

File No. 220803

Committee Item No. 6

Board Item No. 2

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date September 14, 2022

Board of Supervisors Meeting Date September 20, 2022

Cmte Board

<input type="checkbox"/>	<input type="checkbox"/>	Motion
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Resolution
<input type="checkbox"/>	<input type="checkbox"/>	Ordinance
<input type="checkbox"/>	<input type="checkbox"/>	Legislative Digest
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Budget and Legislative Analyst Report
<input type="checkbox"/>	<input type="checkbox"/>	Youth Commission Report
<input type="checkbox"/>	<input type="checkbox"/>	Introduction Form
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Department/Agency Cover Letter and/or Report
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OTHER (Use back side if additional space is needed)

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>Amendment No. 3 – Real Estate Division Letter 10/29/2021</u>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>Amendment No. 2 10/16/2018</u>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>Amendment No. 1 – Letter of Agreement 11/17/2011</u>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>Lease Agreement 12/1/2008</u>
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Completed by: Brent Jalipa Date September 8, 2022

Completed by: Brent Jalipa Date September 16, 2022

1 [Lease Amendment - New Conservatory Theatre Center - 25 Van Ness Avenue, Lower Level -
2 Additional Five-Year Option - Rent Forgiveness - \$50,067.60]

3 **Resolution authorizing the Real Estate Division to approve a fourth amendment to the**
4 **lease to extend approximately 14,229 rentable square feet of space at 25 Van Ness**
5 **Avenue, Lower Level, to New Conservatory Theatre Center, a California non-profit**
6 **corporation, for a five-year period from October 1, 2028, through September 30, 2033,**
7 **and forgive rent between January 2021, through June 2021, in the amount of**
8 **\$50,067.60; and to authorize the Director of Property to enter into any extensions,**
9 **amendments, or modifications to the Lease that do not materially reduce the rent or**
10 **otherwise materially increase the obligations or liabilities to the City and are necessary**
11 **or advisable to effectuate the purposes of the Lease or this Resolution.**

12
13 WHEREAS, 25 Van Ness Avenue, Assessor Parcel Block No. 0834, Lot No. 004, is a
14 building owned and operated by the City and County of San Francisco ("City"); and

15 WHEREAS, The lower level of 25 Van Ness Avenue contains space that is designed
16 for a theatrical use; and

17 WHEREAS, The New Conservatory Theatre Center, a California non-profit corporation
18 ("NCTC" or "Tenant"), has been providing quality live entertainment and children's theatre and
19 classes from the lower level of 25 Van Ness Avenue since 1984, and City desires to have the
20 NCTC continue its operations in that location; and

21 WHEREAS, On October 20, 2018, the Mayor and Board of Supervisors approved
22 Resolution No. 327-18, on file with the Clerk of the Board of Supervisors in File No. 180769,
23 extending the Lease through September 30, 2023; and

24 WHEREAS, On February 25, 2020, Mayor London Breed proclaimed a state of
25 emergency in response to the spread of the novel coronavirus 2019 or COVID19; on March 3,

1 2020, the Board of Supervisors concurred in the February 25th Proclamation and in the
2 actions taken by the Mayor to meet the emergency; and

3 WHEREAS, To mitigate the spread of COVID19, on March 16, 2020, the Local Health
4 Officer issued Order No. C19-07 generally requiring individuals to stay in their homes
5 (“Shelter in Place”), and requiring businesses to cease many non-essential operations at
6 physical locations in the City and County of San Francisco; and

7 WHEREAS, The COVID-19 pandemic caused abrupt and serious impacts on the local
8 economy, on the operations of local businesses and nonprofit organizations, and on the job
9 security of employees; many of the affected businesses and other entities, including City
10 Administrator Office’s Real Estate Division tenants, experienced significant operating deficits
11 and hardships in paying rent for a variety of reasons, including reductions in income due to
12 lower customer demand, required closures, or limits on full-scale operations; many of these
13 entities faced unprecedented challenges to remain financially solvent during the public health
14 emergency; and

15 WHEREAS, The City Administrator determined that rent forgiveness, not just rent
16 deferral, is necessary to maintain rent revenues in the long-term, facilitate at-risk businesses
17 and nonprofit corporations to reopen when the Health Orders allow, and to continue to provide
18 the City with much needed entertainment, art, culture and small business services and
19 materials; unlike rent deferral, which changes the timing of rent payments that are due under
20 a lease but does not change the lease terms, rent forgiveness reduces or eliminates rent
21 payments that are due; and

22 WHEREAS, The City Administrator’s Office, Real Estate Division, leases space in City
23 owned buildings to dozens of tenants for a variety of business and recreational uses; in
24 response to the severe economic impacts on these tenants, on March 27, 2020, the City
25 Administrator issued a Memorandum, “City Policy Regarding Enforcement of Certain Tenant

1 Lease Obligations by City Departments from March 17, 2020 through April 30, 2020
2 (“Policy”),” which was updated on June 1, 2020, to extend the Policy through December 31,
3 2020, allowing City departments to (i) waive all late charges, default interest and associated
4 penalties and fees for any delinquent rent payments that were or are due for use of City
5 property within San Francisco City limits due to the impact of COVID-19, (ii) provide
6 resumption of normal timely rent payments on January 1, 2021, and (iii) payment of any rent
7 arrearages (including March 2020 – December 2020) in full no later than June 30, 2021; and

8 WHEREAS, On April 30, 2021, the Board of Supervisors approved and the Mayor
9 signed Ordinance No. 059-21, on file with the Clerk of the Board of Supervisors in File No.
10 210001, authorizing the City Administrator to amend three leases managed by the Real
11 Estate Division, including the New Conservatory Theater Center lease, to forgive rent for the
12 time period of April 2020 through December 2020; and

13 WHEREAS, Administrative Code, Section 23, and Charter, Section 9.118, requires the
14 Board of Supervisors to review and approve certain leases and amendments to those leases;
15 a change in the rent amount, including rent forgiveness, would require Board of Supervisors
16 approval under subsection (c) of Charter, Section 9.118 and Section 23.30 of Chapter 23; and

17 WHEREAS, NCTC’s sole business and only source of income was closed from March
18 2020 through June 2021 due to COVID19 Health Order restrictions, vaccination status of both
19 employees and the general public, and lack of ticket sales and classes; and

20 WHEREAS, NCTC suffered financial hardship caused by the COVID19 pandemic and
21 owes \$50,067.60 in rent for the time period of January 2021 through June 2021 when its
22 business was closed; and

23 WHEREAS, NCTC reopened in late October 2021 with live performances and
24 audiences; and
25

1 WHEREAS, NCTC has one five-year option extension remaining under the current
2 Lease, to extend its Lease for the time period from October 1, 2023, through September 30,
3 2028; and

4 WHEREAS, The Real Estate Division and NCTC desire to extend and amend the
5 current Lease to add another five-year extension option period from October 1, 2028, through
6 September 30, 2033, subject to adjustment of Base Rent as set forth in the Lease, Section 4.1
7 and in accordance with the provisions of the Lease, Section 26.1; now, therefore, be it

8 RESOLVED, That in accordance with the recommendation of the Director of
9 Property after consulting with the City Attorney, the Director of Property is hereby
10 authorized to take all actions, on behalf of the City, as Landlord, to execute a lease
11 amendment with the NCTC, as Tenant, for the lower level of 25 Ven Ness Avenue, the
12 Fourth Amendment to Performance Space Lease (the "Fourth Amendment"), substantially
13 in the form on file with the Clerk of the Board of Supervisors in File No. 220803; and, be it

14 FURTHER RESOLVED, That the Lease is amended to give Tenant an additional
15 5-year option to extend the Lease for a total of three (3) Extension Options, the first of
16 which Tenant exercised on October 1, 2018, to extend the Term to September 30, 2023, at
17 a rental rate to be adjusted at the beginning of each extension term in accordance with the
18 increase in the Consumer Price Index, subject to a minimum increase of 2% per year and a
19 maximum increase of 4% per year, as more particularly described in the Lease; and, be it

20 FURTHER RESOLVED, That the Board of Supervisors approves the outstanding
21 rent in the amount of \$50,067.60 is forgiven for the time period of January 2021 through
22 June 2021; and, be it

23 FURTHER RESOLVED, That other than the extension of the term, rent forgiveness,
24 and the sections of the Lease updated as set forth in the Fourth Amendment, the Lease, as
25

1 amended previously, shall remain in full force and effect as originally agreed upon; and, be
2 it

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

5 FURTHER RESOLVED, The Board of Supervisors authorizes the Director of
6 Property to enter into any extensions, amendments, or modifications to the Lease
7 (including without limitation, the exhibits) that the Director of Property determines, in
8 consultation with the City Attorney, are in the best interest of the City, do not materially
9 reduce the rent or otherwise materially increase the obligations or liabilities of the City, are
10 necessary or advisable to effectuate the purposes of the Lease or this Resolution, and are
11 in compliance with all applicable laws, including City's Charter; and, be it

12 FURTHER RESOLVED, That within thirty (30) days of the Fourth Amendment being
13 fully executed by all parties, RED shall provide the agreement to the Clerk of the Board for
14 inclusion in the official file.

15
16 RECOMMENDED:
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18

19 /s/
20 Andrico Q. Penick
21 Director of Property
22
23
24
25

Item 6
File 22-0803

Department:
Real Estate Division

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve a fourth amendment to the lease between the New Conservatory Theater Center (as tenant) and the City (as landlord) for continued use of 14,229 square feet of rentable space at the lower level of 25 Van Ness Avenue. The proposed lease would add a five-year option to extend the term through September 2033 and also forgive \$50,067 in base rent accrued from January 2021 through June 2021.

