

LEASE

between

THE PALACE AT WASHINGTON SQUARE LLC,

as Landlord

and

CITY AND COUNTY OF SAN FRANCISCO,

as Tenant

For the lease of
1731-1741 Powell Street and 601 Columbus Avenue
San Francisco, California 94133

April 4, 2013

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- EXHIBIT B – Depiction of Premises and Excavation Area*
- EXHIBIT C – Notice of Lease Dates*
- EXHIBIT D – Form of Lender Consent*
- EXHIBIT E – Intentionally deleted*
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- EXHIBIT H – Form of Memorandum of Lease*

- Schedule 1-- Landlord Consultant Rates, Expenses, and Scope of Work*
- Schedule 2 – Modified CUP and SUD Ordinance*

LEASE

THIS LEASE (this "Lease"), dated for reference purposes only as of April 4, 2013, is by and between THE PALACE AT WASHINGTON SQUARE LLC, a California limited liability company ("Landlord"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Tenant"), acting by and through the San Francisco Municipal Transportation Agency ("SFMTA").

Landlord and City hereby 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:	April 4, 2013
Landlord:	THE PALACE AT WASHINGTON SQUARE LLC
Tenant:	CITY AND COUNTY OF SAN FRANCISCO
Building (<u>Section 2.1</u>):	The building ("Building") located at 1731-1741 Powell Street and 601 Columbus Avenue, San Francisco, California
Premises (<u>Section 2.1</u>):	The real property which is more particularly described on <u>Exhibit A</u> , together with all improvements located on the real property (including the Building)
Rentable Area of Premises (<u>Section 2.1</u>):	Approximately 11,835 rentable square feet
Term (<u>Section 3</u>):	Lease Commencement Date: The date this Lease is executed by Landlord and Tenant Expiration Date: The second anniversary of the Rent Commencement Date (as defined in <u>Section 4.1</u>), subject to any early termination pursuant to <u>Section 3.3</u>
Annual Base Rent (<u>Section 4.1</u>):	\$400,000
Rent Commencement Date (<u>Section 4.1</u>):	The date, if any, upon which all of the following have occurred: (i) the special use district ordinance for Board File No. 130019, submitted to the City's Board of Supervisors on January 8, 2013, as modified by substitute legislation submitted on January 29, 2013, in the form attached hereto as <u>Schedule 2</u> (the "SUD Ordinance"), shall have become effective, (ii)

City's Planning Commission shall have approved the conditional use permit motion (Case No. 2013-0050.CTZ), in the form attached hereto as Schedule 2 ("Modified CUP"), (iii) Landlord shall have delivered possession of the Premises to City in the condition required in Section 2, and (iv) the Federal Transit Administration shall have made a written determination that the extraction of subsurface tunnel boring machines ("TBMs") at the Premises requires no supplemental environmental review under 23 CFR Section 771.130(c) of the regulations implementing the National Environmental Policy Act ("NEPA")

Security Deposit (Section 4.4):

\$66,666.00

Permitted Uses (Section 5.1):

"Permitted Uses" shall mean inspecting the Building and Premises, demolishing and removing the Building, constructing the Excavation Shaft (as defined in Section 7.1), tunneling two TBMs across the Property to the Excavation Shaft, removing the TBMs, construction staging, and parking

Delivery of Premises (Section 2):

Landlord shall deliver the Premises vacant and free of any tenancies and free of the personal property of Landlord or any previous tenant or owner

Utilities and Services (Section 9):

Obtained by City at City's expense

Notice Address of Landlord (Section 23.1):

The Palace at Washington Square LLC
2731 Mission Street
San Francisco, California 94110-3103
Attn: Joel Campos

Landlord Contact Telephone No.:

(415) 669-2967

Notice Address for Tenant (Section 23.1):

San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 8th Floor
San Francisco, CA 94103
Attn: Real Estate Section
Re: Pagoda Palace
Fax No.: (415) 701-4341

with a copy to:

Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Attn: Real Estate/Finance Team

Re: Pagoda Palace
Fax No.: (415) 554-4755

Key Contact for Tenant:

Senior Manager
SFMTA Real Estate Section
Finance and Information Technology Division
1 South Van Ness, 8th Floor
San Francisco, CA 94103
(415) 701-4323

Tenant Contact Telephone No.:

Alternate Contact for Tenant:

Manager
SFMTA Real Estate Section
Finance and Information Technology Division
1 South Van Ness, 8th Floor
San Francisco, CA 94103

Alternate Contact Telephone No.:

(415) 701-4794

Landlord's Broker (Section 23.8):

Martin Kirkwood

City Right of First Offer (Section 22.1):

City shall have the right of first offer to purchase the Premises on the terms and conditions set forth in Section 22.1

Out of Pocket Costs
(Section 4.2)

City shall reimburse Landlord up to \$450,000 for its Out of Pocket Costs (as defined in Section 4.2) on the terms and conditions set forth in Section 4.2

Construction Cost Increase
(Section 4.3)

City shall reimburse Landlord up to \$1,500,000 for any Construction Cost Increase (as defined in Section 4.3) on the terms and conditions set forth in Section 4.3

Reimbursement of Backfill and Removal Costs (Section 4.4)

City shall reimburse Landlord up to \$400,000 for Removal Work and the Backfill Work (as defined in Section 4.4) associated with lowering the Excavation Shaft

2. PREMISES

In consideration of the other terms, covenants, and conditions hereof, Landlord leases to City and City leases from Landlord, subject to the provisions of this Lease, the premises identified in the Basic Lease Information, which includes the real property described in the attached Exhibit A and depicted in the attached Exhibit B, and all other improvements on or appurtenances thereon, including the Building (the "Premises"). On the Lease Commencement Date, Landlord shall, at its sole cost, deliver the Premises to City vacant and free of any tenancies and any personal property of Landlord and any previous tenant or owner.

3. TERM

3.1 Term of Lease

The Premises are leased for a term (the "Term") commencing on the Rent Commencement Date and ending on the Expiration Date specified in the Basic Lease Information, or such earlier date on which this Lease terminates pursuant to the provisions of this Lease. Notwithstanding the foregoing, in no event shall the Term commence prior to the Effective Date, as defined in Section 23.30 below.

The dates on which the Term commences and terminates pursuant hereto are referred to respectively as the "Lease Commencement Date" and the "Expiration Date". The "Rent Commencement Date" shall be the date, if any, upon which all of the following have occurred: (i) the SUD Ordinance shall have become effective, (ii) the Modified CUP shall have been approved by the City's Planning Commission, (iii) Landlord shall have delivered possession of the Premises to City in the condition required in Section 2, and (iv) the Federal Transit Administration shall have determined that extraction of the TBMs at the Premises requires no supplemental environmental review under 23 CFR Section 771.130(c) of the regulations implementing NEPA. Promptly after the Rent Commencement Date, Landlord and Tenant shall execute a letter substantially in the form of Exhibit C attached hereto, confirming the Lease Commencement Date, the Rent Commencement Date, and the Expiration Date, but either party's failure to do so shall not affect the commencement of the Term.

If the SUD Ordinance approved by the City's Board of Supervisors materially differs from the form attached as Schedule 2 to this Lease, Landlord may, in its sole discretion, revoke Landlord's agreement to (and signature of) this Lease by delivering written notice of such revocation to SFMTA within the three (3) day period immediately following the adoption of such modified SUD Ordinance by the City's Board of Supervisors. If the Modified CUP approved by the City's Planning Commission materially differs from the form attached as Schedule 2 to this Lease, Landlord may, in its sole discretion, revoke Landlord's agreement to (and signature of) this Lease by delivering written notice of such revocation within the three (3) day period the City's Planning Commission approves the Modified CUP. If SFMTA unilaterally modifies this Lease between the period that Landlord signs the Lease and SFMTA signs this Lease, Landlord may, in its sole discretion, revoke Landlord's agreement to (and signature of) this Lease by delivering written notice of such revocation to City within three (3) business days of receiving a fully executed copy of this Lease with such City changes. If Landlord timely revokes its agreement to (and signature of) this Lease, this Lease shall immediately cease to be of any force or effect.

3.2 Delivery of Possession

Landlord shall use its best efforts to deliver possession of the Premises in the condition required by this Lease on or before the Lease Commencement Date. However, if Landlord is unable to timely deliver possession of the Premises as provided above, then the validity of this Lease shall not be affected by such inability to timely deliver possession.

3.3 Early Termination

(a) If the Rent Commencement Date does not occur on or before May 1, 2013, either party shall have the right to immediately terminate this Lease by delivering written notice of such termination to the other party on or before May 15, 2013.

(b) If the beneficiary of any deed of trust encumbering record title of the Property as of the Lease Commencement Date fails to duly execute and deliver a Consent and Nondisturbance Agreement in substantially the form attached hereto as Exhibit D (the "Lender Consent ") on or before the Rent Commencement Date, either party shall have the right to immediately terminate this Lease by delivering written notice of such termination to the other party on or before tenth (10th) business day immediately following the Rent Commencement Date.

(c) If, at any time during the six (6) month period immediately following the Rent Commencement Date (the "Construction Period"), City discovers any condition at the Property (including, but not limited to, the discovery of archeological artifacts, hazardous materials, or other adverse conditions) that would, in City's reasonable judgment, delay City's completion of the Excavation Shaft by more than thirty (30) days, City shall have the right to immediately terminate this Lease by delivering written notice of such termination to Landlord prior to the expiration of the Construction Period.

(d) If, at any time during the Construction Period, a court of competent jurisdiction issues an injunction that enjoins (permanently or temporarily) all or any portion of City's demolition of the Building or construction of the Excavation Shaft, or extends the initial period of time set forth in such an injunction (each, an "Injunction Event"), City shall have the right to immediately terminate this Lease by delivering written notice of such termination to Landlord on or before the fifth (5th) day immediately following the date of such Injunction Event.

(e) City shall have the right to terminate this Lease for any other reason not specified in the foregoing subsections (a)-(d) by delivering not less than one hundred fifty (150) days' prior written notice of such termination to Landlord.

4. RENT AND PAYMENT OF ADDITIONAL COSTS

4.1 Base Rent

Prior to entering into negotiations with City for this Lease, Landlord's principal intended to commence construction of the project described in a Conditional Use Permit (Case No. 2007-1117.CV) ("Approved Landlord Project") at the Premises in 2013. As partial consideration for Landlord's agreement to delay such construction and lease the Premises to City pursuant to this Lease, and Landlord's lost opportunity costs with respect to such delay, City agrees to pay the annual Base Rent specified in the Basic Lease Information (the "Base Rent") and to provide all other consideration to Landlord, whether characterized as "Rent" or otherwise, provided under this Lease.

Beginning on the Rent Commencement Date, City shall pay the Base Rent to Landlord during the Term. The Base Rent shall be payable in equal consecutive monthly payments on or before the first day of each month, in advance, at the address specified for Landlord in the Basic Lease Information, or such other place as Landlord may designate in writing upon not less than thirty (30) days' advance notice. City shall pay the Base Rent without any prior demand and without any deductions or setoff except as otherwise provided in this Lease. If the Rent Commencement Date occurs on a day other than the first day of a calendar month or the Expiration Date occurs on a day other than the last day of a calendar month, then the monthly payment of the Base Rent for such fractional month shall be prorated based on a thirty (30)-day month.

If City fails to make any monthly installment of Base Rent by the tenth (10th) day of such month (or with respect to the first installment of Base Rent, by the tenth (10th) day after the Rent Commencement Date), or fails to pay any other amount owed by City to Landlord under this Lease when the same is due, City shall pay to Landlord on demand a late charge equal to five percent (5%) of such delinquent monthly installment of Base Rent or such other amount owed by City to Landlord, as applicable. The Base Rent and all other amounts to be paid by City to Landlord pursuant to this Lease shall be sometimes collectively referred to in this Lease as "Rent."

The parties acknowledge and agree that the Base Rent has been arrived at by way of compromise. Therefore, the Base Rent shall not be used by Landlord or Tenant for the purposes of attempting to value the Premises.

4.2 Reimbursement of Out of Pocket Costs

The Approved Landlord Project contemplated the rehabilitation of the Building, and Landlord submitted a site permit application for the Approved Landlord Project to City's Department of Building Inspection in 2012. Landlord will need to submit a new site permit application for the project described in the Modified CUP (the "Modified Landlord Project") and may need to alter the Modified Landlord Project designs and drawings to reflect changed Property conditions resulting from City's demolition and removal of the Building or construction of the Excavation Shaft. Subject to the requirements of this Section, City shall reimburse to Landlord up to a maximum amount of \$450,000 for (a) the costs, fees, and brokerage commissions (collectively, "Out of Pocket Costs") incurred by Landlord since and including December of 2012 in having its building contractors, attorneys, brokers, architects, structural engineers, construction managers, accountants, financial advisors, and other consultants (each of whom shall be duly licensed for such occupation by the State of California, to the extent such licensing is required for such profession) (each, a "Landlord Consultant") negotiate and evaluate the Lease (including without limitation its proposed terms, conditions, value, construction scope, allowances, and potential impact on the Modified Landlord Project), review all materials provided by City in connection with this Lease and City's proposed improvements at the Premises, prepare a new conditional use permit application for the construction of the Modified Landlord Project through new construction rather than through a rehabilitation of the Building, review and comment upon the SUD Ordinance, construction management and oversight on behalf of Landlord of the City's work at the Premises pursuant to this Lease (the "City Work"), and re-design the Modified Landlord Project to address any modifications reasonably required as a result of the City Work after the Modified CUP is approved, provided that the fees charged by a Landlord Consultant shall not exceed the applicable hourly rates in the attached Schedule 1 (to the extent such Landlord Consultant is named in Schedule 1), and shall be for the scope of work and expenses specified above, (b) to the extent that any costs, fees, and expenses incurred by Landlord to submit a complete site permit application to the City for the Modified Landlord Project upon the termination of this Lease exceed, or are in addition to, the costs, fees, and expenses Landlord incurred in submitting a complete site permit application to the City for the Approved Landlord Project, including without limitation, any additional materials required for complete site permit applications as of the termination of this Lease that were not required for a complete site permit application as of December 4, 2012, (c) any increase in fees or exactions (including transportation improvement fees, transit fees, child care requirements or in-lieu fees, housing (including affordable housing) requirements or fees, residential hotel and residential unit replacement requirements or in lieu fees, dedication or reservation requirements, water and sewer capacity charges, and obligations for on-or off-site improvements, or school district fees, and any fees, taxes, assessments impositions imposed by non-City agencies) assessed or payable at the time a site permit for the Modified Landlord Project is issued, as compared to the fees or exactions assessed or payable if the site permit application or other application for the Approved

Landlord Project had been issued on December 4, 2012, (d) the initial fee charged by City to install a white zone at the Powell Street frontage for the Property and a bulb out at the corner of Powell Street and Columbus Avenue that abuts the Premises, subject to receipt of all regulatory approvals required for such white zone and bulb out, and (e) Landlord's payment of Real Property Taxes (as defined in Section 6) during the Term.

City acknowledges that Landlord may from time to time elect to retain Landlord Consultants in addition to, or different from, the Landlord Consultants named in Schedule 1, but such additional or different Landlord Consultants shall be paid at no more than the appropriate hourly rate established for a named Landlord Consultant performing a comparable role. If there is an additional or different Landlord Consultant that does not have such a comparable role to the named Landlord Consultant, the fee charged by such additional or different Landlord Consultant shall be commercially reasonable. All reimbursements made by City pursuant to this Section 4.2 shall be in lawful money of the United States of America, in immediately-available funds, and without offset or deduction.

Prior to any such reimbursement, Landlord shall submit to City a copy of each invoice Landlord receives for such costs, together with reasonable backup information regarding the services provided or amount charged and Landlord's payment of such costs. City shall have ten (10) business days following the receipt of each invoice to object to such invoice by written notice to Landlord, in which case Landlord, the Landlord Consultant and City shall meet and confer within five (5) business days following the end of such ten (10) business day period to discuss such invoice and, either approve such invoice or, if City and Landlord mutually agree, adjust the amount to be paid by City, which amount shall be based on the applicable rates set forth in the attached Schedule 1, or if there are no such applicable rates thereon, then on commercially-reasonable rates. If City does not object to an invoice within such ten (10) business day period, City shall pay Landlord the entire amount due on or before the twenty-fourth (24th) day following the City's receipt of the original invoice. If City does object to an invoice within such ten (10) business day period, City shall pay Landlord the amount due that is not in dispute on or before the twenty-fourth (24th) day following the City's receipt of the original invoice. City shall pay Landlord the amount due that is in dispute on or before the twenty-fourth (24th) day following City's later approval thereto or the parties' mutual agreement to modify the disputed portion of such invoice.

City shall not unreasonably withhold, condition, or delay its approval of any such invoice. The parties shall meet within the ten (10) business day period immediately following City's notification to Landlord of its disagreement to an invoice. If the parties do not agree on the amount of the invoice that is in dispute on or before the thirty-fifth (35th) day following the City's receipt of the original invoice, then either party may elect to submit such dispute to binding arbitration at anytime thereafter by mutually selecting an arbitrator from a then-existing arbitrator list of JAMS, Inc., in San Francisco, California, to resolve such dispute in accordance with the laws of the State of California pursuant to the JAMS Streamlined Arbitration Rules and Procedures. The parties shall each pay one-half (1/2) of the mutually-selected arbitrator's fee for such service. If the parties are unable to mutually agree to an arbitrator, each party shall select an arbitrator from the existing JAMS list, and those two arbitrators will then select a third arbitrator from the JAMS list. The third arbitrator selected shall resolve such dispute in accordance with the laws of the State of California pursuant to the JAMS Streamlined Arbitration Rules and Procedures. In such event, the parties shall each pay the fee charged by its selected arbitrator for such service, together with one-half (1/2) of the third arbitrator's fee for such service.

4.3 Reimbursement of Construction Cost Increases

(a) An "Approved Construction Company" shall mean a construction company that holds a Class A license and has experience constructing mixed use developments in the San Francisco Bay Area. Subject to the requirements of this Section, and provided (i) this Lease is not revoked or terminated pursuant to Section 3.1, Section 3.3(a) or Section 3.3(b) or with respect to an Injunction Event for the demolition of the Building pursuant to Section 3.3(d), and (ii) Landlord receives a site permit to construct the Modified Landlord Project within the time period for such receipt specified in the Modified CUP (as such time period may be extended from time to time, and SFMTA agrees that it will not oppose any such extension due to any holdover at the Premises by City beyond the Expiration Date) (the "Application Period"), City shall reimburse Landlord, as additional consideration for this Lease, up to a maximum amount of \$1,500,000, for any Construction Cost Increase (as defined below). All reimbursements made by City pursuant to this Section 4.3 shall be in lawful money of the United States of America, in immediately-available funds, and without offset or deduction. If Landlord does not timely receive such site permit, Landlord shall return the entire Construction Cost Increase reimbursement amount previously paid by SFMTA to SFMTA within the thirty (30) day period immediately following the expiration of the Application Period.

The "Construction Cost Increase" shall mean the lower amount of (i) the Future Construction Amount (defined as follows) less the Base Construction Amount (defined as follows), and (ii) \$1,500,000. The "Future Construction Amount" shall mean the projected cost to construct the Modified Landlord Project during the one (1) year period following the termination of this Lease, as established by a commercially reasonable construction bid (the "Future Bid") for the Project Scope of Work and construction drawings for the Modified Landlord Project that is prepared by an Approved Construction Company during the final sixty (60) days of the Term (as may be revised pursuant to this Lease, including but not limited to Section 3.3(c) and, with respect to an Injunction Event as to the construction of the Excavation Shaft, Section 3.3(d)). Landlord shall obtain the Future Bid at its sole cost, and shall deliver a copy of Future Bid to City prior to the termination of this Lease. The "Base Construction Amount" shall be the Future Construction Amount reduced proportionately to reflect the reduction (if any) in general construction cost increases for the San Francisco Bay Area between the date of the Future Bid and the Lease Commencement Date, as reflected in the Construction Cost Index for San Francisco published in the Engineering News-Record for February of 2013 and for the month in which the termination of this Lease occurs.

City shall not unreasonably withhold, condition, or delay its approval of the Future Bid. If City believes Landlord's submitted Future Bid is not commercially reasonable, then within fourteen (14) days of receiving the Future Bid, City shall notify Landlord of such matter in writing, and specifically state in such written notice the scope and cost of the portion of the Future Bid City believes is not commercially reasonable. In the event the City provides such notice of its contention that the Future Bid is not commercially reasonable, then within seven (7) days of delivering written notice thereof to Landlord, the parties and their appropriate consultants shall meet to discuss such matter. If the parties are unable to reach agreement on such matter within thirty (30) days of City's delivery of such notice, then the parties shall retain a mutually-selected Approved Reviewer (as defined below) to review the submitted Future Bid, and instruct such mutually-selected Approved Reviewer to provide, within thirty (30) days of receiving such submitted Future Bid, its determination as to whether the Future Bid as a whole is commercially reasonable; and if the Approved Reviewer determines that the Future Bid is not commercially reasonable, then the Approved Reviewer is authorized to provide suggested modifications with respect to the scope and cost of the portion of the Future Bid that City believes is not commercially reasonable, for the parties' consideration. Each party shall pay fifty percent (50%) of the fee charged by the mutually-selected Approved Reviewer to review the submitted Future

Bid and provide its suggested modifications (if any) thereto. An "Approved Reviewer" shall mean Webcor Builders, Inc., Cahill Construction, Inc., or any other licensed construction company mutually selected by the parties.

If the parties do not mutually agree on the selection of an Approved Reviewer within thirty-five (35) days of City's receipt of the Future Bid, then the parties agree to submit such dispute to binding arbitration by mutually selecting an arbitrator from a then-existing arbitrator list of JAMS, Inc., in San Francisco, California, to resolve such dispute in accordance with the laws of the State of California pursuant to the JAMS Streamlined Arbitration Rules and Procedures. The parties shall each pay one-half (1/2) of the mutually-selected arbitrator's fee for such service. If the parties are unable to mutually agree to an arbitrator, each party shall select an arbitrator from the existing JAMS list, and those two arbitrators will then select a third arbitrator from the JAMS list. The third arbitrator selected shall resolve such dispute in accordance with the laws of the State of California pursuant to the JAMS Streamlined Arbitration Rules and Procedures. In such event, the parties shall each pay the fee charged by its selected arbitrator for such service, together with one-half (1/2) of the third arbitrator's fee for such service.

Landlord represents that its principal made preparations to immediately develop the Landlord Approved Project in 2013 and agreed to delay construction of the Landlord Approved Project on the express condition and assumption that City, at its sole cost and expense, will demolish and remove the Building (provided this Lease is not revoked or terminated pursuant to Section 3.1, Section 3.2(a), or Section 3.2(b) or with respect to an Injunction Event for the demolition of the Building pursuant to Section 3.2(d)) and perform its other obligations under this Lease. Landlord intends to commence construction of the Modified Landlord Project immediately upon the expiration of this Lease. For these reasons, Landlord believes it will suffer significant damage if City fails to perform its material obligations under this Lease.

(b) Provided that (i) Landlord delivers written evidence that the Modified Landlord Project's potential or actual construction lender, or the lender that currently is the beneficiary under the deed of trust encumbering the Premises and recorded in the Official Records of San Francisco County on June 25, 2004, as Instrument No. 2004-H752043-00 (collectively, "Landlord's Lender") requires a deposit of up to \$750,000 as a condition to extend such construction loan to Lender, (ii) such deposit will be held by Landlord's Lender in a segregated, interest-bearing account ("Construction Account") that will only be used to pay for the Modified Landlord Project construction costs, unless otherwise disbursed to City pursuant to a written agreement between City and Landlord's Lender (and if required by Landlord's lender, Landlord shall also be a party) that governs the use and disbursement of the Construction Account (the "Account Agreement"). The Account Agreement shall require the delivery of monthly statements to City summarizing the balance of the Construction Account as of the date of such statement. The Account Agreement shall provide for the automatic disbursement of the total amount deposited in the Construction Account by City, together with all interest earned thereon, to City within the thirty (30) day period immediately following the termination of this Lease under subsections (a) or (b) of Section 3.3 or under Section 3.3(d) with respect to an Injunction Event for the demolition of the Building and, if such Account Agreement is with a Landlord's potential construction lender for the Modified Landlord Project, such Account Agreement shall further specify that the total amount deposited in the Construction Account by City, together with all interest earned thereon, is immediately and automatically disbursed to City if such potential construction lender does not timely issue a written commitment to make such construction loan to Landlord. To the extent that Landlord is unable to secure such a commitment from its lender, then Landlord will have 120 days to secure a commitment from another lender and have the Construction Account transferred to such other lender. Notwithstanding the foregoing provisions of this Section 4.3(b), Landlord and Tenant may

mutually agree to have the Construction Account held and maintained by a third party escrow holder (as opposed to Landlord's Lender) under essentially the same terms and conditions as set forth in this Section 4.3.

(c) If City approves the Future Bid as delivered by Landlord, and the Construction Cost Increase is more than the total funds in the Construction Account as of the date the Future Bid is delivered to City, City shall pay the balance of the amount of such difference (such that the total of the funds in the Construction Account as of the date the Future Bid is delivered to City, plus the balance of the Construction Cost Increase paid to Landlord pursuant to this grammatical paragraph, equals the Construction Cost Increase) to Landlord as additional consideration under this Lease within thirty (30) days after the Future Bid is delivered to City.

If City approves the Future Bid as delivered by Landlord, and the Construction Cost Increase is less than the total funds in the Construction Account as of the date the Future Bid is delivered to City, such excess balance of the Construction Account shall be returned to City within thirty (30) days after the Future Bid is delivered to City.

