loss of business by Tenant; provided, however, that if such interruption, failure or inability impairs Tenant's ability to carry on its business in the Premises for a period of five (5) or more consecutive business days, then Tenant shall have the right, as Tenant's sole remedy, to abate the Rent based on the extent such interruption, failure or inability impairs Tenant's ability to carry on its business in the Premises. Tenant hereby waives the provisions of California Civil Code Section 1932(1) or any other applicable existing or future Legal Requirement permitting the termination of this Lease due to such interruption, failure or inability.

11. COMPLIANCE WITH LAWS AND RISK MANAGEMENT REQUIREMENTS

11.1. Compliance with Laws

Tenant shall promptly comply, at no cost to the City, with all present or future laws, ordinance, resolution, regulation, requirement, proclamation, order or decree of any municipal, county, state or federal government or other governmental or regulatory authority relating to the Premises or the use or occupancy thereof (the "Legal Requirements") and with any and all recorded covenants, conditions and restrictions affecting the Property or any portion thereof, whether in effect at the time of the execution of this Lease or adopted or recorded at any time thereafter and whether or not within the present contemplation of the parties. Tenant further understands and agrees that it is Tenant's obligation, at no cost to the City, to cause the Premises and Tenant's uses thereof to be conducted in compliance with the Americans With Disabilities Act, 42 U.S.C.A. Sections 12101 *et seq.* Notwithstanding the foregoing or anything in this Lease to the contrary, Tenant shall not be required to make any capital improvements or Alterations in order to comply with such laws unless the same shall be occasioned, in whole or in part, directly or indirectly, by Tenant's specific use of the Premises, or any Alterations. Any Alteration made by or on behalf of Tenant pursuant to the provisions of this Section shall comply with the provisions of Section 8.2 (Tenant's Repairs), above. The parties acknowledge and agree

that Tenant's obligation to comply with all Legal Requirements as provided herein is a material part of the bargained for consideration under this Lease.

11.2. Regulatory Approvals

(a) Responsible Party

Tenant understands and agrees that Tenant's use of the Premises may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises, including, without limitation, City and State agencies. Tenant shall be solely responsible for obtaining any and all such regulatory approvals. Tenant shall not seek any regulatory approval without first obtaining the written consent of City under this Lease. Tenant shall bear all costs associated with applying for and obtaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval; provided, however, any such condition that could affect use or occupancy of the Property or City's interest therein must first be approved by the Director of Property in his or her sole discretion. Any fines or penalties levied as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Tenant, and City shall have no liability, monetary or otherwise, for any such fines or penalties. Tenant shall Indemnify City and the other Indemnified Parties hereunder against all Claims (as such terms are defined in Section 18.2 below) arising in connection with Tenant's failure to obtain or failure by Tenant, its Agents, assignees, subtenants, or licensees to comply with the terms and conditions of any regulatory approval.

(b) City Acting as Owner of Real Property

Tenant further understands and agrees that City is entering into this Lease in its capacity as a property owner with a proprietary interest in the Premises and not as a regulatory agency with police powers. Nothing in this Lease shall limit in any way Tenant's obligation to obtain any required approvals from City officials, departments, boards or commissions having jurisdiction over the Premises. By entering into this Lease, City is in no way modifying or limiting Tenant's obligation to cause the Premises to be used and occupied in accordance with all applicable laws, as provided further above.

11.3. Compliance with City's Risk Management Requirements

Tenant shall not do anything, or permit anything to be done, in or about the Premises which would be prohibited by or increase rates under a standard form fire insurance policy or subject City to potential premises liability. Tenant shall faithfully observe, at no cost to the City, any and all requirements of City's Risk Manager with respect to Tenant's use and occupancy of the Premises, so long as such requirements do not unreasonably interfere with Tenant's use of the Premises or are otherwise connected with standard prudent commercial practices of other landlords.

12. SUBORDINATION

This Lease is and shall be subordinate to any reciprocal easement agreement, ground lease, facilities lease or other underlying lease and the lien of any mortgage or deed of trust and

all renewals, modifications, consolidations, replacements and extensions of any of the foregoing, that may now exist or hereafter be executed by City affecting the Property, or any part thereof, or City's interest therein, without the necessity of executing any instrument to effectuate such subordination; provided, however, upon Landlord's request, Tenant, or Tenant's successor-in-interest, shall execute and deliver any and all instruments desired by Landlord evidencing such subordination in the manner requested by Landlord. Notwithstanding the foregoing, City or the holder shall, in its respective discretion, have the right to subordinate any such interests to this Lease. If any ground lease or underlying lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Tenant shall attorn to the successor-in-interest to City, at the option of such successor-in-interest. The provisions of this Section shall be self-operative and no further instrument shall be required. Tenant agrees, however, to execute and deliver, upon demand by City and in the form requested by City, any additional documents evidencing the priority or subordination of this Lease.

13. INABILITY TO PERFORM

Except as expressly set forth herein, no actual or constructive eviction, in whole or in part, shall entitle Tenant to any abatement or diminution of Rent or relieve Tenant from any of its obligations under this Lease. If City is unable to perform or is delayed in performing any of City's obligations under this Lease, by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, protests, riots, demonstrations, inability to obtain utilities or materials or by any other reason beyond City's reasonable control, no such inability or delay shall constitute an eviction under this Lease, or impose any liability upon City or its Agents by reason of inconvenience, annoyance, interruption, injury or loss to or interference with Tenant's business or use and occupancy or quiet enjoyment of the Premises or any loss or damage occasioned thereby, provided, however, that if such inability to perform impairs Tenant's ability to carry on its business in the Premises for a period of five (5) or more consecutive business days, then Tenant shall have the right, as Tenant's sole remedy, to abate the Rent based on the extent such interruption, failure or inability impairs Tenant's ability to carry on its business in the Premises. Tenant hereby waives and releases any right to terminate this Lease under Section 1932, subdivision 1 of the California Civil Code or any similar law, statute or ordinance now or hereafter in effect.

14. DAMAGE AND DESTRUCTION

14.1. Damage and Destruction

If the Premises or the Building is damaged by fire or other casualty (other than an event of flooding or water intrusion within the scope of Section 8.3 hereof which shall be governed by that Section), then City shall repair the same provided that funds for such repairs are appropriated by City's Board of Supervisors, in its sole discretion, for such purpose and that such repairs can be made within two hundred ten (210) days after the date of such damage (the "Repair Period"). In the event such conditions are satisfied, this Lease shall remain in full force and effect except that Tenant shall be entitled to a proportionate reduction of Base Rent and Additional Charges during the period of such repairs based upon the extent to which such damage and the making of such repairs materially interferes with Tenant's use or occupancy of the Premises.

City shall use its best efforts to notify Tenant within ninety (90) days after the date of such damage whether or not such repairs can be made within the Repair Period, and City's determination thereof shall be binding on Tenant. If such repairs cannot be made within the Repair Period, City shall have the option to notify Tenant of: (a) City's intention to repair such damage and diligently prosecute such repairs to completion within a reasonable period after the Repair Period, subject to the Board of Supervisor's appropriation of all necessary funds, in which event this Lease shall continue in full force and effect and the Base Rent and Additional Charges shall be reduced as provided herein; or (b) City's election to terminate this Lease as of a date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by City. Notwithstanding the foregoing, if repairs cannot be made within the Repair Period and City elects to repair such damage pursuant to subsection (a) above, Tenant may elect to terminate this Lease as of a date not less than thirty (30) nor more than sixty (60) days after such notice is given by City, by delivering written notice to City within thirty (30) days after receipt of City's notice to Tenant of City's intention to repair such damage. In either case of termination, the Base Rent and Additional Charges shall be reduced as provided above, and Tenant shall pay such reduced Base Rent and Additional Charges up to the date of termination.

If at any time during the last six (6) months of the Term of this Lease, the Premises or the Building is materially damaged or destroyed, then either City or Tenant may terminate this Lease by giving written notice to the other party of its election to do so within thirty (30) days after the date of the occurrence of such damage; provided, however, Tenant may terminate only if such damage or destruction substantially impairs its use or occupancy of the Premises for the uses permitted hereunder. The effective date of termination shall be specified in the notice of termination, which date shall not be more than thirty (30) days from the date of the notice.

Notwithstanding anything to the contrary in this Lease, City shall have no obligation to repair the Premises or the Building in the event the damage or destruction is attributable to any negligent act or omission of Tenant, its Agents, assignees, subtenants, or licensees. In no event shall City be required to repair any damage to Tenant's Personal Property or any paneling, decorations, railings, floor coverings, or any Alterations installed or made on the Premises by or at the expense of Tenant. In the event the Premises or the Building is substantially damaged or destroyed and City intends to rebuild for public purposes inconsistent with this Lease, City may terminate this Lease upon written notice to Tenant.

14.2. Waiver

City and Tenant intend that the provisions of this Section govern fully in the event of any damage or destruction and accordingly, City and Tenant each hereby waives the provisions of Section 1932, subdivision 2, Section 1933, subdivision 4 and Sections 1941 and 1942, of the Civil Code of California or under any similar law, statute or ordinance now or hereafter in effect.

15. EMINENT DOMAIN

15.1. Definitions

(a) "Taking" means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under law. A

Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

(b) "Date of Taking" means the earlier of (i) the date upon which title to the portion of the Property taken passes to and vests in the condemnor or (ii) the date on which Tenant is dispossessed.