Key Points

- The New Conservatory Theater is a nonprofit theater organization that provides educational programs, theater productions, new play development, and conservatory training for youth in San Francisco. The Theater was closed from March 2020 until October 2021 due to local health orders.
- In April 2021, the Board of Supervisors approved Ordinance No. 059-21 (File 21-0001), which authorized the City Administrator to amend three leases (the New Conservatory Theater Center, New Asia Restaurant, and Stephen M. Paoli) managed by the Real Estate Division to provide rent forgiveness for outstanding rent due from April 2020 to December 2020, including \$32,733 for the theater. The theater still has \$50,067 in outstanding rent for January 2021 to June 2021. No additional rent is outstanding beyond July 2021.
- The City is extending the lease because the tenant plans to undertake improvements to the site, including upgrades to theater seating, investing in new production equipment, upgrades to technological infrastructure, and expanding programming.

Fiscal Impact

- The City will receive an approximate total of \$1,226,959 over the current lease term (from December 2008 through September 2023), net of the previously approved rent forgiveness of \$32,733 and of \$50,067 in unpaid rent that would be forgiven under the proposed amendment. Assuming three percent annual increases to base rent, we estimate the City would receive \$1.3 million over the remaining 10 years of the extension period (September 2023 to September 2033). Rent is a General Fund revenue.
- A financial statement for the theater was not available for our review so we cannot assess the organization's financial condition and ability to pay back rent.

Recommendation

- Because the proposed resolution would forgive rent for a City tenant, we consider approval to be a policy matter for the Board of Supervisors.

MANDATE STATEMENT

City Charter Section 9.118(c) states that (1) any lease of real property for ten or more years, including options to renew, or anticipated to have revenues to the City of \$1,000,000 or more, or (2) the modification, amendment, or termination of any such leases, is subject to Board of Supervisors approval.

City Administrative Code Section 23.30 states that the Board of Supervisors can authorize the Director of Property to lease any City-owned property that is not required for the purposes of the Department. The Director of Property is also required to lease City property for no less than market rent unless authorized by the Board of Supervisors for a “proper public purpose.” This authority excludes month-to-month and year-to-year leases with a fair market rental value of \$15,000 or less per month, which the Director of Property can enter without Board approval, per Section 23.31.

BACKGROUND

On March 27, 2020,¹ the City Administrator issued a memo to all City departments regarding the enforcement of tenant lease obligations for private and non-profit tenants of City-owned property in response to the COVID-19 pandemic and related public health orders. This memo set out a City policy which provided the following relief for commercial City tenants: (1) waived all late charges, interest and other penalties related to late payment of rent from March 17 to December 31, 2020 due to the impact of COVID-19, (2) required the resumption of timely rent payment on January 1, 2021, and (3) specified that any delinquent rent not repaid by June 30, 2021 would be subject to applicable interest and penalties thereafter. The policy authorized City departments to provide further relief to tenants if warranted. This policy only applied to General Fund departments and not enterprise departments. The policy was intended to provide COVID-19 affected City tenants the ability to retain their leasehold while using financial reserves for other operational needs, including payroll, to remain in business.

In April 2021, the Board of Supervisors approved Ordinance No. 059-21 (File 21-0001) which authorized the City Administrator to amend three leases (the New Conservatory Theater Center, New Asia Restaurant, and Stephen M. Paoli) managed by the Real Estate Division to provide rent forgiveness for outstanding rent due from April 2020 to December 2020 in the amount of \$257,723.92. Of this total, the New Conservatory Theater Center (NCTC) received \$32,733 in rent forgiveness for the period of April 2020 to December 2020.

Previous Proposed Ordinance to Forgive Rent Due between January through June 2021

In January 2022, the Board considered an ordinance (File 21-1163) to amend the same three leases to forgive rent due between January through June 2021, in the amount of \$200,068. Of

¹ The memo was subsequently updated on June 1, 2020 to extend protections to December 31, 2020.

this total, the proposed rent forgiveness amount for NCTC was \$50,057. The proposed ordinance did not include additional changes to the three leases. According to Real Estate Division staff, the proposed ordinance was discontinued because there were issues regarding compliance with lease terms with other tenants included in the proposed ordinance to forgive rent. As a result of these issues, it was determined to pull the legislation and propose rent forgiveness for only NCTC.

New Conservatory Theater Center (25 Van Ness)

NCTC is a nonprofit theater organization that provides educational programs, theater productions, new play development, and conservatory training for youth in San Francisco. The City leases the lower level of 25 Van Ness Avenue (14,229 square feet) to the NCTC, an arrangement in place since 1984. The Theater was closed from March 2020 until October 2021 due to local health orders. NCTC secured federal CARES Act funding to pay rent through August 2020. While NCTC secured \$188,706 in other federal aid and \$25,000 in state aid, these monies were only used for salaries. NCTC still has \$50,067 in outstanding rent for January 2021 to June 2021. No additional rent is outstanding beyond July 2021.

Prior Lease History

The City entered into the original lease in November 2008 (Resolution No. 489-08) with an initial expiration date of September 30, 2013 and two five-year extension options through September 2023. In October 2018, the lease was amended to add another five-year extension option from October 2023 through September 2028 (Resolution No. 327-18).

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve a fourth amendment to the lease between the New Conservatory Theater Center (as tenant) and the City (as landlord) for continued use of 14,229 square feet of rentable space at the lower level of 25 Van Ness Avenue. The existing lease term is through September 2028 and has one five-year extension. The proposed amendment would add an additional five-year option to extend the term through September 2033. The proposed amendment would also forgive \$50,067 in base rent accrued from January 2021 through June 2021.

In addition, the proposed amendment clarifies that the tenant is responsible for maintaining the floors, interior plumbing, electrical wiring, fixtures, and related equipment on the rented premises. The City would continue to be responsible for other building systems and common areas and for repairing damage caused by flooding. The City pays any flooding damage costs that exceed \$11,000 in any year.

Current and Proposed Lease Terms

Exhibit 1 below summarizes key terms of the proposed and current lease.

Exhibit 1. Summary of Current and Proposed Fourth Amendment Lease Provisions

	Current Lease	Proposed Amendment
Term	December 1, 2008 - September 30, 2023; one 5-Year Option to Extend through September 2028	December 1, 2008 - September 30, 2023; two 5-Year Options to Extend through September 2033
Premises	12,792 sq. feet at 25 Van Ness Ave	12,792 sq. feet at 25 Van Ness Ave
Annual Base Rent	\$104,136 (\$8.14/sq. ft.)	Approximately \$107,260 (\$8.38/sq. ft.) starting October 2022, depending on CPI
Annual Rent Increases	Between 2%-4%, based upon CPI	No change
Utilities Services	City responsible	No change
Building Systems	City responsible	No change
Flood Damage	City responsible and absorbs costs above \$11,000 per year	No change
Interior Maintenance	Tenant responsible	Clarifies that the tenant is responsible for maintaining the floors, interior plumbing, electrical systems on premises
Rent Forgiveness	\$32,733 base rent forgiven for April 2020 to December 2020	\$50,067 base rent forgiven for January 2021 through June 2021

Source: Received from Real Estate Division.

Additional Five Year Extension & Tenant Improvements

According to Real Estate Division staff, the additional extension option, which could extend the lease from September 2028 to September 2033, was included in the proposed agreement because the tenant plans to perform tenant improvements and develop new programming if there are at least 10 additional guaranteed lease years beyond September 2023. Some of the planned tenant improvements and programming changes include: refurbishing management's office space which has been damaged and repaired during numerous rain and sewage flooding events, upgrades to Theater seating, investing in new production equipment, upgrades to technological infrastructure, expanding the Theater-In-Education program through more class offerings, touring educational Theater programs and performance opportunities and offering low-cost weekend classes and summer training sessions for youth ages 6 – 17 from all backgrounds. Tenant improvements are funded by the tenant.

Reason for Requested Rent Forgiveness

According to the Real Estate Division, NCTC was severely impacted by the slow pace of recovery from the COVID-19 pandemic and did not fully reopen until October 2021. NCTC was closed during the period for which rent forgiveness is being requested (January 2021 – June 2021) and was therefore unable to collect sufficient revenue from ticket sales. According to the Real Estate Division, while NCTC did receive CARES act funding to pay rent through August 2020, as well as

other federal and state aid to fund salary costs, it did not obtain other aid to pay the \$50,067 owed in back rent for the 2021 period. A financial statement for the Theater was not available for our review so we cannot assess the Theater's financial condition and ability to pay back rent.

FISCAL IMPACT

According to Real Estate Division staff, the City will receive an approximate total of \$1,226,959 over the current lease term (from December 2008 through September 2023), net of the previously approved rent forgiveness of \$32,733 and of \$50,067 in unpaid rent that would be forgiven under the proposed amendment. Assuming three percent annual increases to base rent, we estimate the City would receive \$1.3 million over the remaining 10 years of the extension period (September 2023 to September 2033). Rent is a General Fund revenue.

Because the proposed resolution would forgive rent for a City tenant, we consider approval to be a policy matter for the Board of Supervisors. As noted above, a financial statement for the Theater was not available for our review so we cannot assess the Theater's financial condition and ability to pay back rent.

RECOMMENDATION

Approval of the proposed resolution is a policy matter for the Board of Supervisors.

**FOURTH AMENDMENT TO
PERFORMANCE SPACE LEASE**

This **Fourth Amendment to Performance Space Lease** (“**Amendment**”), dated for reference purposes only as of July 7, 2022, amends that certain Performance Space Lease, dated for reference purposes only as of December 1, 2008, between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**City**”), and the NEW CONSERVATORY THEATER CENTER, a California non-profit corporation (“**NCTC**” or “**Tenant**”).