If City does not approve of a portion of the Future Bid pursuant to Section 4.3(a), but approves a portion of the Future Bid that establishes a Construction Cost Increase, and such mutually approved portion of the Construction Cost Increase equals or exceeds the total funds in the Construction Account as of the date the Future Bid is delivered to City, City shall pay the balance of the amount of such undisputed difference, if any (such that the total of the funds in the Construction Account as of the date the Future Bid is delivered to City, plus the balance of the Construction Cost Increase paid to Landlord pursuant to this grammatical paragraph, equals the mutually approved Construction Cost Increase) to Landlord as additional consideration under this Lease within thirty (30) days after the Future Bid is delivered to City; and City shall immediately authorize Landlord's Lender to disburse the entire amount of the Construction Account to pay for the Modified Landlord Project construction costs. If any amount of such disputed portion of any proposed Construction Cost Increase is later agreed to by the parties or decided by arbitration under Section 4.3(a) in favor of Landlord, City shall deliver such additional amount to Landlord within thirty (30) days of the resolution of such disputed portion.

If City does not approve of an entire Future Bid pursuant to Section 4.3(a), but approves a portion of the Future Bid that establishes a Construction Cost Increase, and such mutually approved portion of the Construction Cost Increase is less than the total funds in the Construction Account as of the date the Future Bid is delivered to City, but the Future Bid establishes a Construction Cost Increase that equals or exceeds the total funds in the Construction Account as of the date the Future Bid is delivered to City, City shall authorize Landlord's Lender to disburse the undisputed amount of the Construction Account to pay for the Modified Landlord Project construction costs. If any amount of such disputed portion of any proposed Construction Cost Increase is later agreed to by the parties or decided by arbitration under Section 4.3(a) in favor of Landlord, City shall authorize Landlord's Lender to disburse out of the Construction Account an amount equal to the lesser of such additional amount or the remaining balance of the Construction Account, to pay for the Modified Landlord Project construction costs, within ten (10) days of the resolution of such disputed portion; and to the extent such disbursement is less than the additional amount of the Construction Cost Increase, City shall deliver the remaining portion of such additional amount to Landlord within thirty (30) days of the resolution of such disputed portion.

If City does not approve of a portion of the Future Bid pursuant to Section 4.3(a), and the Future Bid establishes a Construction Cost Increase that is less than the total funds in the Construction Account as of the date the Future Bid is delivered to City, such excess balance of

the Construction Account shall be returned to City within thirty (30) days after the Future Bid is delivered to City; and City shall immediately authorize Landlord's Lender to disburse the undisputed amount of the Construction Account to pay for the Modified Landlord Project construction costs. If any amount of such disputed portion of any proposed Construction Cost Increase is later agreed to by the parties or decided by arbitration under Section 4.3(a) in favor of City, an equivalent amount of such portion shall be returned to City within thirty (30) days of the resolution of such disputed portion. If any amount of such disputed portion of any proposed Construction Cost Increase is later agreed to by the parties or decided by arbitration under Section 4.3(a) in favor of Landlord, City shall authorize Landlord's Lender to disburse such amount out of the Construction Account to pay for the Modified Landlord Project construction costs, within ten (10) days of the resolution of such disputed portion.

(d) The parties acknowledge and agree that the amounts to be paid by City to Landlord under this Section 4.3 are additional consideration for the delay created by this Lease in developing the Modified Landlord Project, and that such amounts are not assisting or subsidizing the construction of the Modified Landlord Project. The parties agree that the payment of such amounts shall not be deemed to make the Modified Landlord Project a public improvement that is subject to any prevailing wage (or any similar public improvement construction) requirements. If in fact such agreement is incorrect and payments made by City pursuant to this Lease, or City's performance of the City Work, does subject the Modified Landlord Project to any prevailing wage (or any similar public improvement) requirements, City agrees that any and all increased costs due to the imposition of prevailing wage (or other similar public improvement) requirements shall be includible in the Future Bid and reimbursable to Landlord pursuant to the foregoing provisions of this Section 4.3.

4.4 Reimbursement of Backfill and Removal Costs

Landlord and City acknowledge that it is necessary to lower the Excavation Shaft in order to accommodate the construction of the Modified Landlord Project. Landlord accordingly intends to excavate around the Excavation Shaft to expose the walls of the Excavation Shaft, to cut and remove the secant piles that comprise the walls of the Excavation Shaft down to a level that will be seven feet (7') below the bottom of the building slab for the Modified Landlord Project (the "Removal Work"), and backfill the portion of the Excavation Shaft to a depth of approximately twelve feet (12') below ground surface (bgs) (the "Backfill Work"), to accommodate the construction of the Modified Landlord Project. If Landlord elects to perform the Removal Work and the Backfill Work, or any portion thereof, during the Application Period (under Section 4.3) and following the termination of this Lease (as may be revised pursuant to this Lease, including but not limited to Section 3.3(c) and, with respect to an Injunction Event as to the construction of the Excavation Shaft, Section 3.3(d)), City shall reimburse to Landlord up to the Backfill and Removal Amount (defined as follows) for the costs and fees (collectively, "Backfill and Removal Costs") incurred by Landlord in having its building contractor (whom shall be duly licensed by the State of California) (each, a "Landlord Building Contractor") perform the Removal Work and the Backfill Work, provided that the fees charged by a Landlord Building Contractor shall not exceed the applicable hourly rates in the attached Schedule 1 and shall be for the scope of work and expenses specified above. The Backfill and Removal Costs may include (1) the cost of excavating around the Excavation Shaft an additional seven (7) feet below the bottom of the designed Modified Landlord Project slab in order to expose the walls of the Excavation Shaft to cutting and removal; (2) the cost to cut and remove the secant piles of the Excavation Shaft such that the remaining top of the Excavation Shaft is situated seven (7) feet below the bottom of the designed slab for the Modified Landlord Project; (3) the cost of backfilling and compacting this additional seven (7) foot excavated area to the level of the bottom of the designed Modified Landlord Project slab; and (4) all consulting costs incurred by Landlord associated with such work.

The "Backfill and Excavation Amount" shall mean a maximum amount of \$400,000, which is the product of the estimated \$1,500,000 cost to perform the Removal Work and the Backfill Work, less an estimated \$1,100,000 credit that reflects City's costs to demolish the Building and Landlord's saved costs in constructing the Modified Landlord Project without needing to rehabilitate the Building. (This credit is only applicable to calculating costs under this Section 4.4 and does not apply anywhere else in the Lease.) City acknowledges that Landlord may from time to time elect to retain a Landlord Building Contractor in addition to, or different from, the Landlord Building Contractor named in Schedule 1, but such additional or different Landlord Building Contractor shall be paid at no more than the appropriate hourly rate established for the named Landlord Building Contractor in Schedule 1. All reimbursements made by City pursuant to this Section 4.4 shall be in lawful money of the United States of America, in immediately-available funds, and without offset or deduction.

Prior to any such reimbursement pursuant to this Section 4.4, Landlord shall submit to City a copy of each invoice Landlord receives for such costs, together with reasonable backup information regarding the services provided or amount charged and Landlord's payment of such costs. City shall have ten (10) business days following the receipt of each invoice to object to such invoice by written notice to Landlord, in which case Landlord, the Landlord Building Contractor and City shall meet and confer within five (5) business days following the end of such ten (10) business day period to discuss such invoice and, either approve such invoice or, if City and Landlord mutually agree, adjust the amount to be paid by City, which amount shall be based on the applicable rates set forth in the attached Schedule 1, or if there are no such applicable rates thereon, then on commercially-reasonable rates. If City does not object to an invoice within such ten (10) business day period, City shall pay Landlord the entire amount due on or before the twenty-fourth (24th) day following the City's receipt of the original invoice. If City does object to an invoice within such ten (10) business day period, City shall pay Landlord the amount due that is not in dispute on or before the twenty-fourth (24th) day following the City's receipt of the original invoice. City shall pay Landlord the amount due that is in dispute on or before the twenty-fourth (24th) day following City's later approval thereto or the parties' mutual agreement to modify the disputed portion of such invoice.

City shall not unreasonably withhold, condition, or delay its approval of any such invoice. The parties shall meet within the ten (10) business day period immediately following City's notification to Landlord of its disagreement to an invoice. If the parties do not agree on the amount of the invoice that is in dispute on or before the thirty-fifth (35th) day following the City's receipt of the original invoice, then either party may elect to submit such dispute to binding arbitration at anytime thereafter by mutually selecting an arbitrator from a then-existing arbitrator list of JAMS, Inc., in San Francisco, California, to resolve such dispute in accordance with the laws of the State of California pursuant to the JAMS Streamlined Arbitration Rules and Procedures. The parties shall each pay one-half (1/2) of the mutually-selected arbitrator's fee for such service. If the parties are unable to mutually agree to an arbitrator, each party shall select an arbitrator from the existing JAMS list, and those two arbitrators will then select a third arbitrator from the JAMS list. The third arbitrator selected shall resolve such dispute in accordance with the laws of the State of California pursuant to the JAMS Streamlined Arbitration Rules and Procedures. In such event, the parties shall each pay the fee charged by its selected arbitrator for such service, together with one-half (1/2) of the third arbitrator's fee for such service.

4.5 Security Deposit

On or before the fifth (5th) day immediately following the Rent Commencement Date, City shall deposit with Landlord the sum specified as the security deposit in the Basic Lease Information (the "Security Deposit"), in cash, to secure City's faithful performance of all terms,

covenants and conditions of this Lease. Landlord shall comply with all applicable laws with respect to its retention, use and return of the Security Deposit, and for any damages that Landlord may incur as a consequence of any default by City under this Lease, and City shall not be entitled to interest thereon. Landlord shall deliver no less than fifteen (15) business days' prior written notice of its determination that it is entitled to use the Security Deposit for an uncured Event of Default (as defined in Section 15.1). If Landlord uses or applies the Security Deposit or any portion thereof, City shall, within ten (10) days after demand deposit cash with Landlord in an amount sufficient to restore the Security Deposit to the full amount, and City's failure to do so shall be deemed a material breach of this Lease. Upon termination of the original Landlord's or any successor owner's interest in the Premises, the original Landlord or such successor owner shall be released from further liability with respect to the Security Deposit upon the original Landlord's or such successor owner's complying with California Civil Code Section 1950.7 and the succeeding owner of the Premises assuming Landlord's obligations under this Lease in writing. Subject to the foregoing, City hereby waives the provisions of Section 1950.7 of the California Civil Code that limit Landlord to using a security deposit only as reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by City, or to clean the Premises, it being agreed that Landlord may, in addition, claim those sums reasonably necessary to compensate Landlord for any other loss or damage caused by the default of City under any City obligation under this Lease that is to be performed on or before the termination of this Lease. If City defaults under any such obligation and Landlord brings an action for such default pursuant to California Civil Code Section 1951.2, the parties agree that Landlord shall have the right to (i) retain the Security Deposit until the time of entry of an award in any action brought by Landlord pursuant to California Civil Code Section 1951.2, and (ii) offset the Security Deposit against any such award. In the event the Security Deposit exceeds the amount of the award, Landlord shall refund to City any remainder within thirty (30) days of the entry of the award.

5. USE

5.1 Permitted Use

City and its Agents (as defined in Section 23.5) and Invitees (as defined in Section 23.5) may use the Premises for the Permitted Uses. City shall not use the Premises for any other use without the prior written consent of Landlord, which shall not be unreasonably withheld or delayed.

5.2 Interference with Access or Use

Landlord shall not restrict access to the Premises. If City's use of any of the Premises or access thereto is interrupted as a result of the Premises being rendered unsafe for human occupancy due to Landlord's failure to comply with its obligations under this Lease or for any other reason other than an Event of Default hereunder, then Landlord shall immediately undertake all necessary steps to correct such condition; provided, however, that City acknowledges that it accepts the Building in its current "as is" condition, and that Landlord has no obligation under this Lease to correct any existing condition at the Building or the Premises; provided Landlord does have an obligation to deliver the Premises in the condition specified in Section 2. In the event such condition continues for two (2) business days and impairs City's ability to perform any of the Permitted Uses at the Premises, the Rent payable hereunder shall be abated based on the extent to which such default interferes with City's ability to perform any of the Permitted Uses at the Premises. If any such default by Landlord shall continue for thirty (30) days or more after City's use is interrupted and impairs City's ability to perform any of the Permitted Uses at the Premises, then City shall have the right, without limiting any of its other rights under this Lease to terminate this Lease. Nothing in this Section shall limit City's rights

with respect to any disruption due to casualty pursuant to Section 12 (Damage and Destruction) hereof.

6. TAXES

Landlord shall pay, at its sole cost, all Real Estate Taxes, subject to any reimbursement pursuant to Section 4.2. "Real Estate Taxes" means all taxes, assessments and charges levied upon or with respect to Building and the Premises. Real Estate Taxes shall include, without limitation, all general real property taxes and general and special assessments, charges, fees, or assessments for transit, housing, police, fire, or other governmental services thereof, service payments in lieu of taxes that are now or hereafter levied or assessed against Landlord by the United States of America, the State of California or any political subdivision thereof, public corporation, district, or any other political or public entity, and shall also include any other tax, fee or other excise, however described, that may be levied or assessed as a substitute for, or as an addition to, in whole or in part, any other Real Estate Taxes.

7. ALTERATIONS

7.1 Initial Improvements by City

If the Rent Commencement Date occurs and this Lease is not revoked or terminated pursuant to Section 3.1, Section 3.3(b), or Section 3.3(d), for an Injunction Event related to City's demolition of the Building, City shall, at its sole cost and expense, demolish and remove the Building through conventional demolition methods, with all subsurface Building improvements removed unless such improvements are reasonably necessary to provide subjacent or lateral support to any properties abutting the Premises (together with any improvements on such abutting properties); provided, however, that City shall have the right to place crushed concrete (that is derived from such demolition work on the Property, does not contain any Hazardous Material (as defined in Section 21.1(b)) or rebar, and is broken into pieces that are no larger than 3" in diameter) on the Property as described on the draft demolition plans attached hereto as Exhibit F (the "Demolition Crushed Concrete"). By way of example, to the extent that the subsurface portion of the Building's back wall provides support to the adjacent property and its improvements, it shall not be removed as part of such demolition and removal work. City shall have no obligation to demolish or remove any portion of adjacent property improvements that encroach on the Premises. City shall deliver to Landlord a copy of the final plans and specifications for the demolition and removal of the Building (the "Final Demolition Plans"), which Final Demolition Plans shall not materially deviate from the draft demolition plans except to the extent such material deviations are required by City's Department of Building Inspection or any other regulatory entity with jurisdiction over such matter, no less than seven (7) days prior to commencing the demolition of the Building.

Provided this Lease is not revoked or terminated pursuant to Section 3.1 or subsections (a)-(c) of Section 3.3, City shall have the right to construct an excavation shaft (the "Excavation Shaft") on the portion of the Premises depicted in the attached Exhibit B (the "Excavation Location") in substantial compliance with the shaft specifications and drawings attached hereto as Exhibit F (the "Initial Shaft Plans and Specifications"), and as further modified as set forth in Paragraph 20. City shall deliver to Landlord a copy of the final plans and specifications for the construction of the Excavation Shaft (the "Final Shaft Plans") no less than seven (7) days prior to commencing the construction of the Excavation Shaft. City shall have the right to construct two tunnel bores (the "Bores") on the Premises in substantial compliance with the tunnel bore specifications and drawings attached hereto as Exhibit F (the "Initial Bore Plans and Specifications"). City shall not demolish any existing improvement on the Premises needed to

provide, nor take any action that would remove existing, lateral or subjacent support to property and improvements adjacent to the Premises.

City acknowledges that its agreement pursuant to this Lease to demolish and remove the Building (provided this Lease is not revoked or terminated pursuant to Section 3.1, subsections (a)-(c) of Section 3.3, or Section 3.3(d) with respect to an Injunction Event for such demolition) in the manner specified in Section 7.1 and, if it constructs the Excavation Shaft, its agreement pursuant to this Lease to perform such Excavation Shaft construction in compliance with the Final Shaft Plans, and any subsequent modifications, are critical components of the consideration to be provided under this Lease, and that Landlord would not have agreed to this Lease but for the City's agreement to such matters. If City fails to so demolish and remove the Building in compliance with the Final Demolition Plans or, if City constructs the Excavation Shaft and fails to perform such construction in compliance with the Final Shaft Plans, or fails to modify the Excavation Shaft as stated in the Lease, and City does not cure such matter following its receipt of Landlord's written notice of such failure, Landlord shall have the right to pursue and receive all of its available remedies at law and in equity, including without limitation recovering monetary damages for the cost of performing such work and/or obtaining specific performance, because monetary damages alone may not be sufficient to remedy such a breach of this Lease. In addition, within thirty (30) days after receiving Landlord's written request from time to time during the Term, City shall provide to Landlord (in a commercially reasonable and understandable format) current information pertaining to ground subsidence as it affects the Premises to the extent that City places instrumentation devices in the vicinity of the Premises as part of City's construction of either subsurface tunnel with the TBMs.

Prior to commencing any construction of the Excavation Shaft, City shall install a construction fence completely surrounding the Premises, with such fencing complying with all applicable laws. Landlord acknowledges that City shall remove such construction fence from the Premises on the termination of this Lease, and Landlord shall be solely responsible for making its own arrangements for the installation of a replacement construction fence at the Premises thereafter. In addition, City shall provide to Landlord copies of any and all Department of Building Inspection inspection approvals associated with the City Work, concurrently with City's receipt thereof. City shall provide to Landlord in writing a tentative schedule for the performance of the City Work at least seven (7) days prior to commencing the demolition of the Building, and City shall, contemporaneously with the date any modifications to such schedule, provide Landlord with written copies of the modified schedule.

7.2 Alterations

Other than the demolition and removal of the Building and any construction and modification of the Excavation Shaft and the Bores pursuant to this Lease, City shall not make or permit any alterations, installations, additions or improvements (collectively, "Alterations") to the Premises without first obtaining Landlord's written consent, which Landlord shall not unreasonably withhold, condition or delay. Landlord acknowledges and agrees that it would be unreasonable to withhold its written consent to any proposed Alteration that is necessary to enable City to use the Premises to remove the TBMs from the Premises, except that Landlord may withhold its written consent if in Landlord's sole discretion such proposed Alteration would adversely affect Landlord's ability to develop the Modified Landlord Project at the Premises. Any written consent given by Landlord for a proposed Alteration shall specify if the proposed Alteration must be removed from the Premises by City on or before the termination of the Term or shall remain at the Premises. Any Alterations permitted hereunder shall be made at City's cost in compliance with applicable Laws. Landlord shall, without cost to itself, cooperate with City in securing building and other permits and authorizations needed in connection with any permitted Alterations. Landlord shall not be entitled to any construction or other administrative

fee in connection with any Alteration. All Alterations shall be constructed in a good and workmanlike manner, with a copy of all plans and specifications for any Alterations provided to Landlord prior to the construction of such Alteration. Landlord may inspect and observe construction of the Alterations. Prior to City's commencement of construction of any Alterations, Landlord may post on and about the Premises notices of non-responsibility thereto pursuant to applicable law. Landlord shall not make any alterations, installations, additions or improvements to the Premises.

7.3 Title to Improvements

Except for City's Personal Property (as defined in Section 7.4) and any Alterations that City must remove pursuant to Section 7.1, all appurtenances, fixtures, improvements, equipment, additions and other property permanently installed in the Premises during the Term shall be City's property until the end of the Term. Upon surrender of the Premises, the Excavation Shaft (if constructed by City), Bores (if constructed by City), the Demolition Crushed Concrete (only as specified under Section 7.1), and all Alterations constructed by City shall remain on the Premises as Landlord's property (subject to the provisions of Section 20), except to the extent Landlord provided written notice to City of its obligation or right to remove such Alteration at the end of the Term pursuant to Section 7.2 or as otherwise agreed to in writing by Landlord and City. City shall repair any damage caused by the removal of such Alterations upon surrender of the Premises.

7.4 City's Personal Property

All equipment, trade fixtures and articles of movable personal property installed in the Premises by or for the account of City (collectively, "City's Personal Property") shall be and remain City's property. At any time during the Term or at the expiration thereof, City may remove any of City's Personal Property, provided City shall repair any damage to the Premises resulting therefrom. Upon the expiration or earlier termination of this Lease, City shall remove City's Personal Property from the Premises in accordance with Section 20 (Surrender of Premises).

8. REPAIRS AND MAINTENANCE

Landlord shall have no obligation to make any repairs or perform any maintenance at the Premises, except as specifically set forth herein. City shall be obligated to keep all of its improvements installed or constructed by City at the Premises (including without limitation the Excavation Shaft, the Bores, any shoring walls, any and all means of lateral and subjacent support, and the construction fence) in good condition and repair. City shall keep the Premises free from liens arising out of any work performed, material furnished or obligations incurred by City during the Term. Landlord shall have the right to post on the Premises any notices permitted or required by law or that are needed for the protection of Landlord, the Premises, or the Building, from mechanics' and material suppliers' liens. City shall give Landlord at least ten (10) days' prior written notice of commencement of any repair or construction by City on the Premises.

9. UTILITIES AND SERVICES

City shall be responsible for all utilities and services to the Premises. Landlord shall not be liable for any failure or interruption of any utility service furnished to the Premises, and no such failure or interruption shall entitle City to any abatement in Rent or to terminate this Lease, unless such interruption is due to the negligence or willful misconduct of Landlord. In the event

of such Landlord negligence, willful misconduct, City shall be entitled to an abatement of rent hereunder, which abatement shall be based on the extent of City's inability to use the Premises.

10. COMPLIANCE WITH LAWS; PREMISES CONDITION

City shall use the Premises during the Term in compliance with applicable present or future federal, state, local and administrative laws, rules, regulations, orders and requirements (collectively, "Laws"). Without limiting Section 16.1 (City's Indemnity), City shall Indemnify Landlord against any and all Claims arising out of City's failure to comply with all applicable Laws as provided in this Section. City hereby waives any and all right or ability to make a claim of any kind or nature against Landlord for any and all deficiencies or defects in the characteristics and condition of the Premises (collectively, and as further described below, the "Premises Condition") and City leases the Premises with any and all such deficiencies and defects. City further acknowledges and agrees that neither Landlord nor any of Landlord's employees, agents or representatives, have made any representations, warranties or agreements by or on behalf of Landlord of any kind whatsoever, whether oral or written, express or implied, statutory or otherwise, as to any matters concerning the Premises Condition. City hereby acknowledges, agrees and represents that the Premises is to be leased to or used by, and accepted by, City in its present condition, "AS IS"; "WHERE IS" AND WITH ALL FAULTS, and that no patent or latent defect or deficiency in the Premises Condition, whether or not known or discovered, shall affect the rights of either Landlord or City hereunder. Any reports, repairs or work required by City are the sole responsibility of City, and City agrees that there is no obligation on the part of Landlord to make any changes, alterations or repairs to the Premises Condition, to obtain any certificates or permits in connection with the leasing of the Premises, to cure any violations of law, or to comply with the requirements of any insurer.

11. SUBORDINATION

Prior to the Rent Commencement Date, Landlord shall deliver the Landlord Consent, duly executed (and acknowledged) by the beneficiary of each deed of trust encumbering the Premises as of the Lease Commencement Date. In the event any mortgage or deed of trust to which this Lease is subordinate is foreclosed or a deed in lieu of foreclosure is given to the mortgagee or beneficiary, this Lease shall not be barred, terminated, cut off, or foreclosed nor shall the rights and possession of City hereunder be disturbed if City shall not then be in default in the payment of rental or other sums due hereunder or otherwise be in default under the terms of this Lease beyond any applicable notice and cure period, provided that such lender and the City have executed the Landlord Consent or a comparable Non-Disturbance Agreement. City shall attorn to and become the tenant of the successor-in-interest to Landlord, provided that City has received proper written notice of such succession and the name and address of the successor landlord. The provisions of this Section shall be self-operative and no further instrument shall be required other than as provided in this Section. This Lease shall be subordinate to any ground lease, mortgage, deed of trust, or any other hypothecation for security now or later placed upon the Premises and to any advances made on the security of it or Landlord's interest in it, and to all renewals, modifications, consolidations, replacements, and extensions of it. However, if any mortgagee, trustee or ground lessor elects to have this Lease prior to the lien of its mortgage or deed of trust, or prior to its ground lease, and gives written notice of that to City, this Lease shall be deemed prior to the mortgage, deed of trust or ground lease, whether this Lease is dated prior or subsequent to the date of the mortgage, deed of trust, or ground lease, or the date of recording of it. In the event of termination of any ground lease to which this Lease is subordinate, City shall attorn to the ground lessor. City agrees to execute any documents, in form and substance reasonably acceptable to City, required to effectuate the subordination, to make this Lease prior to the lien of any mortgage or deed of trust, or to any ground lease, or to evidence the attornment.

12. DAMAGE AND DESTRUCTION

If the Premises is damaged by casualty (including, but not limited to, an earthquake or sinkhole that renders the soil of the Premises structurally unsound) that, in City's reasonable judgment, renders the Premises untenable or unsuitable for continued use by City for its intended purposes or otherwise materially adversely affects City's normal operations in the Premises, then City may elect to terminate this Lease upon no less than one hundred twenty days prior written notice to the Landlord, and this Lease shall terminate on the date specified by City in such notice. If the Premises is damaged by casualty (including, but not limited to, fire) and City does not terminate the Lease pursuant to the foregoing sentence, this Lease shall remain in full force and effect. City shall not have the right to terminate this Lease as a result of any damage by fire or other cause to City's property or any damage caused by the negligence or willful misconduct of City or its Agents. Except as provided herein, City waives any right to terminate the Lease by reason of damage or casualty loss. The parties intend that the provisions of this Section govern fully their rights and obligations in the event of damage or destruction, and Landlord and City each hereby waives and releases any right to terminate this Lease in whole or in part under 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, to the extent such rights are inconsistent with the provisions hereof.

13. EMINENT DOMAIN

13.1 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, but excluding any eminent domain action by City. 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 Premises 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.

13.2 General

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

13.3 Total Taking; Automatic Termination

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

13.4 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 if all of the following exist: **(i)** the partial Taking, in City's reasonable judgment, renders the remaining portion of the Premises untenable or unsuitable for continued use by City for its intended purposes, **(ii)** the condition rendering the Premises untenable or unsuitable either is not curable or is curable but Landlord is unwilling or unable to cure such condition, and **(iii)** City elects to terminate.