(c) "Award" means all compensation, sums or anything of value paid, awarded or received for a Taking, whether pursuant to judgment, agreement, settlement or otherwise.

15.2. General

If during the Term or during the period between the execution of this Lease and the Commencement Date, there is any Taking of all or any part of the Premises or any interest in this Lease, the rights and obligations of the parties hereunder shall be determined pursuant to this Section. City and Tenant intend that the provisions hereof govern fully in the event of a Taking and accordingly, the parties each hereby waive any right to terminate this Lease in whole or in part under Sections 1265.110, 1265.120, 1265.130 and 1265.140 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

15.3. Total Taking; Automatic Termination

If there is a total Taking of the Premises, then this Lease shall terminate as of the Date of Taking.

15.4. Partial Taking; Election to Terminate.

(a) If there is a Taking of any portion (but less than all) of the Premises, then this Lease shall terminate in its entirety under either of the following circumstances: (i) if all of the following exist: (A) the partial Taking renders the remaining portion of the Premises untenable or unsuitable for continued use by Tenant, (B) the condition rendering the Premises untenable or unsuitable either is not curable or is curable but City is unwilling or unable to cure such condition, and (C) Tenant elects to terminate; or (ii) if City elects to terminate; provided, however, that this Lease shall not terminate if Tenant agrees to, and does, pay full Rent and Additional Charges, without abatement, and otherwise agrees to, and does, fully perform all of its obligations hereunder.

(b) If there is a partial Taking of a substantial portion of the Building but not the Premises, City shall have the right to terminate this Lease in its entirety.

(c) Either party electing to terminate under the provisions of this Section 15 shall do so by giving the other party written notice to the other party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth (30th) day after such written notice is given or the Date of Taking.

15.5. Rent; Award

Upon termination of this Lease pursuant to an election under Section 15.4 above, then: (i) Tenant's obligation to pay Rent shall continue up until the date of termination, and thereafter shall cease, except that Rent shall be reduced as provided in Section 15.6 below for any period

during which this Lease continues in effect after the Date of Taking, and (ii) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease), and Tenant shall have no claim against City for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Personal Property.

15.6. Partial Taking; Continuation of Lease

If there is a partial Taking of the Premises under circumstances where this Lease is not terminated in its entirety under Section 15.4 above, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the parties shall be as follows: (a) Base Rent shall be reduced by an amount that is in the same ratio to the Base Rent as the area of the Premises taken bears to the area of the Premises prior to the Date of Taking, and (b) where such partial termination is not in connection with a Taking by City as described in Section 15.5 above, City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease), and Tenant shall have no claim against City for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Personal Property.

15.7. Temporary Takings

Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to all or any part of the Premises for a limited period of time not in excess of one hundred eighty (180) consecutive days, this Lease shall remain unaffected thereby, and Tenant shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. In the event of such temporary Taking, Tenant shall be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by Tenant for the period of the Taking, and City shall be entitled to receive the balance of any Award.

16. ASSIGNMENT AND SUBLETTING

16.1. Restriction on Assignment and Subletting

Tenant shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Tenant), voluntarily or by operation of law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises or its leasehold estate hereunder (collectively, an "Assignment"), or permit or license any portion of the Premises to be used or occupied by anyone other than itself, or sublet any portion of the Premises (collectively, "Sublease"), without City's prior written consent in each instance, as provided herein. Notwithstanding the foregoing, City acknowledges that a Sublease requiring City's consent hereunder does not include use of the Premises by Tenant's agents and independent contractors engaged in activities related solely to Tenant's

ongoing operations, such as public relations, fundraising and producing publicity stills and artwork.

16.2. Notice of Proposed Transfer

If Tenant desires to enter into an Assignment or a Sublease, it shall give written notice (a "Notice of Proposed Transfer") to City of its intention to do so. The Notice of Proposed Transfer shall identify the proposed transferee and state the terms and conditions of the proposed Assignment or Sublease. Tenant shall deliver to City with its request for City's consent the proposed Assignment or Sublease and current financial statements of the proposed Transferee, prepared by an independent certified public accountant, and promptly upon City's request for same, any additional documents or information reasonably related to the proposed transaction or Transferee.

16.3. City's Response

Within twenty (20) business days after City's receipt of the Notice of Proposed Transfer (the "Response Period"), City may elect, by written notice to Tenant, to: (a) sublease the portion of the Premises specified in the Notice of Proposed Transfer on the terms and conditions set forth in such notice, except as otherwise provided in Section 16.4 (Sublease or Recapture Space), or (b) terminate this Lease as to the portion (including all) of the Premises that is specified in the Notice of Proposed Transfer, with a proportionate reduction in Base Rent (a "Recapture").

If City declines to exercise either of its options provided above, then Tenant shall have ninety (90) days following the earlier of (i) City's notice that it will not elect either such option or (ii) the expiration of the Response Period, to enter into such Assignment or Sublease, subject to City's prior written approval of the proposed assignee or subtenant (collectively, "Transferee") and the terms and conditions of the proposed Sublease or Assignment. However, one hundred percent (100%) of any rent or other consideration realized by Tenant under any such Assignment or Sublease in excess of the Base Rent and Additional Charges payable hereunder (or the amount thereof proportionate to the portion of the Premises subject to such Sublease or Recapture) shall be paid to City, after Tenant has recovered any reasonable brokers' commissions and the reasonable cost of any leasehold improvements that Tenant has incurred in connection with such Sublease or Recapture. Tenant shall provide City with such information regarding the proposed Transferee and the Assignment or Sublease as City may reasonably request. City agrees that it will not unreasonably withhold its approval of any proposed Transferee. The parties hereto agree and acknowledge that, among other circumstances for which City may reasonably withhold its consent to a proposed Transferee or a Sublease or Assignment, it shall be reasonable for City to withhold its consent where: (i) the assignment or subletting would involve a change in use from that expressly permitted under this Lease; (ii) City disapproves of the proposed Transferee's reputation or creditworthiness; (iii) City determines that the character of the business that would be conducted by the proposed assignee or subtenant at the Premises, or the manner of conducting such business, would be inconsistent with the character of the Building as a first-class building; (iv) City determines that the proposed assignee may be unable to perform all of Tenant's obligations under this Lease or the proposed subtenant may be unable to perform all of its obligations under the proposed sublease; or (v) the proposed Transferee does not in City's reasonable opinion have sufficient experience operating a business similar to the business to be operated in the Premises at a profit.

If after City declines to exercise any of the foregoing options Tenant desires to enter into such Assignment or Sublease (i) on terms and conditions materially more favorable to Tenant than those contained in the Notice of Proposed Transfer or (ii) with a Transferee that is currently a tenant or other occupant of the Building, then Tenant shall give City a new Notice of Proposed Transfer, which notice shall state the terms and conditions of such Assignment or Sublease and identify the proposed Transferee, and City shall again be entitled to elect one of the options provided in clauses (a) and (b) at any time within twenty (20) business days after City's receipt of such new Notice of Proposed Transfer.

In the event City elects either of the options provided in clauses (a) or (b), City shall be entitled to enter into a lease, sublease or assignment agreement with respect to the Premises (or portion thereof specified in such new Notice of Proposed Transfer) with the proposed Transferee identified in Tenant's notice.

Notwithstanding the foregoing, if any event of default by Tenant beyond the applicable notice and cure periods is outstanding hereunder at the time of Tenant's Notice of Proposed Transfer, then City may elect by notice to Tenant to refuse to consent to Tenant's proposed Transfer and pursue any of its right or remedies hereunder or at law or in equity.

16.4. Sublease, Recapture

If City elects to Sublease or Recapture from Tenant as described in Section 16.3, City's Response, the following shall apply:

(a) In the case of a Sublease, (i) City shall have the right to use the portion of the Premises covered by the Notice of Proposed Transfer (the "Sublease Space") for any legal purpose, (ii) the rent payable by City to Tenant shall be the lesser of (A) the amount in the Notice of Proposed Transfer or (B) the Base Rent payable by Tenant under this Lease at the time of the Sublease (or the amount thereof proportionate to the Sublease Space if for less than the entire Premises), (iii) City may make alterations and improvements to the Sublease Space and may remove any such alterations or improvements, in whole or in part, prior to or upon the expiration of the Sublease, provided that City shall repair any damage or injury to the Sublease Space caused by such removal, and (iv) City shall have the right to further sublease or assign the Sublease Space to any party, without the consent of Tenant.

(b) In the case of Recapture, the portion of the Premises subject to the Recapture (the "Recapture Space") shall be deleted from the Premises for all purposes hereunder, and Tenant and City shall be relieved of all their rights and obligations hereunder with respect to the Recapture Space except to the extent the same would survive the Expiration Date or other termination of this Lease pursuant to the provisions hereof.

16.5. Effect of Sublease or Assignment

No Sublease or Assignment by Tenant nor any consent by City thereto shall relieve Tenant, or any guarantor, of any obligation to be performed by Tenant under this Lease. Any Sublease or Assignment not in compliance with this Section shall be void and, at City's option, shall constitute a material default by Tenant under this Lease. The acceptance of any Base Rent or other payments by City from a proposed Transferee shall not constitute consent to such Sublease or Assignment by City or a recognition of any Transferee, or a waiver by City of any

failure of Tenant or other transferor to comply with this Section. If there is an Assignment or Sublet, whether in violation of or in compliance with this Section, in the event of default by any Transferee, or any successor of Tenant, in the performance or observance of any of the terms of this Lease or any Sublease or Assignment agreement, City may proceed directly against Tenant without the necessity of exhausting remedies against such Transferee or successor.