RECITALS

A. The Performance Space Lease was amended by a Letter of Agreement between City and NCTC, executed by the City on November 17, 2011 (the “**First Amendment**”); as amended by the Amendment to Performance Space Lease between City and Tenant, dated June 2018 (the “**Second Amendment**”), wherein Tenant exercised the first Extension Option under the Performance Space Lease, extending the Term to September 30, 2023, authorized by Resolution No. 327-18; and further amended by the Letter Amendment to Commercial Space Lease, dated October 29, 2021, authorized by Ordinance No. 059-21 (the “**Third Amendment**”). The Performance Space Lease, the First Amendment, the Second Amendment, and the Third Amendment are collectively referred to as the “**Lease**”.

B. The Lease provides for Tenant to occupy and use a portion of the basement of the building located at 25 Van Ness Avenue, San Francisco, California 94102 (the “**Premises**”) as a children’s theatre and learning space on the terms and conditions described therein.

C. On February 25, 2020, Mayor London Breed proclaimed a state of emergency in response to the spread of the novel coronavirus 2019 or COVID19. On March 3, 2020, the Board of Supervisors concurred in the February 25th Proclamation and in the actions taken by the Mayor to meet the emergency.

D. To mitigate the spread of COVID19, on March 16, 2020, the Local Health Officer issued Order No. C19-07 generally requiring individuals to stay in their homes, and requiring businesses to cease many non-essential operations at physical locations in the City and County of San Francisco.

E. NCTC closed in March 2020 due to the Health Orders and remained closed through October 2021.

F. Having received funds from the federal CARES Act, NCTC paid its Rent through August 2020; NCTC was in compliance with the Lease and the terms thereof on September 1, 2020, when the Director of Property granted a rent deferral for certain City leases pursuant to the City Administrator’s March 27, 2020, memorandum, as amended and superseded by that certain City Administrator Memorandum, dated June 1, 2020, which extended the City’s policies under the March 27, 2020, memorandum through December 2020.

G. On April 30, 2021, the Mayor approved Ordinance No. 059-21, which authorized the City Administrator to amend the Performance Space Lease to forgive Tenant’s Rent in the amount of \$32,723.92 for the time period of April 2020, through December 2020.

H. NCTC currently owes the City deferred rent for the time period of January 1, 2021 through June 30, 2021, in the amount of \$50,067.60 (\$8,344.60 per month).

I. The parties desire to enter into this Amendment to amend the Expiration Date to September 30, 2023, add an additional Extension Option, and forgive all deferred Base Rent for the time period of January 1, 2021 through June 30, 2021, in the amount of \$50,067.60. All capitalized terms used but not defined herein shall have the meanings given to such terms in the Lease.

AGREEMENT

ACCORDINGLY, in consideration of the foregoing, 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:

I. EXPIRATION DATE

The Expiration Date specified in Lease Section 1 (Basic Lease Information) is hereby amended to read "September 30, 2023 (subject to Extension Option of Section 26.1)."

II. EXTENSION OPTION

Notwithstanding anything to the contrary contained in the Lease, this Amendment gives Tenant an additional 5-year option to extend the Lease (for a total of three (3) Extension Options, the first of which Tenant exercised on October 1, 2018, to extend the Term to September 30, 2023), subject to adjustment of Base Rent, as set forth in Lease Section 4.2 (as amended in paragraph 4 of the Second Amendment) and in accordance with the provisions of Lease Section 26.1.

The additional Extension Option provides Tenant the ability to extend the Term by two 5-year Extension Options. For the avoidance of doubt, if Tenant exercises each of the remaining Extension Options, Tenant may occupy the Premises for up to ten (10) additional years from the current Expiration Date of September 30, 2023, to September 30, 2033.

III. Notwithstanding anything to the contrary within the Lease, Section 4 of the Lease is amended by adding the following new subsections:

4.6. Costs of Collection

In addition to any interest or late charges under Section 4.4 and Section 4.5 above, if Tenant fails to pay Rent in immediately available funds or by good check (if Tenant is permitted to pay by personal or business check), to the extent that the costs incurred by City because of Tenant's failure exceed the late charges applicable to that failure, then Tenant will pay to City immediately upon demand as Additional Charges the amount of any fees, charges, or other costs incurred by City, including dishonored check fees, increased staff time, and any costs of collection.

4.7. Forgiveness of Deferred Base Rent.

In light of the numerous emergency orders closing Tenant's business and the economic hardship Tenant has suffered over the past two years caused by COVID-19, City forgives Tenant's Base Rent in the amount of \$50,067.60 for the period of January 1, 2021, through June 30, 2021, and waives all late charges, default interest and associated penalties and fees, if any, in connection with the foregoing deferred payment of Base Rent.

IV. Notwithstanding anything to the contrary within the Lease, Section 5 of Lease is hereby amended by adding the following new subsections:

5.5 Prevailing Wages for Certain Uses

(a) Tenant will pay, and will require its subtenants, and contractors and subcontractors (regardless of tier) to pay, prevailing wages, including fringe benefits or the matching equivalents, to persons performing services for the following activity on the Premises, as set forth in and to the extent required by San Francisco Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in Section 21C.3), a Show (as defined in Section 21C.4), a Trade Show and Special Event (as defined in Section 21C.8), and Broadcast Services (as defined in Section 21C.9), Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in Section 21C.10), and Security Guard Services for Events (as defined in Section 21C.11).

(b) If Tenant, or its subtenants, contractors, and subcontractors fail to comply with the applicable obligations in San Francisco Administrative Code Chapter 21C, City will have all available remedies set forth in Chapter 21C and the remedies set forth in this Lease. City may inspect and/or audit any workplace, job site, books, and records pertaining to the applicable services and may interview any individual who provides, or has provided, those services. Promptly after City's request, Tenant will provide to City (and to require any subtenant, contractor, or subcontractor who maintains the records to provide to City) immediate access to all workers' time sheets, payroll records, and paychecks for inspection to the extent they relate to those services.

- The types of covered services related to a Show includes individuals engaged in theatrical or technical services, including rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services.
- The types of covered services related to a Special Event includes individuals engaged in on-site installation, set-up, assembly, and dismantling of temporary exhibits, displays, booths, modular systems, signage, drapery, specialty furniture, floor coverings, and decorative materials in connection with trade shows, conventions, expositions, and other special events on City property.
- The types of covered services related to Broadcast Services includes individuals engaged in the electronic capture and/or live transmission of on-site video, digital, and/or video content for commercial purposes through the use of a remote production or satellite trust on-site, including any technical director,

video controller, assistant director, and stage manager, and individuals engaged in audio, camera, capture and playback, graphics, and utility functions.

If Tenant has any questions about the applicability or implementation of the requirements of this Section, Tenant should contact the City's Office of Labor Standards Enforcement at 415-554-6235 or www.sfgov.org/olse.

V. Notwithstanding anything to the contrary contained within the Lease, Section 6 of the Lease is hereby amended to add the following new subsections:

6.2 Local Hiring Requirements.

(a) Any undefined, initially-capitalized term used in this Section has the meaning given to that term in San Francisco Administrative Code Section 23.62 (the "**Local Hiring Requirements**"). Tenant Improvements and Alterations (as defined in Section 7.1 (Tenant's Alterations)) are subject to the Local Hiring Requirements unless the cost for the work is (i) estimated to be less than \$750,000 per building permit or (ii) meets any of the other exemptions in the Local Hiring Requirements. Tenant will comply with the Local Hiring Requirements to the extent applicable. Before starting any Tenant Improvement Work or any Alteration, Tenant will contact City's Office of Economic Workforce and Development ("**OEWD**") to verify if the Local Hiring Requirements apply to the work (i.e., whether the work is a "**Covered Project**").

(b) In any contract for a Covered Project, Tenant will include, and will require its subtenants to include, a requirement to comply with the Local Hiring Requirements with specific reference to San Francisco Administrative Code Section 23.62. Each contract will name the City and County of San Francisco as a third-party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Tenant will cooperate, and require its subtenants to cooperate, with City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. Tenant's failure to comply with its obligations under this Section will constitute a material breach of this Lease. A contractor's or subcontractor's failure to comply with this Section will enable City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party.

6.3 Prevailing Wages and Working Conditions

(a) Any undefined, initially-capitalized term used in this Section has the meaning given to that term in San Francisco Administrative Code Section 23.61. Tenant will require its Contractors and Subcontractors performing (i) labor in connection with a "public work" as defined under California Labor Code Section 1720 *et seq.* (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction, at the Premises to (A) pay workers performing that work not less than the Prevailing Rate of Wages, (B) provide the same hours, working conditions, and benefits as in each case are provided for similar work performed in San Francisco County, and (C) employ Apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, "**Prevailing Wage Requirements**"). Tenant will cooperate with City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements.

(b) Tenant will include, and will require its subtenants, and Contractors and Subcontractors (regardless of tier), to include in any Construction Contract the Prevailing Wage Requirements, with specific reference to San Francisco Administrative Code Section 23.61, and the agreement to cooperate in City enforcement actions. Each Construction Contract will name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third-party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any Contractor or Subcontractor in accordance with San Francisco Administrative Code Section 23.61. Tenant's failure to comply with its obligations under this Section will constitute a material breach of this Lease. A Contractor's or Subcontractor's failure to comply with this Section will enable City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party. For the current Prevailing Rate of Wages, see www.sfgov.org/olse or call City's Office of Labor Standards Enforcement at 415-554-6235.

(c) Tenant will also pay, and will require its subtenants, and Contractors and Subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities on the Premises as set forth in and to the extent required by San Francisco Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in Section 21C.3), a Show (as defined in Section 21C.4), a Special Event (as defined in Section 21C.8), Broadcast Services (as defined in Section 21C.9), Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in Section 21C.10), and Security Guard Services for Events (as defined in Section 21C.11).