(b) In the case of a partial taking of the portion of the Premises in which subsection (a) above does not apply, City shall have the right to terminate this Lease by written notice to Landlord within thirty (30) days after the Date of Taking, provided that, as a condition to City's right to terminate, the portion of the Premises taken shall, in City's reasonable judgment, render the Premises unsuitable for continued use by City for its intended purposes or otherwise materially adversely affect City's normal operations in the Premises. If City elects to terminate under the provisions of this subsection, City shall do so by giving written notice to the Landlord 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.

13.5 Rent; Award

Upon termination of this Lease pursuant to an election under Section 13.4 above, then: **(a)** City'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 13.6 below for any period during which this Lease continues in effect after the Date of Taking, and **(b)** Landlord shall be entitled to the entire Award in connection therewith, except that City shall receive any Award made specifically for City's relocation expenses or the interruption of or damage to City's business or damage to City's Personal Property.

13.6 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 13.4 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)** Rent shall be reduced by an amount that is in the same ratio to the Rent as the area of the Premises taken bears to the area of the Premises prior to the Date of Taking, and **(b)** Landlord shall be entitled to the entire Award in connection therewith, provided that City shall receive any Award made specifically for City's relocation expenses or the interruption of or damage to City's use of the Premises or damage to City's Personal Property or the Excavation Shaft.

13.7 Temporary Taking

Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to the Premises for a limited period of time not in excess of thirty (30) consecutive days, this Lease shall remain unaffected thereby, and City 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, City shall be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Premises during the Term.

13.8 Taking by City

Notwithstanding anything to the contrary set forth elsewhere in this Lease (including without limitation the foregoing provisions of this Section 13, if at any time during the Term of this Lease the City commences any action for a Taking of, or other eminent domain proceeding involving, all or any portion of the Premises, then Landlord may, in its sole discretion, terminate this Lease at any time upon written notice to Tenant.

14. ASSIGNMENT AND SUBLETTING

Except as provided in this Section below, City shall not directly or indirectly sell, assign, encumber, pledge or otherwise transfer or hypothecate all or any part of its interest in or rights with respect to the Premises or its leasehold estate hereunder or permit all or any portion of the Premises to be occupied by anyone other than itself or sublet all or any portion of the Premises, without Landlord's prior written consent in each instance, which shall not be unreasonably withheld or delayed. City shall have the right from time to time, upon notice to but without the consent of Landlord, to transfer this Lease or use and occupancy of all or any of the Premises to any department of the City and County of San Francisco for uses permitted under this Lease.

Subject to Sections 22 and 23.7 below, Landlord may from time to time, in its sole discretion, sell, convey, or otherwise transfer the Premises, or any portion thereof or interest therein, to one or more third parties; provided such third party(ies) assumes Landlord's obligations under this Lease as of the date of such transfer. It is expressly understood and agreed that the obligations of Landlord under this Lease shall be binding upon Landlord and its successors and assigns and any future owner of the Premises only with respect to events occurring during its and their respective ownership of the Premises; provided, however, if an event of default by Landlord occurred prior to the commencement of such ownership, but such event of default continues after such ownership has commenced, then the successor landlord shall be subject to the obligations of Landlord to cure such continuing event of default. In the event of any sale, conveyance or other transfer of title to the Premises, then the grantor or transferor shall be relieved of all liability with respect to Landlord's obligations to be performed under this Lease after the date of such conveyance.

15. DEFAULT; REMEDIES

15.1 Events of Default by City

Any of the following shall constitute an "Event of Default" by City hereunder:

(a) City's failure to make any monthly payment of Base Rent before the tenth (10th) day of such month, provided that for the first two (2) monthly payments of Base Rent at the beginning of the Term and for the first monthly payment of Base Rent after the beginning of each new fiscal year for City, City shall have until the twentieth (20) day of such months to make such payment;

(b) City's failure to make any payment of Rent (other than Base Rent) within ten (10) days of the date of receipt of notice from Landlord requesting payment thereof, provided that, with respect to the payments of Rent to be made by Tenant pursuant to Section 4.2 or Section 4.3 above, the parties have agreed to the amount of such payment (or have agreed or consented to the payment of any portion of such payment) pursuant to Section 4.2 and Section 4.3;

(c) City's abandonment of the Premises (within the meaning of California Civil Code Section 1951.3), provided, however, that Landlord acknowledges City anticipates an approximate six (6) month period between completion of construction of the Excavation Shaft and the commencement of the tunnel boring machine excavation work, and City's election not to actively use the Premises during such period shall not be deemed an abandonment of the Premises; or

(d) City's failure to perform any other covenant or obligation of City hereunder (not involving the payment of money) and to cure such non-performance within thirty (30) days of the date of receipt of notice thereof from Landlord, provided that if more than thirty (30) days are reasonably required for such cure, no Event of Default shall occur if City commences such cure within such period and diligently prosecutes such cure to completion.

15.2 Landlord's Remedies

Upon the occurrence of any Event of Default that is not cured within the applicable grace period as provided above, Landlord shall have all rights and remedies available pursuant to law or granted hereunder, including the following:

(a) The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate City's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that City proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. Pursuant to such Section 1951.2, Landlord shall also be entitled to recover (i) the worth at the time of award of the unpaid rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rent loss that City proves could reasonably have been avoided; and (iii) any other amount necessary to compensate Landlord for all the detriment proximately caused by City's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom. The "worth at the time of award" of the amount referred to in the first sentence of this subparagraph (a) and clauses (i) and (ii) above is computed by allowing interest at the discount rate of the Federal Reserve Bank of San Francisco plus five percent (5%) per annum at date of termination, but in no event in excess of the maximum rate of interest permitted by law. The worth at the time of award of the amount referred to in clause (iii) above is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). City waives any rights of redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179, or under any other applicable present or future law, if City is evicted or Landlord takes possession of the Premises by reason of any Event of Default.

(b) The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows Landlord to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, for so long as Landlord does not terminate City's right to possession, if City has the right to sublet or assign, subject only to reasonable limitations. Acts of maintenance or preservation or efforts to relet the Premises or the appointment of a receiver upon initiative of Landlord to protect Landlord's interest under this Lease shall not constitute a termination of City's right to possession.

15.3 Landlord's Default

If Landlord fails to perform any of its obligations under this Lease, then (without limiting any of City's other cure rights under this Lease) City may, at its sole option, perform such obligation at Landlord's expense if such failure continues after thirty (30) days from the date City gives notice to Landlord of City's intention to perform such cure. However, in the case of a default which for causes beyond Landlord's control (excluding any financial inability to perform) cannot with due diligence be cured within such thirty (30)-day period, such thirty (30)-day period shall be extended if Landlord, promptly upon receipt of City's notice, advises City of Landlord's intention to take all steps required to cure such default, and Landlord promptly commences such cure and diligently prosecutes the same to completion. Subject to the other provisions of this Lease relating to abatement of Rent, if Landlord fails to cure any default within the cure period provided above, then, whether or not City elects to cure Landlord's default as provided herein, the Base Rent and any other charges hereunder shall be abated based on the extent to which such default interferes with City's ability to carry on its business at the Premises. City's rights hereunder shall not limit in any way any of its other rights and remedies hereunder or at law or in equity. City agrees to look solely to Landlord's interest in the Premises, or any amounts received by Landlord in connection with a sale or transfer of the Premises, for recovery of any judgment against Landlord arising in connection with this Lease, it being agreed that neither Landlord nor any successor or assign of Landlord nor any future owner of the Premises, nor any partner, shareholder, or officer of any of the foregoing, shall ever be personally liable for any such judgment.

16. INDEMNITIES

16.1 City's Indemnity

To the fullest extent permitted by law, City shall indemnify, defend and hold harmless ("Indemnify") Landlord and its Agents from and against any and all claims, costs, expenses, losses, demands, actions, suits, and damages, including, without limitation, punitive damages and reasonable attorneys' fees, consultants' fees or expert fees (collectively, "Claims"), incurred as a result of, caused by, arising out of, resulting from or occurring in connection with (a) City's use of the Premises, (b) any Event of Default arising from City's failure to perform any of its material obligations under this Lease, (c) any negligent acts or omissions of City or its Agents or Invitees in, on or about the Premises, (d) the City's failure to comply with the requirements of this Lease in performing any of the City Work at the Premises, including City's obligation to perform the City Work in compliance with all applicable laws, (e) the alleged or actual acts or omissions at the Premises, whether active or passive, of City or City's agents, representatives, employees, contractors, or subcontractors, to the extent such Claim is not caused by Landlord or its Agents, or (f) any allegation that City's performance of any of the City Work, or City's payment of any amounts to Landlord pursuant to this Lease, including without limitation City's obligation to reimburse Landlord as consideration for increases in construction costs pursuant to Section 4.2, imposes any prevailing wage (or any similar public improvement) requirements upon the Modified Landlord Project (except to the extent that such increases in construction costs as a result of any such requirements are reimbursed to Landlord as part of the Construction Cost Increase); provided, however, City shall not be obligated to Indemnify Landlord or its Agents to the extent any Claim arises out of the negligence or willful misconduct of Landlord or its Agents. In any action or proceeding brought against Landlord or its Agents by reason of any Claim Indemnified by City hereunder, City may, at its sole option, elect to defend such Claim by attorneys in City's Office of the City Attorney, by other attorneys selected by City, or both. City shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that Landlord shall have the right, but not the obligation, to participate in the defense of any such Claim at its sole cost. City's obligations under this

Section, and all other indemnity obligations of the City, shall survive the termination of the Lease. The foregoing indemnity and defense obligations are not limited by the amount of any available insurance and are in addition to any other express or implied indemnity or contribution rights available to any of Landlord or its Agents at law or in equity.

16.2 Landlord's Indemnity and Waiver

Landlord shall Indemnify City and its Agents against any and all Claims incurred as a result of (a) any default by Landlord in the performance of any of its obligations under this Lease or any breach of any representations or warranties made by Landlord under this Lease, (b) Landlord's failure to design or construct the Modified Landlord Project either in conformance with the recommendations made for the development of a mixed use development at the Premises described in the Geotechnical Investigation for the Premises dated December 1, 2008 (the "Rollo Report"), or in conformance with the written recommendations of any other California-licensed engineer with expertise in such matters retained by Landlord in connection with the Modified Landlord Project, provided such engineer receives the Rollo Report, inspects the Premises, and entitles City to rely on such report, and Landlord delivers a copy of such report to City prior to commencing construction of the Modified Landlord Project, or (c) any negligent acts or omissions of Landlord or its Agents in, on or about the Premises; provided, however, Landlord shall not be obligated to Indemnify City or its Agents to the extent any Claim arises out of the negligence or willful misconduct of City or its Agents. In any action or proceeding brought against City or its Agents by reason of any Claim Indemnified by Landlord hereunder, Landlord may, at its sole option, elect to defend such Claim by attorneys selected by Landlord. Landlord shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that City shall have the right, but not the obligation, to participate in the defense of any such Claim at its sole cost. Landlord's obligations under this Section shall survive the termination of this Lease.

Provided the Excavation Shaft is constructed in compliance with the Final Shaft Plans, Landlord further agrees to waive any claims that the Excavation Shaft causes, or threatens to cause, any damage to the Modified Landlord Project or the Property, interferes with Landlord's construction or operation of Modified Landlord Project, or results in any inverse condemnation of Owner's Property. In connection with the foregoing release, Landlord expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

BY PLACING ITS INITIALS BELOW, LANDLORD SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASES MADE ABOVE AND THE FACT THAT LANDLORD WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THE ABOVE RELEASES.

INITIALS: LANDLORD: _____

Landlord's obligations under this Section shall survive the termination of this Lease.

17. INSURANCE

17.1 City's Self-Insurance

Landlord acknowledges that City maintains a program of self-insurance and agrees that City shall not be required to carry any insurance with respect to this Lease. Such program of self-insurance covers risks including without limitation of commercial general liability, damage to personal property, ownership and operation of vehicles, builder's risk, and worker's compensation. City assumes the risk of damage to any of City's Personal Property, except for damage caused by Landlord or its Agents.

17.2 Landlord's Insurance

Landlord, at no cost to City, shall procure and keep in effect at all times during the Term insurance as follows: (a) 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); and (b) Worker's Compensation Insurance in Statutory Amounts with Employer's Liability Limits not less than One Million Dollars (\$1,000,000) each accident, provided, however, that Landlord shall only be required to carry such Worker's Compensation Insurance during any period of the Term that Landlord has employees.

17.3 Waiver of Subrogation

Notwithstanding anything to the contrary contained herein, Landlord hereby waives any right of recovery against City for any loss or damage sustained by Landlord 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 City, to the extent such loss or damage is covered by insurance which Landlord is required to purchase under this Lease or is otherwise actually recovered from valid and collectible insurance covering Landlord. Landlord agrees to obtain a waiver of subrogation endorsement from each insurance carrier issuing policies relative to the Building or the Premises; provided, Landlord's failure to do so shall not affect the above waiver. If City self-insures any of the risks described in Section 17.1 above, City's self-insurance protection shall be deemed to include (and City's self-insurance shall be deemed to include) the waivers of subrogation and the additional insured status mentioned above. If City ceases to self-insure any of the risks described in Section 17.1 above, City shall be deemed to have agreed to the waivers of subrogation and the additional insured status mentioned above.

18. ACCESS BY LANDLORD

Landlord reserves for itself and any designated Agent the right to enter the Premises at all reasonable times and, except in cases of emergency (in which event Landlord shall give any reasonable notice), after giving City at least twenty four (24) hours' advance written or oral notice, for the purpose of (a) inspecting the Premises, (b) observing and photographing the demolition and removal of the Building and the construction of the Excavation Shaft, Bores or any other Alterations, and the removal of the TBMs, or (c) posting notices of non-responsibility in connection with the construction of the Excavation Shaft or any Alteration. Landlord acknowledges that the City Work entails heavy construction activities, and Landlord shall comply with all safety rules for the Premises established by City in entering the Premises.

19. ESTOPPEL CERTIFICATES

Either party, from time to time during the Term upon not less than twenty (20) days' prior written notice from the other party, may reasonably request the other party to execute, acknowledge and deliver to such persons or entities designated by such other party a certificate stating: (a) the Lease Commencement Date, the Rent 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, this the Lease is in full force and effect as modified and stating the modifications), (c) that there are no defaults under this Lease (or if so, specifying the same), and (d) the date to which Rent has been paid.

20. SURRENDER OF PREMISES

Upon the expiration or sooner termination of this Lease, City shall surrender the Premises (including any constructed Excavation Shaft, Bores, or other Alterations that City is required, or has the right, to leave at the Premises pursuant to the provisions of Section 7.2) to Landlord in a safe and neat condition. Prior to the Expiration Date:

(a) City shall perform general site cleanup and remove from the Premises all of City's Personal Property and any Alterations City desires or is required to remove from the Premises pursuant to the provisions of Section 7.2.

(b) If City has constructed the Bores, City shall, in compliance with all applicable laws and the Final Shaft Plans, install concrete bulk heads that cover the entire diameter of the Bores at the property line of the Premises. City shall ensure that the Bores are completely located at or below the elevation of forty (40) feet CCSF Datum, and shall provide Landlord with data evidencing the locations (including specifically the elevation of the top of the Bores at the highest point on the Project site) and dimensions of the Bores on the Property prior to the termination of this Lease, which will be the same data used to create the as-built plans for the Bores.

(c) If City has completed construction of the Excavation Shaft, City shall, in compliance with all applicable laws and the Final Shaft Plans, install a cap that completely covers the top of the Excavation Shaft at grade level such that the remaining portion is sufficiently sealed to prevent water from entering the Excavation Shaft and to keep people from falling into the Excavation Shaft.

(d) If City has performed any other excavation work below the portion of the Property under the existing Building foundation, City shall, in compliance with all applicable laws:

(1) back-fill any such excavation area with the native removed soil, compacted to 95% compaction, and

(2) deliver to Landlord a soil compaction report showing that the excavated area has been compacted in accordance with good construction practices to the condition described in clause (1) above.

(e) City shall ensure that the proposed Bores and the remaining secant piles will be installed in a manner that will support the Approved Landlord Project as depicted in the approved set of plans dated November 11, 2011. Landlord acknowledges that the Approved Landlord Project will not exceed the load bearing capacity set forth in Rollo Report.

(f) City shall ensure that the Premises and all of its excavation work on the Premises shall comply with industry standard practice and that the Excavation Shaft is free from standing water during the Term.

(g) City shall leave the Premises at the end of the Lease Term in a clean and safe condition, without the introduction of any new hazards or Hazardous Material by City's use of the Premises pursuant to this Lease.

(h) City agrees that the Landlord assumes no responsibility or liability for the physical condition or safety of the Premises or any improvement on the Premises during the lease term. The City agrees to assume sole responsibility for providing a safe place for the performance of its work during the Lease Term.

(i) City acknowledges and agrees that it has not relied on and does not rely on any representations, if any, made by Landlord or its Agents and consultants with respect to the Premises or any adjacent property, including, but not limited to, the nature and extent of site conditions, differing site conditions, existing grades and elevations, Hazardous Materials, above and below grade improvements, foundations, subsurface conditions, and underground mechanical, electrical and plumbing facilities.

Notwithstanding anything to the contrary in this Lease, City shall not be required to demolish or remove the Excavation Shaft or the Bores from the Premises. Provided the Excavation Shaft and Bores are constructed in compliance with the Final Shaft Plans, and left in the condition specified in this Section, Landlord shall accept the Excavation Shaft and the Bores in their as is condition on the expiration or sooner termination of this Lease, and acknowledges that City makes no representations or warranties on the condition of the Excavation Shaft or Bores on such date or the suitability of the Excavation Shaft or Bores for any future Landlord use or purpose other than City's express representation regarding the load-bearing capacity of the Bores.

21. HAZARDOUS MATERIALS

21.1 Definitions

As used in this Lease, the following terms shall have the meanings hereinafter set forth:

(a) "Environmental Laws" shall mean any federal, state, local or administrative law, rule, regulation, order or requirement relating to industrial hygiene, environmental conditions or Hazardous Material, whether now in effect or hereafter adopted.

(b) "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended (42 U.S.C. Section 9601 et seq.), or pursuant to Section 25316 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of the Building or are naturally occurring substances on or about the Premises; and petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas). As defined in Environmental Laws, during the

Term, City is and shall be deemed to be the "operator" of City's "facility" and the "owner" of all Hazardous Materials brought on the Premises, or discovered at the Premises and removed therefrom by City, its Agents or Invitees, and the wastes, by-products, or residues generated, resulting, or produced therefrom.

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

21.2 Landlord's Representations and Covenants

Landlord represents and warrants to City that, to Landlord's actual knowledge without investigation, the following statements are true and correct and will be true and correct as of the Lease Commencement Date: (a) the Premises is not in violation of any Environmental Laws; (b) the Premises is not now, nor has it been, used for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Material, except for the use of such substances in such limited quantities as are customarily used in theaters; (c) the Premises does not consist of any landfill or contain any underground storage tanks; (d) the Building does not consist of any asbestos-containing materials, or any building materials that contain any other Hazardous Material (except that Landlord has disclosed to City that the Building was constructed prior to 1979 and may contain lead-based paints); (e) there has been and is no Release of any Hazardous Material in the Building or in, on, under or about the Premises in violation of Environmental Laws; (f) the Premises is not subject to any claim by any governmental regulatory agency or third party related to the Release of any Hazardous Material, and there is no inquiry by any governmental agency (including, without limitation, the California Department of Toxic Substances Control or the Regional Water Quality Control Board) with respect to the presence of Hazardous Material in the Building or in, on, under or about the Premises, or the migration of Hazardous Material from or to other real property, and (g) the materials listed on the attached Exhibit G (the "Property Reports") contain all of the environmental reports, studies, surveys, tests and assessments, soils and geotechnical reports, and building condition reports in Landlord's possession or control regarding the physical and environmental condition of the Building and Premises, including the asbestos abatement work performed by Landlord at the Building (if any), and the copies of the Property Reports delivered by Landlord to City are complete and correct photocopies of the Property Reports that are in Landlord's possession or control.

21.3 Landlord's Environmental Indemnity

Without limiting Landlord's Indemnity in Section 16.2 (Landlord's Indemnity), above, Landlord shall Indemnify City and its Agents against any and all Claims arising during or after the Term of this Lease (a) as a result of any breach of any of Landlord's representations, warranties or covenants in the preceding Section, or (b) in connection with any presence or Release of Hazardous Material in the Building or on, under or about the Premises, unless and to the extent that City or its Agents or its Invitees caused or contributed to such Release.

21.4 City's Covenants

Neither City nor its Agents shall cause any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises, or transported to or from the Premises, in violation of any Environmental Laws, provided that City may use such substances in such limited amounts as are reasonably required for the performance of the Permitted Uses so long as such use is in compliance with all applicable Environmental Laws. City shall supply

Landlord with complete and accurate copies of any applicable Material Safety Data Sheets of any and all Hazardous Materials that are used in conjunction with the performance of the Permitted Uses, to the extent such sheets are provided to City by its contractors. Notwithstanding anything to the contrary set forth above in this Section 21.4, City shall have the right to remove the soil that must be excavated from the Premises in order to construct and modify the Excavation Shaft (the "Excavation Area") to perform the Excavation Shaft work and to demolish the Building, even if such Excavation Area soil or any portion of the Building is determined to contain any Hazardous Materials. In the event that any of the soil removed by City from the initial twelve feet (12') below ground surface in the Excavation Area is determined to contain Hazardous Materials that require such soil to be disposed of at any location other than landfill, or City determines that the Building contains asbestos that will require additional construction measures to contain such asbestos during demolition, City shall be obligated to properly dispose of such contaminated soil and take such asbestos containment measures; provided, however, that City shall have the right to offset the Increased Disposal Costs (as defined below) against Rent following City's submittal of commercially reasonable evidence of such costs to Landlord. For purposes of this Lease, the "Increased Disposal Costs" shall mean (i) the commercially reasonable amount by which the costs (including any additional fees for hauling, testing, or preparing the manifest) City incurs in disposing of such contaminated soil exceed the costs that City would have incurred in disposing of such soil if it had not been contaminated, plus (ii) the commercially reasonable costs incurred by City for such asbestos containment.

21.5 City's Environmental Indemnity

If City breaches its obligations contained in the preceding Section 21.4, or if and to the extent City or its Agents or its Invitees cause or contribute to the Release of Hazardous Material from, in, on or about the Premises, then City shall Indemnify Landlord against any and all Claims arising during or after the Term of this Lease as a result of such Release, except to the extent Landlord or its Agents is responsible for the Release. The foregoing Indemnity shall not include any Claims resulting from the non-negligent aggravation by City, its Agents or Invitees of physical conditions of the Premises existing prior to City's occupancy.

22. RIGHT OF FIRST OFFER

If Landlord wishes to pursue the sale of the Premises at any time during the Term of this Lease, City shall have the right of first offer as set forth in this Section ("Right of First Offer").

(a) If Landlord wishes to market the Premises during the Term of this Lease, Landlord shall first deliver written notice ("Marketing Notice") to City of the sales price at which Landlord intends to market the Premises. If Landlord receives any written offer for the purchase of the Premises that Landlord wishes to pursue during the Term of this Lease (a "Third Party Offer"), Landlord shall first offer the Premises to City at the purchase price and on such terms offered by such party by delivering written notice ("Offer Notice") thereof to City, together with a copy of such offer. City shall have sixty (60) days from the date that City receives a Marketing Notice or an Offer Notice (the "Response Period") to submit to Landlord a written offer to purchase the Premises at the price and on the terms contained in the Marketing Notice or Offer Notice, as applicable (a "City Offer"), or to deliver to Landlord a written counter offer to purchase the Premises at a lesser price and on terms specified in such counter offer (a "Counter Offer").

(b) If City does not offer to purchase the Premises for the purchase price and on the terms set forth in a Marketing Notice or Offer Notice, as applicable, by delivery of a City Offer, nor delivers a Counter Offer, to Landlord before the expiration of the Response Period,

then Landlord shall be free to sell the Premises at a Gross Purchase Price (defined as follows) that is not less than 98% of the price set forth in the Marketing Notice or Offer Notice, as applicable; provided, however, that such sale shall include an assignment and assumption of this Lease (if such sale occurs during the Term) and shall recognize City's Right of First Offer as set forth in this Section. A "Gross Purchase Price" shall mean an amount determined without regard to any brokerage commission liability, but reduced by any credits or reductions Landlord agrees to give to the potential buyer (e.g. for such items as existing property conditions or entitlement requirements). If City delivers a Counter Offer to Landlord before the expiration of the Response Period, but Landlord rejects the Counter Offer in a written notice delivered to City, then Landlord may sell the Premises to a buyer that agrees to pay a Gross Purchase Price not less than 98% of the amount set forth in such Counter Offer. If Landlord is unable to sell the Premises for a Gross Purchase Price that is equal to or more than 98% of the Gross Purchase Price that would be payable by City pursuant to a Counter Offer and Landlord is willing to reduce the purchase price, or if Landlord does not enter into a purchase and sale agreement within 365 days following City's receipt of the Marketing Notice or Offer Notice, as applicable, and Landlord continues to desire to sell the Premises, then Landlord shall give to City another Marketing Notice or Offer Notice, as applicable (with a reduced purchase price, if applicable) and the above procedure for City's Right of First Offer shall be repeated.

(c) If City offers to pay the purchase price and comply with the terms set forth in the Marketing Notice or Offer Notice, as applicable, or if the parties agree to a revised purchase price and terms of sale following Landlord's receipt of a Counter Offer, the parties shall enter into good faith negotiations on a form of purchase agreement that reflects the agreed-upon purchase price and other terms of such purchase and sale. If the parties mutually agree on such form of purchase agreement within the forty-five (45) day period immediately following Landlord's receipt of a City Offer or Landlord's acceptance of a Counter Offer, as applicable, such purchase agreement shall be subject to the approval of the SFMTA Board of Directors ("SFMTA Board") and, if required under City's Charter, City's Board of Supervisors ("BOS") by resolution, each acting in its sole discretion.