16.6. Assumption by Transferee

Each Transferee (other than City) under an Assignment shall assume all obligations of Tenant under this Lease and shall be liable jointly and severally with Tenant for the payment of the Base Rent and Additional Charges, and for the performance of all the terms, covenants and conditions to be performed on Tenant's part hereunder. No Assignment shall be binding on City unless Tenant or Transferee has delivered to City a counterpart of the Assignment and an instrument in recordable form that contains a covenant of assumption by such Transferee satisfactory in form and substance to City. However, the failure or refusal of such Transferee to execute such instrument of assumption shall not release such Transferee from its liability as set forth above. Tenant shall reimburse City on demand for any reasonable costs that may be incurred by City in connection with any proposed Sublease or Assignment, including, without limitation, the costs of making investigations as to the acceptability of the proposed Transferee and legal costs incurred in connection with the granting of any requested consent.

16.7. Indemnity for Relocation Benefits

Without limiting Section 16.6 (Assumption by Transferee) above, Tenant shall cause any Transferee to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease. Tenant shall indemnify City for any and all Losses arising out of any relocation assistance or benefits payable to any Transferee.

17. DEFAULT; REMEDIES

17.1. Events of Default

Any of the following shall constitute an event of default (the "Event of Default") by Tenant hereunder:

(a) a failure to pay Base Rent or Additional Charges when due, and such failure continues for three (3) days after the date of written notice by City. However, City shall not be required to provide such notice more than twice during any twelve (12) month period, and any such failure by Tenant after Tenant has received two (2) such notices in such 12-month period shall constitute a default by Tenant hereunder without any further action by City or opportunity of Tenant to cure except as may be required by Section 1161 of the California Code of Civil Procedure;

(b) a failure to comply with any other covenant, condition or representation made under this Lease and such failure continues for fifteen (15) days after the date of written notice by City, provided that if such default is not capable of cure within such 15-day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such 15-day period and thereafter diligently prosecutes the same to completion;

(c) a vacation or abandonment of the Premises for a continuous period in excess of five (5) business days; or

(d) an appointment of a receiver to take possession of all or substantially all of the assets of Tenant, or an assignment by Tenant for the benefit of creditors, or any action taken or suffered by Tenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted, if any such receiver, assignment or action is not released, discharged, dismissed or vacated within sixty (60) days.

17.2. Remedies

Upon the occurrence of an Event of Default Landlord shall have the following remedies, which shall not be exclusive but shall be cumulative and shall be in addition to any other remedies now or hereafter allowed by law or in equity:

(a) Landlord may terminate Tenant's right to possession of the Premises at any time by written notice to Tenant. Tenant expressly acknowledges that in the absence of such written notice from Landlord, no other act of Landlord, including, but not limited to, its re-entry into the Premises, its efforts to relet the Premises, its reletting of the Premises for Tenant's account, its storage of Tenant's Personal Property and trade fixtures, its acceptance of keys to the Premises from Tenant, its appointment of a receiver, or its exercise of any other rights and remedies under this Section 17.2 or otherwise at law, shall constitute an acceptance of Tenant's surrender of the Premises or constitute a termination of this Lease or of Tenant's right to possession of the Premises.

Upon such termination in writing of Tenant's right to possession of the Premises, this Lease shall terminate and Landlord shall be entitled to recover damages from Tenant as provided in California Civil Code Section 1951.2 or any other applicable existing or future Legal Requirement providing for recovery of damages for such breach, including but not limited to the following:

- (i) The reasonable cost of recovering the Premises; plus
- (ii) The reasonable cost of removing Tenant's Alterations, trade fixtures and improvements; plus
- (iii) All unpaid rent due or earned hereunder prior to the date of termination, less the proceeds of any reletting or any rental received from subtenants prior to the date of termination applied as provided in Section 17.2(b) below, together with interest at the Interest Rate, on such sums from the date such rent is due and payable until the date of the award of damages; plus
- (iv) The amount by which the rent which would be payable by Tenant hereunder, including Additional Charges under Section 4.3 above, as reasonably estimated by Landlord, from the date of termination until the date of the award of damages, exceeds the amount of such rental loss as Tenant proves could have been reasonably avoided, together with interest at the Interest Rate on such sums from the date such rent is due and payable until the date of the award of damages; plus

(v) The amount by which the rent which would be payable by Tenant hereunder, including Additional Charges under Section 4.3 above, as reasonably estimated by Landlord, for the remainder of the then term, after the date of the award of damages exceeds the amount such rental loss as Tenant proves could have been reasonably avoided, discounted at the discount rate published by the Federal Reserve bank of San Francisco for member banks at the time of the award plus one percent (1%); plus

(vi) Such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law, including without limitation any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease which in the ordinary course of things would be likely to result therefrom.

(b) Landlord has the remedy described in California Civil Code Section 1951.4 (a landlord may continue the lease in effect after the tenant's breach and abandonment and recover rent as it becomes due, if the tenant has the right to sublet and assign subject only to reasonable limitations), and may continue this Lease in full force and effect and may enforce all of its rights and remedies under this Lease, including, but not limited to, the right to recover rent as it becomes due. After the occurrence of an Event of Default, Landlord may enter the Premises without terminating this Lease and sublet all or any part of the Premises for Tenant's account to any person, for such term (which may be a period beyond the remaining term of this Lease), at such rents and on such other terms and conditions as Landlord deems advisable. In the event of any such subletting, rents received by Landlord from such subletting shall be applied (i) first, to the payment of the costs of maintaining, preserving, altering and preparing the Premises for subletting, the other costs of subletting, including but not limited to brokers' commissions, attorneys' fees and expenses of removal of Tenant's Personal Property, trade fixtures and Alterations; (ii) second, to the payment of rent then due and payable hereunder; (iii) third, to the payment of future rent as the same may become due and payable hereunder; (iv) fourth, the balance, if any, shall be paid to Tenant upon (but not before) expiration of the term of this Lease. If the rents received by Landlord from such subletting, after application as provided above, are insufficient in any month to pay the rent due and payable hereunder for such month, Tenant shall pay such deficiency to Landlord monthly upon demand. Notwithstanding any such subletting for Tenant's account without termination, Landlord may at any time thereafter, by written notice to Tenant, elect to terminate this Lease by virtue of a previous Event of Default.

During the continuance of an Event of Default, for so long as Landlord does not terminate Tenant's right to possession of the Premises and subject to Section 16 (Assignment and Subletting) and the options granted to Landlord thereunder, Landlord shall not unreasonably withhold its consent to an assignment or sublease of Tenant's interest in the Premises or in this Lease.

(c) During the continuance of an Event of Default, Landlord may enter the Premises without terminating this Lease and remove all Tenant's Personal Property, Alterations and trade fixtures from the Premises and store them at Tenant's risk and expense. If Landlord removes such property from the Premises and stores it at Tenant's risk and expense, and if Tenant fails to pay the cost of such removal and storage after written demand therefore and/or to pay any rent then due, then after the property has been stored for a period of thirty (30) days or more Landlord may sell such property at public or private sale, in the manner and at such times and places as Landlord deems commercially reasonable following reasonable notice to Tenant of

the time and place of such sale. The proceeds of any such sale shall be applied first to the payment of the expenses for removal and storage of the property, the preparation for and the conducting of such sale, and for attorneys' fees and other legal expenses incurred by Landlord in connection therewith, and the balance shall be applied as provided in Section 17.2(b) above.

Tenant hereby waives all claims for damages that may be caused by Landlord's re-entering and taking possession of the Premises or removing and storing Tenant's Personal Property pursuant to this Section 17.2, and Tenant shall indemnify, defend and hold Landlord harmless from and against any and all Claims resulting from any such act. No re-entry by Landlord shall constitute or be construed as a forcible entry by Landlord.

(d) Landlord may require Tenant to remove any and all Alterations from the Premises or, if Tenant fails to do so within ten (10) days after Landlord's request, Landlord may do so at Tenant's expense.

(e) Landlord may cure the Event of Default at Tenant's expense, it being understood that such performance shall not waive or cure the subject Event of Default. If Landlord pays any sum or incurs any expense in curing the Event of Default, Tenant shall reimburse Landlord upon demand for the amount of such payment or expense with interest at the Interest Rate from the date the sum is paid or the expense is incurred until Landlord is reimbursed by Tenant. Any amount due Landlord under this subsection shall constitute additional rent hereunder.

17.3. Waiver of Redemption

Tenant hereby waives, for itself and all persons claiming by and under Tenant, all rights and privileges which it might have under any present or future Legal Requirement to redeem the Premises or to continue this Lease after being dispossessed or ejected from the Premises.

17.4. City's Right to Cure Tenant's Defaults

If Tenant defaults in the performance of any of its obligations under this Lease, then City may, at its sole option, remedy such default for Tenant's account and at Tenant's expense by providing Tenant with three (3) days' prior written or oral notice of City's intention to cure such default (except that no such prior notice shall be required in the event of an emergency as determined by City). Such action by City shall not be construed as a waiver of such default or any rights or remedies of City, and nothing herein shall imply any duty of City to do any act that Tenant is obligated to perform. Tenant shall pay to City upon demand, as additional rent, all costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such default. Tenant's obligations under this Section shall survive the termination of this Lease.