VI. Notwithstanding anything to the contrary within the Lease, Section 7.1 of the Lease is hereby amended and restated to read in its entirety as follows:

7.1 Tenant's Alterations.

(a) **General.** Tenant will not make or permit any alterations, installations, additions, or improvements, structural or otherwise (collectively, "**Alterations**") (i) in, to or about the Premises (ii) to the Building or (iii) to the heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security, and other mechanical, electrical, or communications systems of the Building ("**Building Systems**"), without City's prior written consent in each instance, not to be unreasonably withheld. All Alterations will 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. With respect to any Alterations that would be visible from the exterior of the Building, Tenant will obtain the prior written approval of City's Arts Commission to the extent the Arts Commission has jurisdiction over the design of the proposed alterations under City's Charter Section 5.103. If the cost of any Alterations is in excess of Fifteen Thousand Dollars (\$15,000), then Tenant will pay to City an administrative fee equal to five percent (5%) of the total "hard" costs of the work to compensate City for its review costs.

(b) **Asbestos.** Without limiting Section 25.2 (No Hazardous Materials) below, if it is determined that asbestos-containing materials ("**ACM**") exist in or about the Premises, Tenant will 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 Legal Requirements relating to asbestos, including California Occupational Safety and Health (OSHA) regulations found in Title 8 of the California Code of Regulations, Sections 1502 and 1529.

Additionally, Tenant will distribute notifications to all employees and contractors as required under California Health & Safety Code Section 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 may be performed without City's prior written consent in each instance.

(c) **Prevailing Wage and Local Hiring Requirements.** Tenant and its subtenants will comply with the applicable requirements of Section 6.2 (Local Hiring Requirements) and Section 6.3 (Prevailing Wages and Working Conditions) above in the performance of any Alterations for which such compliance is required thereby.

(d) **Tenant's Improvements or Alterations that Disturb or Remove Lead-Based Paint.** Tenant, on behalf of itself and its Agents or Invitees, will comply with all requirements of the San Francisco Building Code, Section 3407, and all other Legal Requirements, including the California and United States Occupational Health and Safety Acts and their implementing regulations, when the work of improvement or alteration disturbs or removes exterior lead-based or "presumed" lead-based paint (as defined below). Tenant and its Agents or Invitees (defined in Section 28.5 (Parties and Their Agents; Approvals) below) will give to City three (3) business days' prior written notice of any disturbance or removal of exterior lead-based or presumed lead-based paint. Further, Tenant and its Agents or Invitees, when disturbing or removing exterior lead-based or presumed lead-based paint, may not use or cause to be used any of the following methods: (i) acetylene or propane burning and torching; (ii) scraping, sanding or grinding without containment barriers or a High Efficiency Particulate Air filter ("HEPA") local vacuum exhaust tool; (iii) hydroblasting or high-pressure wash without containment barriers; (iv) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool; and (v) heat guns operating above 1,100 degrees Fahrenheit. Paint on the exterior of buildings built before December 31, 1978, is presumed to be lead-based paint unless lead-based paint testing, as defined in Section 3407 of the San Francisco Building Code, demonstrates an absence of lead-based paint on the exterior surfaces of the buildings. Under this Section, lead-based paint is "disturbed or removed" if the work of improvement or alteration involves any action that creates friction, pressure, heat, or a chemical reaction on any lead-based or presumed lead-based paint on an exterior surface so as to abrade, loosen, penetrate, cut through, or eliminate paint from that surface. Notice to City under this Lease will not constitute notice to City's Department of Building Inspection required under San Francisco Building Code Section 3407.

VII. Notwithstanding anything to the contrary within the Lease, Section 8.2 of the Lease is hereby amended and restated to read in its entirety as follows:

8.2. Tenant's Repairs

Except as otherwise limited by Section 8.3 below, at no expense to City, Tenant will maintain (and replace, if necessary) the Premises (including the floors, interior plumbing, electrical wiring, fixtures, and equipment) in good repair and working order and in a clean, secure, safe, and sanitary condition. Tenant will promptly make all repairs and replacements: (a) at no cost to City, (b) by licensed contractors or qualified mechanics approved by City, (c) so that the repairs and replacements will 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 22 (Rules and Regulations)) and all applicable Legal Requirements. 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 Legal Requirements. Tenant will give to City at least fifteen (15) days' prior written notice of commencement of any repair, replacement, or construction on the Premises. Replacements costing over \$5,000 will be considered an Alteration and Article 7 above will apply.

VIII. Notwithstanding anything to the contrary within the Lease, Section 27.10 of the Lease is hereby amended and restated to read in its entirety as follows:

27.10. Governing Law

This Lease will be construed and enforced in accordance with the Legal Requirements of the State of California and City's Charter.

Any legal suit, action, or proceeding arising out of or relating to this Lease shall be instituted in the Superior Court for the City and County of San Francisco, and each party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this Lease has been brought in an inconvenient forum. The Parties also unconditionally and irrevocably waive any right to remove any such suit, action, or proceeding to Federal Court.

IX. Notwithstanding anything to the contrary within the Lease, the Lease is amended by adding the following new sections:

27.45 Consideration of Salary History

In addition to Tenant's obligations as an employer under San Francisco Police Code Article 33J, Tenant must comply with San Francisco Administrative Code Chapter 12K. For each employment application to Tenant for work of eight (8) or more hours per week at the Premises, Tenant must not consider the applicant's current or past salary (a "**Salary History**") in deciding whether to hire the applicant or what salary to offer the applicant unless the applicant voluntarily discloses that Salary History without prompting. In addition, Tenant must not (1) ask those applicants about their Salary History, (2) refuse to hire, or otherwise disfavor, injure, or retaliate against applicants that do not disclose their Salary History, or (3) disclose a current or former employee's Salary History without that employee's authorization unless it is required by law, publicly available, or subject to a collective bargaining agreement.

Tenant is subject to the posting, enforcement, and penalty provisions in Chapter 12K. Information about Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>.

27.46 Contractor Vaccination Requirements

(1) Tenant acknowledges that it has read the requirements of the 38th Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency ("**Emergency Declaration**"), dated February 25, 2020, and the Contractor Vaccination Policy for City Contractors issued by the City Administrator ("**Contractor Vaccination Policy**"), as those

documents may be amended from time to time. A copy of the Contractor Vaccination Policy can be found at: <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors>. Any undefined, initially-capitalized term used in this Section has the meaning given to that term in the Contractor Vaccination Policy.

(2) A Contract, as defined in the Emergency Declaration, is an agreement between the City and any other entity or individual and any subcontract under such agreement, where Covered Employees of the contractor or subcontractor work in-person with City employees at a facility owned, leased, or controlled by the City. A Contract includes such agreements currently in place or entered into during the term of the Emergency Declaration. A Contract does not include an agreement with a state or federal governmental entity or agreements that does not involve the City paying or receiving funds.

(3) Tenant has read the Contractor Vaccination Policy. In accordance with the Emergency Declaration, if this Lease is (or becomes) a Contract as defined in the Contractor Vaccination Policy, Tenant agrees that:

(I) Tenant shall ensure it complies with the requirements of the Contractor Vaccination Policy pertaining to Covered Employees, as they are defined under the Emergency Declaration and the Contractor Vaccination Policy, and insure such Covered Employees are fully vaccinated for COVID-19 or obtain an exemption based on medical or religious grounds; and

(II) If Tenant grants Covered Employees an exemption based on medical or religious grounds, Tenant will promptly notify City by completing and submitting the Covered Employees Granted Exemptions Form ("**Exemptions Form**"), which can be found at <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors> (navigate to "Exemptions" to download the form).

27.47 Stormwater Flood Risk Disclosure. Under San Francisco Police Code Article 51, property owners in San Francisco are required to disclose to transferees and prospective transferees (including tenants and prospective tenants) if the leased premises is susceptible to flooding in a 100-year storm, as shown on the San Francisco Public Utilities Commission's 100-Year Storm Flood Risk Map. The Premises are at risk for flooding in a 100-year storm. Please see **Exhibit A** to this Lease for additional information.

X. GENERAL PROVISIONS

a. No Joint Venture. This Amendment or any activity by the City hereunder does not create a partnership or joint venture between the City and Tenant relating to the Lease or otherwise. This Amendment does not constitute authorization or approval by the City of any activity conducted by Tenant, and the City shall in no way be responsible for the acts or omissions of Tenant on the Premises or otherwise.

b. Attorneys' Fees. In the event a dispute arises concerning this Amendment, the party not prevailing in such dispute shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Amendment, 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.

c. References. No reference to this Amendment is necessary in any instrument or document at any time referring to the Lease. Any future reference to the Lease shall be deemed a reference to such document as amended hereby.

d. Applicable Law. This Amendment shall be governed by, construed and enforced in accordance with the laws of the State of California.

e. Further Instruments. The parties hereto agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this Amendment.

f. Miscellaneous. Except as expressly modified herein, the terms, covenants and conditions of the Lease shall remain unmodified and in full force and effect. The Lease, as amended by this Amendment, constitutes the entire agreement of the parties concerning the subject matter hereof, and supersedes and cancels any and all previous negotiations, agreements, or understandings, if any, regarding the matters contained herein. The execution of this Amendment shall not constitute a waiver of relinquishment of any rights that City may have relating to the Lease. Tenant and City hereby ratify and confirm all of the provisions of the Lease as amended by this Amendment.

g. Full Force and Effect. The Lease, as amended by this amendment, shall be deemed to have been amended as of the date the Board of Supervisors and the Mayor approve the resolution regarding same, and shall remain in full force and effect in accordance with its terms.

h. 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]

IN WITNESS whereof, the parties hereto have executed this Amendment as of the date first above written.