If Landlord and SFMTA agree to the form of purchase agreement within such forty-five (45) day period, Landlord shall execute such form and, within five (5) business days of receiving such executed form from Landlord, SFMTA shall submit the form agreement to the SFMTA Board for approval. SFMTA shall have a thirty (30) calendar day period (the "SFMTA Board Review Period") following such submittal to have the proposed form agreement considered by the SFMTA Board of Directors; provided, however, that if the SFMTA Board does not hold all regularly scheduled open meetings during the original SFMTA Board Review Period, the original SFMTA Board Review Period shall be automatically extended through the date of the first regularly scheduled SFMTA Board meeting that immediately follows the initial SFMTA Board Review Period. Notwithstanding anything to the contrary herein, any automatic extensions of the SFMTA Board Review Period shall be limited to 10 days.

If the SFMTA Board approves the proposed form agreement prior to the termination of the SFMTA Board Review Period (as it may be extended pursuant to the foregoing paragraph), and SFMTA is required to obtain approval of the BOS to such form agreement, SFMTA shall submit to escrow a deposit equal to five percent (5%) of the purchase price specified in such form agreement (the "Earnest Money Deposit") within five (5) business days after SFMTA Board approval and shall submit the proposed form agreement to the Clerk of the BOS. SFMTA shall have the six (6) week period (the "BOS Review Period") immediately following the SFMTA Board approval of the proposed form agreement to have the proposed form agreement considered and approved by the BOS and the City's Mayor; provided, however, that if a regularly scheduled meeting of the BOS or the BOS committee to which the proposed form agreement is referred is not scheduled or is cancelled during the original BOS Board Review Period, the

original BOS Review Period shall be automatically extended by the number of days that elapse between such unscheduled or cancelled meeting and the next regularly scheduled meeting. The Earnest Money Deposit shall be refunded to City only if the BOS or the City's Mayor does not approve the proposed form agreement within the BOS Review Period or if the Earnest Money Deposit is refundable pursuant to the conditions specified in the proposed form agreement. Notwithstanding anything to the contrary herein, any automatic extensions of the BOS Review Period shall be limited to 10 days.

If the parties do not timely agree on a final form of purchase agreement, or the parties agree to such final form of purchase agreement, but City does not timely obtain approval of such purchase agreement from the SFMTA Board and, if required under City's Charter, City's Board of Supervisors, Landlord shall be free to sell the Premises for a Gross Purchase Price of not less than that specified in the Marketing Notice, Offer Notice, or Counter Offer, as applicable, and on terms not materially less favorable to Landlord than those set forth in the proposed purchase agreement presented to the SFMTA Board of Directors.

(d) Notwithstanding anything herein to the contrary, the following conditions shall apply to City's Right of First Offer pursuant to this Section:

(i) City's Right of First Offer shall be personal to City and shall terminate upon any assignment of this Lease, or sublease of the Premises, by City to any party.

(ii) The City's Right of First Offer shall not apply to transfers to members of Joel Campos's immediate family; to any entity owned, controlled by, or under common control with Landlord, or owned or under the control or management of Joel Campos or members of his immediate family; or to transfers in connection with a corporate re-organization, merger, liquidation or dissolution; but shall be binding on any such transferee; provided, however, that such acquiring member or entity assumes Landlord's obligations under this Lease at the time of such transfer. The Right of First Offer does not apply to any transfers by Landlord to a lender for security or related purposes, nor to transfers by judicial or non-judicial foreclosure or a deed in lieu of foreclosure.

(iii) The Right of First Offer shall not be applicable and City shall have no rights under this Section so long as an Event of Default has occurred and is not timely cured.

(iv) The Right of First Offer is not assignable or transferable separate and apart from this Lease, nor may the Right of First Offer be separated from this Lease in any manner, either by reservation or otherwise.

(e) If City learns that Landlord has entered into a binding agreement to sell, or has in fact sold, the Premises to another party without complying with its obligations under this Section, City shall have the right to exercise all remedies available at law or in equity.

23. GENERAL PROVISIONS

23.1 Notices

Except as otherwise specifically provided in this Lease, any notice given under this Lease shall be in writing and given by delivering the notice in person or by commercial courier, or by sending it by first-class mail, certified mail, return receipt requested, or Express Mail, return receipt requested, with postage prepaid, to: (a) City at Tenant's address set forth in the Basic Lease Information; or (b) Landlord at Landlord's address set forth in the Basic Lease Information; or (c) such other address as either Landlord or City may designate as its new

address for such purpose by notice given to the other in accordance with this Section. Any notice hereunder shall be deemed to have been given and received two (2) days after the date when it is mailed if sent by first-class, certified mail, one day after the date when it is mailed if sent by Express Mail, or upon the date personal delivery is made. For convenience of the parties, copies of notices may also be given by telefacsimile to the telefacsimile 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.

23.2 No Implied Waiver

No failure by either party to insist upon the strict performance of any obligation of the other party under this Lease or to exercise any right, power or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such term, covenant or condition. No acceptance of full or partial Rent by Landlord while City is in default hereunder shall constitute a waiver of such default by Landlord. 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. The consent of Landlord or City given in one instance under the terms of this Lease shall not relieve the other party of any obligation to secure the consent to any other or future instance under the terms of the Lease.

23.3 Amendments

Neither this Lease nor any terms or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. 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 or permits the giving by City of its consent or approval, the SFMTA Director of Transportation, or his or her designee, shall be authorized to provide such approval, except as otherwise provided by applicable law, including the Charter of the City and County of San Francisco. Any amendments or modifications to this Lease, including, without limitation, amendments to or modifications to the exhibits to this Lease, shall be subject to the mutual written agreement of City and Landlord, and City's agreement may be made upon the sole approval of SFMTA's Director of Transportation or his or her designee; provided, however, material amendments or modifications to this Lease **(a)** changing the legal description of the Premises, **(b)** increasing the Term, **(c)** increasing the Rent, **(d)** changing the general use of the Premises from the use authorized under Section 5.1 of this Lease, and **(e)** any other amendment or modification which materially increases City's liabilities or financial obligations under this Lease shall additionally require the approval of the SFMTA Board.

23.4 Authority

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

23.5 Parties and Their Agents; Approvals

If applicable, the word "Landlord" as used in this Lease shall include the plural as well as the singular. As used in this Lease, the term "Agents" when used with respect to either party

shall include the agents, employees, officers, contractors and subcontractors of such party (and with respect to Landlord shall include Landlord's lender), and the affiliates, officers, directors, shareholders, members, managers, partners, representatives, agents and employees of each of the foregoing; and the term "Invitees" when used with respect to City shall include the clients, customers, invitees, guests, licensees, assignees or subtenants of City. All approvals, consents or other determinations permitted or required by City under this Lease, including but not limited to the exercise of any option granted to City, shall be made by or through SFMTA's Director of Transportation (or his or her designee) unless otherwise provided in this Lease, subject to any applicable limitations in the City's Charter.

23.6 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 intent and purposes of the parties, without any presumption against the party responsible for drafting any part of this Lease. Except as otherwise specifically provided herein, wherever in this Lease Landlord or City is required or requested to give its consent or approval to any matter or action by the other, such consent or approval shall not be unreasonably withheld or delayed and the reasons for disapproval of consent shall be stated in reasonable detail in writing. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Lease, whether or not language of non-limitation, such as "without limitation" or similar words, are used.

23.7 Successors and Assigns

Subject to the provisions of Section 14 relating to assignment and subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of Landlord and City and, except as otherwise provided herein, their personal representatives and successors and assigns. There are no third-party beneficiaries to this Lease.

23.8 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, except for the broker identified in the Basic Lease Information ("Landlord's Broker"), whose commission, if any is due, shall be part of the Out of Pocket Costs. In the event that any other broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes his claim shall be responsible for such commission or fee and shall indemnify 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.

23.9 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 full extent permitted by law, except to the extent that enforcement of this Lease without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Lease.

23.10 Governing Law

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

23.11 Entire Agreement

The parties intend that this Lease (including all of the attached exhibits, which are made a part of this Lease) shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous written or oral agreements or understandings. 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.

23.12 Attorneys' Fees

In the event that either Landlord or City 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 non-prevailing party in such dispute, as the case may be, shall pay the prevailing party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). For purposes of this Lease, reasonable attorneys' fees of the 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. The term "attorneys' fees" shall also include, without limitation, all such fees incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees were incurred. The term "costs" shall mean the costs and expenses of counsel to the parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney.

23.13 Holding Over

Should City hold over in possession of the Premises after the expiration of the Term with Landlord's consent, such holding over shall not be deemed to extend the Term or renew this Lease, but such tenancy thereafter shall continue as a month-to-month tenancy. Such tenancy shall be on all the terms and conditions set forth in this Lease and at the monthly Base Rent in effect during the last month of the Term of this Lease or such other rental as Landlord and City may mutually agree in writing as a condition to Landlord's consent to such holding over, and City shall continue as a month-to-month tenant until the tenancy shall be terminated by Landlord giving City or City giving Landlord at least thirty (30) days' prior written notice of termination. Should City hold over without Landlord's consent, the rent payable by City during the first thirty

(30) day period of such holding over shall be one hundred ten percent (110%) of the monthly Base Rent in effect during the last month of the Term of this Lease, and such tenancy shall otherwise be on the terms and conditions contained herein. After the first thirty (30) day period of such holding over, the monthly base rent shall be increased to one hundred fifty percent (150%) of the monthly base Rent in effect during the last month of the Term of this Lease.

23.14 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.

23.15 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.

23.16 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. Each party hereto specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Lease, the indemnitor has an immediate and independent obligation to defend the indemnitees from any claim which actually or potentially falls within the 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 the indemnitor by the indemnitee and continues at all times thereafter.

23.17 Signs

Subject to all Laws and at City's sole cost, City may erect or post signs on or about the Premises. Any such signs shall not be deemed to be Alterations that require Landlord's prior written consent. Landlord shall have the right to post signage (to the extent such signage complies with applicable laws) upon the construction fence installed by Tenant, depicting the Modified Landlord Project. Such signage may include sales and leasing information. Landlord and Tenant shall cooperate with respect to the location and installation of any such signage.

23.18 Quiet Enjoyment and Title

Landlord covenants and represents that it has full right, power and authority to grant the leasehold estate hereunder, and covenants that City, upon paying the Rent hereunder and performing the covenants hereof, shall, subject to the terms of this Lease, peaceably and quietly have, hold and enjoy the Premises and all appurtenances during the full Term of this Lease as against all persons or entities claiming by and through Landlord or on account of any action, inaction or agreement of Landlord or its Agents. Without limiting the provisions of Section 16.2 (Landlord's Indemnity), Landlord agrees to Indemnify City and its Agents against Claims arising out of any breach of Landlord's foregoing representation that would interfere with City's right to quiet enjoyment as provided in this Section.

23.19 Bankruptcy

Landlord represents and warrants to City that Landlord has neither filed nor been the subject of any filing of a petition under the federal bankruptcy law or any federal or state

insolvency laws or laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Landlord's knowledge, no such filing is threatened. Landlord and City agree that City's leasehold estate created hereby includes, without limitation, all rights to receive and enjoy all services as provided herein, and that if any of such services are terminated, or materially limited or restricted on account of any such case or proceeding, or for any other reason, City shall have the right to (a) contract directly with any third-party provider of such services, facilities or amenities to obtain the same, and (b) offset against the Base Rent or other charges payable hereunder any and all reasonable costs and expenses incurred by City in obtaining such services.

23.20 [Intentionally deleted]

23.21 Non-Liability of City Officials, Employees and Agents of City

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

23.22 MacBride Principles - Northern Ireland

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

23.23 Controller's Certification of Funds

[Intentionally Deleted.]

23.24 [Intentionally left blank]

23.25 Non Discrimination in City Contracts and Benefits Ordinance

(a) **Covenant Not to Discriminate.** In the performance of this Lease, Landlord agrees not to discriminate against any employee of, any City employee working with Landlord, or applicant for employment with Landlord, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

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

(c) **Non-Discrimination in Benefits.** Landlord does not as of the date of this Lease and will not during the term of this Lease, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for the City or 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, Landlord shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission (the "HRC"). Landlord hereby represents that prior to execution of the Lease: (a) Landlord executed and submitted to the HRC Form HRC-12B-101 with supporting documentation, and (b) the HRC approved such form.

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

(f) **Applicable During Lease Term.** Notwithstanding anything to the contrary set forth above in this Section 23.25, City confirms and agrees that the provisions of this Section 23.25 shall only apply during the Term of this Lease.

23.26 [Intentionally left blank]

23.27 [Intentionally left blank]

23.28 [Intentionally left blank]

23.29 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.

23.30 Effective Date

The date on which this Lease shall become effective (the "Effective Date") is the date upon which (a) the SFMTA Board, in its sole and absolute discretion, adopts a resolution approving this Lease in accordance with all applicable laws, and (b) this Lease is duly executed by the parties hereto.

23.31 Certification by Landlord

By executing this Lease, Landlord certifies that neither Landlord nor any of its officers or members have been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. In the event Landlord or any of its officers or members have been so suspended, disbarred, disciplined or prohibited from contracting with any governmental agency, it shall immediately notify the City of same and the reasons therefore together with any relevant facts or information requested by City. Any such suspension, disbarment, discipline or prohibition may result in the termination or suspension of this Lease. Landlord acknowledges that this certification is a material term of this Lease.

23.32 Memorandum of Lease

On or about the Effective Date, Landlord and City shall execute the memorandum of lease in the form attached hereto as Exhibit H (the "Memorandum of Lease"), and City shall cause the Memorandum of Lease to be recorded in the Official Records of the City and County of San Francisco within two (2) business days thereafter. Upon termination of the Right of First Offer, City shall execute in recordable form such documents as reasonably requested by Landlord to establish that the Premises is no longer subject to the option.

23.33 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.

23.34 Conflicts of Interest

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

23.35 Notification of Limitations on Contributions

Through its execution of this Lease, Landlord acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the

individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Landlord acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Landlord further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Landlord's board of directors, chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Landlord; and any committee that is sponsored or controlled by Landlord. Additionally, Landlord acknowledges that Landlord must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Landlord further agrees to provide to City the names of each person, entity or committee described above.

23.36 Preservative-Treated Wood Containing Arsenic

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

23.37 Cooperative Drafting

This Lease has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Lease reviewed and revised by legal counsel. No party shall be considered the drafter of this Lease, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Lease.

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

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

LANDLORD:

THE PALACE AT WASHINGTON SQUARE LLC,
a California limited liability company


By:


Joel Campos, Member

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by and through its
Municipal Transportation Agency

By:


Edward D. Reiskin
Director of Transportation
San Francisco Municipal Transportation Agency

APPROVED BY:

San Francisco Municipal Transportation Agency
Board of Directors

Resolution No: 13-023

Adopted: FEBRUARY 19, 2013

Attest: R. Boomer

Secretary, SFMTA Board of Directors

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By:


Deputy City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

THAT CERTAIN REAL PROPERTY SITUATION IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING at a point on the Westerly line of Powell Street, distant thereon 103 feet and 6 inches Northerly from the Northerly line of Union Street; running thence Westerly, parallel with the said Northerly line of Union Street, 137 feet and 6 inches; thence at a right angle Northerly 89 feet; thence at a right angle Easterly 111 feet, 8-7/8 inches to the Southwesterly line of Columbus Avenue; thence Southeasterly along the Southwesterly line of Columbus Avenue, 40 feet and 3-1/8 inches to the Westerly line of Powell Street; thence Southerly along the said Westerly line of Powell Street, 58 feet and 3/4 of an inch to the point of beginning.

BEING a portion of 50 Vara Block No. 154.

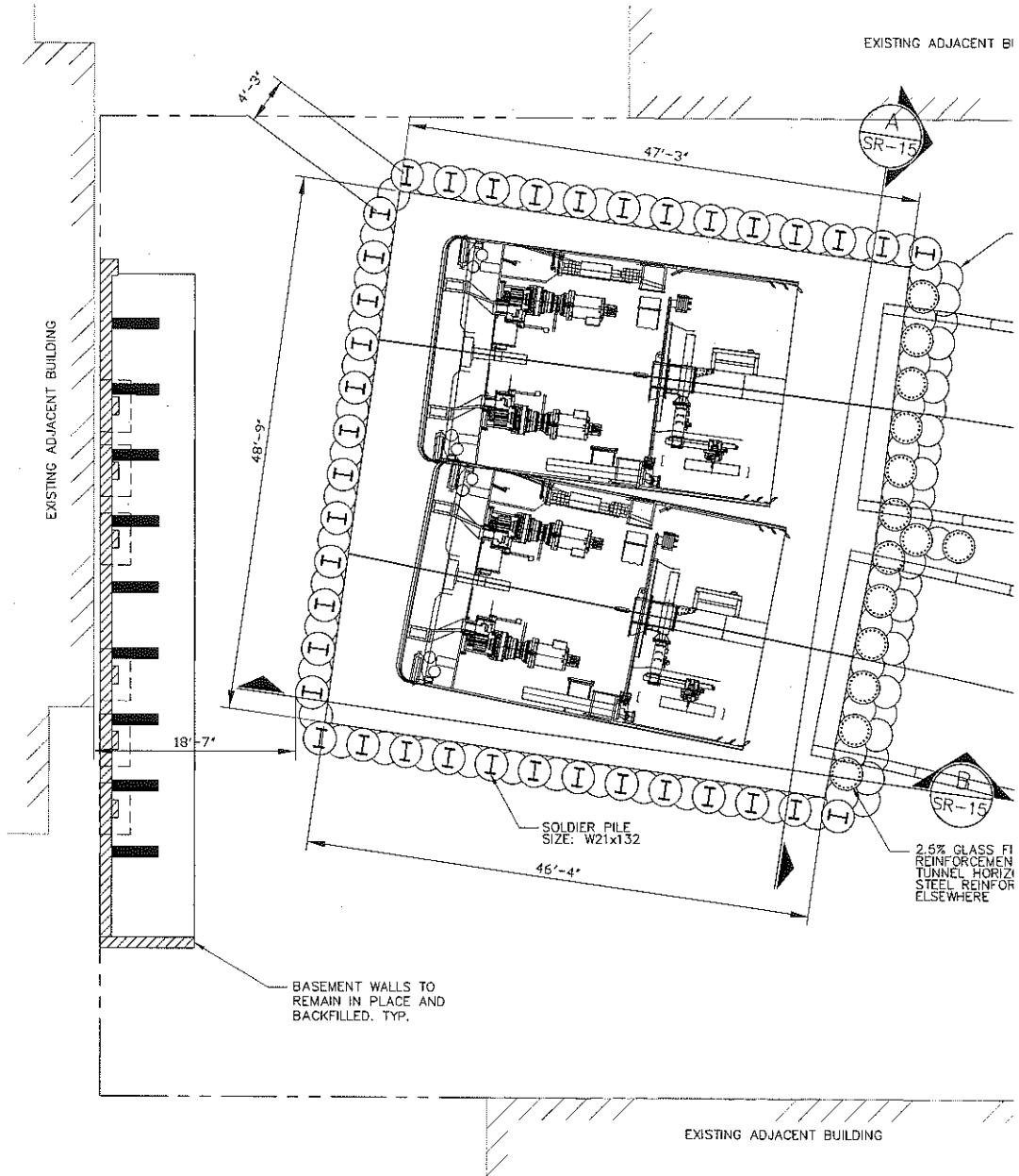
APN: Lot 004, Block 0101

EXHIBIT B

DEPICTION OF PREMISES

[see attached]

FILE



ONLY


	<table border="1"> <thead> <tr> <th>NO.</th> <th>REVISION</th> <th>DATE</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	NO.	REVISION	DATE				<p>Client</p>  <p>BARNARD IMPREGILO HEALY JOINT VENTURE</p> <p>BARNARD / IMPREGILO HEALY JV 460 4TH STREET SAN FRANCISCO, CA 94107</p>	<p>Job Title</p> <p>THIRD STREET PROGRAM PHA CENTRAL SUBV RUNNING TUNN</p>
NO.	REVISION	DATE							

EXHIBIT C

NOTICE OF LEASE DATES

[Date]

Mr. Edward D. Reiskin
San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 7th Floor
San Francisco, CA 94103

RE: Acknowledgement of Commencement Dates, Lease Between _____ (Landlord),
and the CITY AND COUNTY OF SAN FRANCISCO (Tenant), for premises located at
1731-1741 Powell Street, San Francisco, California 94133

Dear Mr. Reiskin:

This letter is to confirm the following dates pursuant to the Lease:

Lease Commencement Date:
(Section ____)

Rent Commencement Date:
(Section ____)

Lease Expiration Date:
(Section ____)

Please acknowledge your acceptance of the dates specified in this letter by signing below
and returning a copy of this countersigned letter.

Sincerely,

Accepted by:

Edward D. Reiskin
Director of Transportation
San Francisco Municipal Transportation Agency

Date: _____

EXHIBIT D

FORM OF LENDER CONSENT

RECORDING REQUESTED BY, AND
WHEN RECORDED, MAIL TO:

City and County of San Francisco
SFMTA Real Estate Section
Finance and Information Technology Division
1 South Van Ness, 8th Floor
San Francisco, CA 94103
Attn: Senior Manager

FOR RECORDER'S USE ONLY

CONSENT, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Consent, Non-Disturbance and Attornment Agreement (this "Agreement") is entered into as of February __, 2013 (the "Effective Date"), between East-West Bank, a _____ ("Lender"), and the City and County of San Francisco, a municipal corporation, acting by and through the San Francisco Municipal Transportation Agency ("Tenant").

A. The Palace at Washington Square LLC, a California limited liability company ("Landlord"), owns the real property located at 1731-1741 Powell Street and 601 Columbus Avenue, San Francisco, California (such real property, including all buildings, improvements, structures and fixtures located thereon, shall be hereinafter referred to as the "Premises"), as more particularly described on Exhibit A attached hereto.

B. Lender is the holder of a loan (the "Loan") to Joel Campos, Landlord's predecessor in interest, which was assigned to and assumed by Landlord and is secured, in part, by that deed of trust dated June 16, 2004, in favor of Lender (as amended, increased, renewed, extended, spread, consolidated, severed, restated or otherwise changed from time to time, the "Deed of Trust"), recorded in the Official Records of San Francisco County as Document No. 2004-H752043-00 on June 25, 2004.

C. Pursuant to that certain lease between Landlord and Tenant, dated as of February 13, 2013 (the "Lease"), Landlord will lease the Premises to Tenant for a two (2) year term and, following the satisfaction of certain conditions specified in the Lease, Tenant shall have the right to demolish the existing building at the Premises, to construct tunnel bores and an underground tunnel boring machine retrieval shaft at the Premises ("Excavation Shaft"), to remove two (2) underground tunnel boring machines from the Premises, and to conduct the other uses permitted under the Lease (the "Permitted Uses").

D. Tenant wishes to obtain Lender's consent to the Lease and the Permitted Uses and its agreement on their respective rights and obligations if certain events occur.

AGREEMENT

NOW, THEREFORE, for good and sufficient consideration, Tenant and Lender agree:

1. Consent. Lender acknowledges it has received a copy of the Lease and consents thereto and to the Permitted Uses. Landlord agrees that Tenant's performance of all or any of the Permitted Uses shall not be deemed to be a default of Landlord's obligations under the Loan, the Deed of Trust, or any other document executed by Landlord or Landlord's predecessor in interest in favor of Lender with respect to the Loan (collectively, the "Loan Documents").

2. Non-Disturbance, Recognition and Attornment

2.1 No Exercise of Deed of Trust Remedies Against Tenant. So long as the Lease has not been terminated, Lender shall not name or join Tenant as a defendant in any exercise of Lender's rights and remedies arising upon a default under the Deed of Trust or any of the Loan Documents unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or prosecuting such rights and remedies. In the latter case, Lender may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant's rights under the Lease or this Agreement in such action.

2.2 Non-Disturbance and Attornment. If the Lease has not been terminated when Successor Landlord (as defined in Section 3) takes title to the Landlord's Premises or succeeds to Landlord's interest in the Lease: (a) Successor Landlord shall not terminate nor disturb Tenant's possession of the Premises under the Lease; (b) Successor Landlord shall be bound to Tenant under all of the terms and conditions of the Lease; (c) Tenant shall recognize and attorn to Successor Landlord as Tenant's direct landlord under the Lease; and (d) the Lease shall continue in full force and effect as a direct lease in accordance with its terms between Successor Landlord and Tenant.

2.3 Further Documentation. The provisions of this Article shall be effective and self-operative without any need for Successor Landlord or Tenant to execute any further documents. Tenant and Successor Landlord shall, however, confirm the provisions of this Article in writing upon written request by either of them, provided that any such writing is reasonably acceptable to Tenant and Successor Landlord.

3. Successor Landlord. A "Successor Landlord" means any party that becomes owner of Landlord's Premises or successor to Landlord's interest in the Lease as the result of any of the following events: (a) foreclosure under the Deed of Trust; (b) any other exercise by Lender of rights and remedies (whether under the Deed of Trust or under applicable law, including bankruptcy law) as holder of the Loan and/or the Deed of Trust, as a result of which Successor Landlord becomes owner of Landlord's Premises; or (c) delivery by Landlord to Lender (or its designee or nominee) of a deed or other conveyance of Landlord's interest in Landlord's Premises in lieu of any of the foregoing.

4. Miscellaneous.

4.1 Notices. All notices or other communications required or permitted under this Agreement shall be in writing and given by certified mail (return receipt requested) or by nationally recognized overnight courier service (next business day service requested) that regularly maintains records of items and shall be delivered to Lender or Tenant (applicable) at the addresses set forth below. Notices shall be effective upon receipt.

If to Tenant: San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 8th Floor
San Francisco, CA 94103

Attn: Real Estate Section
Re: Pagoda Palace

With a copy to: Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Attn: Real Estate/Finance Team
Re: Pagoda Palace

If to Lender: _____

4.2 Successors and Assigns. This Agreement shall bind and benefit the parties, their successors and assigns, any Successor Landlord and its successors and assigns.

4.3 Entire Agreement. This Agreement constitutes the entire agreement between Lender and Tenant regarding the subordination of the Lease to the Deed of Trust and the rights and obligations of Tenant and Lender as to the subject matter of this Agreement.