18. WAIVER OF CLAIMS; INDEMNIFICATION

18.1. Limitation on City's Liability; Waiver of Claims

City shall not be responsible for or liable to Tenant, and Tenant hereby assumes the risk of, and waives and releases City and its Agents from all Claims (as defined below) for, any injury, loss or damage to any person or property in or about the Premises by or from any cause

whatsoever including, without limitation, (i) any act or omission of persons occupying adjoining premises or any part of the Building adjacent to or connected with the Premises, (ii) theft, (iii) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination, (iv) stopped, leaking or defective Building Systems, (v) Building defects, and (vi) any other acts, omissions or causes. Nothing in this Section shall relieve City from liability caused solely and directly by the gross negligence or willful misconduct of City or its Agents, but City shall not be liable under any circumstances for any consequential, incidental or punitive damages.

18.2. Tenant's Indemnity

Tenant, on behalf of itself and its successors and assigns, shall indemnify, defend and hold harmless ("Indemnify") City including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, all of its and their Agents, and their respective heirs, legal representatives, successors and assigns (individually and collectively, the "Indemnified Parties"), and each of them, from and against any and all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, including, without limitation, direct and vicarious liability of every kind (collectively, "Claims"), incurred in connection with or arising in whole or in part from: (a) any accident, injury to or death of a person, including, without limitation, employees of Tenant, or loss of or damage to property, howsoever or by whomsoever caused, occurring on the Premises; (b) any default by Tenant in the observation or performance of any of the terms, covenants or conditions of this Lease to be observed or performed on Tenant's part; (c) the use or occupancy or manner of use or occupancy of the Premises by Tenant, its Agents or Invitees or any person or entity claiming through or under any of them; (d) any construction or other work undertaken by Tenant on the Premises whether before or during the Term of this Lease; or (e) any acts, omissions or negligence of Tenant, its Agents, assignees, subtenants, or licensees, in, on or about the Premises or the Property; all regardless of the active or passive negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that such Indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Lease and further except only such Claims as are caused exclusively by the willful misconduct or gross negligence of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any Claim. Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Tenant by City and continues at all times thereafter. Tenant's obligations under this Section shall survive the termination of the Lease.

19. INSURANCE

19.1. Tenant's Insurance

(a) Tenant, at no cost to the City, shall procure and keep in effect at all times during the Term insurance as follows:

(i) Commercial general liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form property

damage, fire damage legal liability (of not less than Fifty Thousand Dollars (\$50,000)), personal injury, products and completed operations, and explosion, collapse and underground (XCU).

(ii) Worker's Compensation Insurance with Employer's Liability Limits not less than \$1,000,000 each accident.

(iii) Business automobile liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles, as applicable, if Tenant uses automobiles in connection with its use of the Premises.

(iv) Such other insurance as is generally carried by theatre operators in San Francisco, as may change from time to time.

(b) Should any of the required insurance be provided under a claims-made form, Tenant shall maintain such coverage continuously throughout the Term and, without lapse, for a period of three (3) years beyond the expiration or termination of this Lease, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Lease, such claims shall be covered by such claims-made policies.

(c) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

(d) All liability insurance policies shall be endorsed to provide the following:

(i) Name as additional insured the City and County of San Francisco, its officers, agents and employees.

(ii) That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Lease, and that insurance applies separately to each insured against whom claim is made or suit is brought.

(e) Each insurance policy required pursuant to Section 19.1(a) above shall be issued by an insurance company licensed in the State of California and with a general policyholders' rating of "A-" or better and a financial size ranking of "Class VIII" or higher in the most recent edition of Best's Insurance Guide.

(f) All policies shall be endorsed to provide thirty (30) days' advance written notice to City of cancellation or intended non-renewal (or ten (10) days' advance written notice in case of nonpayment of premium), mailed to the address(es) for City set forth in the Basic Lease Information.

(g) Tenant shall deliver to City certificates of insurance from insurers in a form satisfactory to City, evidencing the coverage required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly upon City's request, and Tenant shall provide City with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. In the event Tenant shall fail to procure

such insurance, or to deliver such policies or certificates, City may procure, at its option, without waiving any rights or remedies which City may have for Tenant's default hereunder, the same for the account of Tenant, and the cost thereof shall be paid to City within five (5) days after delivery to Tenant of bills therefore.

(h) Upon City's request, Tenant and City shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Tenant for risks comparable to those associated with the Premises, then Tenant shall, at City's request, increase the amounts or coverage carried by Tenant to conform to such general commercial practice.

(i) Tenant's compliance with the provisions of this Section shall in no way relieve or decrease Tenant's liability under Section 18.2 (Tenant's Indemnity), or any of Tenant's other obligations under this Lease.

(j) Notwithstanding anything to the contrary in this Lease, if any of the required insurance coverage lapses, City may elect, at its sole discretion, to terminate this Lease by delivering to Tenant three (3) days' written notice of termination and, if so delivered, this Lease shall so terminate unless Tenant renews the insurance coverage within the 3-day notice period.

19.2. Tenant's Personal Property

Tenant shall be responsible, at no cost to the City, for separately insuring Tenant's Personal Property.

19.3. City's Self Insurance

Tenant acknowledges that City self-insures against casualty, property damage and public liability risks and agrees that City may at its sole election, but shall not be required to, carry any third party insurance with respect to the Building, the Premises or otherwise.

19.4. Waiver of Subrogation

Notwithstanding anything to the contrary contained herein, City and Tenant (each a "Waiving Party") each hereby waives any right of recovery against the other party for any loss or damage sustained by such other party with respect to the Building or the Premises or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party, to the extent such loss or damage is covered by insurance, which is required to be purchased by the Waiving Party under this Lease (whether or not self insured), or is actually covered by insurance obtained by the Waiving Party. Each Waiving Party agrees to cause its insurers to issue appropriate waiver of subrogation rights endorsements to cover all policies relating to the Building or the Premises; provided the failure to obtain any such endorsement shall not affect the above waiver.

20. ACCESS BY CITY

City reserves for itself and any of its designated Agents, the right to enter the Premises as follows: (i) on a regular basis without advance notice to supply any necessary or agreed-upon

service to be provided by City hereunder; (ii) on an occasional basis, at all reasonable times after giving Tenant reasonable advance written or oral notice, to show the Premises to prospective tenants or other interested parties, to post notices of non-responsibility, to conduct any environmental audit of Tenant's use of the Premises, to repair, alter or improve any part of the Building, Building Systems or the Premises, and for any other lawful purpose; and (iii) on an emergency basis without notice whenever City believes that emergency access is required. City shall have the right to use any means that it deems proper to open doors in an emergency in order to obtain access to any part of the Premises, and any such entry shall not be construed or deemed to be a forcible or unlawful entry into or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from the Premises or any portion thereof. Tenant shall not alter any lock or install any new or additional locking devices without the prior written consent of City. All locks installed in the Premises (excluding Tenant's vaults, safes or special security areas, if any, designated by Tenant in writing to City) shall be by keyed to the Building master key system, and City shall at all times have a key with which to unlock all such doors.

21. CERTIFICATES

21.1. Tenant's Certificates

Tenant, at any time and from time to time upon not less than ten (10) business days' prior notice from City, shall execute and deliver to City or to any party designated by City a certificate stating: (a) that Tenant has accepted the Premises, (b) the Commencement Date and Expiration Date of this Lease, (c) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (d) whether or not there are then existing any defenses against the enforcement of any of Tenant's obligations hereunder (and if so, specifying the same), (e) whether or not there are any defaults then existing under this Lease (and if so specifying the same), and (f) the dates, if any, to which the Base Rent and Additional Charges have been paid.

21.2. City's Certificates

City, at any time and from time to time upon not less than ten (10) business days' prior notice from Tenant, shall execute and deliver to Tenant or to any party designated by Tenant a certificate stating: (a) the Commencement Date and Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (c) whether or not there are any defaults then existing under this Lease (and if so specifying the same), and (d) the dates, if any, to which the Base Rent and Additional Charges have been paid.

22. RULES AND REGULATIONS

Tenant shall faithfully comply with the Building Rules and Regulations, previously provided to Tenant and incorporated herein by reference, and all modifications thereof and additions thereto that City may from time to time put into effect (the "Rules and Regulations"). City shall not be responsible for the non-performance of the Rules and Regulations by any other tenant or occupant of the Building. In the event of any conflict between any provision of this Lease and any provision of the Rules and Regulations, this Lease shall control.

23. SECURITY DEPOSIT

Upon Tenant's execution of this Lease, Tenant shall deposit with City in cash or immediately available funds the sum specified as the security deposit in the Basic Lease Information (the "Security Deposit") to secure Tenant's faithful performance of all terms, covenants and conditions of this Lease. Tenant agrees that City may (but shall not be required to) apply the Security Deposit in whole or in part to remedy any damage to the Premises caused by Tenant, its Agents or Invitees, or any failure of Tenant to perform any other terms, covenants or conditions contained herein (including, but not limited to, the payment of Rent or other sums due hereunder either before or after a default), without waiving any of City's other rights and remedies hereunder or at law or in equity and without any obligation. Tenant waives the provisions of Section 1950.7 of the California Civil Code or any similar law, statute or ordinance now or hereafter in effect and agrees that Landlord may retain any portion of Security Deposit reasonably necessary to compensate Landlord for any other foreseeable or unforeseeable loss or damage caused by the acts or omissions of Tenant, its Agents or Invitees. Without limiting the foregoing, Tenant understands and agrees that Landlord may apply some or all of the Security Deposit to the payment of future Rent following a Tenant default.