TENANT:

NEW CONSERVATORY THEATRE CENTER,
a California non-profit corporation

By: Barbara J. Halpern

Name: Barbara Halpern

Its: Executive Director

Date: 7/7/22

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: Andrico Q. Penick

ANDRICO Q. PENICK
Director of Property

Date: 7/11/22

APPROVED AS TO FORM:

DAVID CHIU, City Attorney

By: _____

Vincent L. Brown
Deputy City Attorney

EXHIBIT A

STORMWATER FLOOD RISK DISCLOSURE

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS BLOCK 0834, LOT 004, AT THE FOLLOWING STREET ADDRESS: 25 VAN NESS, SAN FRANCISCO, CALIFORNIA. THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE-DESCRIBED PROPERTY IN COMPLIANCE WITH ARTICLE 51 OF THE SAN FRANCISCO POLICE CODE. IT IS NOT A WARRANTY OF ANY KIND BY THE CITY, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE TENANT MAY WISH TO OBTAIN.

I

The City discloses the following information with the knowledge that even though this is not a warranty, prospective transferees may rely on this information in deciding whether and on what terms to rent or lease the subject property. City authorizes any agent(s) representing any tenant in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated rental or lease of the property.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE CITY AS REQUIRED BY THE CITY AND COUNTY OF SAN FRANCISCO AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE CITY AND TENANT.

The City and County of San Francisco recognizes that it is in the public interest to ensure that persons who own properties at risk of flooding have information about their flood risk so they can take steps to mitigate the risk, such as flood-proofing their property or purchasing flood insurance. It is also in the public interest to ensure that before persons purchase, rent, or lease real property they have notice regarding the stormwater flood risk to their property. Mandatory disclosure before sale, rent, or lease is an effective tool for ensuring that transferees (including buyers and tenants) of real property in San Francisco have access to this important information.

Accordingly, the San Francisco Public Utilities Commission has adopted the 100-Year Storm Flood Risk Map. The above-referenced property is located in a "100-year storm flood risk zone" as shown on the 100-Year Storm Flood Risk Map. Accordingly, the property may be subject to deep and contiguous flooding during a 100-year storm event due to stormwater flow and drainage, and you may experience inconveniences, costs, and governmental requirements related to that flooding.

A 100-year storm event means a storm that has a 1% probability of occurring at a particular location in a given year.

If the property is in a "100-year storm flood risk zone" as shown on the 100-Year Storm Flood Risk Map, that does not mean the property is subject to flooding only during a 100-year storm event. The property may also flood at other times and from other causes.

The 100-Year Storm Flood Risk Map shows only areas subject to flood risk in a 100-year storm event due to precipitation and related stormwater runoff. It does not show all areas of San Francisco that are subject to flood risk due to inundation, storm surge, high tides, stormwater systems blockages, or other causes of flooding, and should not be relied upon to provide a complete assessment of a property's risk of flooding.

The 100-Year Storm Flood Risk Map may be found at <https://www.sfwater.org/index.aspx?page=1229> and is on file with the San Francisco Public Utilities Commission at 525 Golden Gate Avenue, San Francisco, CA 94102. For additional information pertaining to this disclosure and the 100-Year Storm Flood Risk Map, please contact the San Francisco Public Utilities Commission at RainReadySF@sfwater.org or (415) 695-7326.

The person signing below on behalf of the City certifies that the information in this disclosure is true and correct to the best of such person's knowledge as of the date below.

*City and County of San Francisco,
a municipal corporation*

By: _____

Print Name: _____

Print Title: _____

Date _____

II

TENANT MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT WITH RESPECT TO ANY ADVICE/INSPECTIONS/DEFECTS.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Tenant _____ Date _____

Tenant _____ Date _____

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

City & County of San Francisco
London N. Breed, Mayor



Office of the City Administrator
Carmen Chu, City Administrator
Andrico Q. Penick, Director of Real Estate

October 29, 2021

Barbara Hodgen
Executive Director
New Conservatory Theatre Center
25 Van Ness Avenue, Basement
San Francisco, CA 94102

Re: New Conservatory Theatre Center
25 Van Ness Avenue, A Portion of the Basement, San Francisco
Letter Amendment to Performance Space Lease dated December 1, 2008

Dear Barbara:

On April 7, 2021, at the request of the Real Estate Division, the Board of Supervisors and the Mayor approved Ordinance No. 059-21, which authorized the City Administrator to amend certain leases and forgive rent due between April 2020 and December 2020, as necessitated by the financial hardship caused by the public health emergency related to the COVID-19 Pandemic. (See enclosed copy of the Ordinance.)

Pursuant to the above ordinance, the Lease dated December 1, 2008, amended by the First Amendment to Performance Space Lease dated June 16, 2018, is hereby amended and the rent for the period of April 2020 through December 2020 is forgiven in the amount of \$32,732.92.

Please execute the next page and return an executed copy to RED in the enclosed SASE as soon as possible confirming your agreement with this amendment.

Should you have any questions, please feel free to contact Tracy Irvin at (415) 554-9850.

Thank you for your time and attention to this matter – Stay safe -

Sincerely,

A handwritten signature in blue ink, appearing to read "Claudia J. Gorham", written over a horizontal line.

Claudia J. Gorham
Deputy Managing Director
Real Estate Division

The undersigned agree to the terms set forth in the Letter Amendment dated October 29, 2021 regarding rent forgiveness for the time period of April 2020 through December 2020 pursuant to Ordinance No. 059-21 in the amount of \$32,732.92.

By: NEW CONSERVATORY THEATRE CENTER, Tenant


BARBARA J. HODGEN, Executive Director

Enclosure: Ordinance No. 059-21

Copies to:

Charles Sullivan, Deputy City Attorney

1 [Amendments to Real Property Leases - Forgive Tenant Rent During COVID-19 Pandemic]

2
3 **Ordinance authorizing the City Administrator to amend certain leases and forgive rent**
4 **due between April 2020 and December 2020 with nonresidential tenants, and waiving**
5 **Administrative Code and Environmental Code requirements enacted after the most**
6 **recent modification of each lease, in order to allow for expeditious rent forgiveness**
7 **necessitated by the financial hardship caused by the public health emergency related**
8 **to the COVID-19 pandemic;** ~~authorizing the City Administrator to further amend leases and~~
9 ~~forgive rent due between January 2021 and June 2021, and waiving Administrative Code and~~
10 ~~Environmental Code requirements enacted after the most recent modification of each lease,~~
11 ~~without further Board of Supervisors approval under Charter, Section 9.118 and~~
12 ~~Administrative Code Chapter 23.~~

13 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
14 **Additions to Codes** are in *single-underline italics Times New Roman font*.
15 **Deletions to Codes** are in ~~strikethrough italics Times New Roman font~~.
16 **Board amendment additions** are in double-underlined Arial font.
17 **Board amendment deletions** are in ~~strikethrough Arial font~~.
18 **Asterisks (* * * *)** indicate the omission of unchanged Code
19 subsections or parts of tables.

20 Be it ordained by the People of the City and County of San Francisco:

21 Section 1. Findings and Purpose.

22 (a) On February 25, 2020, Mayor London Breed proclaimed a state of emergency in
23 response to the spread of the novel coronavirus 2019 or COVID19. On March 3, 2020, the
24 Board of Supervisors concurred in the February 25th Proclamation and in the actions taken by
25 the Mayor to meet the emergency.

///

1 (b) To mitigate the spread of COVID19, on March 16, 2020, the Local Health Officer
2 issued Order No. C19-07 generally requiring individuals to stay in their homes ("Shelter in
3 Place"), and requiring businesses to cease many non-essential operations at physical
4 locations in the City and County of San Francisco. The Health Officer's Order continues to be
5 updated and revised to address public health issues presented by the pandemic. The Health
6 Order, as amended, still does not allow for certain businesses to resume normal operations at
7 this time or for the foreseeable future.

8 (c) The COVID-19 pandemic has caused, and will likely continue to cause, abrupt
9 and serious impacts on the local economy, on the operations of local businesses and
10 nonprofit organizations, and on the job security of employees. Many of the affected
11 businesses and other entities, including City Administrator Office's Real Estate Division
12 tenants, are experiencing significant operating deficits and hardships in paying rent for a
13 variety of reasons, including reductions in income due to lower customer demand, required
14 closures, or limits on full-scale operations. Many of these entities face unprecedented
15 challenges to remain financially solvent during the public health emergency. These difficulties
16 cascade beyond the operators to their employees, whose jobs may be eliminated or hours cut
17 due to the reduced customer demand or required closures or limitations on full-scale
18 operations.

19 (d) The City Administrator's Office, Real Estate Division, leases space in City
20 owned buildings to dozens of tenants for a variety of business and recreational uses. In
21 response to the severe economic impacts on these tenants, on March 27, 2020, the City
22 Administrator issued a Memorandum, "City Policy Regarding Enforcement of Certain Tenant
23 Lease Obligations by City Departments from March 17, 2020 through April 30, 2020
24 ("Policy")", which was updated on June 1, 2020 to extend the Policy through December 31,
25 2020, allowing City departments to (i) waive all late charges, default interest and associated

1 penalties and fees for any delinquent rent payments that were or are due for use of City
2 property within San Francisco City limits due to the impact of COVID-19, (ii) provide
3 resumption of normal timely rent payments on January 1, 2021, and (iii) payment of any rent
4 arrearages (including March 2020 – December 2020) in full no later than June 30, 2021.

5 (e) The City Administrator has determined that rent forgiveness, not just rent
6 deferral, is necessary to maintain rent revenues in the long-term, facilitate at-risk businesses
7 and nonprofit corporations to reopen when the Health Orders allow, and to continue to provide
8 the City with much needed entertainment, art, culture and small business services and
9 materials. Unlike rent deferral, which changes the timing of rent payments that are due under
10 a lease but does not change the lease terms, rent forgiveness reduces or eliminates rent
11 payments that are due.