4.4 Interaction with Lease. If this Agreement conflicts with the Lease, then this Agreement shall govern as between the parties and any Successor Landlord, including upon any attornment pursuant to this Agreement.

4.5 Lender's Rights and Obligations. Except as expressly provided for in this Agreement, Lender shall have no obligations to Tenant with respect to the Lease. If an attornment occurs pursuant to this Agreement, all rights and obligations of Lender under this Agreement shall terminate, without thereby affecting in any way the rights and obligations of Successor Landlord provided for in this Agreement.

4.6 Interpretation; Governing Law. The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the internal laws of the state where the Landlord's Premises is located excluding its principles of conflict of laws.

4.7 Amendments. This Agreement may be amended, discharged or terminated, or any of its provisions waived, only by a written instrument executed by the party to be charged.

4.8 Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the-same instrument.

4.9 Lender's Authority. Lender represents that Lender has full authority to enter into this Agreement, and Lender's entry into this Agreement has been duly authorized by all necessary actions.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, this Agreement has been duly executed by Lender and Tenant as of the Effective Date.

LENDER:

EAST WEST BANK, a _____

By: _____

Name: _____

Its: _____

Date: _____

TENANT:

CITY AND COUNTY OF SAN FRANCISCO, a
municipal corporation, acting by and through its
Municipal Transportation Agency

By: _____

Edward D. Reiskin
Director of Transportation

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Carol Wong, Deputy City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

State of California)
County of _____)

On _____ before me, _____, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

State of California)
County of _____)

On _____ before me, _____, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT E

[Intentionally deleted]

EXHIBIT F

CITY PROJECT PLANS AND SPECIFICATIONS

Demolition Plans and Specifications: [See attached]

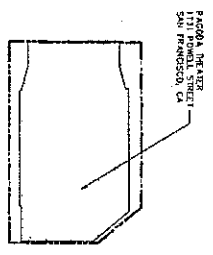
Initial Shaft Plans and Specifications:

- Work will include construction of the secant pile wall, design and construction of the excavation method, a temporary excavation support system, and a guide wall; material disposal; control and disposal of ground, surface, and construction water ; and site restoration.
- These secant pile walls consist of vertical secant concrete shaft installed by drilling and over cutting (overlapping) or touching adjacent shafts using a temporary double or single walled casing. The primary piles shall be reinforced with conventional steel reinforcement or wide flange steel sections.
- Self-compacting concrete shall be placed using tremie pipes. Once the concrete level in the pile bore has reached at least 6 feet height into the temporary casing, the casing shall be withdrawn by means of the oscillator, rotator, crane or the pile boring rig in sections, keeping the concrete level at least five feet above the casing shoe at all times.

Initial Bore Plans and Specifications:

The tunnel bores on the Premises will be constructed using a pressure faced tunnel boring machine. The tunnels will be lined with a single-pass, fully gasketed, precast concrete segmental lining system.

22-241



PACQUA TUNNEL
1770 BAY STREET
SAN FRANCISCO, CA

VIA BUIFANO

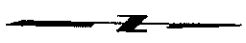
POWELL STREET

POWELL STREET

COLUMBIA AVENUE

UNION STREET

SITE PLAN
9/15



ABBREVIATIONS

- CA 854 CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH
- CCSF CITY AND COUNTY OF SAN FRANCISCO
- DOB DEPARTMENT OF BUILDING INSPECTION
- DOE DEPARTMENT OF ENVIRONMENT
- OPW DEPARTMENT OF PUBLIC WORKS
- DPT DEPARTMENT OF PARKING AND TRAFFIC
- POE PACIFIC GAS & ELECTRIC
- SPATA SAN FRANCISCO METROPOLITAN TRANSPORTATION AUTHORITY
- SPUC SAN FRANCISCO PUBLIC UTILITIES COMMISSION
- USA 101318 UNDERGROUND SERVICE ALERT 101318

DRAWING INDEX

- 10-00 SITE PLAN, ABBREVIATIONS AND DRAWING INDEX
- 10-01 GENERAL NOTES
- 10-10 OCCUPATION PLAN BASELINE LEVEL
- 10-11 OCCUPATION PLAN GROUND LEVEL
- 10-12 OCCUPATION PLAN SECOND LEVEL
- 10-13 OCCUPATION PLAN THIRD LEVEL
- 10-14 OCCUPATION PLAN FOURTH LEVEL
- 10-15 OCCUPATION PLAN ROOF
- 10-16 OCCUPATION PLAN SECTION

ARUP

Arup North America Ltd.
400 Market Street, Suite 100
San Francisco, CA 94102
Tel: (415) 774-2000
Fax: (415) 774-2001



BARNARD INTERNATIONAL HEALTH JV
400 KIN STREET
SAN FRANCISCO, CA 94107

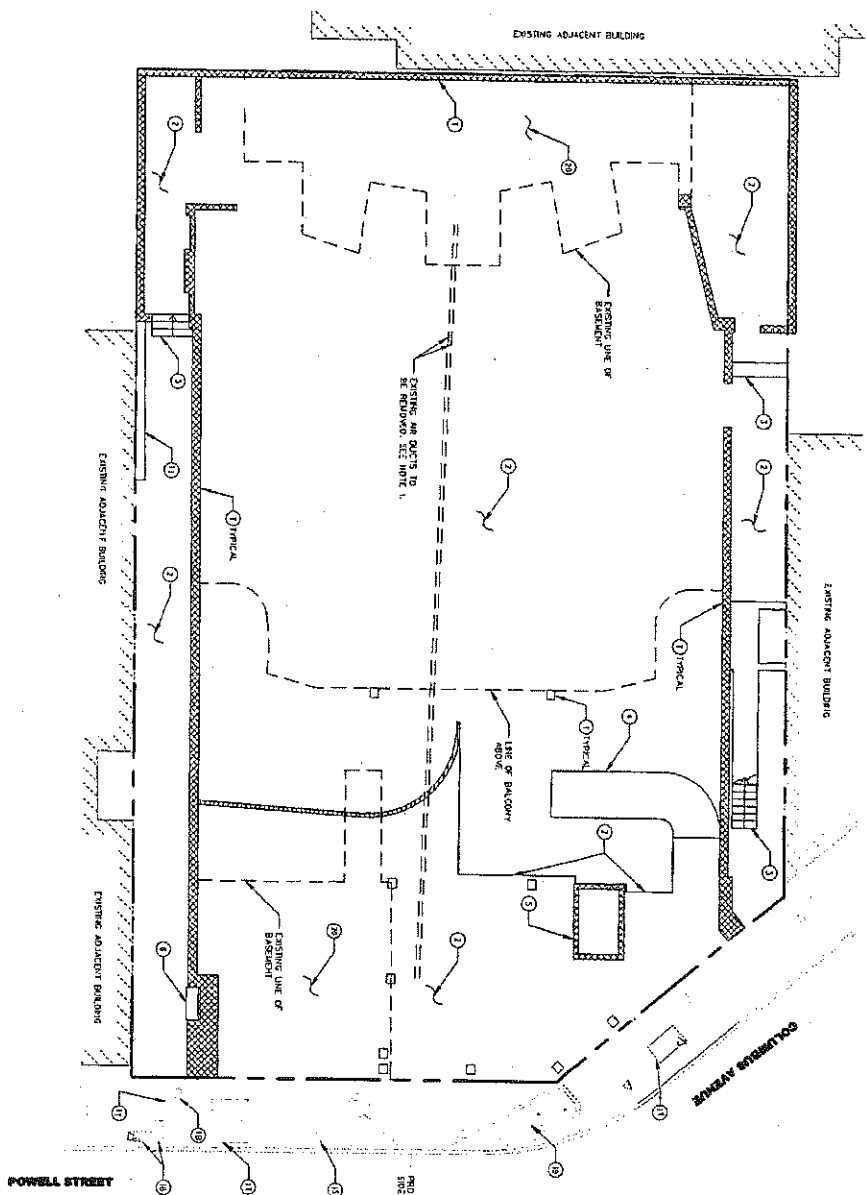
THIRD STREET LIGHT RAIL
PROGRAM PHASE 2
CENTRAL STATION
RUNNING TUNNELS



PACQUA TUNNEL
DEVELOPMENT PLAN
SITE PLAN, ABBREVIATIONS
AND DRAWING INDEX

Scale	NOT TO SCALE
Revision	NOV 2010
Author	ARUP
Checked	ARUP
Drawn	ARUP
Project No.	219424
Sheet No.	10-00

FLORIST STREET



- NOTES**
1. BASED ON THE GEOTECHNICAL INVESTIGATION 11-11-11.
 2. THE EXISTING FOUNDATION IS TO BE REMOVED AND THE NEW FOUNDATION IS TO BE CONSTRUCTED AS SHOWN ON THE PLAN. THE EXISTING FOUNDATION IS TO BE REMOVED AND THE NEW FOUNDATION IS TO BE CONSTRUCTED AS SHOWN ON THE PLAN.
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LEGEND

1. EXISTING FOUNDATION TO BE REMOVED.
2. EXISTING CONCRETE SLAB AND WALLS TO BE REMOVED.
3. EXISTING STAIRS, LANDING AND TO BE REMOVED.
4. EXISTING CONCRETE FLOOR TO BE REMOVED.
5. EXISTING CONCRETE WALL TO BE REMOVED.
6. EXISTING WATER, GAS LINES TO BE REMOVED. THEY SHALL BE LEFT AND CAPPED IN THE PROPERTY LINE.
7. EXISTING ELECTRICAL, TELEPHONE, CABLE AND OTHER SERVICES TO BE REMOVED TO EXISTING LEVEL.
8. EXISTING FOUNDATION BELOW SURROUNDING VIGILANCE TO BE REMOVED.
9. EXISTING ROOF TO BE REMOVED.
10. EXISTING BRICES TO BE REMOVED.
11. EXISTING BRICK WALL, CONCRETE WALL, STUO WALL, GOLF BRICKS AND METAL TOP LEVEL STUO TO BE REMOVED.
12. EXISTING CONCRETE LOW WALL TO BE REMOVED.
13. EXISTING RETAINING WALL, CONCRETE RETAINING WALLS TO REMAIN, PROTECT AS PLATE.
14. EXISTING FINE MASONRY TO REMAIN.
15. EXISTING SPRINKLER HEADS TO REMAIN.
16. EXISTING POLE UTILITY TO REMAIN.
17. EXISTING TELEPHONE UTILITY TO REMAIN.
18. EXISTING CABLE RAMP TO REMAIN.
19. EXISTING GROUND FLOOR SLAB OVER BASEMENT AT THE WALL BRACKING HAS BEEN INSTALLED.
20. EXISTING BRICK WALL, CONCRETE WALL, STUO WALL, GOLF BRICKS AND METAL TOP LEVEL STUO TO BE REMOVED.
21. EXISTING CONCRETE LOW WALL TO BE REMOVED.
22. EXISTING PROPERTY LINE.



ARUP
 500 North Alameda Street
 San Francisco, CA 94102
 Tel: 415.774.2000
 Fax: 415.774.2001
 www.arup.com

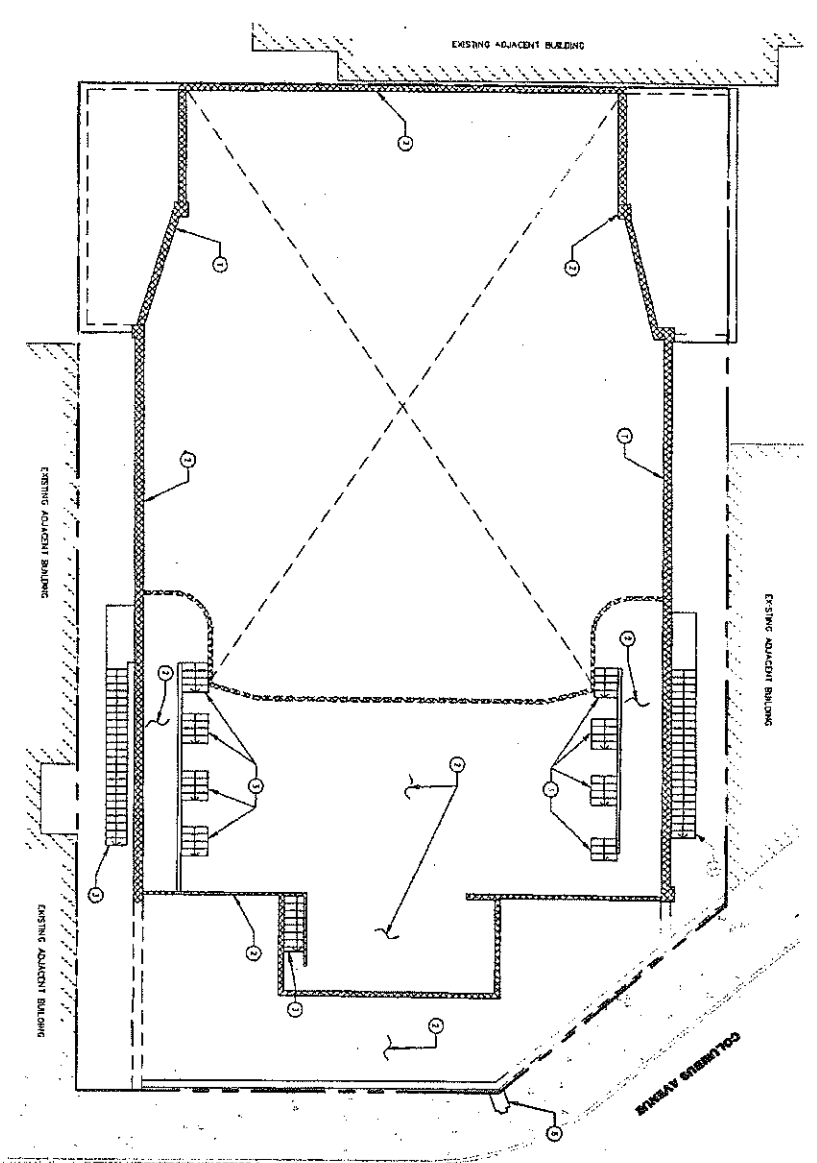
BARNARD IMPRELLIO HEALTH
 BARNARD IMPRELLIO HEALTH
 400 4TH STREET
 SAN FRANCISCO, CA 94107

THIRD STREET LIGHT RAIL
 CENTRAL RAILWAY
 RUNNING TUNNELS



**PAQUETA THEATER
 DEMOLITION PLAN
 GROUND LEVEL**

DATE	NO.	DESCRIPTION
11-11-11	1	ISSUED FOR PERMIT
11-11-11	2	REVISED PER COMMENTS
11-11-11	3	REVISED PER COMMENTS
11-11-11	4	REVISED PER COMMENTS
11-11-11	5	REVISED PER COMMENTS
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11-11-11	97	REVISED PER COMMENTS
11-11-11	98	REVISED PER COMMENTS
11-11-11	99	REVISED PER COMMENTS
11-11-11	100	REVISED PER COMMENTS



NOTES

- 1 CONTRACTOR IS RESPONSIBLE TO CAREFULLY EXAMINE ALL RECORDS FOR THE SITE AND TO VERIFY THE ACCURACY OF THE INFORMATION PROVIDED HEREON.
- 2 ALL FOUNDATIONS SHALL BE DEMOLISHED UNLESS OTHERWISE NOTED.

LEGEND

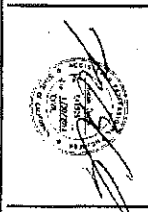
- 1 EXISTING FOUNDATION TO BE REMOVED.
- 2 EXISTING CONCRETE SLAB AND WALKOFF TOP LEVEL DECK TO BE REMOVED.
- 3 EXISTING STAIRS, LANDING HAVE TO BE REMOVED
- 4 EXISTING CONCRETE SHAFT TO BE REMOVED
- 5 EXISTING ELEVATOR SHAFT TO BE REMOVED.
- 6 EXISTING WATER, GAS LINES TO BE REMOVED. METR SHALL BE CUT AND CAPPED AT THE PROPERTY LINE.
- 7 EXISTING CONCRETE ENDOUSED STEEL COLLARS LOCATED IN THE BUILDING WALL, BRICK MASONRY WALL OF STEEL COLLARS TO BE REMOVED.
- 8 EXISTING SOIL TO BE REMOVED.
- 9 EXISTING STRUCTURAL BEAM SUPPORTING MEZANINE TO BE REMOVED.
- 10 EXISTING ROOF TO BE REMOVED.
- 11 EXISTING BRUSSES TO BE REMOVED.
- 12 EXISTING BRICK WALL, CONCRETE WALL, SHIP WALL, ROOF, WINDOWS AND MULTIPLE TOP LEVEL SHED TO BE REMOVED
- 13 EXISTING CONCRETE LOW WALL TO BE REMOVED
- 14 EXISTING RETAINING WALL AGAINST NEIGHBORING BUILDING TO REMAIN, PROTECT AS PLACED
- 15 EXISTING BRICK WALL, CONCRETE WALL, SHIP WALL, ROOF, WINDOWS AND MULTIPLE TOP LEVEL SHED TO BE REMOVED
- EXISTING PROPERTY LINE

1 2 0 4 8
SCALE IN FEET

ARUP
Architectural Firm
1111 Market Street, Suite 1000
San Francisco, CA 94102
Tel: 415.774.2000
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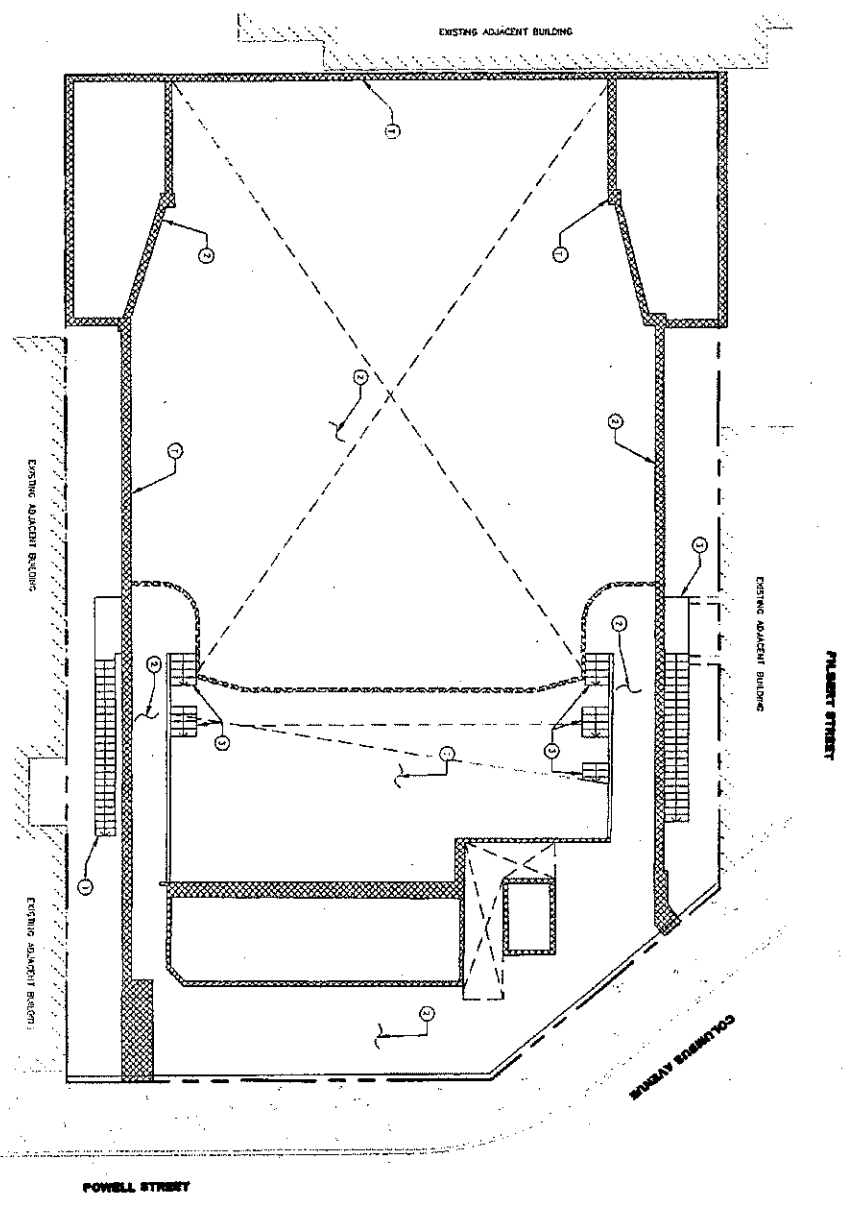
BARNARD INTERNATIONAL HEALTH
BARNARD / IMPREGLO HEALTH JV
400 7TH STREET
SAN FRANCISCO, CA 94107

**THIRD STREET LIGHT RAIL
CENTRAL STATION
RAMP/TUNNEL**



**PAOZOLA THEATER
DEMOLITION PLAN
THIRD LEVEL**

Scale	1/4" = 1'-0"
Revision	
Author	
Checked	
Drawn	
Date	11/14/11
Project	TH-12
Sheet	21844

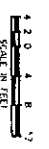


NOTES

1. CONTRACTOR IS RESPONSIBLE FOR CAREFULLY EXAMINE CONDITIONS FOR POTENTIAL UNDISCOVERED HAZARDOUS MATERIALS.
2. PROTECT EXISTING WALLS AGAINST TROUBLED BUILDINGS AND TROUBLED BUILDINGS AGAINST EXISTING WALLS.

LEGEND

- ① EXISTING RENOVATION TO BE REMOVED.
- ② EXISTING CONCRETE SLAB AND REINFORCING TOP LEVEL ONLY TO BE REMOVED.
- ③ EXISTING STAIRS, LAMINAS SLIP TO BE REMOVED.
- ④ EXISTING CONCRETE SLAB TO BE REMOVED.
- ⑤ EXISTING ELEVATOR SHAFT TO BE REMOVED.
- ⑥ EXISTING WATER, GAS LINES TO BE REMOVED; THEY SHALL BE CUT AND CAPPED AT THE PROPERTY LINE.
- ⑦ EXISTING CONCRETE INJECTED STEEL COLUMN & GYRATOR COLUMN TO BE REMOVED.
- ⑧ EXISTING CONCRETE INJECTED STEEL COLUMN TO BE REMOVED.
- ⑨ EXISTING PERIPHERAL BEAM SUPPORTING JEZZUWINE TO BE REMOVED.
- ⑩ EXISTING RAMP TO BE REMOVED.
- ⑪ EXISTING BUSSES TO BE REMOVED.
- ⑫ EXISTING STAIRS TO BE REMOVED.
- ⑬ EXISTING CONCRETE LOW WALL TO BE REMOVED.
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- ㊿ EXISTING CONCRETE LOW WALL TO BE REMOVED.