Should City use any portion of the Security Deposit to cure any default by Tenant hereunder, upon written notice from the City to Tenant specifying the amount of the Security Deposit so utilized by the City and the particular purpose for which such amount was applied, Tenant shall immediately replenish the Security Deposit to the original amount. If the Base Rent is increased pursuant to any of the provisions of this Lease, Tenant shall increase the amount of the Security Deposit accordingly. City's obligations with respect to the Security Deposit are solely that of debtor and not trustee. City shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on the Security Deposit. If Tenant is not in default at the expiration or termination of this Lease, City shall return to Tenant the Security Deposit or the balance thereof then held by City; provided, however, that in no event shall any such return be construed as an admission by City that Tenant has performed all of its covenants and obligations hereunder. The amount of the Security Deposit shall in no way limit the liabilities of Tenant under any provision of this Lease.

24. SURRENDER OF PREMISES

Upon the Expiration Date or other termination of the Term of this Lease, Tenant shall peaceably quit and surrender to City the Premises together with all Alterations approved by City in the same condition as received, except for normal wear and tear after Tenant having made the last necessary repair required on its part under this Lease, and further except for any portion of the Premises condemned and any damage and destruction for which Tenant is not responsible hereunder. The Premises shall be surrendered free and clear of all liens and encumbrances for which Tenant is responsible pursuant to Section 9. Immediately before the Expiration Date or other termination of this Lease, Tenant shall remove all of Tenant's Personal Property as provided in this Lease, and repair any damage resulting from the removal. If such removal is not completed at the expiration or other termination of this Lease, City may remove the same at Tenant's expense. Notwithstanding anything to the contrary in this Lease, City can elect at any time prior to the Expiration Date or within five (5) days after termination of this Lease, to require Tenant to remove, at Tenant's sole expense, all or part of any Alterations constructed or installed by or at the expense of Tenant provided that City informed Tenant at the time of consent to the same that such removal may be required. Tenant shall promptly remove such items and shall

repair, at no cost to the City, any damage to the Premises or the Building resulting from such removal, or if Tenant fails to repair, City may do so, at Tenant's expense. Tenant's obligations under this Section shall survive the Expiration Date or other termination of this Lease. Any items of Tenant's Personal Property remaining in the Premises after the Expiration Date or sooner termination of this Lease may, at City's option, be deemed abandoned and disposed of in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by law.

Concurrently with the surrender of the Premises, Tenant shall, if requested by City, execute, acknowledge and deliver to City a quitclaim deed to the Premises and any other instrument reasonably requested by City to evidence or otherwise effect the termination of Tenant's leasehold estate hereunder and to effect such transfer or vesting of title to the improvements or equipment which remain part of the Premises. The terms of this Section shall survive the expiration or sooner termination of this Lease.

25. HAZARDOUS MATERIALS

25.1. Definitions

As used herein, the following terms shall have the meanings set forth below:

(a) "Environmental Laws" shall mean any present or future federal, state, local or administrative law, rule, regulation, order or requirement relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage), or to health and safety, industrial hygiene or the environment, including, without limitation, soil, air and groundwater conditions.

(b) "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health, welfare or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 et seq.) or pursuant to Section 25316 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; and petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.

(c) "Investigate and Remediate" ("Investigation" and "Remediation") shall mean the undertaking of any activities to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Property or that has been, are being or threaten to be Released into the environment, and to clean up, remove, contain, treat, stabilize, monitor or otherwise control such Hazardous Material.

(d) "Release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside the Premises, or in, on, under or about any other part of the Property or into the environment.

25.2. No Hazardous Materials

Tenant covenants and agrees that neither Tenant nor any of its Agents, assignees, subtenants, or licensees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Property, or transported to or from the Property, with the sole exception that Tenant may keep and use such substances in the Premises in such reasonably limited amounts as are customarily used for theatre purposes (such as normal cleaning supplies) so long as such storage and use are in compliance with all applicable Environmental Laws at all times. Tenant shall give immediate written notice to City of: (a) any action, proceeding or inquiry by any governmental authority (including, without limitation, the California State Department of Health Services, the State or any Regional Water Quality Control Board, the Bay Area Air Quality Management district or any local governmental entity) against Tenant with respect to the presence or Release or suspected presence or Release of Hazardous Material on the Premises, Building or Property or the migration thereof from or to other property; (b) all demands or claims made or threatened by any third party against Tenant relating to the Premises, Building or Property relating to any loss of injury resulting from any Hazardous Materials; (c) any Release of Hazardous Material for which Tenant is responsible on or about the Premises or any other part of the Property has occurred that may require any Investigation or Remediation; and (d) all matters of which Tenant is required to give notice pursuant to Section 25359.7 of the California Health and Safety Code.

25.3. Tenant's Environmental Indemnity

If Tenant breaches any of its obligations contained in this Section, or, if any act or omission of Tenant, its Agents, assignees, subtenants or licensees, results in any Release of Hazardous Material in, on, under or about the Premises or any other part of the Property in violation of any applicable Environmental Laws, including but not limited to Chapter 36 of the San Francisco Building Code, then, without limiting Tenant's Indemnity contained in Section 18.2, Tenant shall, on behalf of itself and its successors and assigns, Indemnify the Indemnified Parties, and each of them, from and against all Claims (including, without limitation, damages for decrease in value of the Premises or the Property, the loss or restriction of the use of rentable or usable space or of any amenity of the Premises or the Property and sums paid in settlement of claims, attorneys' fees, consultants' fees and experts' fees and costs) arising during or after the Term of this Lease and relating to such Release. The foregoing Indemnity includes, without limitation, costs incurred in connection with activities undertaken to Investigate and Remediate Hazardous Material and to restore the Property to its prior condition, fines and penalties assessed for the violation of any applicable Environmental Laws including but not limited to Chapter 36 of the San Francisco Building Code, and any natural resource damages. Without limiting the foregoing, if Tenant or any of its Agents, assignees, subtenants, or licensees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or any other part of the Property, Tenant shall immediately and at no expense to City take any and all appropriate actions to return the Premises or the Property affected thereby to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Tenant by the City and continues at all times thereafter. Tenant shall afford City a full opportunity to participate in any

discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, or other compromise or proceeding involving Hazardous Material.

25.4. Survival of Obligation

Tenant's obligations under this Section 25 shall survive the Expiration Date or other termination of this Lease.

25.5. Hazardous Substance Disclosure

California law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Tenant is hereby advised that occupation of the Premises may lead to exposure to Hazardous Materials such as, but not limited to, gasoline, diesel and other vehicle fluids, vehicle exhaust, office maintenance fluids, tobacco smoke, methane and building materials containing chemicals, such as formaldehyde. By execution of this Lease, Tenant acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Section 25359.7 and related statutes.

26. SPECIAL PROVISIONS

26.1. Extension Options

City grants to Tenant two options to extend the Term of this Lease as to the entire Premises only (the "Extension Options"), each for an additional five (5) years (each, an "Extension Term"), the first Extension Option commencing on the date immediately following the Expiration Date, and if the first Extension Option is exercised, then the second Option commencing five (5) years after the commencement of the initial Extension Term, granted upon the following terms and conditions. Tenant may exercise the Extension Options by written notice to City not more than three hundred sixty-five (365) days or less than one hundred eighty (180) days prior to the Expiration Date, or, as applicable, the expiration of the first Extension Term. If any event of default by Tenant is outstanding hereunder either at the time of Tenant's exercise of an Extension Option or at any time prior to the first day of the applicable Extension Term (or if any event shall have occurred which with the giving of notice or the passage of time or both would constitute such a default), then City may elect by notice to Tenant to reject Tenant's exercise of the Extension Options, whereupon the Extension Options shall be null and void. City shall also have the right to void Tenant's Extension Options if Tenant has assigned, sublet or transferred its interest in this Lease during the Term without City's consent.

If Tenant properly exercises an Extension Option, then the lease for the applicable Extension Term shall cover the entire Premises and shall be upon all of the terms, covenants and conditions of this Lease, except that Rent hereunder shall be adjusted as set forth in Section 4.2 hereof and the term "Expiration Date" where used in this Lease shall refer to the expiration of the applicable Extension Option period.

27. GENERAL PROVISIONS

27.1. Notices

Any notice given under this Lease shall be effective only if in writing and given by delivering the notice in person or by sending it first-class mail or certified mail with a return receipt requested or by overnight courier, return receipt requested, with postage prepaid, to: (a) Tenant (i) at Tenant's address set forth in the Basic Lease Information, if sent prior to Tenant's taking possession of the Premises, or (ii) at the Premises if sent on or subsequent to Tenant's taking possession of the Premises, or (iii) at any place where Tenant or any Agent of Tenant may be found if sent subsequent to Tenant's vacating, abandoning or surrendering the Premises; or (b) City at City's address set forth in the Basic Lease Information; or (c) to such other address as either City or Tenant may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first class or certified mail, one day after the date it is made if sent by overnight courier, or upon the date personal delivery is made. For convenience of the parties, copies of notices may also be given by facsimile to the telephone number set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither party may give official or binding notice by facsimile. Tenant shall promptly provide City with copies of any and all notices received regarding any alleged violation of laws or insurance requirements or any alleged unsafe condition or practice.