12 (f) Administrative Code Section 23, and Charter Section 9.118, requires the Board
13 of Supervisors to review and approve certain leases and amendments to those leases. A
14 change in the rent amount, including rent forgiveness, would require Board of Supervisors
15 approval under subsection (c) of Charter Section 9.118 and section 23.30 of Chapter 23.

16 (g) The City has over the years adopted a number of Administrative Code and
17 Environment Code ordinances the requirements of which must be included in new leases or
18 amendments of existing leases entered by City agencies. To require tenants to comply with
19 certain ordinances enacted after execution of the tenant's lease or, if applicable, the most
20 recent amendment of the lease, as a condition of entering into a new lease or a lease
21 amendment to qualify for rent forgiveness, would likely impose costs that further impede a
22 tenant's survival and frustrate the purpose of providing relief to ensure a tenant's ability to
23 sustain operations through this challenging period.

24 ~~(h) By waiving the requirement of Board of Supervisors approval of future lease~~
25 ~~amendments regarding rent forgiveness between January 1, 2021 through June 30, 2021 and~~

1 also waiving Administrative Code and Environment Code requirements, if any, imposed on
2 leases and lease amendments when said requirements were enacted after execution of the
3 tenant's lease, or if applicable, most recent lease amendment, this ordinance will increase the
4 chances that a tenant will be able to effectively sustain operations or reopen, thereby avoid
5 the cascade of negative impacts to the City, the tenant and the tenant's employees, if rent
6 forgiveness is denied or delayed.

7 Section 2. Definitions.

8 For the purposes of this ordinance:

9 "Administrative Code and Environment Code Requirements" shall mean the
10 requirements of those Codes that are required to be included in Leases. These requirements
11 include the following provisions of the Administrative Code: Section 4.1-3 (All-Gender Toilet
12 Facilities); Section 4.9-1© (Vending Machines; Nutritional Standards and Calorie Labeling
13 Requirements; Offerings); Section 4.20 (Tobacco Product And Alcoholic Beverage Advertising
14 Prohibition); Chapters 12B and 12C (Nondiscrimination in Contracts and Property Contracts);
15 Section 12F (MacBride Principles—Northern Ireland); Chapter 12K (Salary History); Chapter
16 12Q (Health Care Accountability); Chapter 12T (Criminal History in Hiring and Employment
17 Decisions); Chapter 21C (Miscellaneous Prevailing Wage Requirements); Sections 23.50-
18 23.56 (Labor Representation Procedures In Hotel And Restaurant Developments); Section
19 23.61 (Prevailing Wage and Apprenticeship Requirements and Local Hire Requirements); and
20 Sections 83.1 et seq. (First Source Hiring Program).

21 Further, these requirements include the following provisions of the Environment Code:
22 Chapter 3 (Restrictions on Use of Pesticides); Sections 802(b) and 803(b) (Tropical Hardwood
23 and Virgin Redwood Ban); Chapter 13 (Preservative-Treated Wood Containing Arsenic); and
24 Chapter 16 (Food Service and Packaging Waste Reduction Ordinance). The listing in the two
25 preceding sentences of specific requirements in the Administrative Code and Environment

1 Code is not necessarily an exhaustive list; this definition of "Administrative Code and
2 Environment Code Requirements" is intended to include all requirements of those Codes that
3 are required to be included in Leases.

4 "CARES Act" means the federal Coronavirus Aid, Relief, and Economic Security Act
5 enacted on March 27, 2020.

6 "Lease" means a lease or other means of granting a right to occupy or use real
7 property, and shall also include a license, permit to enter, use permit, or other similar
8 instrument.

9 "Payroll Costs" shall have the same meaning as "payroll costs" under the CARES Act.

10 Section 3. Leases.

11 (a) New Asia Restaurant.

12 (1) On or about June 28, 2017, the City and County of San Francisco,
13 Mayor's Office of Housing and Community Development, purchased 772 Pacific
14 Avenue for development of affordable housing.

15 (2) At that time, the City was assigned the existing lease for the New Asia
16 Restaurant located on the ground floor. The New Asia Restaurant is one of the few
17 banquet locations in the District and has been a staple in the area for almost two
18 decades. It leases the space for \$22,500 per month and its lease expires December
19 31, 2021.

20 (3) The New Asia Restaurant has been closed since the middle of March
21 2020 and has accepted a rent deferral plan and will owe the City \$202,500 as of
22 December 2020. However, with the continued Health Orders requiring closure and/or
23 limited seating/outdoor seating (which is physically impossible at this location), the New
24 Asia Restaurant has basically been closed since the pandemic commenced and with

25 ///

1 difficulties in continuing to employ its 200 employees, believes it will remain closed for
2 the foreseeable future.

3 (b) New Conservatory Theatre Center.

4 (1) The Real Estate Division currently leases the Lower Level of 25 Van
5 Ness Avenue (Assessor's Parcel No. 0834, Lot No. 004), in the City and County of San
6 Francisco, to The New Conservatory Theatre Center, a California non-profit corporation
7 ("NCTC" or "Tenant"), who has been leasing the lower level of 25 Van Ness and
8 providing quality live entertainment since 1984.

9 (2) On October 20, 2018, the Mayor and Board of Supervisors approved
10 Resolution No. 327-18, on file with the Clerk of the Board of Supervisors in File No.
11 180769, extending the Lease through September 30, 2023.

12 (3) Having received funds from the federal CARES Act, NCTC has been able
13 to pay rent since March 2020 through August 2020 during the pandemic and was in
14 compliance with its Lease and all lease provisions until September 1, 2020, when the
15 Director of Property granted a rent deferral per the City Administrator's March 27, 2020
16 memorandum.

17 (4) NCTC has been closed since March 2020 due to the Health Orders and
18 remains closed at this time and for the foreseeable future. It will owe the City
19 \$32,723.92 as of December 2020.

20 (5) A term of NCTC's Rent Deferral Agreement is that should it receive
21 further federal aid for rent from the CARES Act or similar legislation, it will commence
22 rent payments immediately to the extent and amount received even if it remains closed
23 due to the City's Health Orders.

24 ///

25 ///

1 (c) Pop-Up Restaurant - Stephen M. Paoli.

2 (1) On May 4, 2018, the City purchased a building at 11th Street and Natoma
3 ultimately for recreation and park purposes.

4 (2) The City was assigned several existing leases including a ground floor
5 lease with Stephen M. Paoli that operates a "pop-up" restaurant. The lease terminates
6 in June 2021.

7 (3) Mr. Paoli's business has been closed since March 2020. He has one
8 employee in addition to himself. This business is his only source of income. He
9 applied for federal funds, grants and loans to help pay his rent and employee but he did
10 not receive anything.

11 (4) He pays \$2,500 per month in rent and will owe \$22,500 as of December
12 2020.

13 Section 4. Amendment of Existing Leases to Forgive Rent; Waiver of Requirements for
14 Board of Supervisors Approval Under Chapter 23 and Charter Section 9.118; Waiver of
15 Administrative Code and Environment Code Requirements.

16 The above-mentioned leases are hereby amended and rent forgiven in the amounts set
17 forth below for the period of April 2020 through December 2020:

18	New Asia Restaurant	\$202,500.00
19	New Conservatory Theatre Center	\$ 32,723.92
20	Paoli	\$ 22,500.00
21	TOTAL	\$257,723.92

22 The City Administrator through the Director of Property may further amend these
23 leases, and other leases under the control or jurisdiction of the City Administrator, without
24 approval of the amendment by the Board of Supervisors under Charter Section 9.118 (c) or
25 Chapter 23, section 23.30, and without modifying the Lease to include Administrative Code

1 and Environment Code Requirements that were enacted since the most recent modification to
2 their Lease, provided that all of the following conditions are satisfied:

3 (a) ~~The Lease has already been approved by the Board of Supervisors under~~
4 ~~Chapter 23 if required;~~

5 (b) ~~The Lease amendment, which must be in the appropriate standardized form~~
6 ~~without exception and without negotiation, and modifies the Lease only to forgive some or all~~
7 ~~of the rent owed during the time period between January 1, 2021 and June 30, 2021;~~

8 (c) ~~The Tenant must be in compliance with all other existing lease provisions;~~

9 (d) ~~Rent may be forgiven during the time period of January 2021 up to June 30,~~
10 ~~2021, at the discretion of the City Administrator and this ordinance does not mandate that the~~
11 ~~City amend the Lease, grant any further rent forgiveness, or require the City Administrator or~~
12 ~~Director of Property to take any other action;~~

13 (e) ~~Each tenant must disclose information regarding all monies received from any~~
14 ~~government-funded financial aid, grant or loan program intended for rent, including CARES~~
15 ~~Act and similar federal, state, or local aid; such funds are not eligible for forgiveness and will~~
16 ~~be deducted from any forgiveness amount;~~

17 (bf) ~~The parties will release each other from claims for rent forgiven under any~~
18 ~~amendment;~~

19 (cg) ~~Tenant's failure to comply with the Lease or the amendment will result in~~
20 ~~termination of rent forgiveness as of the date of default;~~

21 (dh) ~~The amendment does not waive, suspend, or modify any other revision or~~
22 ~~obligation of either party under the existing Lease; and~~

23 ///

24 ///

25 ///

1 (ei) Tenant must comply with all applicable laws including all "back to work"
2 requirements and other workforce-related ordinances, orders, and laws relating to the COVID-
3 19 pandemic, including those addressing workplace safety and employment rights.

4 Section 5. Effective Date.

5 This ordinance shall become effective 30 days after enactment. Enactment occurs
6 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
7 sign the ordinance within 10 days of receiving it, or the Board of Supervisors overrides the
8 Mayor's veto of the ordinance.