SCALE IN FEET

ARUP
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 Tel: 415 774 2000
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 www.arup.com

BARNARD HEALTH CARE
 BARNARD / IMPROVED HEALTH CARE
 400 17TH STREET
 SAN FRANCISCO, CA 94111

THIRD STREET LIGHT RAIL
 PROVISION PHASE 2
 CENTRAL STATION
 RUNNING TUNNELS



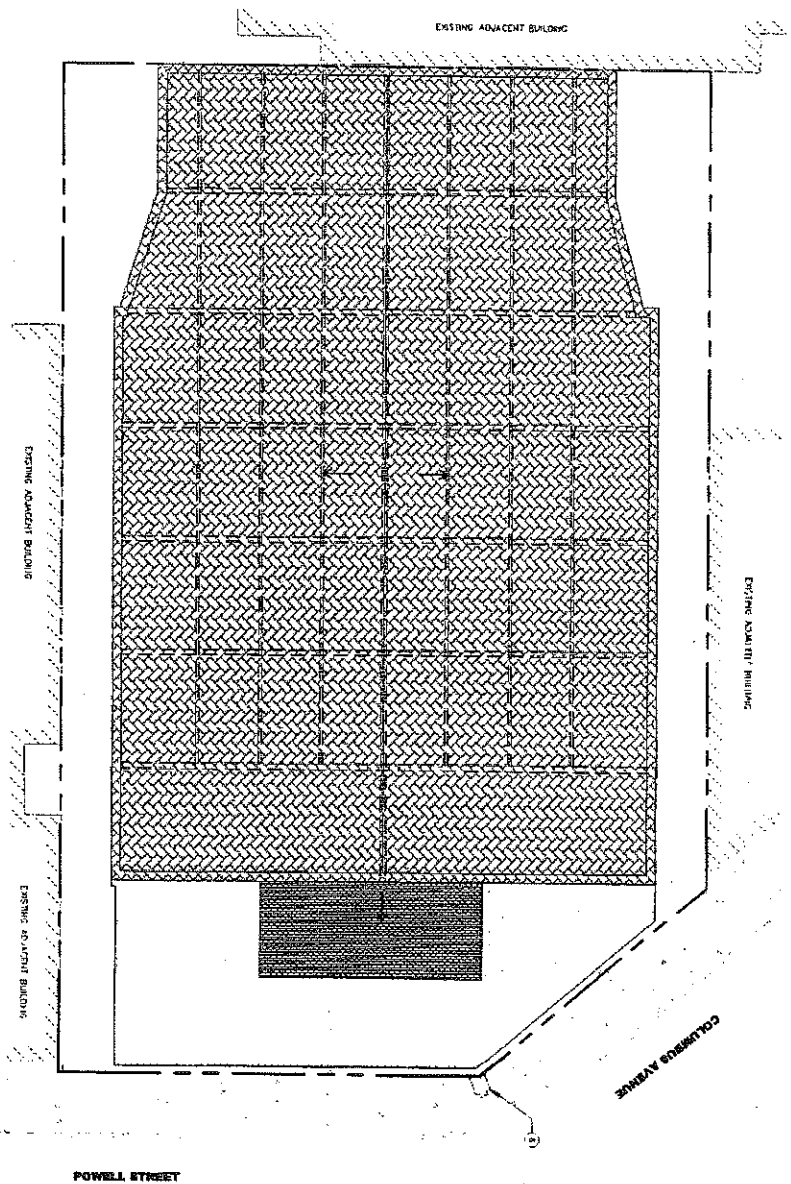
DAQOON THEATER
 PRELIMINARY
 SECOND LEVEL

Scale: 1/8" = 1'-0"

Project No: 21844

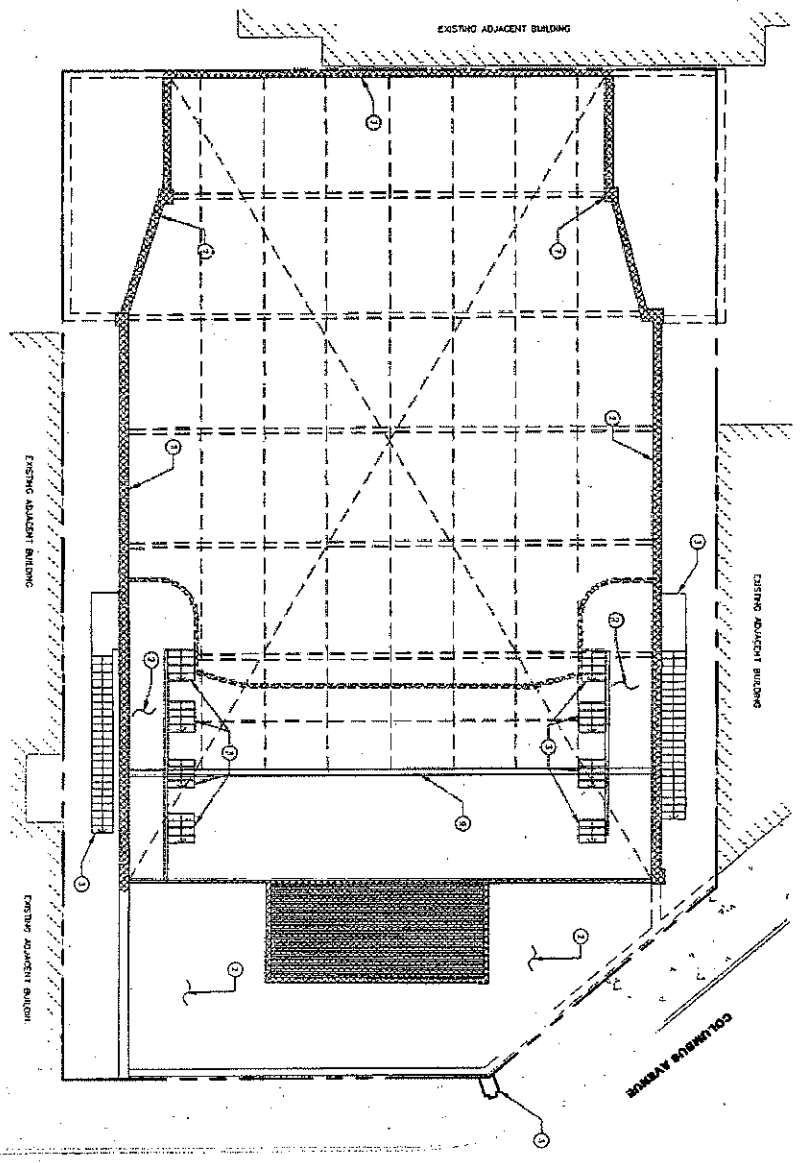
Date: 10-12

- NOTES**
1. CONTRACTOR IS RESPONSIBLE TO CURRENTLY EXISTING CONDITIONS FOR FURTHER UNDISCOVERED ITEMS.
 2. PROTECT EXISTING WALLS AGAINST NEIGHBORING BUILDINGS AND ADJACENT WALLS (SEE SECTION 10.00).



- LEGEND**
1. EXISTING FOUNDATION TO BE REMOVED
 2. EXISTING CONCRETE SLAB AND INTERIOR TOP LEVEL DECK TO BE REMOVED
 3. EXISTING STAIRS, LANDING PAIR TO BE REMOVED
 4. EXISTING CONCRETE FLOOR TO BE REMOVED
 5. EXISTING ELEVATOR SHAFT TO BE REMOVED
 6. EXISTING INTERIOR WALLS TO BE REMOVED (NET SHALL BE CUT AND DISCARDED)
 7. EXISTING CONCRETE ENCASED STEEL COLUMN LOCATED WITHIN BUILDING WALL BEING MAINTAINED WALL OF STEEL COLUMN TO BE REMOVED
 8. EXISTING SOIL TO BE REMOVED
 9. EXISTING PERIPHERAL BEAM SUPPORTING MEZANINE TO BE REMOVED
 10. EXISTING ROOF TO BE REMOVED
 11. EXISTING BRICK WALL, CONCRETE WALL, STUO WALL, ROOF, WINDOWS AND INTERIOR TOP LEVEL STUO TO BE REMOVED
 12. EXISTING CONCRETE ION WALL TO BE REMOVED
 13. EXISTING RETAINING WALL AGAINST NEIGHBOR BUILDING TO REMAIN, PROTECT IN PLACE
 14. EXISTING MAIN ROOF TO BE REINFORCED
 15. EXISTING MAIN ROOF AND SUPPORTING MEMBERS TO BE REMOVED
 16. EXISTING MAIN ROOF TO BE REMOVED
 17. EXISTING PROPERTY LINE

<p>ARUP Arup North America, LLC 1100 California Street, Suite 1000 San Francisco, CA 94109 Tel: 415.774.4000 Fax: 415.774.4001 www.arup.com</p>	<p>DATE: 10/15/15 BY: [Signature]</p>	<p>BARNARD HERSHFIELD HEALTH CARE BARNARD HERSHFIELD HEALTH CARE SAN FRANCISCO, CA 94107</p>	<p>THIRD STREET LIGHT RAIL PROGRAM PHASE 2 CENTRAL SUBWAY RUNNING TUNNELS</p>	<p>[Professional Seal]</p>	<p>PAOOIA THEATER DEMOLITION PLAN ROOF LEVEL</p>	<p>Scale: 1/8" = 1'-0" Date: 10/15/15 Project No: 218434</p>
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FILBERT STREET

COLUMBUS AVENUE

POWELL STREET

- NOTES**
1. CONTRACTOR IS RESPONSIBLE TO VERIFY EXISTING CONDITIONS FOR POTENTIAL UNDISCOVERED ITEMS.
 2. PROJECT EXISTING WALLS AGAINST ADJACENT BUILDINGS AND FOUNDATIONS (UNDER FOUNDATION WORK).

LEGEND

- ① EXISTING FOUNDATION TO BE REMOVED.
- ② EXISTING CONCRETE SLAB AND WALLING FOR LEVEL DECK TO BE REMOVED.
- ③ EXISTING TRUSS, LAMING RAFT TO BE REMOVED.
- ④ EXISTING CONCRETE RAMP TO BE REMOVED.
- ⑤ EXISTING CONCRETE FLOOR TO BE REMOVED.
- ⑥ EXISTING WATER, GAS LINES TO BE REMOVED. THEY SHALL BE CUT AND CAPPED AT THE PROJECT LINE.
- ⑦ EXISTING CONCRETE ENCLOSED STEEL COLUMNS (LOCATED IN EXISTING CONCRETE FLOOR) TO BE REMOVED.
- ⑧ EXISTING STEEL TO BE REMOVED.
- ⑨ EXISTING STEEL BEAM SUPPORTING UTZILAVET TO BE REMOVED.
- ⑩ EXISTING ROOF TO BE REMOVED.
- ⑪ EXISTING TRUSSES TO BE REMOVED.
- ⑫ EXISTING ROOFING ON THE WALL, STAIR WALKWAY AND WALKWAY FOR LEVEL STAIR TO BE REMOVED.
- ⑬ EXISTING CONCRETE LOW WALL TO BE REMOVED.
- ⑭ EXISTING CONCRETE WALL (CANT) REMOVED INCLUDING TO EXISTING ROOFING WALL.
- ⑮ EXISTING BRICK WALL, CONCRETE WALL, STAIR ROOF WALKWAY AND WALKWAY FOR LEVEL STAIR TO BE REMOVED.
- ⑯ EXISTING LAM ROOF TO BE REMOVED.
- ⑰ EXISTING ROOFING JUTE



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BARNARD HEATHFIELD
 BARNARD HEATHFIELD
 THIRD STREET LIGHT RAIL
 PROGRAM PHASE 2
 CENTRAL STATION
 PLANNING TUNNELS
 300 3TH STREET
 SAN FRANCISCO, CA 94107

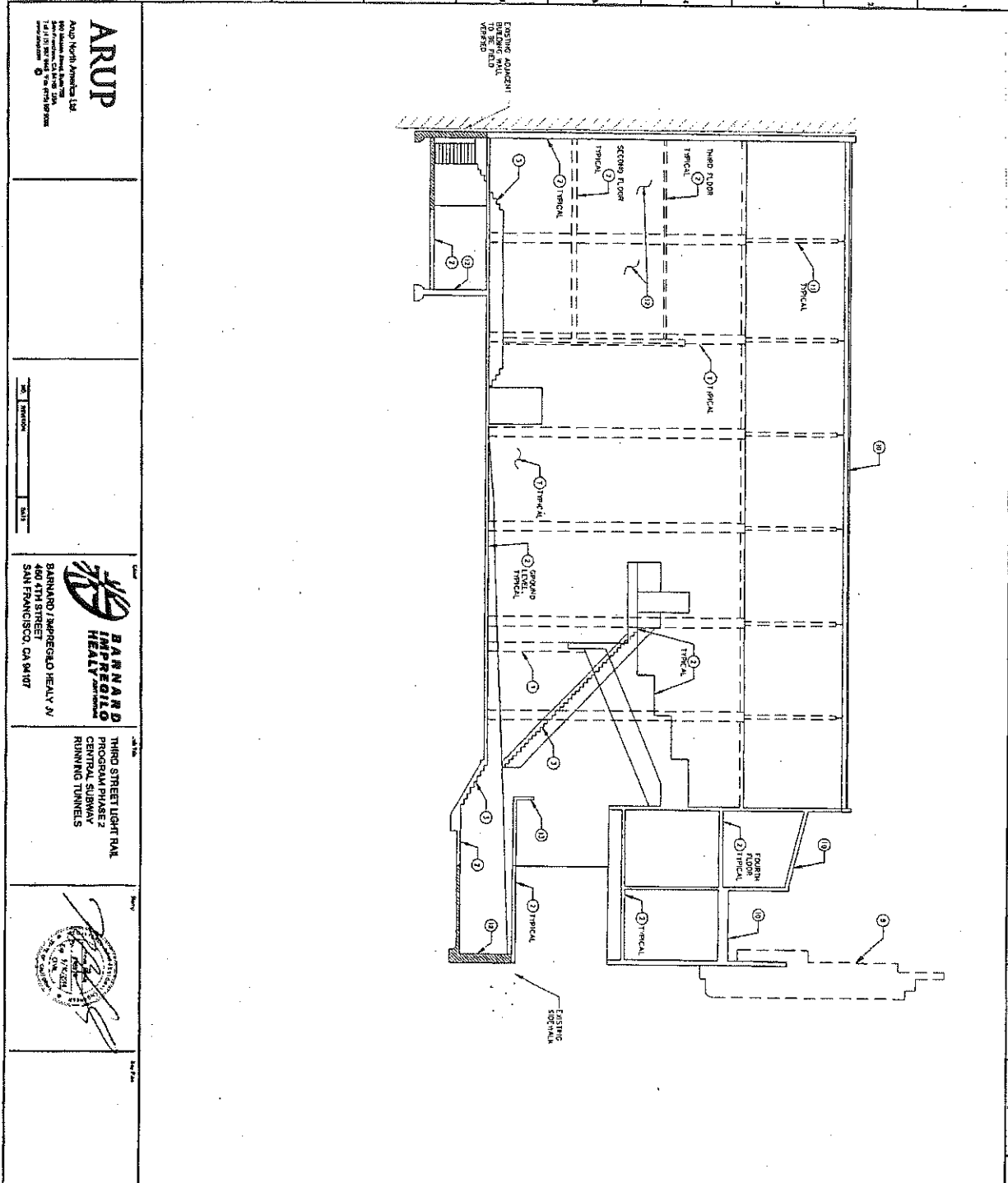
PAUCOA THEATER
 300 3TH STREET
 FOUNDATION LEVEL

DATE: _____

SCALE: 3/8" = 1'-0"

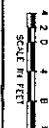
PROJECT NO: 218434

DATE: 10/14



- NOTES**
1. CONTRACTOR IS RESPONSIBLE TO CAREFULLY EXAMINE CONDITIONS FOR POTENTIALLY UNDISCOVERED STAIRS AND FOUNDATIONS DURING DEMOLITION WORK.

- LEGEND**
- ① EXISTING FOUNDATION TO BE REMOVED.
 - ② EXISTING CONCRETE SLAB AND MULTIPLE TOP LEVEL DECK TO BE REMOVED.
 - ③ EXISTING STAIRS, LAMPS, PUMP TO BE REMOVED.
 - ④ EXISTING CONCRETE RAISE TO BE REMOVED.
 - ⑤ EXISTING ELEVATOR SHAFT TO BE REMOVED.
 - ⑥ EXISTING W/DR, GAS LINES TO BE REMOVED. THIS SHALL BE CUT AND CAPPED AT THE PROPERTY LINE.
 - ⑦ EXISTING CONCRETE ENCASED STEEL, COILS, LOCALS, CABLES TO BE REMOVED. POWER WIRE SHALL BE REMOVED TO GROUND LEVEL.
 - ⑧ EXISTING STEEL TO BE REMOVED.
 - ⑨ REMOVING PRINCIPAL BEAM SUPPORTING MEZZANINE TO BE REMOVED.
 - ⑩ EXISTING ROOF TO BE REMOVED.
 - ⑪ EXISTING BRICK WALL, CONCRETE WALL, SUD WALL, ROOF, WINDSTOP AND INTERIOR TOP LEVEL STUB TO BE REMOVED.
 - ⑫ EXISTING CONCRETE LOW WALL TO BE REMOVED.
 - ⑬ EXISTING RETAINING WALL, AGAINST NEIGHBOR BUILDING TO REMAIN, PROJECT IN PLACE.
 - ⑭ EXISTING BASEMENT CONCRETE SLAB AND CONCRETE WALL TO REMAIN, PROJECT IN PLACE.



<p>ARUP ARUP North America Ltd 1111 Market Street, Suite 200 San Francisco, CA 94102 Tel: 415 774 2000 Fax: 415 774 2001</p>	<p>DATE: 1/27/01 SHEET: 10-16</p>	<p>BARNARD IMPREGATO HEALY BARNARD IMPREGATO HEALY & ASSOCIATES 460 4TH STREET SAN FRANCISCO, CA 94107</p>	<p>THIRD STREET LIGHT RAIL PROPOSED BRIDGE CENTRAL SUBWAY RUNNING TUNNELS</p>		<p>PARGOLA THEATER DEMOLITION PLAN SECTION</p>	<p>DATE: 1/27/01 DRAWN BY: [Name] CHECKED BY: [Name] SCALE: 1/8" = 1'-0" SHEET: 10-16</p>
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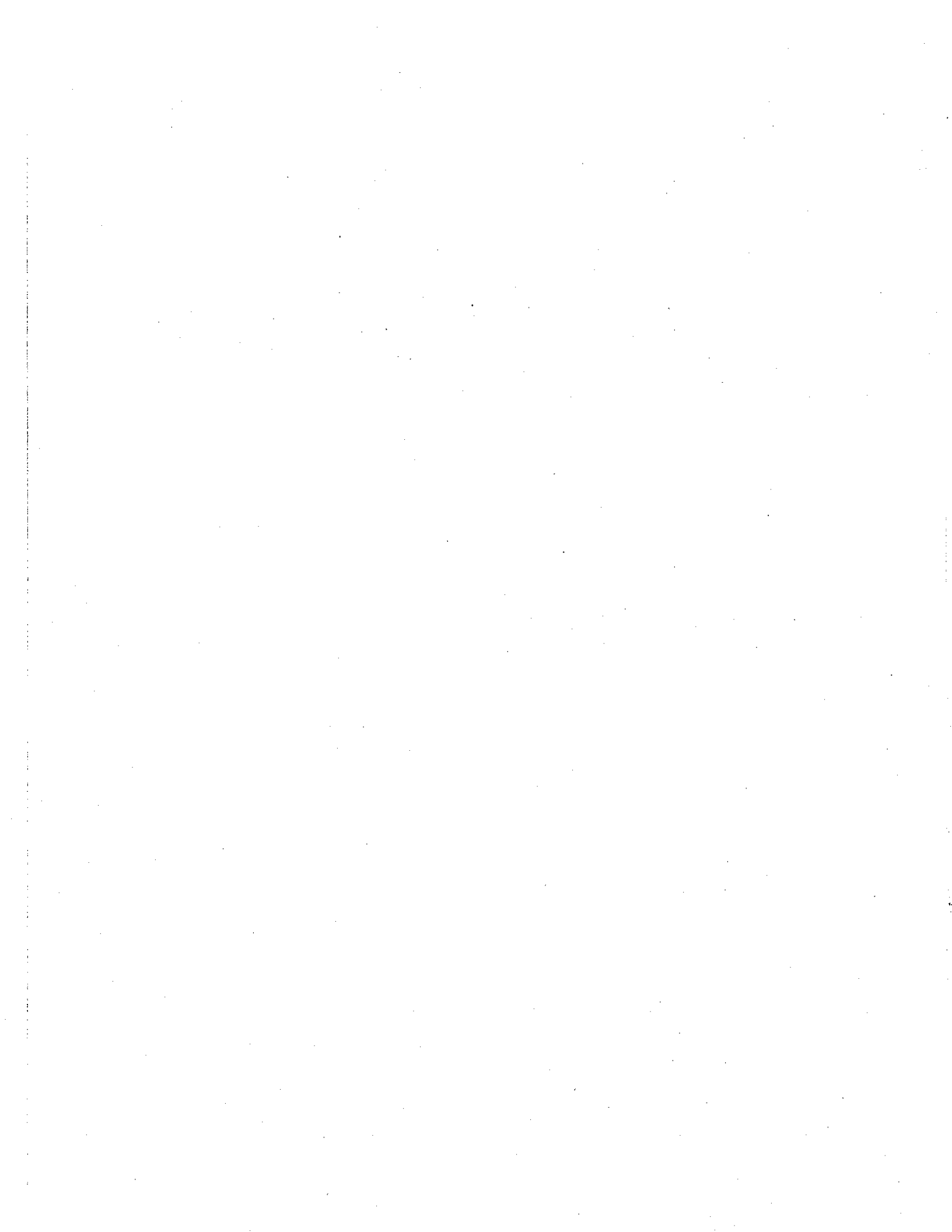


EXHIBIT G

PROPERTY REPORTS

1. Phase One-Environmental Site Assessment-Theatre Building dated May 30, 2001
2. EnviroNova Asbestos and Lead Survey dated June 19, 2009
3. Steve Walker Studio Letter of Interest dated October 25, 2012
4. Geotechnical Investigation for the Premises prepared by Treadwell & Rollo, Inc., dated December 1, 2008

EXHIBIT H

FORM OF MEMORANDUM OF LEASE

RECORDING REQUESTED BY, AND
WHEN RECORDED, MAIL TO:

City and County of San Francisco
SFMTA Real Estate Section
Finance and Information Technology Division
1 South Van Ness, 8th Floor
San Francisco, CA 94103
Attn: Senior Manager

The undersigned hereby declares this instrument to be
exempt from Recording Fees (Govt. Code § 27383).

Documentary Transfer Tax of \$0 based on
full value of the property conveyed

FOR RECORDER'S USE ONLY

MEMORANDUM OF LEASE

This Memorandum of Lease ("Memorandum"), dated for reference purposes as of April 4, 2013, is by and between THE PALACE AT WASHINGTON SQUARE LLC, a California limited liability company ("Landlord"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through its Municipal Transportation Agency ("City").

Recitals

A. Concurrently herewith, Landlord and City have entered into that certain Lease, dated April 4, 2013 (the "Lease"), pursuant to which Landlord leased to City and City leased from Landlord the real property more particularly described in the attached Exhibit A (the "Property"), which is incorporated by this reference.

B. The Lease provides City a right of first offer to acquire the Property (the "Right of First Offer") on the terms specified in Section 22 of the Lease.

C. Landlord and City desire to execute this Memorandum to provide constructive notice of the Lease and the Right of First Offer to all third parties, and all of the terms and conditions of the Lease are incorporated herein by reference as if they were fully set forth herein and reference is made to the Lease itself for a complete and definitive statement of the rights and obligations of Landlord and Tenant thereunder.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Term. Pursuant to the terms of the Lease, Landlord leased the Property to City for a term commencing on _____, 2013 (the "Lease Commencement Date"), and City's obligation to pay Base Rent will commence on the Rent Commencement Date (as defined in the Lease). The term of the Lease shall expire at midnight on the last day of the Twenty-Forth

(24th) full month immediately following the Rent Commencement Date, unless earlier terminated in accordance with the terms of the Lease.

2. Lease Terms. The lease of the Property to City is made pursuant to the Lease, which is incorporated in this Memorandum by reference. This Memorandum shall not be deemed to modify, alter or amend in any way the provisions of the Lease. In the event any conflict exists between the terms of the Lease and this Memorandum, the terms of the Lease shall govern. Except as otherwise defined in this Memorandum, capitalized terms shall have the meanings given them in the Lease.

3. Successors and Assigns. This Memorandum and the Lease shall bind and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject, however, to the provisions of the Lease.

IN WITNESS WHEREOF, Landlord and City have executed this Memorandum of Lease as of the day and year first above written.

LANDLORD:

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by and through its
Municipal Transportation Agency

By: _____
Edward D. Reiskin
Director of Transportation

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Carol Wong
Deputy City Attorney

State of California)
County of _____)

On _____ before me, _____, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

State of California)
County of _____)

On _____ before me, _____, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

to

Memorandum of Lease

Legal Description of Property

THAT CERTAIN REAL PROPERTY SITUATION IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

SCHEDULE 1

Landlord Consultant Rates, Expenses, and Scope of Work

Name	Hourly Rate	Scope of Work and Services
HansonBridgett	\$355-440	Legal Services
Susan Kelly	\$355	Legal Services
Brett Gladstone	\$440	Legal Services
West Builders	\$150-330	Construction Services
Sedgwick	\$400-460	Legal Services
Jonathan Rodriguez	\$400	Legal Services
Paul Kawakami	\$460	Legal Services
Santos & Urrutia	\$150-250	Structural Engineering
Craig Funai	Flat Fee Based *	Rendering Services
Leonardo Zylberberg	Flat Fee Based *	Rendering Services
Alex Mendoza	\$120	Financial Consultant
Steve Walker Studio	\$175	Architectural Services
Jorge Hernandez	\$120	Architectural Services
Radius Services	Flat Fee Based *	Notification Services
Martin Kirkwood	\$130	Project Coordination
Robert Sellers	\$300	Legal Services
Treadwell & Rollo	\$110-275	Geotechnical Engineering
Pedro Rodriguez	\$300	CPA - Accounting Services
Martin Kirkwood	Percentage Based**	Real Estate Brokerage Services
Andreas Moussouras	\$175	Construction Services

For further specificity refer to Section 4.2 set forth in the Lease.

* The Flat Fee Based charges are currently estimated to be \$3,000 in total.

** Percentage based on value of rent and other lease terms.

SCHEDULE 2

Modified CUP and SUD Ordinance

[see attached]

5

1 [Planning Code, Zoning Map - Central Subway Tunnel Boring Machine Extraction Site Special
2 Use District]

3 Ordinance amending the Planning Code, by adding Section 249.70, to create the
4 Central Subway Tunnel Boring Machine Extraction Site Special Use District for the
5 property located at Assessor's Block No. 0101, Lot No. 004, known as 1731-1741 Powell
6 Street, to facilitate the removal of the tunnel boring machines used in the construction
7 of the Central Subway Project and allow the construction of a previously approved
8 mixed-use residential/retail building; amending Sectional Zoning Maps HT 01 and SU
9 01 to reflect the Central Subway Tunnel Boring Machine Extraction Site Special Use
10 District; adopting findings, including environmental findings, and findings of
11 consistency with the General Plan.

12 NOTE: Additions are single-underline italics Times New Roman;
13 deletions are ~~strike-through italics Times New Roman~~.
14 Board amendment additions are double-underlined;
Board amendment deletions are ~~strike-through normal~~.

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

16 Section 1. General

17 (a) The San Francisco Municipal Transportation Agency (SFMTA) is constructing a
18 continuation of the T-Third Light Rail Vehicle line from the Caltrain Station at Fourth and King
19 Streets to an underground station in Chinatown (the "Project") to create a critical
20 transportation improvement linking neighborhoods in the southeastern portion of the City and
21 County of San Francisco (the "City") with the retail and employment centers in the City's
22 downtown and Chinatown neighborhoods.

23 (b) The Project will provide direct rail service to regional destinations, including the
24 City's Chinatown, Union Square, Moscone Convention Center, Yerba Buena, SoMa and
25 AT&T Park neighborhoods; connect BART and Caltrain; serve a low-auto-ownership

Supervisor Chiu
BOARD OF SUPERVISORS

1 population of transit customers; increase transit use and reduce travel time; reduce air and
2 noise pollution and provide congestion relief.

3 (c) Construction of the subway portion of the extension, from underneath Interstate
4 80 to the Chinatown Station, requires the use of two tunnel boring machines. The Project
5 originally included plans to remove the tunnel boring machines from a location in North Beach
6 in the right-of-way of Columbus Avenue, between Powell Street and Union Street,
7 approximately 2000 feet beyond the Chinatown Station. Retrieval of the machines from
8 Columbus Avenue will require closing two lanes of Columbus Avenue for almost a year. After
9 further consideration, and in order to avoid the traffic disruptions caused by the original
10 retrieval location, the SFMTA proposes to change the location where the tunnel boring
11 machines are retrieved to an off-street location at 1731-1741 Powell Street.