27.2. No Implied Waiver

No failure by City to insist upon the strict performance of any obligation of Tenant under this Lease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial Base Rent or Additional Charges during the continuance of any such breach, and no acceptance of the keys to or possession of the Premises prior to the expiration of the Term by any Agent of City, shall constitute a waiver of such breach or of City's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Lease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. Any consent by City hereunder shall not relieve Tenant of any obligation to secure the consent of City in any other or future instance under the terms of this Lease.

27.3. Amendments

Neither this Lease nor any terms or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by both parties hereto. No waiver of any breach shall affect or alter this Lease, but each and every term, covenant and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof. Whenever this Lease requires an amendment, waiver, notice, or other instrument or document to be executed by or on behalf of City, the Director of Property of the City, or his or her designee, shall be authorized to provide such approval and execute such instrument on behalf of City, except as otherwise provided by applicable law,

including the City's Charter. Any amendments or modifications to this Lease, including, without limitation, amendments or modifications to the exhibits to this Lease, shall be subject to the mutual written agreement of City and Tenant, and City's agreement may be made upon the sole approval of the Director of Property, or his or her designee; provided, however, material amendments or modifications to this Lease (i) materially changing the legal description of the Premises, (ii) increasing the Term, (iii) decreasing the Rent, (iv) materially changing the permitted uses of the Premises, and (v) any other amendment or modification that materially increases the City's liabilities or financial obligations under this Lease shall additionally require the approval of the City's Board of Supervisors.

27.4. Authority

Tenant does hereby covenant and warrant that Tenant is a duly authorized and existing entity, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Tenant are authorized to do so. Upon City's request, Tenant shall provide City with evidence reasonably satisfactory to City confirming the foregoing representations and warranties.

27.5. Parties and Their Agents; Approvals

The words "City", "Landlord" and "Tenant" as used herein shall include the plural as well as the singular. If there is more than one Tenant, the obligations and liabilities under this Lease imposed on Tenant shall be joint and several. As used herein, the term "Agents" when used with respect to either party shall include the agents, employees, officers, contractors and representatives of such party, and the term "Invitees" when used with respect to Tenant shall include the clients, customers, invitees, guests, licensees, assignees or subtenants of Tenant. All approvals, consents or other determinations permitted or required by City hereunder shall be made by or through City's Director of Property unless otherwise provided in this Lease, subject to applicable law.

27.6. Interpretation of Lease

The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the parties, without any presumption against the party responsible for drafting any part of this Lease. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Lease, whether or not language of non-limitation, such as "without limitation" or similar words, are used.

27.7. Successors and Assigns

Subject to the provisions of this Lease relating to Assignment and Subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of City and Tenant and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any sale, assignment or transfer by City named herein (or by any subsequent landlord) of its interest in the Building as owner or lessee, including any transfer by operation of law, City (or any subsequent landlord) shall be relieved from all subsequent obligations and liabilities arising under this Lease subsequent to such sale, assignment or transfer.

27.8. Brokers

Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall indemnify the other party from any and all Claims incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

27.9. Severability

If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

27.10. Governing Law

This Lease shall be construed and enforced in accordance with the laws of the State of California and the City's Charter.

27.11. Entire Agreement

This instrument, including the exhibits hereto, which are made a part of this Lease by reference herein, contains the entire agreement between the parties and all prior written or oral negotiations, understandings and agreements are merged herein. The parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts hereof and changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease. Tenant hereby acknowledges that neither City nor City's Agents have made any representations or warranties with respect to the Premises, the Building or this Lease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Tenant by implication or otherwise unless expressly set forth herein.

27.12. Attorneys' Fees

In the event that either City or Tenant fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Lease, reasonable fees of attorneys of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

27.13. Holding Over

If Tenant retains possession of any portion of the Premises after the expiration or earlier termination of this Lease, then unless City expressly agrees to the holdover in writing, Tenant shall pay City, on a month-to-month basis, Base Rent equal to two hundred percent (200%) of the latest Base Rent payable by Tenant hereunder prior to such expiration, together with an amount estimated by City for the monthly Additional Charges payable under this Lease, and shall otherwise be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term and any Extension Options). Any failure by Tenant to surrender, discontinue using, or, if required by City, any failure to remove any property or equipment following written demand for the same by City, shall constitute continuing possession for purposes hereof. Tenant acknowledges that the foregoing provisions shall not serve as permission for the Tenant to hold over, nor serve to extend the term of this Lease beyond the end on the term hereof. Any holding over without City's consent shall constitute a default by Tenant and entitle City to exercise any or all of its remedies as provided herein, notwithstanding that City may elect to accept one or more payments of Rent, and whether or not such amounts are at the holdover rate specified above or the rate in effect at the end of the Term of the Lease.

Any holding over after the expiration of the Term with the express consent of City shall be construed to automatically extend the Term of this Lease on a month-to-month basis at a Base Rent equal to one hundred fifty percent (150%) of the latest Base Rent payable by Tenant hereunder prior to such expiration, together with an amount estimated by City for the monthly Additional Charges payable under this Lease, and shall otherwise be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term and any Extension Options). Tenant's obligations under this Section shall survive the expiration or termination of this Lease.

27.14. Time of Essence

Time is of the essence with respect to all provisions of this Lease in which a definite time for performance is specified.

27.15. Cumulative Remedies

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

27.16. Survival of Indemnities

Termination of this Lease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease, nor shall it affect any provision of this Lease that expressly states it shall survive termination hereof.

27.17. Signs

Tenant agrees that it will not erect or maintain, or permit to be erected or maintained, any signs, notices or graphics upon or about the Premises which are visible in or from public corridors or other portions of any common areas of the Building, without City's prior written consent consistent with this Section 27.17. The parties acknowledge that Tenant shall have the right to reasonable signage on the outside of the Building and in the interior entryway and Building lobby, identifying Tenant's theatre and current productions, subject to the City's prior written consent. Tenant may submit a signage program to City for its approval acting in its proprietary capacity, setting forth a comprehensive program for its exterior and interior signage, which program shall be in accordance with all applicable Laws, including City Planning requirements and all necessary approvals from City acting in its regulatory capacity. If approved by City, Tenant shall have the right to erect and maintain signs in accordance with the approved signage program. Any material changes to an approved signage program shall require City's prior written consent in accordance with this Section 27.17.

27.18. Relationship of the Parties

City is not, and none of the provisions in this Lease shall be deemed to render City, a partner in Tenant's business, or joint venturer or member in any joint enterprise with Tenant. Neither party shall act as the agent of the other party in any respect hereunder. This Lease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

27.19. Light and Air

Tenant covenants and agrees that no diminution of light, air or view by any structure that may hereafter be erected (whether or not by City) shall entitle Tenant to any reduction of the Base Rent or Additional Charges under this Lease, result in any liability of City to Tenant, or in any other way affect this Lease or Tenant's obligations hereunder.

27.20. No Recording

Tenant shall not record this Lease or any memorandum hereof in the public records.

27.21. Options Personal

Any right or option to extend the Term of this Lease or renew this Lease is personal to the original Tenant and may be exercised only by the original Tenant while occupying the Premises who does so without the intent of thereafter making any Assignment of this Lease or Subletting of the Premises, or any portion thereof, and may not be exercised by or assigned, voluntarily or involuntarily, by or to any person or entity other than Tenant provided, however, that an option may be exercised by or assigned to an Affiliate. The options, if any, herein granted to Tenant are not assignable separate and apart from this Lease, nor may any option be separated from this Lease in any manner, either by reservation or otherwise.

27.22. Financial Statements

At any time during the Lease term within thirty (30) days after Landlord's request therefor, Tenant shall furnish to Landlord copies of true and accurate financial statements reflecting Tenant's then current financial situation (including without limitation balance sheets, statements of profit and loss, and changes in financial condition), and audited or certified annual and quarterly financial statements pertaining to the most recent year and quarter of the operation Tenant's business in the Premises.

27.23. Public Transit Information

Tenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Tenant employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Building and encouraging use of such facilities; all at Tenant's sole expense.

27.24. Taxes, Assessments, Licenses, Permit Fees and Liens

(a) Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest.

(b) Tenant agrees to pay taxes of any kind, including possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Tenant's usage of the Premises that may be imposed upon Tenant by law, all of which shall be paid when the same become due and payable and before delinquency.

(c) Tenant agrees not to allow or suffer a lien for any such taxes to be imposed upon the Premises or upon any equipment or property located thereon without promptly discharging the same, provided that Tenant, if so desiring, may have reasonable opportunity to contest the validity of the same.

(d) San Francisco Administrative Code Sections 23.38 and 23.39 require that the City and County of San Francisco report certain information relating to this Lease, and any renewals thereof, to the County Assessor within sixty (60) days after any such transaction, and that Tenant report certain information relating to any assignment of or sublease under this lease

to the County Assessor within sixty (60) days after such assignment or sublease transaction. Tenant agrees to provide such information as may be requested by the City to enable the City to comply with this requirement.

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

No elective or appointive board, commission, member, officer, employee or other Agent of City shall be personally liable to Tenant, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Tenant, its successors and assigns, or for any obligation of City under this Agreement.

27.26. Wages and Working Conditions

With respect to the construction of any Alterations, any employee performing services for Tenant shall be paid not less than the highest prevailing rate of wages as required by Section 6.22E of the San Francisco Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California. Tenant shall require any contractor to provide, and shall deliver to City every two weeks during any construction period, certified payroll reports with respect to all persons performing labor in the construction of any Alterations on the Premises.