9

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

12 By: /s/ CHARLES SULLIVAN
13 CHARLES SULLIVAN
 Deputy City Attorney

14 n:\spec\as2021\9690013\01519195.docx

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City and County of San Francisco
Tails
Ordinance

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

File Number: 210001

Date Passed: April 20, 2021

Ordinance authorizing the City Administrator to amend certain leases and forgive rent due between April 2020 and December 2020 with nonresidential tenants, and waiving Administrative Code and Environmental Code requirements enacted after the most recent modification of each lease, in order to allow for expeditious rent forgiveness necessitated by the financial hardship caused by the public health emergency related to the COVID-19 pandemic.

April 07, 2021 Budget and Finance Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

April 07, 2021 Budget and Finance Committee - RECOMMENDED AS AMENDED

April 13, 2021 Board of Supervisors - PASSED ON FIRST READING

Ayes: 11 - Chan, Haney, Mandelman, Mar, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton

April 20, 2021 Board of Supervisors - FINALLY PASSED

Ayes: 10 - Chan, Haney, Mar, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton
Absent: 1 - Mandelman

File No. 210001

I hereby certify that the foregoing
Ordinance was FINALLY PASSED on
4/20/2021 by the Board of Supervisors of
the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

London N. Breed
Mayor

4/30/21

Date Approved

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.

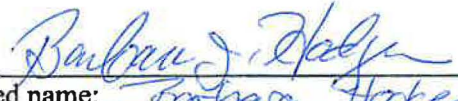
[Signatures Follow]

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 Hodge
Its: Executive Director

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

By: 
Andrico Q. Penick 10/16/18
Acting Director of Property

APPROVED AS TO FORM:

DENNIS HERRERA
City Attorney


By: 
Deputy City Attorney

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 Hocken
Its: Executive Director

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

By: 
Andrico Q. Penick 10/16/18
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

11/12/2011

Date



Ed Decker, Founding Artistic and Executive Director

12/2/2011

Date

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

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LIST OF EXHIBITS:

EXHIBIT A – Site Plan

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
With a copy to:	Gibson, Dunn & Crutcher LLP Attn: Neil H. Sekhri <i>If before January 1, 2009:</i> One Montgomery Street, San Francisco, CA 94104 <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

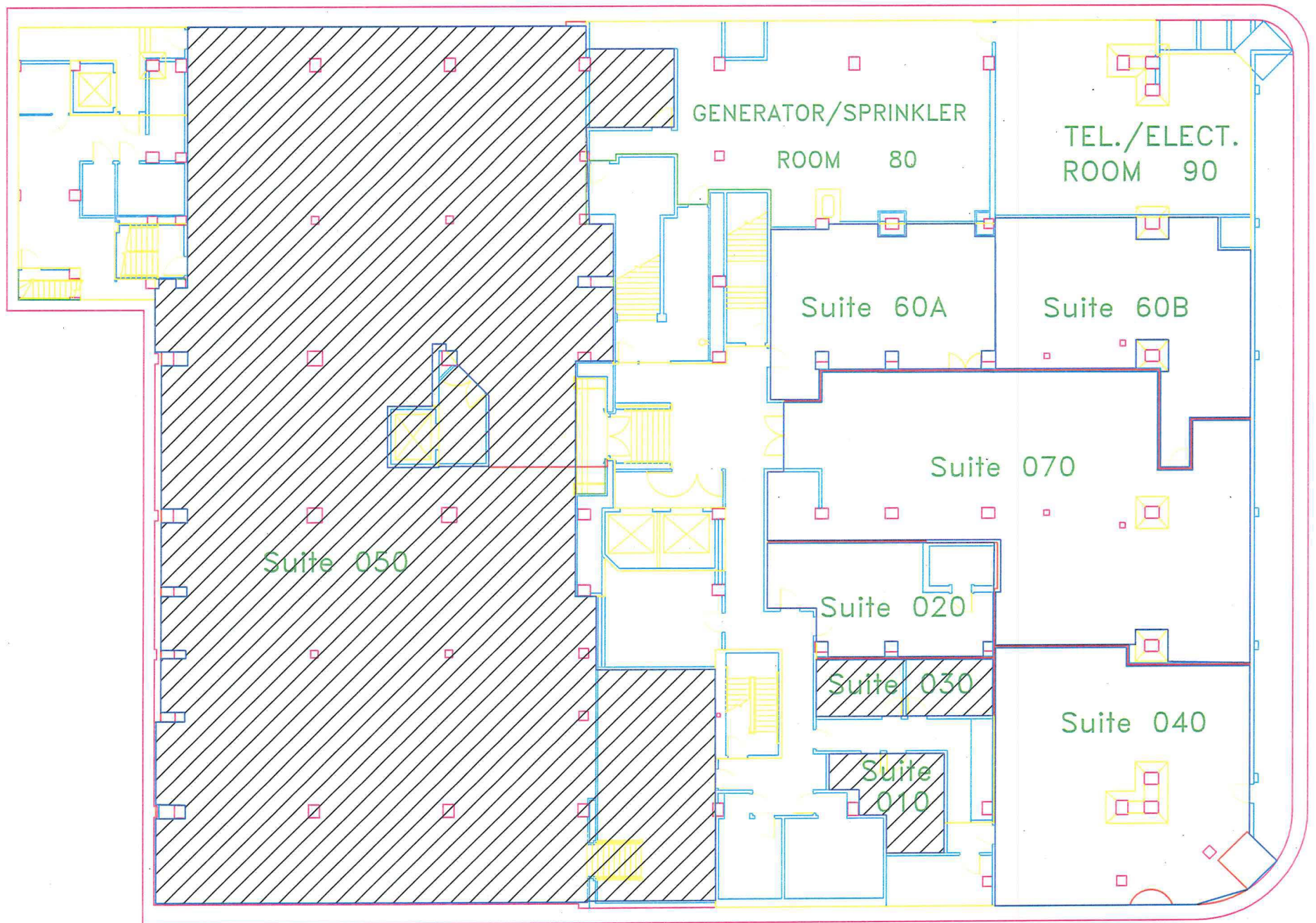
By: Amy L Brown
AMY L. BROWN
Director of Property

APPROVED AS TO FORM:

DENNIS HERRERA
City Attorney

By: Allen M. Malley
Deputy City Attorney

EXHIBIT A



25 VAN NESS AVENUE

BASEMENT

Memo to Budget and Finance Committee
November 5, 2008 Budget and Finance Committee Meeting

Item 2 - File 08-1273

Department:

Division of Real Estate (DRE)

Item:

Resolution authorizing the City to enter into a new lease consisting of approximately 12,792 rentable square feet of space with the New Conservatory Theatre Center, a California non-profit corporation, in the lower level of 25 Van Ness Ave, a City-owned building.

Location:

25 Van Ness Avenue, lower level (basement)

Purpose of Lease:

To provide performance, classroom, and administrative space for the New Conservatory Theatre Center

Lessor:

City and County of San Francisco acting by and through DRE

Lessee:

New Conservatory Theatre Center (NCTC)

Term of Subject Lease:

Four years and ten months, to commence upon approval of the proposed resolution, or approximately December 1, 2008 through September 30, 2013, subject to extension options (see Options to Extend below).

No. of Sq. Ft:

12,792 square feet

Rent Payable to DRE:

The monthly base rent is \$7,036, or \$0.55 per square foot per month, for a total annual base rent of \$84,432.

Utilities and

Janitorial Services: Under the proposed lease, NCTC will be responsible for (a) telephone charges, (b) janitorial services, and (c) any utilities or services other than or in excess of the standard utilities and services. The standard utilities and services that the City will provide are heating, air conditioning, lighting, refuse removal, and water and sewer charges.

Options to Extend: The proposed lease includes two five-year options for NCTC to extend the lease. The first option would extend the lease from October 1, 2013 through September 30, 2018 and the second option would extend the lease from October 1, 2018

**BOARD OF SUPERVISORS
BUDGET ANALYST**

• Solidifies NCTC's stay, ^{enally} grants
• Continuation of rental
revenue since late 1995
• Limits CCSE liabilities
relative to future flooding
events.

Provides
Revenue
Income
beginning
in
2013

Standard
base
basmt
rate of
\$.94 / sq

w/ CPI inflation

Memo to Budget and Finance Committee
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through September 30, 2023. The proposed lease states that the rental rate would be adjusted on the first day of each extension and each one year anniversary thereafter in accordance with the increase in the Consumer Price Index, subject to a minimum increase of 3 percent per year and a maximum increase of 8 percent per year.

**Limitation on Repair
Obligations for
Water Damage:**

The proposed lease contains contingencies that limit the financial liability of the City for water damage costs.¹ In the event of flooding or water intrusion, water damage costs would be allocated between the NCTC and the City in the following manner: a) NCTC would be responsible for the first \$11,000 of water damage costs; b) the City would be responsible for water damage costs exceeding the first \$11,000 up to an additional \$11,000; and c) NCTC and the City would either equitably allocate any water damage costs exceeding aggregate costs of \$22,000 or choose to terminate the lease.

Background:

According to Mr. John Updike, Assistant Director, Division of Real Estate, the current lease between NCTC and the City commenced on May 15, 1998 at a fixed five-year rate of \$12,793 per month. That lease was subject to Board of Supervisors approval. On January 15, 2003, NCTC exercised its first option to extend the lease for three additional years, effective May 15, 2003 through May 14, 2006 at a rate of \$14,712 per month. That rental rate was reduced to \$14,072 per month, a reduction of \$640 per month or 4.4 percent, effective September 1, 2003 through May 14, 2006, based on negotiations between Mr. Kenneth E. Winters, then Acting Director of Property, and NCTC due to a recalculation of useable space. According to Mr. Updike, although Mr. Winters did not have authority to reduce the monthly rent by \$640 at the time, both the NCTC and City proceeded from that time forward under the assumption of a \$14,072 per month base rental rate.