12 (d) The proposed new location for the removal of the machines is currently
13 occupied by the former Pagoda Palace, or Pagoda Theater. The Pagoda Palace is a former
14 movie and live performance theater built around 1908. The building is approximately 56 feet
15 tall. The building height is consistent with other building heights in the same block where it is
16 located, including the height of the building directly adjacent to the Pagoda Palace to the
17 south; however, it exceeds the current height limit in the area, which is 40 feet. The building
18 has been officially closed since 1994, is currently vacant.

19 (e) On January 8, 2009, in Motion number 17797, the San Francisco Planning
20 Commission approved a conditional use authorization to allow the building to be converted
21 from a movie theater use to a mixed-use residential, parking and ground floor retail project
22 with basement parking. The Planning Commission approved an amended conditional use
23 authorization on October 28, 2010, in Motion number 18204, which did not alter the project,
24 but allowed the project sponsor to change the method by which the project sponsor complied
25 with the City's affordable housing requirements.

1 (f) As approved by the Planning Commission in Motion numbers 17797 and 18204,
2 the reuse of 1731-1741 Powell as a mixed-use residential and retail project would have
3 consisted of a seismic/structural retrofit, and would not have constituted structural demolition.
4 As an alteration of a non-complying structure, and not demolition, the approved project would
5 comply with the applicable zoning regulations relative to building height, which allows altered
6 non-conforming buildings to remain at their current height. However, use of the site by the
7 Central Subway to remove the tunnel boring machines will require the demolition of the
8 structure in order to provide the necessary construction access. This Ordinance will allow the
9 Central Subway to demolish the non-complying structure while preserving the ability of the
10 project sponsor to construct the previously approved mixed-use residential/retail use, which
11 included a building consistent with the previously existing height. By adopting a special use
12 district exclusively for the site, the 40 foot height limit remains applicable for other parcels in
13 the area.

14 (g) In addition, since the time that the Planning Commission approved Motions
15 17797 and 18204, several Planning Code provisions have been added or amended which, if
16 applicable to the project site, would trigger additional restrictions on the ability of the project
17 sponsor to construct the previously approved project. These restrictions would not apply to the
18 previously approved project. This Ordinance would allow the construction of the previously
19 approved project without requiring compliance with these later enacted Planning Code
20 provisions.

21 Section 2. Findings.

22 (a) On August 7, 2008, the City's Planning Commission certified that the Final
23 Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report
24 ("Final Supplemental EIS/EIR") for the Central Subway/Third Street Light Rail Phase 2
25 ("Central Subway") was in compliance with the California Environmental Quality Act,

1 (California Public Resources Code section 21000, *et seq*) ("CEQA"), the CEQA Guidelines,
2 and Administrative Code Chapter 31 in Planning Commission Motion No. 17668. The Final
3 Supplemental EIS/EIR and Motion No. 17668 are on file with the Clerk of the Board of
4 Supervisors in File No. 130019 and are incorporated by reference.

5 (b) On August 19, 2008, the SFMTA's Board of Directors, by Resolution No. 08-
6 150, approved the Project, and adopted CEQA Findings, including a Statement of Overriding
7 Considerations and a Mitigation Monitoring and Reporting Program (MMRP) as required by
8 CEQA. Resolution No. 08-150 is on file with the Clerk of the Board of Supervisors in File
9 No. 130019 and is incorporated by reference.

10 (c) On September 16, 2008, the City's Board of Supervisors (this "Board") adopted
11 Motion No. 08-145, in Board File No. 081138, affirming the City's Planning Department
12 decision to certify the Final Supplemental EIS/EIR. Motion No. 08-145 is on file with the Clerk
13 of the Board of Supervisors in File No. 130019 and is incorporated by reference.

14 (d) On February 7, 2013, the City's Planning Department found in an
15 Addendum to the Final Supplemental EIS/EIR, that the proposed changes to the Project are
16 not substantial and would not require major revisions to the Final Supplemental EIS/EIR or
17 result in significant environmental impacts that were not evaluated in the Final Supplemental
18 EIS/EIR; and no new information has become available that was not known and could not
19 have been known at the time the Final Supplemental EIS/EIR was certified as complete and
20 that would result in significant environmental impacts not evaluated in the Final Supplemental
21 EIS/EIR.

22 (e) In accordance with the actions contemplated herein, this Board has reviewed
23 the Final Supplemental EIS/EIR and the Addendum, and adopts and incorporates by
24 reference as though fully set forth herein the findings, including the mitigation monitoring and
25 reporting program, adopted by the Planning Commission on August 7, 2008 in

Supervisor Chiu
BOARD OF SUPERVISORS

Page 4
1/29/2013

1 Motion No. 17668. The Board further finds that there is no need to prepare a
2 subsequent environmental impact report under CEQA Guidelines Section 15162 for the
3 actions contemplated herein.

4 (f) On February 14, 2013, the Planning Commission conducted a duly
5 noticed public hearing on the proposed Zoning Map amendments and, by Resolution No.
6 18805 recommended them for approval. The Planning Commission found that the
7 proposed Zoning Map amendments were, on balance, consistent with the City's General Plan,
8 and with Planning Code Section 101.1(b). A copy of said Resolution is on file with the Clerk
9 of the Board of Supervisors in File No. 130019 and is incorporated herein by
10 reference.

11 (g) The Board finds that these Zoning Map amendments are on balance consistent
12 with the General Plan and with the Priority Policies of Planning Code Section 101.1 for the
13 reasons set forth in Planning Commission Resolution No. 18805 and the Board
14 hereby incorporates such reasons herein by reference.

15 (h) Pursuant to Planning Code Section 302, the Board finds that the proposed
16 ordinance will serve the public necessity, convenience and welfare for the reasons set forth in
17 Planning Commission Resolution No. 18805, which reasons are incorporated by
18 reference as though fully set forth.

19
20 Section 3. The San Francisco Planning Code is hereby amended by adding Section
21 249.70 to read as follows:

22 Section 249.70 Central Subway Tunnel Boring Machine Extraction Site Special Use District

23 (a) Purposes. In order to facilitate the removal of the tunnel boring machines used to
24 construct the Central Subway Project from an off-street location at 1731-1741 Powell Street while
25 allowing the construction of a mixed-use residential and ground floor retail building in substantial

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1 conformity to a mixed-use residential/retail project conditionally authorized in 2009 and 2010, there
2 shall be a special use district known as the Central Subway Tunnel Boring Machine Extraction Site
3 Special Use District, as designated on Sectional Map No. 1SU of the Zoning Map of the City and
4 County of San Francisco.

5 (b) Controls: All otherwise applicable provisions of the Planning Code shall apply to this
6 Special Use District, except as specifically provided in this Section 249.70:

7 (1) Restaurant Use: Section 780.3, prohibiting new restaurants in specified locations, shall
8 not apply in this Special Use District.

9 (2) Use Size: In this District, the maximum use size in the North Beach Neighborhood
10 Commercial District found in Section 121.2(b) shall be 5,000 square feet.

11 (3) Parking: Notwithstanding any other provision of this Code, no more than one parking
12 space per dwelling unit, up to .5 accessory spaces per dwelling unit, and up to 3 accessory parking
13 spaces for non-residential uses, up to a total maximum of 27 spaces, shall be allowed.

14 (4) Rear Yard. The provisions of Section 134 shall not apply in this District.

15 (5) Ground Floor Ceiling Heights. Notwithstanding the provisions of section 145.1, ground
16 floor non-residential uses in this District shall have a minimum floor-to-floor height of 8.5 feet.

17 (6) Exposure. The requirements of Section 140 shall not apply. Any dwelling unit shall
18 either face onto a public street or a lightwell measuring at least 25 feet.

19 (7) Demolition. Notwithstanding any other provision in this Code, in this District, an
20 application authorizing demolition of a building may be granted prior to final approval of a building
21 permit for construction of a replacement building, as long as the replacement building has been
22 conditionally authorized.

23 (8) Height and Bulk. The height and bulk applicable to this Special Use District shall be
24 55-X, provided, however, that in no case shall the height of any new structure exceed the height of the
25 existing Pagoda Palace structure. For purposes of measurement of height in this District, the height of

1 a projecting business sign shall be exempt, provided that such sign is the reconstruction or
 2 rehabilitation of an existing projecting movie theater blade sign as provided in Section 9 herein. Prior
 3 to demolition of the existing structure, the owner or owners authorized agent shall prepare and submit
 4 to the Planning Department a detailed survey, including elevations and sections, which accurately
 5 dimension the height of the existing theater building, including the heights of all rooftop features.

6 (9) Signage. The existing Pagoda Palace's projecting movie theater blade sign provided a
 7 prominent visual landmark within the North Beach Neighborhood Commercial District. In order to
 8 preserve this visual landmark, any new structure in the Special Use District shall include as an
 9 architectural element, a reconstructed projecting movie theater blade sign in general conformity with
 10 the overall design, scale and character of the existing movie theater sign.

11 (10) Streetscape and Pedestrian Improvements. The requirements of Section 138.1(c)(1)
 12 shall apply.

13 (c) Fees. The provisions of Section 352 shall apply to this District, provided however, that if
 14 the Planning Commission has approved a conditional use authorization for a substantially similar
 15 project within the previous 4 years of the effective date of this ordinance, such fees shall be waived.

16 (d) Sunset Provision. This Section 249.70 shall be repealed 5 years after its initial effective
 17 date unless the Board of Supervisors, on or before that date, extends or re-enacts it.

18
 19 Section 4. The San Francisco Planning Code is hereby amended by amending
 20 Sectional Map HT01 of the Zoning Map of the City and County of San Francisco, as follows:
 21

<u>Description of Property</u>	<u>Height and Bulk</u> <u>Districts to be Superseded</u>	<u>Height and Bulk</u> <u>Districts Hereby Approved</u>
Assessor's Block/Lot 0101/04	40-X	55-X

22
 23
 24
 25
 Supervisor Chiu
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1 Section 5. The San Francisco Planning Code is hereby amended by amending
2 Sectional Map SU01 of the Zoning Map of the City and County of San Francisco, as follows:
3

Description of Property	Special Use District Hereby Approved
Assessor's Block/Lot 0101/04	Central Subway Tunnel Boring Machine Extraction Site Special Use District

4
5
6
7
8 Section 6. This section is uncodified. Effective Date and Operative Date. This
9 ordinance shall become effective 30 days from the date of passage. This Ordinance shall
10 become operative only upon the later of 30 days from the date of passage or the date that a
11 lease authorized by SFMTA Resolution 13-023, regarding use of 1731 Powell for
12 extraction of the tunnel boring machines for the Central Subway project, becomes effective. A
13 copy of said Resolution is on file with the Board of Supervisors in Board File Number
14 130019.

15 Section 7. This section is uncodified. In enacting this Ordinance, the Board intends
16 to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,
17 punctuation, charts, diagrams, or any other constituent part of the Planning Code that are
18 explicitly shown in this legislation as additions, deletions, Board amendment additions, and
19 Board amendment deletions in accordance with the "Note" that appears under the official title
20 of the legislation.

21
22 APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

23 By: 
24 Audrey Pearson
25 Deputy City Attorney

Supervisor Chiu
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revised on: 1/29/2013 - n:\ptclas2012\1000388\00823854.doc



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- | | |
|---|---|
| <input checked="" type="checkbox"/> Affordable Housing (Sec. 415) | <input checked="" type="checkbox"/> First Source Hiring (Admin. Code) |
| <input type="checkbox"/> Jobs Housing Linkage Program (Sec. 413) | <input type="checkbox"/> Child Care Requirement (Sec. 414) |
| <input type="checkbox"/> Downtown Park Fee (Sec. 412) | <input type="checkbox"/> Other |

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Planning Commission Motion 18806

HEARING DATE: FEBRUARY 14, 2013

Date: January 31, 2012
Case No.: 2013.0050CTZ
Project Address: 1731 Powell Street
Zoning: North Beach Neighborhood Commercial District
North Beach Special Use District
North Beach Financial Service, Limited Financial Service, and Business or
Professional Service Subdistrict
40-X Height and Bulk District
Block/Lot: 0101/004
Project Sponsor: Brett Gladstone
177 Post Street, Penthouse
San Francisco, CA 94108
Staff Contact: Kevin Guy – (415) 558-6163
kevin.guy@sfgov.org

ADOPTING FINDINGS RELATING TO CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 121.1, 121.2, 303, 221.1, AND 722 OF THE PLANNING CODE TO ALLOW A RESTAURANT (D.B.A. LA CORNETA) WITH A TYPE 47 ABC LICENSE, TO ALLOW THE DEMOLITION OF AN EXISTING VACANT MOVIE THEATER, TO ALLOW THE DEVELOPMENT OF A LOT GREATER THAN 5,000 SQUARE FEET, AND TO ALLOW NON-RESIDENTIAL USES GREATER THAN 2,000 SQUARE FEET, IN ASSOCIATION WITH A PROJECT TO DEMOLISH THE EXISTING THEATER (FORMERLY KNOWN "PALACE" OR "PAGODA" THEATER), AND CONSTRUCT A NEW FIVE-STORY OVER BASEMENT MIXED-USE BUILDING CONTAINING UP TO 18 DWELLING UNITS, A RESTAURANT MEASURING APPROXIMATELY 4,700 SQUARE FEET, AND UP TO 27 OFF-STREET PARKING SPACES, WITHIN THE NORTH BEACH NEIGHBORHOOD COMMERCIAL DISTRICT, THE NORTH BEACH SPECIAL USE DISTRICT, THE NORTH BEACH FINANCIAL SERVICE, LIMITED FINANCIAL SERVICE, AND BUSINESS OR PROFESSIONAL SERVICE SUBDISTRICT, AND THE 40-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On January 15, 2013 Brett Gladstone ("Project Sponsor") filed an application with the Planning Department (hereinafter "Department") for Conditional Use Authorization to allow development of a lot greater than 5,000 square feet (Section 121.1), non-residential uses greater than 2,000 square feet (Section 121.2), demolition of a movie theater use (Section 221.1), and establishment of a restaurant use, including a Type 47 ABC License to provide beer, wine, and/or liquor in a Bona Fide Eating Place (Sections 722.44 and 790.142), for a project to demolish the existing vacant movie theater (formerly known as the "Palace" or "Pagoda" Theater), and construct a new five-story over basement mixed-use building containing up to 18 dwelling units, a restaurant measuring approximately 4,700 square feet, and up to 27 off-street parking spaces, within the North Beach Neighborhood Commercial District, the North Beach Special Use District, the North Beach Financial Service, Limited Financial Service, and Business or Professional Service Subdistrict, and the 40-X Height and Bulk District. Following demolition of the existing building, and prior to the construction of the new mixed-use building, the site would be utilized for extraction of a tunnel boring machine associated with the Central Subway project (Case No. 2013.0050C, collectively "Project").

On January 8, 2009, the San Francisco Planning Commission ("Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2007.1117C, which proposed to rehabilitate the existing theater and convert the building to up to 18 dwelling units, a restaurant measuring approximately 4,000 square feet, an additional ground-floor commercial space measuring approximately 1,000 square feet, and 27 off-street parking spaces located at 1731 Powell Street (Motion No. 17797). The Zoning Administrator also granted variances from Planning Code regulations for rear yard and dwelling unit exposure in association with the rehabilitation project (Case No. 2007.1117V). On October 28, 2010, the Commission approved an amendment to Conditional Use Application No. 2007.1117C, allowing the project to satisfy the Inclusionary Affordable Housing requirements of Planning Code Section ("Section") 415 through the payment of an in-lieu fee rather than through the construction of off-site affordable dwelling units (Motion No. 18204). The project was determined to be categorically exempt under the California Environmental Quality Act (CEQA).

On August 7, 2008, the Planning Commission reviewed and considered the Central Subway/Third Street Light Rail Phase 2 Final Supplemental Environmental Impact Statement/Final Supplemental Environmental Impact Report ("Final SEIS/SEIR") and found that the contents of said report and the procedures through which the SEIS/SEIR was prepared, publicized, and reviewed complied with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) (CEQA), 14 California Code of Regulations Sections 15000 et seq. (the "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code ("Chapter 31"). The Commission found the SEIS/SEIR was adequate, accurate and objective, reflected the independent analysis and judgment of the Department and the Commission, and approved the SEIS/SEIR for the Central Subway Project in compliance with CEQA, the CEQA Guidelines and Chapter 31. The Planning Department, Jonas Ionin, is the custodian of records, located in the File for Case No. 1996.281E, at 1650 Mission Street, Fourth Floor, San Francisco, California. Department staff prepared a Mitigation Monitoring and Reporting program, which material was made available to the public and the Commission for the Commission's review, consideration, and action. On August 19, 2008, the San Francisco Municipal Transportation Agency adopted the Project and adopted findings under CEQA, including a statement of overriding considerations and a mitigation monitoring

and reporting program. This Commission has reviewed the findings, and adopts and incorporates them herein by reference.

On January 31, 2013, the Department prepared and published an Addendum to the previously-certified Final EIR which determined that the revisions to incorporate the proposed Project, would not cause and new significant impacts not identified in the original Final SEIS/SEIR (Case No. 1996.281E).

On January 8, 2013, the San Francisco Board of Supervisors ("Board") introduced legislation to amend Zoning Map HT01 to reclassify the subject property from the 40-X Height and Bulk District to the 50-X Height and Bulk District, and to amend Zoning Map SU01 and the text of the Planning Code to establish the "Central Subway Tunnel Boring Machine Extraction Site Special Use District" (SUD) on the property. The proposed SUD would modify specific Planning Code regulations related to off-street parking, rear yard, ground-floor ceiling heights, dwelling unit exposure, signage, allowing a restaurant use at the property, and other provisions of the Planning Code. Substitute legislation was introduced on January 29, 2013, which increase the height to 55-X and allowed a non-residential use over 4,000 square feet. Adoption of the SUD (as amended in the substitute legislation) would enable the construction of the proposed Project in a manner similar to the configuration and program of uses envisioned by the previously-approved rehabilitation project, after the existing building is demolished to allow the extraction of the boring machine utilized for the Central Subway project (Case No. 2007.1117C).

On February 14, 2013, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2013.0050C.

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties.

MOVED, that the Commission hereby authorizes the Conditional Use requested in Application No. 2013.0050C, subject to the conditions contained in "EXHIBIT A" of this motion, based on the following findings:

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and constitute findings of this Commission.
2. **Site Description and Present Use.** The project is located on the southwest corner of the intersection of Columbus Avenue and Powell Street, Assessor's Block 0101, Lot 004. The property is located within the North Beach NCD Neighborhood Commercial District (NCD), the 40-X Height and Bulk District, the North Beach Special Use District, and the North Beach Financial Service, Limited Financial Service, and Business or Professional Service Subdistrict. The property is historically known as the Palace and the Pagoda Theaters. The subject property is a corner lot,

with approximately 40 feet of frontage on Columbus Avenue and 58 feet of frontage on Powell Street. The existing building that is proposed for demolition has full lot coverage.

3. **Surrounding Properties and Neighborhood.** The project site is located at the intersection of Powell Street and Columbus Avenue within the North Beach NCD and directly across the street from Washington Square Park. The North Beach NCD is a generally linear district situated along Columbus Avenue between Grant Avenue and Francisco Street. The District hosts a mixture of commercial establishments, but is heavily oriented toward restaurants, including a number of larger restaurants such as Original Joe's (measuring approximately 7,800 square feet), Park Tavern (measuring approximately 7,200 square feet), and Fior D' Italia (measuring approximately 6,000 square feet). The surrounding area is mixed-use in character. A variety of commercial establishments are located within ground floor storefronts in the vicinity, including restaurants, financial institutions, apparel stores, and other types of retailers. Upper floors of buildings are generally occupied by offices, residential units, or tourist-hotels. Other nearby uses include the Church of Saint Peter and Paul and the Saint Francis of Assisi Church.
4. **Project Description.** The applicant proposes to demolish the existing vacant movie theater (formerly known "Palace" or "Pagoda" Theater), and construct a new five-story over basement mixed-use building containing up to 18 dwelling units, a restaurant measuring approximately 4,700 square feet, and up to 27 off-street parking spaces. Following demolition of the existing building, and prior to the construction of the new mixed-use building, the site would be utilized for extraction of a tunnel boring machine associated with the Central Subway project.

A project was previously approved for the subject property (Case No. 2007.1117C; Motion No. 17797, adopted on January 8, 2009, and amended by Motion No. 18204, adopted on October 28, 2010), to rehabilitate the existing theater and convert the building to a similar program of uses as the mixed-use building proposed by this application.

5. **Public Comment.** To date, the Department has received six communications in support of the project, and no letters in opposition.
6. **Planning Code Compliance:** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:
 - A. **Height.** Planning Code Section 260 requires that all structures be no taller than the height prescribed in the subject height and bulk district. The proposed Project is located in the 40-X Height and Bulk District, with a 40-foot height limit.

The Board has introduced legislation to reclassify the subject property from the existing 40-foot height limit to a 55-foot height limit. This height reclassification is necessary to allow the construction of the building to the height of the existing vacant movie theater, which exceeds the current height limit applicable to the property. The newly-constructed building would not exceed the roof height or roof profile of the existing theater building. The proposed SUD would also allow the reconstruction of the blade sign feature found on the existing theater. This blade sign would be exempt from the height limit of the 55-X Height and Bulk District.

- B. Bulk. Planning Code Section 270 limits the bulk of buildings and structures, and assigns maximum plan dimensions. The proposed Project is located in a 40-X Height and Bulk district, with an "X" bulk controls.

Planning Code Section 270 does not regulate bulk dimensions for sites with "X" controls.

- C. Floor Area Ratio (FAR) Planning Code Section 124 limits the building square footage to 1.8 square feet of building area for every 1 square foot of lot area, or approximately 21,300 square feet of building area for the subject site.

The FAR limits do not apply to dwellings or to other residential uses in NC Districts, nor do they apply to non-accessory off-street parking. The Project includes a total of approximately 4,700 square feet of ground floor commercial space, and is therefore well within the allowed FAR.

- D. Open Space. Section 135 of the Planning Code requires a minimum of 60 square feet of private open space for each residential unit or approximately 80 square feet of common open space per unit within the North Beach NCD.

All of the 18 units will have access to private terraces that meet the Code requirements for private useable open space. Each of the terraces will meet the minimum Code requirements for area, dimension, and exposure to light and air.

- E. Exposure. Section 140(a)(2) of the Planning Code requires each unit to face directly onto a public street or an open area (whether an inner court or a space between separate buildings on the same lot) which is unobstructed and is no less than 25 feet in every horizontal dimension for the floor at which the dwelling unit is located and the floor immediately above it, with an increase of five feet in every horizontal dimension at each subsequent floor.

Several of the units toward the interior of the property do not face onto an area that meets the exposure requirements of the Code. However, the interior units face onto inner courtyards to be inserted on the north and south sides of the building. These courtyards measure 25-feet in every direction. The proposed SUD would exempt the project from strict compliance with the dwelling unit exposure requirements of Section 140.

- F. Rear Yard. Section 134(a)(1) of the Planning Code requires a rear yard equal to 25 percent of the lot depth to be provided at every residential level.

The Project proposes to construct a new building within the same general footprint and configuration as the existing vacant theater, which covers the entire lot and does not provide a Code-complying rear yard. The proposed SUD would exempt the project from strict compliance with the rear yard requirements of Section 134. It should be noted that the subject block is generally occupied by buildings with full-lot coverage, and does not exhibit a strong pattern of mid-block open space that is intended by the rear yard requirements of the Code. The Project includes private terraces for each of the dwelling units, creating ample exterior open space for the use of residents that might ordinarily be satisfied by a Code-complying rear yard. In addition, the Project includes two courtyards situated

toward the interior of the lot that create exposure to light and air for several of the dwelling units, in a manner that is typical of the traditional dense development pattern of the North Beach neighborhood.

- G. **Street Frontage in Neighborhood Commercial Districts.** Section 145.1 of the Planning Code requires that NC Districts containing specific uses have at least ½ the total width of the new or altered structure at the commercial street frontage devoted to entrances to commercially used space, windows or display space at the pedestrian eye-level. Such windows shall use clear, un-tinted glass, except for decorative or architectural accent. Any decorative railings or decorated grille work, other than wire mesh, which is placed in front or behind such windows, shall be at least 75 percent open to perpendicular view and no more than six feet in height above grade. Section 145.1(c)(4) requires that non-residential ground-floor uses within NC Districts provide a minimum floor-to-floor height of 14 feet.

The subject commercial space has approximately 100-feet of frontage on Columbus Avenue and Powell Street with the majority devoted to either the retail entries or window space. The windows are clear and unobstructed. The floor-to-floor heights within portions of the ground-floor restaurant space measure approximately 10 feet, and do not strictly comply with the requirements of Section 145.1(c)(4). However, the ceiling heights must be limited in order for the overall structure to fit within the height and roof profile of the existing vacant theater building. Therefore, the proposed SUD would exempt the project from strict compliance with the ceiling height requirements of Section 145.1(c)(4). The SUD would allow ceiling heights of 8.5 feet, and the project would comply with this requirement.

- H. **Parking.** Section 151 of the Planning Code allows one off-street parking space for every two residential units within the North Beach NCD, or up to .75 spaces per residential unit with Conditional Use Authorization. Eating and drinking establishments are required to provide one parking space for every 200 square feet of occupied floor area, where the occupied floor area exceeds 5,000 square feet.

The occupied floor area of the proposed restaurant is less than 5,000 square feet; therefore the restaurant use within the Project is not required to provide parking. The project includes 27 off-street parking spaces, which exceeds the maximum permitted residential parking per Section 151. The proposed SUD would exempt the subject property from the parking limitations of Section 151, allowing up to 27 off-street parking spaces for the Project.

- I. **Bicycle Parking.** Section 155.4 of the Planning Code requires that one bicycle parking space be provided for every two dwelling units.

The Project will provide secured storage for nine bicycles within the basement parking garage to serve the 18 proposed dwelling units.

- J. **Shadow.** Planning Code Section 295 generally does not permit new buildings over 40-feet in height to cast new shadows on a property owned and operated by the Recreation and Park Commission. Section 295 does not apply to structures of the same height and in the same location as structures in place on June 6, 1984.