Pursuant to San Francisco Administrative Code Section 21.25-3, unless excepted, Contracts, Leases, Franchises, Permits, and Agreements awarded, let, issued or granted by the City for the use of property owned by the City shall require any Employee engaged in theatrical or technical services related to the presentation of a Show to be paid not less than the Prevailing Rate of Wages. Employees engaged in theatrical and technical services include, without limitation, those engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services. Capitalized terms in this Section that are not defined in this Lease shall have the meanings provided in San Francisco Administrative Code Section 21.25-3.

Contractor agrees to comply with and be fully bound by, and to require its Subcontractors to comply with and be fully bound by, the provisions of Section 21.25-3, including, without limitation, the payment of any penalties for noncompliance and other remedies available to the City. The provisions of Section 21.25-3 are hereby incorporated by reference and made a part of this agreement. Contractor shall cooperate fully with the Labor Standards Enforcement Officer and any other City official or employee, or any of their respective agents, in the administration and enforcement of the requirements of Section 21.25-3, including, without limitation, any investigation of noncompliance by Contractor or its Subcontractors. Contractor agrees that the City may inspect and/or audit any workplace or job site involved in or related to the performance of this agreement, including, without limitation, interviewing Contractor's and any Subcontractor's employees and having immediate access to employee time sheets, payroll records, and paychecks for inspection.

Contractor may obtain a copy of the current Prevailing Rate of Wages from City, including its Office of Labor Standards Enforcement. Contractor acknowledges that the City's Board of Supervisors may amend such Prevailing Rate of Wages and agrees that Contractor and

any Subcontractors shall be bound by and shall fully comply with any such amendments by the Board of Supervisors.

27.27. Non-Discrimination in City Contracts and Benefits Ordinance

(a) Covenant Not to Discriminate

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

(b) Subleases and Other Subcontracts

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

(c) Non-Discrimination in Benefits

Tenant does not as of the date of this Lease and will not during the Term, in any of its operations or in San Francisco or with respect to its operations under this Lease elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) HRC Form

As a condition to this Lease, Tenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission. Tenant hereby represents that prior to execution of this Lease, (i) Tenant executed and submitted to the HRC Form HRC-12B-101 with supporting documentation, and (ii) the HRC approved such form.

(e) **Incorporation of Administrative Code Provisions by Reference**

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Tenant shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Tenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

27.28. No Relocation Assistance; Waiver of Claims

Tenant acknowledges that it will not be a displaced person at the time this Lease is terminated or expires by its own terms, and Tenant fully RELEASES, WAIVES AND DISCHARGES forever any and all Claims against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any laws, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 *et seq.*), except as otherwise specifically provided in this Lease with respect to a Taking.

27.29. MacBride Principles - Northern Ireland

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

27.30. Tropical Hardwood and Virgin Redwood Ban

The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Tenant shall not provide any items to the construction of Alterations, or otherwise in the performance of this Lease which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Tenant fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Tenant shall be liable for liquidated damages for each violation in any amount equal to five percent (5%) of the total amount of the contract dollars, whichever is greater.

27.31. Pesticide Prohibition

Tenant shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage, and (iii) require Tenant to submit to the Real Estate Division an integrated pest management ("IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the terms of this Lease, (b) describes the steps Tenant will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance, and (c) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with the City. In addition, Tenant shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

Nothing herein shall prevent Tenant, through the Real Estate Division, from seeking a determination from the Commission on the Environment that it is exempt from complying with certain portions of the Pesticide Ordinance as provided in Section 307 thereof.

27.32. First Source Hiring Ordinance

The City has adopted a First Source Hiring Ordinance (Board of Supervisors Ordinance No. 264-98) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry level positions. Within thirty (30) days after the City and County of San Francisco's Real Estate Division of the General Services Agency adopts a First Source Hiring Implementation and Monitoring Plan in accordance with the First Source Hiring Ordinance, Tenant shall enter into a First Source Hiring Agreement meeting applicable requirements of Section 83.9 of the First Source Hiring Ordinance.

27.33. Sunshine Ordinance

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

27.34. Conflicts of Interest

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

27.35. Charter Provisions

This Lease is governed by and subject to the provisions of the Charter of the City and County of San Francisco.

27.36. Drug-Free Workplace

Tenant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City premises. Tenant agrees that any violation of this prohibition by Tenant, its Agents or assigns shall be deemed a material breach of this Lease.

27.37. Prohibition of Tobacco Advertising

Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City, including the Premises and the Building. This prohibition includes the placement of the name of a company producing selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

27.38. Requiring Health Benefits for Covered Employees

Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Lease as though fully set forth. The text of the HCAO is available on the web at www.sfgov.org/olse/hcao. Capitalized terms used in this Section and not defined in this Lease shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee, Tenant shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Tenant chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(b) Notwithstanding the above, if the Tenant is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with subsection (a) above.

(c) Tenant's failure to comply with the HCAO shall constitute a material breach of this Lease. City shall notify Tenant if such a breach has occurred. If, within thirty (30) days after receiving City's written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Tenant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies

set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

(d) Any subcontract entered into by Tenant shall require the subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Tenant shall notify City's Purchasing Department when it enters into such a subcontract and shall certify to the Purchasing Department that it has notified the subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on subcontractor through the subcontract. Each Tenant shall be responsible for its subcontractors' compliance with this Chapter. If a subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Tenant based on the subcontractor's failure to comply, provided that City has first provided Tenant with notice and an opportunity to obtain a cure of the violation.

(e) Tenant shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Tenant's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Tenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(g) Tenant shall keep itself informed of the current requirements of the HCAO.

(h) Tenant shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on subcontractors and Subtenants, as applicable.

(i) Tenant shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least five (5) business days to respond.

(j) City may conduct random audits of Tenant to ascertain its compliance with HCAO. Tenant agrees to cooperate with City when it conducts such audits.

(k) If Tenant is exempt from the HCAO when this Lease is executed because its amount is less than Twenty-Five Thousand Dollars (\$25,000) [Fifty Thousand Dollars (\$50,000) for nonprofits], but Tenant later enters into an agreement or agreements that cause Tenant's aggregate amount of all agreements with City to reach Seventy-Five Thousand Dollars (\$75,000), all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Tenant and the Contracting Department to be equal to or greater than Seventy-Five Thousand Dollars (\$75,000) in the fiscal year.

27.39. Notification of Limitations on Contributions

Through its execution of this Lease, Tenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three (3) months has elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves.

27.40. Preservative-Treated Wood Containing Arsenic

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

27.41. Counterparts

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

27.42. Effective Date

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

27.43. Resource-Efficient City Buildings

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

27.44. Food Service Waste Reduction

Tenant agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Lease as though fully set forth. This provision is a material term of this Lease. By entering into this Lease, Tenant agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Tenant agrees that the sum of One Hundred Dollars (\$100.00) liquidated damages for the first breach, Two Hundred Dollars (\$200.00) liquidated damages for the second breach in the same year, and Five Hundred Dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Lease was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Tenant's failure to comply with this provision.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, TENANT ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS LEASE UNLESS AND UNTIL CITY'S BOARD OF SUPERVISORS SHALL HAVE DULY ADOPTED A RESOLUTION APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS LEASE SHALL BE NULL AND VOID IF CITY'S MAYOR AND THE BOARD OF SUPERVISORS DO NOT APPROVE THIS LEASE, IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ENACTED, NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

City and Tenant have executed this Lease as of the date first written above.