¹ Water damage costs are defined in Section 8.2a in the proposed lease as: "... 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" .

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In December 2005 and in August through October 2006, flooding occurred in the subject lower level space, causing damage to the Theatre's equipment and personal property. As shown in Attachment I, provided by Mr. Updike, NCTC estimated the water damage in the amount of \$47,955 for replacement costs; \$7,398 for lost revenues and incurred costs related due to cancellation of performances; and \$37,114 in estimated additional labor costs associated with repairs for water damage. In total, NCTC estimated and invoiced the City for \$92,467 in water damage costs, for which they were reimbursed through rental reductions and abatements described below.

In December 2005, NCTC exercised its second option to extend the lease for another three years, at a reduced rate of \$11,384 per month, effective May 15, 2006 through May 14, 2009. However, this rental rate never took effect, because in order to address the \$92,467 water damage costs explained above, borne by the NCTC, DRE agreed to a different rent adjustment effective December 15, 2005 through May 14, 2009. The rent adjustment contained the following specific provisions: (a) full abatement of the \$14,072 monthly rent for the four-month period from December 15, 2005 through April 14, 2006; (b) an ongoing abated rental rate of \$7,036 per month; and c) full abatement of \$14,072 monthly rent for the one-month period from October 15, 2006 through November 14, 2006.

A summary of the historical rental lease terms, rates and adjustments are provided in the table below:

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Lease	Date	Monthly Rent	Percentage Increase/ Decrease
Initial Lease	May 15, 1998 – May 14, 2003	\$ 12,793	-
First Renewal Option	May 15, 2003 – May 14, 2006	\$ 14,712	15.0%
First Renewal Option	September 1, 2003 – May 14, 2006	\$ 14,072	(4.5%)
Second Renewal Option*	May 15, 2006 – May 14, 2009	\$ 11,384	(19.1%)
Current Lease**	December 15, 2005 – May 14, 2009	\$ 7,036	(50%)
Proposed Lease	November 5, 2008 – September 30, 2013	\$ 7,036	0%

* Second renewal option never took effect.

** Current Lease negotiated after flooding event; 50% decrease is from the \$14,072 monthly rental rate

Description:

Approval of the proposed resolution would authorize the Department of Real Estate to execute a new lease agreement between the City and NCTC at 25 Van Ness Avenue. The subject space provides 12,792 net rentable square feet on the lower level basement of 25 Van Ness Avenue, a City-owned facility. NCTC is a nonprofit organization that offers theatre productions, adult and children's conservatory programs, and educational theatre programming.

Fiscal Impact:

According to a memorandum provided by Ms. Amy L. Brown, Director of Real Estate, Division of Real Estate (Attachment II), the prior Director of Property provided the rent adjustments to effectively reimburse the NCTC for water damage costs as well as devaluation of the property following the flooding events, although the January 3, 2008 letter on p. 6 of Attachment I that memorializes the rent adjustments does not make reference to rent adjustments for property devaluation. As shown in Attachment III prepared by the Budget Analyst, the total value of the rent reductions that DRE provided to NCTC from December 15, 2005 through November 14, 2008 will exceed the actual water damage costs incurred by NCTC by \$108,359.

Value of Rent Reductions and Rent Abatements	\$200,826
<u>Water Damage Costs</u>	<u>92,467</u>
Net Cost to City	\$108,359

BOARD OF SUPERVISORS
BUDGET ANALYST

Memo to Budget and Finance Committee
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According to Mr. Updike and as stated on page 5 of Attachment I, in Section 11 of the current lease provisions, the reduction of rental rate from \$14,072 to \$7,036 following the flooding event in December 2005 is in accordance with the provision that the Theatre "...shall be entitled to a reasonable abatement of rent during the Term until the repairs are completed to the Theatre's satisfaction." According to Mr. Updike, the Board of Supervisors approval was therefore not necessary to invoke a provision of a previously approved lease agreement, which permits rent abatements.

However, the Budget Analyst questions the assumption that these rental reductions and abatements were reasonable given a net cost of \$108,359 to the City of these abatements.

Comments:

1. According to Ms. Brown, the proposed rental rate of \$7,036 per month is comparable to a fair market value rate for the space, given the following: (a) unrepaired flood damage that still remains in the space; (b) risk of further water damage, or liability from water intrusion resulting from sidewalk leaks above, as well as, rising Hayes Creek from below; and (c) new limitations on the City's repair obligations for future water damage under the proposed lease as explained above.

2. The proposed resolution states that the term of the lease will be five years. However, as noted above, the term will actually be four years and ten months.

3. Given that (a) the City has provided rent reductions and abatements to NCTC at a net cost of \$108,359 as noted in the Fiscal Impact section above, (b) such rent reductions and abatements were not subject to the Board of Supervisors approval, and (c) the proposed rental rate would extend the rent reduction of 50 percent of the rate from the prior existing rent of \$14,072 per month as of September 1, 2003 to the monthly rent of \$7,036 for an additional 4 years and 10 months, under this subject proposed new lease, the Budget Analyst considers approval of the proposed resolution to be a policy matter for the Board of Supervisors.

Recommendations: 1. In accordance with Comment No. 2, amend the proposed resolution to provide for a term of four years and ten

BOARD OF SUPERVISORS
BUDGET ANALYST

Memo to Budget and Finance Committee
November 5, 2008 Budget and Finance Committee Meeting

months, instead of a term of five years, in order to reflect an approximate start date of December 1, 2008.

2. In accordance with Comment No. 3, approval of the proposed resolution, as amended, is a policy matter for the Board of Supervisors.



San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Phone: 415.252.3100 . Fax: 415.252.3112

ethics.commission@sfgov.org . www.sfethics.org

Received On:

File #: 220803

Bid/RFP #:

Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

1. FILING INFORMATION

TYPE OF FILING	DATE OF ORIGINAL FILING (for amendment only)
original	
AMENDMENT DESCRIPTION – Explain reason for amendment	

2. CITY ELECTIVE OFFICE OR BOARD

OFFICE OR BOARD	NAME OF CITY ELECTIVE OFFICER
Board of Supervisors	Members

3. FILER'S CONTACT

NAME OF FILER'S CONTACT	TELEPHONE NUMBER
Angela Calvillo	415-554-5184
FULL DEPARTMENT NAME	EMAIL
office of the clerk of the Board	Board.of.Supervisors@sfgov.org

4. CONTRACTING DEPARTMENT CONTACT

NAME OF DEPARTMENTAL CONTACT	DEPARTMENT CONTACT TELEPHONE NUMBER
Claudia Gorham	415-554-9850
FULL DEPARTMENT NAME	DEPARTMENT CONTACT EMAIL
ADM RED	realstateadmin@sfgov.org

5. CONTRACTOR	
NAME OF CONTRACTOR New Conservatory Theater, CA Non-Profit	TELEPHONE NUMBER 415-861-4914
STREET ADDRESS (including City, State and Zip Code) 25 Van Ness Ave., Lower Level, San Francisco, CA 94102	EMAIL

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	ORIGINAL BID/RFP NUMBER	FILE NUMBER (If applicable) 220803
DESCRIPTION OF AMOUNT OF CONTRACT \$100,135.20		
NATURE OF THE CONTRACT (Please describe) Base Rent \$100,135.20 plus tenant responsible for utilities and services. Lease for basement (lower level) of 25 Van Ness Avenue, San Francisco, CA for non-profit theater.		

7. COMMENTS

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
<input type="checkbox"/>	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Decker	Ed	Other Principal Officer
2	Hoftkin	Leah	Other Principal Officer
3	Lazarus	Eli	Other Principal Officer
4	Roux	Renee	Other Principal Officer
5	Vales	Larry	Other Principal Officer
6	Williams	Nathan	Other Principal Officer
7	Wayne	Sharon	Other Principal Officer
8	Rogers	Desiree	Other Principal Officer
9	Little	Theophilus D.	Other Principal Officer
10	Nathan	Melanie	Other Principal Officer
11	Lynch	Eve	Other Principal Officer
12	Murriel	Christopher	Other Principal Officer
13	Renfoe	Charles	Other Principal Officer
14	Decker	Ed	CEO
15	Pence	Brad	CFO
16	Hodgen	Barbara	COO
17			
18			
19			

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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☐ Check this box if you need to include additional names. Please submit a separate form with complete information. Select "Supplemental" for filing type.

10. VERIFICATION

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK

DATE SIGNED

BOS Clerk of the Board

City & County of San Francisco
London N. Breed, Mayor



Office of the City Administrator
Carmen Chu, City Administrator
Andrico Q. Penick, Director of Real Estate

July 08, 2022

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

RE: 25 Van Ness Avenue, Lower Level, New Conservatory Theater Center ("NCTC")

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 Lease was extended through September 30, 2023, with one additional extension of five years by approval of this Board on October 12, 2018 (Resolution No. 327-18); and, nine months of rent (April 2020 through December 2020) was forgiven by Ordinance No. 059-21 in April 2021 due to the hardship of the COVID-19 pandemic.

NCTC remained closed from March 2020 through June 2021. Accordingly, it was in financial hardship to pay its rent during this entire period of time. Accordingly, the Real Estate Division is requesting forgiveness of \$50,067.60 for outstanding rent from January 2021 through June 2021.

In addition, this Amendment to Lease adds another 5-year option extension for the time period of October 1, 2028 through September 30, 2033 (for a total of three 5-year options, the first one already exercised and approved by the Board in 2018). Finally, the Amendment updates specific sections of the agreement as mandated and changed by the City Attorney's Office and the Administrative Code since its commencement.

All other terms and conditions, including the calculation of Base Rent for the extensions, remains the same.

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

Respectfully,

A handwritten signature in blue ink, appearing to read "Andrico Q. Penick".

Andrico Q. Penick
Director of Real Estate