TENANT: NEW CONSERVATORY THEATRE CENTER,
a California non-profit corporation

By: ED DECKER
Printed name: ED DECKER
Its: ARTIST / EXECUTIVE DIRECTOR

By: _____
Printed name: _____
Its: _____

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

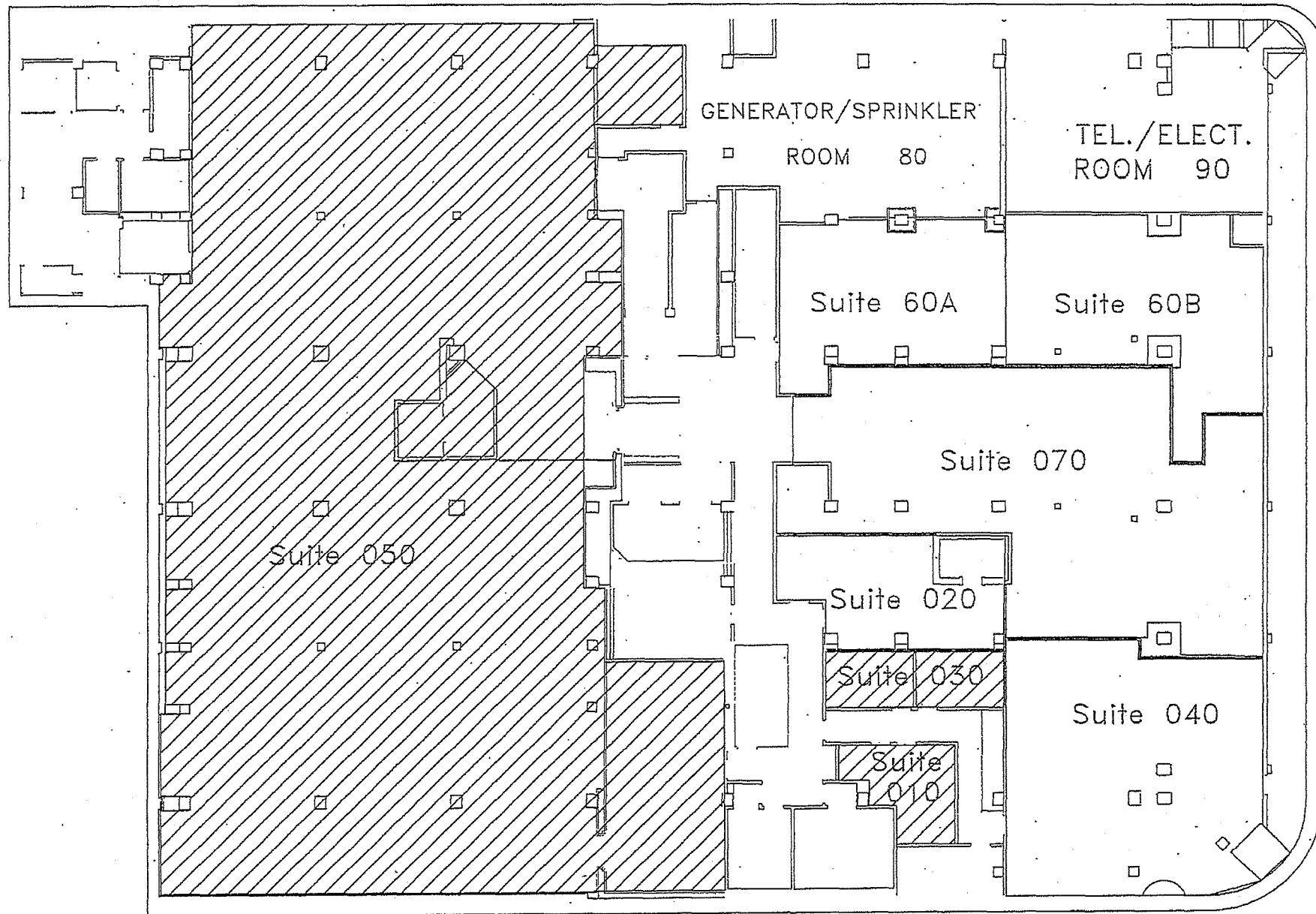
By: Amy L. Brown
AMY L. BROWN
Director of Property

APPROVED AS TO FORM:

DENNIS HERRERA
City Attorney

By: Alicia M. Malley
Deputy City Attorney

EXHIBIT A



25 VAN NESS AVENUE

BASEMENT

FILE NO. 081273

RESOLUTION NO. 489-08

1 [Lease of Real Property at 25 Van Ness, Lower Level, to New Conservatory Theatre Center]

2
3 **Resolution authorizing the lease of approximately 12,792 rentable square feet of space**
4 **to New Conservatory Theatre Center, a California non-profit corporation, in the lower**
5 **level of 25 Van Ness, San Francisco**

6
7 WHEREAS, 25 Van Ness, Block 0834, Lot 004, City and County of San Francisco, is a
8 building owned and operated by the City and County of San Francisco ("City"); and,

9 WHEREAS, The lower level of 25 Van Ness contains space that is designed for a
10 theatrical use and is ADA-compliant; and,

11 WHEREAS, The New Conservatory Theatre Center, a California non-profit corporation
12 ("NCTC" or "Tenant"), has been providing quality live entertainment from the lower level of 25
13 Van Ness since 1984, and City desires to have the NCTC continue its operations in that
14 location; and,

15 WHEREAS, The Real Estate Division has completed negotiations with the NCTC for a
16 new five year lease within the lower level of 25 Van Ness at a fair market rental rate with
17 consideration for occasional water intrusion issues resulting from the proximity to Hayes
18 Creek; now, therefore, be it

19 RESOLVED, That in accordance with the recommendation of the Director of Property,
20 the Director of Property is hereby authorized to take all actions, on behalf of the City, as
21 Landlord, to execute a lease with the NCTC, as Tenant, for the lower level of 25 Van Ness,
22 San Francisco, California (the "Lease"), substantially in the form on file with the Clerk of the
23 Board of Supervisors in File No. 081273 ; and, be it

24 FURTHER RESOLVED, That the initial term of the Lease shall be ~~five years~~ ^{four years and ten months} with a
25 termination date of September 30, 2013; and, be it

1 FURTHER RESOLVED, That the monthly base rent shall be \$7,036.00 upon
2 commencement, full service, and such rent shall remain the same through the initial term of
3 the Lease; and, be it

4 FURTHER RESOLVED, That the Lease shall contain two 5-year options for renewal by
5 Tenant at a rental rate to be adjusted at the beginning of each extension term in accordance
6 with the increase in the Consumer Price Index, subject to a minimum increase of 3% per year
7 and a maximum increase of 8% per year, as more particularly described in the Lease; and, be
8 it

9 FURTHER RESOLVED, That the Lease shall contain contingencies regarding any
10 intrusions of water into the space (resulting from acts of nature) which shall limit the financial
11 liability of the City and the NCTC in a mutually satisfactory manner and clearly set forth the
12 responsibilities and obligations of the City and the NCTC in protecting the quality of the lower
13 level space at 25 Van Ness while in occupancy; and, be it

14 FURTHER RESOLVED, That the Lease shall include a clause approved by the City
15 Attorney, indemnifying and holding harmless the City from and agreeing to defend the City
16 against any and all claims, costs and expenses, including, without limitation, reasonable
17 attorney's fees, incurred as a result of Tenant's use of the premises, any default by the Tenant
18 in the performance of any of its obligations under the Lease or any acts or omissions of
19 Tenant or its agents, in, on or about the premises or the property on which the premises are
20 located, excluding those claims, costs and expenses incurred as a result of the active gross
21 negligence or willful misconduct of City or its agents; and, be it

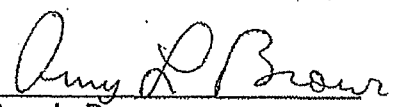
22 FURTHER RESOLVED, That all actions heretofore taken by any employee or official of
23 the City with respect to this Lease are hereby approved, confirmed and ratified; and, be it

24 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of
25 Property to enter into any amendments or modifications to the Lease that the Director of

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Property determines, in consultation with the City Attorney, are in the best interest of the City, do not materially reduce the rent or otherwise materially increase the obligations or liabilities of the City, are necessary or advisable to effectuate the purposes of the Lease and are in compliance with all applicable laws, including City's Charter.

RECOMMENDED:



Amy L. Brown
Director of Property



City and County of San Francisco

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

Tails
Resolution

File Number: 081273

Date Passed:

Resolution authorizing the lease of approximately 12,792 rentable square feet of space to New Conservatory Theatre Center, a California non-profit corporation, in the lower level of 25 Van Ness, San Francisco.

November 18, 2008 Board of Supervisors — ADOPTED

Ayes: 11 - Alioto-Pier, Ammiano, Chu, Daly, Dufty, Elsbernd, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

File No. 081273

I hereby certify that the foregoing Resolution was ADOPTED on November 18, 2008 by the Board of Supervisors of the City and County of San Francisco.

11/25/2008

Date Approved

Angela Calvillo

Angela Calvillo
Clerk of the Board

[Signature]

Mayor Gavin Newsom



London Breed, Mayor
Naomi M. Kelly, City Administrator



Andrico Q. Penick
Acting Director of Real Estate

July 20, 2018

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

Dear Board Members:

Attached for your consideration is a proposed Resolution for an Amendment to Lease for the New Conservatory Theater Center ("NCTC") located in the basement of 25 Van Ness Avenue, San Francisco.

NCTC is a California non-profit providing quality live entertainment from the lower level of 25 Van Ness since 1984. NCTC also provides educational theatrical experiences for youth, artists and the queer and allied communities to effect personal and societal growth, enlightenment and change.

The original Lease, dated December 1, 2008, was approved by the full Board of Supervisors on November 18, 2008, Resolution No. 489-08. The proposed Amendment extends the term of the Lease from October 1, 2018 through September 30, 2023 with one additional extension of five years upon approval of this Board. The base rent will increase from its current \$7,826.39 to \$7,983 with annual adjustments between two and four percent based upon the CPI.

If you have any questions regarding this matter, please contact Claudia J. Gorham of our office at 415-554-9871.

Respectfully,

Andrico Q. Penick
Director of Real Estate

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
18 JUL 20 PM 4:44

/wtc

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

City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors

Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: New Conservatory Theater Center, a California non-profit corporation	
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i>	
<ol style="list-style-type: none"> 1. Ed Decker, Jeff Malloy, David Berry, Jeff Eugley, J. Conrad Frank, Leah A. Hofkin, Robert Holgate, Maurice Kelly, Eli Lazarus, Serenity Siya Mlay, Andrew Nance, Renee Roux, Andrew Smith, Larry Vales, Eric Valko, Stephanie Walker, Chris Yaros and, Dana Zook. 2. CEO – Ed Decker; CFO – Brad Pence; COO – Barbara Hodgen. 3. N/A. 4. None. 5. None. 	
Contractor address: New Conservatory Theatre Center 25 Van Ness Avenue, Lower Level, SF, CA 94102 Attn: Ed Decker	
Date that contract was approved: <i>(By the SF Board of Supervisors)</i>	Amount of contract: Base Rent - \$95,796, plus tenant responsible for utilities and services.
Describe the nature of the contract that was approved: Lease for basement (lower level) of 25 Van Ness Avenue, San Francisco, CA for non-profit theater	
Comments:	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

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

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

Print Name of Board

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

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

Date Signed

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

Date Signed