The existing theater building to be demolished was constructed in 1908. The proposed project would be constructed to match the existing height and roof profile of the existing theater, and would therefore not create any new shadows on Recreation and Park Commission that did not exist on June 6, 1984. Therefore, the Project is not subject to Section 295.

- K. **Inclusionary Affordable Housing Program.** Planning Code Section 415 sets forth the requirements and procedures for the Inclusionary Affordable Housing Program. Under Planning Code Section 415.3, the current percentage requirements apply to projects that consist of ten or more units, where the first application (EE or BPA) was applied for on or after July 18, 2006. Pursuant to Planning Code Section 415.5, the Project must pay the Affordable Housing Fee ("Fee"). This Fee is made payable to the Department of Building Inspection ("DBI") for use by the Mayor's Office of Housing for the purpose of increasing affordable housing citywide.

The Project Sponsor has submitted a 'Affidavit of Compliance with the Inclusionary Affordable Housing Program: Planning Code Section 415,' to satisfy the requirements of the Inclusionary Affordable Housing Program through payment of the Fee, in an amount to be established by the Mayor's Office of Housing at a rate equivalent to an off-site requirement of 20%. The project sponsor has not selected an alternative to payment of the Fee.

- L. **Signage.** Currently, there is not a developed sign program on file with the Planning Department; however, the previously-approved project for the site included the rehabilitation/reconstruction of the existing blade sign.

The height of the blade sign, which exceeds the roof height of the existing building, would not be permitted by the existing sign regulations of Article 6. The Project Sponsor has indicated, as shown in the proposed plans, that the new building will include a new blade sign that is comparable to the size and character of the existing blade sign. The proposed SUD would exempt the blade sign from the height limitation which applies to the property.

- M. **Loading.** Section 152 requires off-street freight loading for uses above a certain size. Eating and drinking establishments up to 10,000 square feet in gross floor area are not required to provide off-street freight loading.

With a gross floor area of under 10,000 square feet, the Project is not required to provide off-street loading. There are nearby yellow zones that can be used for deliveries.

- N. **Formula Retail.** Section 703.3 places notification requirements and other restrictions on formula retail uses.

The Project is not considered to be a Formula Retail Use as defined by Section 703.3 of the Planning Code. The proposed location would be a sister restaurant to the La Corneta Restaurant in the Mission.

- O. **Hours of Operation.** Section 722.27 allows hours of operation from 6:00AM until 2:00AM as of right and requires conditional use authorization to operate between the hours of 2:00AM and 6:00AM.

The Project Sponsor is not requesting conditional use authorization to operate between the hours of 2:00AM and 6:00AM.

- P. **North Beach Special Use District/Restaurant Use.** Section 780.3 (the North Beach SUD) prohibits a restaurant from being located within a space that is currently or last occupied by a Basic Neighborhood Sale or Service.

The proposed SUD would exempt the project from this prohibition, allowing the proposed restaurant to seek Conditional Use authorization.

- Q. **Use Size.** Sections 722 and 121.2(a) establishes size limits on nonresidential uses in all NCDs. In the North Beach NCD, conditional use authorization is required for any nonresidential use that exceeds 1,999 square feet. Section 121.2 also limits nonresidential uses to a maximum of 4,000 square feet within the North Beach NCD.

The Project Sponsor is requesting conditional use authorization for the proposed restaurant, which would measure approximately 4,700 square feet. The proposed SUD would raise the maximum 4,000 square-foot nonresidential use size limit to 5,000 square feet for the subject property, in order to accommodate the proposed restaurant size.

7. **Planning Code Section 303.** Specifically, the Project requires Conditional Use Authorization per 211.1 to demolish an existing theater; per 722.42 to establish a restaurant use with a Type 47 ABC License within the North Beach NCD; per 722.21 and 121.2 to allow a non-residential use exceeding 2,000 square feet; and, per 121.1 to develop a lot greater than 5,000 square feet within the North Beach NCD.

Section 303 of the Planning Code establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the project does comply with said criteria in that:

- A. The proposed new uses and building, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.

The size of the proposed building is consistent with the existing building, and is in keeping with other buildings on the block face. The proposed restaurant will not impact traffic or parking in the District because it is not a destination restaurant. This will complement the mix of goods and services currently available in the district and contribute to the economic vitality of the neighborhood by demolishing an existing building that has been vacant for nearly 20 years, and by locating services and dwelling units at a location which is currently underutilized.

- B. The proposed project will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity. There are no features of the project that could be detrimental to the health, safety or convenience of those residing or working the area, in that:

- i. Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

The proposed project is compatible in its overall massing, size, scale, and architectural features with the neighborhood and its immediate neighbors. The volume of the Project will not exceed that of the existing vacant theater building, which has existed as an element of the urban fabric in the area for over 100 years.

- ii. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;

The proposed restaurant is designed to meet the needs of the immediate neighborhood and should not generate significant amounts of vehicular trips from the immediate neighborhood or citywide. Residents of the project would be able to walk or use transit to satisfy daily convenience needs, avoiding private automobile use which would generate excessive traffic.

- iii. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

The proposed use is subject to the standard conditions of approval for restaurants as shown in Exhibit A. These conditions specifically obligates the project sponsor to mitigate odor and noise generated by the restaurant use.

- iv. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;

The Department shall review all lighting and signs proposed for the new business in accordance with the Conditions of Approval. The reconstruction of the blade sign found on the existing building is consistent with the architectural theme of the proposed building, and will retain the sign as an element of the historic urban fabric of the neighborhood.

- C. That the use as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.

Project complies generally with all relevant requirements and standards of the Planning Code and is consistent with objectives and policies of the General Plan as detailed below. The proposed SUD and height reclassification would address several areas of inconsistency between the Code and the Project, and would enable the construction of the project in a manner similar to the previously-approved rehabilitation of the theater building.

- D. That the use as proposed would provide development that is in conformity with the purpose of the applicable Neighborhood Commercial District.

The proposed project is consistent with the purposes of The North Beach NCD in that the intended restaurant use is located at the ground floor, and will provide a compatible convenience service for the

immediately surrounding neighborhoods during daytime hours. The addition of dwelling units will create housing opportunities in a walkable, urban context that is well served by transit.

8. **Planning Code Section 303(k)** establishes criteria for the Planning Commission to consider when reviewing applications for a change in use or a demolition of a movie theater Conditional Use approval. On balance, the project does comply with said criteria in that:

A. Preservation of a movie theater use is no longer economically viable and cannot effect a reasonable economic return to the property owner.

The existing theater has been closed since 1994, and has been completely gutted of all features. To rehabilitate and return the structure into an operating theater would require a substantial and unreasonable investment.

B. The change in use or demolition of the movie theater use will not undermine the economic diversity and vitality of the surrounding Neighborhood Commercial District.

As stated above, the existing theater has been closed since 1994. There are no other neighborhood-serving theaters within close proximity; however, the lack of an operating theater for nearly 20 years has not impacted the diversity and vitality of the North Beach NCD.

C. The resulting project will preserve the architectural integrity of important historic features of the movie theater use affected.

The existing theater has been completely gutted of all interior features. Aside from the projecting blade sign, all other exterior historic character-defining features have been removed. The Project Sponsor proposes to reconstruct the blade sign, which is the one architecturally significant element remaining from the historic theater use.

9. **Planning Code Section 121.1** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval for development of a lot exceeding 5,000 square feet within the North Beach NCD. On balance, the project does comply with said criteria in that:

A. The mass and facade of the proposed structure are compatible with the existing scale of the district.

The massing of the building is virtually identical to the existing theater building on the site. In addition, it is compatible with many of the older buildings in the area, particularly the larger commercial structures found on corner lots and fronting along Columbus Avenue.

B. The facade of the proposed structure is compatible with the design features of adjacent facades that contribute to the positive visual quality of the district.

While contemporary, the project design incorporates visual elements of many of the Art Deco and Moderne buildings in the vicinity. The facade is expressed as a rhythm of voids framed by strong column elements, and further articulated through the use of richly detailed balconies. The project also

includes a reconstructed blade sign which recalls the past theater use of the site and strengthens the relationship to Art Deco motifs found in the area.

10. Planning Code Section 121.2 establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval for a non-residential use which exceed 2,000 square feet within the North Beach NCD. On balance, the project does comply with said criteria in that:

- A. The intensity of activity in the district is not such that allowing the larger use will likely to foreclose the location of other needed neighborhood-serving uses in the area;

The proposed restaurant is not a destination eating establishment, but a neighborhood-serving facility. While there are a number of restaurants within the North Beach NCD, the establishment of a Mexican restaurant will help diversify the collection of eating establishments within the District. There are a number of other larger existing restaurants in the area, including Original Joe's (measuring approximately 7,800 square feet), Park Tavern (measuring approximately 7,200 square feet), and Fior D' Italia (measuring approximately 6,000 square feet). The presence of these larger establishments does not appear to preclude opportunities for other needed neighborhood-serving uses in the area.

- B. The proposed use will serve the neighborhood, in whole or in significant part, and the nature of the use requires a larger size in order to function;

The proposed use is designed to meet the needs of the immediate neighborhood and visitors alike. The building's existing envelope has full lot coverage and the proposal is to accommodate the potential number of customers generated from an area with a very high level of foot traffic.

- C. The building in which the use is to be located is designed in discrete elements which respect the scale of development in the district;

The project design respect the overall character, massing, and scale of the district. It follows the Art Deco and Moderne motifs found on other buildings within the neighborhood and its massing and scale is identical to its previous use as a movie theater. The historic blade sign will be rehabilitated as part of the proposal and will continue as a prominent visual landmark within the North Beach NCD.

10. General Plan Compliance. The Project is, on balance, consistent with the following Objectives and Policies of the General Plan:

NEIGHBORHOOD COMMERCE

Objectives and Policies

OBJECTIVE 1:

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

Policy 1.1:

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development that has substantial undesirable consequences that cannot be mitigated.

The Project will replace an existing structure that has been vacant for nearly 20 years with a new structure that is comparable to the scale and character of the existing vacant theater. The project will bring a neighborhood-serving restaurant and new housing opportunities to a site that is currently underutilized.

Policy 1.2:

Assure that all commercial and industrial uses meet minimum, reasonable performance standards.

The Project is located in an ideal location for a mixed-use structure. It is located within a thriving commercial area that is well served by public transit and experiences a high level of foot traffic.

Policy 1.3:

Locate commercial and industrial activities according to a generalized commercial and industrial land use plan.

The proposed ground-floor commercial space shall provide goods and services to the neighborhood and shall provide resident employment opportunities to those in the community. Further, the Project Site is located within a neighborhood commercial district and is thus consistent with activities in the commercial land use plan.

OBJECTIVE 2:

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.1:

Seek to retain existing commercial and industrial activity and to attract new such activity to the City.

The Project will increase the amount of commercial activity where a building shell has been unoccupied and boarded up for nearly 20 years. The Project will enhance the diverse economic base of the City.

OBJECTIVE 6:

MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

Policy 6.1:

Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts.

No existing commercial tenant would be displaced and the project would not prevent the district from achieving optimal diversity in the types of goods and services available in the neighborhood.

The following guidelines, in addition to others in this objective for neighborhood commercial districts, should be employed in the development of overall district zoning controls as well as in

the review of individual permit applications, which require case-by-case review and City Planning Commission approval. Pertinent guidelines may be applied as conditions of approval of individual permit applications. In general, uses should be encouraged which meet the guidelines; conversely, uses should be discouraged which do not.

Eating and Drinking Establishments

Eating and drinking establishments include bars, sit-down restaurants, fast food restaurants, self-service restaurants, and take-out food. Associated uses, which can serve similar functions and create similar land use impacts, include ice cream stores, bakeries and cookie stores. Guidelines for eating and drinking establishments are needed to achieve the following purposes:

- Regulate the distribution and proliferation of eating and drinking establishments, especially in districts experiencing increased commercial activity;
- Control nuisances associated with their proliferation;
- Preserve storefronts for other types of local-serving businesses; and
- Maintain a balanced mix of commercial goods and services.
- The regulation of eating and drinking establishments should consider the following:
 - Balance of retail sales and services;
 - Current inventory and composition of eating and drinking establishments;
 - Total occupied commercial linear frontage, relative to the total district frontage;
 - Uses on surrounding properties;
 - Available parking facilities, both existing and proposed;
 - Existing traffic and parking congestion; and
 - Potential impacts on the surrounding community.

There is a concern with the potential over-concentration of food-service establishments in North Beach. The Commerce and Industry Element of the General Plan contains Guidelines for Specific Uses. For eating and drinking establishments, the Guidelines state, "the balance of commercial uses may be threatened when eating and drinking establishments occupy more than 20% of the total occupied commercial frontage." However, the proposed restaurant would be located within a newly constructed building which replaces a theater that has been vacant for over 20 years. Therefore, the restaurant will not displace an existing business, or occupy an existing storefront which could otherwise be used for a neighborhood serving, non-restaurant use.

Policy 6.2:

Promote economically vital neighborhood commercial districts which foster small business enterprises and entrepreneurship and which are responsive to the economic and technological innovation in the marketplace and society.

An independent entrepreneur is sponsoring the proposal. The proposed use is a neighborhood serving use, and is not a Formula Retail use.

URBAN DESIGN ELEMENT OBJECTIVES AND POLICIES

Objectives and Policies

OBJECTIVE 1:

EMPHASIS OF THE CHARACTERISTIC PATTERN WHICH GIVES TO THE CITY AND ITS NEIGHBORHOODS AN IMAGE, A SENSE OF PURPOSE AND A MEANS OR ORIENTATION.

Policy 1.1:

Promote harmony in the visual relationships and transitions between new and older buildings.
The Project proposes a well-designed structure that captures the character and vitality of the North Beach Neighborhood Commercial District, and the Washington Square Historic District in a contemporary idiom through its use of materials, massing, scale, and details similar to those adjacent buildings that characterize the district.

Policy 1.3:

Recognize that buildings, when seen together, produce a total effect that characterizes the City and its districts.
The Project design expresses the character of the overall district; it is consistent with the historical pattern of development and has been found to meet the Secretary of the Interior's Standards for infill construction within a historic district, (Standard 9.)

OBJECTIVE 2:

CONSERVATION OF RESOURCES WHICH PROVIDE A SENSE OF NATURE, CONTINUITY WITH THE PAST, AND FREEDOM FROM OVERCROWDING.

Policy 2.4:

Preserve notable landmarks and areas of historic, architectural or aesthetic value, and promote the preservation of other buildings and features that provide continuity with past development.
The subject building was not found to be a historic resource due to lack of integrity; however, the overall massing and form of the former theater, including the historic blade sign, are important visual reminders of the building's historic use and are to be retained and rehabilitated as part of the proposal.

TRANSPORTATION ELEMENT

Objectives and Policies

OBJECTIVE 1

MEET THE NEEDS OF ALL RESIDENTS AND VISITORS FOR SAFE, CONVENIENT AND INEXPENSIVE TRAVEL WITHIN SAN FRANCISCO AND BETWEEN THE CITY AND OTHER PARTS OF THE REGION WHILE MAINTAINING THE HIGH QUALITY LIVING ENVIRONMENT OF THE BAY AREA.

Policy 1.3

Give priority to public transit and other alternatives to the private automobile as the means of meeting San Francisco's transportation needs, particularly those of commuters.

Policy 1.5

Coordinate regional and local transportation systems and provide for interline transit transfers.

The Project will allow the construction of the Project in a manner consistent with the previously-approved rehabilitation of the theater, and will also facilitate construction of the Central Subway project. Prior to construction of the new building, the existing building on the site will be demolished and the boring machine utilized for the construction of the Central Subway project will be extracted at the site. Extracting the boring machine through the site will avoid the need to extract within the Columbus Avenue right-of-way, which would cause substantial disruption to pedestrian and vehicular movement in the area.

OBJECTIVE 24:

IMPROVE THE AMBIENCE OF THE PEDESTRIAN ENVIRONMENT.

Along the Powell Street and Columbus Avenue frontages the project sponsor will activate the ground-floor of the building where pedestrians have passed by a dormant building.

HOUSING ELEMENT:

Objectives and Policies

OBJECTIVE 1

TO PROVIDE NEW HOUSING, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING, IN APPROPRIATE LOCATIONS WHICH MEETS IDENTIFIED HOUSING NEEDS AND TAKES INTO ACCOUNT THE DEMAND FOR AFFORDABLE HOUSING CREATED BY EMPLOYMENT DEMAND.

Policy 1.1:

Encourage higher residential density in areas adjacent to downtown, in underutilized commercial and industrial areas proposed for conversion to housing, and in neighborhood commercial districts where higher density will not have harmful effects, especially if the higher density provides a significant number of units that are affordable to lower income households.

Policy 1.3

Identify opportunities for housing and mixed-use districts near downtown and former industrial portions of the City.

Policy 1.4:

Locate in-fill housing on appropriate sites in established residential neighborhoods.

The Project will add residential units to an area that is well-served by transit, services, and shopping opportunities. The site is suited for dense, mixed-use development, where residents can commute and satisfy convenience needs without frequent use of a private automobile. The Project Site is located within walking distance of the Financial District, and is in an area with abundant transit options routes that travel to the South of Market and Civic Center employment clusters.

11. Planning Code Section 101.1(b) establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the project does comply with said policies in that:

A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses be enhanced.

The proposal would enhance the district by providing a restaurant and would be locally owned. It will create more employment opportunities for the community. The proposed alterations are within the existing building footprint.

B. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

The existing dwelling units in the surrounding neighborhood would not be adversely affected. The proposed project would activate the corner of Powell Street and Columbus Avenue by returning a building to lively use after being shuttered for nearly 20 years.

C. That the City's supply of affordable housing be preserved and enhanced,

The Project will comply with the City's Inclusionary Affordable Housing Program through the payment of an in-lieu fee.

D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

The site is well served by transit, and is located within a pedestrian-oriented context. Residents would be able to walk or use transit to commute and to meet daily convenience needs. In addition, the project will facilitate the Central Subway project by providing a site for the extraction of the boring machine used to tunnel the subway alignment. Extracting the boring machine at this site would avoid the substantial disruption to pedestrian and vehicular traffic that would result by extracting the boring machine within the public right-of-way of Columbus Avenue.

E. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

The Project will not displace any service or industry establishment. The proposed restaurant would create local ownership and employment opportunities.

F. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

The Project is designed and will be constructed to conform to the structural and seismic safety requirements of the City Building Code. This proposal will not impact the property's ability to withstand an earthquake.

G. That landmarks and historic buildings be preserved.

The subject building was not found to be a historic resource due to lack of integrity; however, the overall massing and form of the former theater, including the historic blade sign, are important visual reminders of the building's historic use and are reflected in the proposal.

The Project design expresses the character of the overall Washington Square Historic District; it is consistent with the historical pattern of development and has been found to meet the Secretary of the Interior's Standards for infill construction within a historic district, (Standard 9.)

H. That our parks and open space and their access to sunlight and vistas be protected from development.

The project will have no negative impact on existing parks and open spaces. The Project does not have an impact on open spaces. The project would not exceed the roof height or roof profile of the existing theater building, and would therefore not cast new shadows on parks and open spaces.

12. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.

13. The Commission hereby finds that approval of the Conditional Use authorization would promote the health, safety and welfare of the City.

Motion 18806
February 14, 2013

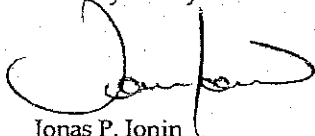
CASE NO. 2013.0050CTZ
1731 Powell Street

DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby APPROVES Conditional Use Application No. 2013.0050C subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated February 14, 2013, and stamped "EXHIBIT B", which is incorporated herein by reference as though fully set forth.

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion No. 18806. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on February 14, 2013.



Jonas P. Ionin
Acting Commission Secretary

AYES: Fong, Antonini, Borden, Hillis

NAYS: Moore, Sugaya

ABSENT: Wu

ADOPTED: February 14, 2013

EXHIBIT A

AUTHORIZATION

This authorization is for a conditional use to allow development of a lot greater than 5,000 square feet (Section 121.1), non-residential uses greater than 2,000 square feet (Section 121.2), demolition of a movie theater use (Section 221.1), and establishment of a restaurant use, including a Type 47 ABC License to provide beer, wine, and/or liquor in a Bona Fide Eating Place (Sections 722.44 and 790.142), for a project to demolish the existing vacant movie theater (formerly known "Palace" or "Pagoda" Theater), and construct a new five-story over basement mixed-use building containing up to 18 dwelling units, a restaurant measuring approximately 4,700 square feet, and up to 27 off-street parking spaces, within the North Beach Neighborhood Commercial District, the North Beach Special Use District, the North Beach Financial Service, Limited Financial Service, and Business or Professional Service Subdistrict, and the 40 Height and Bulk District; in general conformance with plans, dated February 14, 2013, and stamped "EXHIBIT B" included in the docket for Case No. 2013.0050C and subject to conditions of approval reviewed and approved by the Commission on February 14, 2013 under Motion No 18806. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

RECORDATION OF CONDITIONS OF APPROVAL

Prior to the issuance of the building permit or commencement of use for the Project the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on February 14, 2013 under Motion No 18806.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. 18806 shall be reproduced on the Index Sheet of construction plans submitted with the Site or Building permit application for the Project. The Index Sheet of the construction plans shall reference to the Conditional Use authorization and any subsequent amendments or modifications.

SEVERABILITY

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a building permit. "Project Sponsor" shall include any subsequent responsible party.

CHANGES AND MODIFICATIONS

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Conditional Use authorization.

Conditions of approval, Compliance, Monitoring, and Reporting

PERFORMANCE

1. **Validity and Expiration.** The authorization and right vested by virtue of this action is valid for the term of the Central Subway Tunnel Boring Machine Extraction Site Special Use District (Planning Code Section 249.70). A building permit from the Department of Building Inspection to construct the project and/or commence the approved use must be issued as this Conditional Use authorization is only an approval of the proposed project and conveys no independent right to construct the project or to commence the approved use. The Planning Commission may, in a public hearing, consider the revocation of the approvals granted if a site or building permit has not been obtained prior to the expiration of the Central Subway Tunnel Boring Machine Extraction Site Special Use District (Planning Code Section 249.70). Once a site or building permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and continued diligently to completion. If the site or building permit for the Project has been issued but is allowed to expire after the expiration of the Central Subway Tunnel Boring Machine Extraction Site Special Use District (Planning Code Section 249.70), then the Conditional Use authorization will be deemed null and void.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

2. **Extension.** This authorization may be extended at the discretion of the Zoning Administrator only where failure to issue a permit by the Department of Building Inspection to perform said tenant improvements is caused by a delay by a local, State or Federal agency or by any appeal of the issuance of such permit(s).

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

3. **Additional Project Authorization.** The Project Sponsor must obtain a height reclassification from the 40-X Height and Bulk District to the 55-X Height and Bulk District, along with Zoning Text Amendment to adopt the "Central Subway Tunnel Boring Machine Extraction Site Special Use District" associated with the project for the subject property. The conditions set forth below are additional conditions required in connection with the Project. If these conditions overlap with any other requirement imposed on the Project, the more restrictive or protective condition or requirement, as determined by the Zoning Administrator, shall apply.

This approval is contingent on, and will be of no further force and effect until the date that the San Francisco Municipal Transportation Agency Board of Directors has approved by resolution approving a lease by and between the property owner and the San Francisco Municipal Transportation Agency for use of the site to remove tunnel boring machines used in the Central Subway Project.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

DESIGN – COMPLIANCE AT PLAN STAGE

4. **Final Materials.** The Project Sponsor shall continue to work with Planning Department on the building design. Final materials, glazing, color, texture, landscaping, and detailing shall be subject to Department

staff review and approval. The architectural addenda shall be reviewed and approved by the Planning Department prior to issuance.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

5. Building Height. The height of the project shall not exceed the height of the existing vacant theater building, and the roofline of the project shall not exceed the roofline profile formed by the roof, parapet, and other rooftop appurtenances, equipment, and all other solid features of the existing theater building. Prior to demolition of the existing theater building, the Project Sponsor shall prepare and submit to the Planning Department a detailed survey, including elevations and sections, which accurately dimension the height of the existing theater building, including the heights of all rooftop features of the existing building.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

6. Garbage, composting and recycling storage. Space for the collection and storage of garbage, composting, and recycling shall be provided within enclosed areas on the property and clearly labeled and illustrated on the building permit plans. Space for the collection and storage of recyclable and compostable materials that meets the size, location, accessibility and other standards specified by the San Francisco Recycling Program shall be provided at the ground level of the buildings.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

7. Rooftop Mechanical Equipment. Pursuant to Planning Code 141, the Project Sponsor shall submit a roof plan to the Planning Department prior to Planning approval of the building permit application. Rooftop mechanical equipment, if any is proposed as part of the Project, is required to be screened so as not to be visible from any point at or below the roof level of the subject building.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

8. Streetscape Plan. Pursuant to Planning Code Section 138.1, the Project Sponsor shall continue to work with Planning Department staff, in consultation with other City agencies, to refine the design and programming of the Streetscape Plan so that the plan generally meets the standards of the Better Streets Plan and all applicable City standards. The Project Sponsor shall complete final design of all required street improvements, including procurement of relevant City permits, prior to issuance of first architectural addenda, and shall complete construction of all required street improvements prior to issuance of first temporary certificate of occupancy.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

9. Signage. The Project Sponsor shall develop a signage program for the Project which shall be subject to review and approval by Planning Department staff before submitting any building permits for construction of the Project. All subsequent sign permits shall conform to the approved signage program. Once approved by the Department, the signage program/plan information shall be submitted and

approved as part of the site permit for the Project. All exterior signage shall be designed to complement, not compete with, the existing architectural character and architectural features of the building.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

10. Transformer Vault. The location of individual project PG&E Transformer Vault installations has significant effects to San Francisco streetscapes when improperly located. However, they may not have any impact if they are installed in preferred locations. Therefore, the Planning Department recommends the following preference schedule in locating new transformer vaults, in order of most to least desirable:

1. On-site, in a basement area accessed via a garage or other access point without use of separate doors on a ground floor façade facing a public right-of-way;
2. On-site, in a driveway, underground;
3. On-site, above ground, screened from view, other than a ground floor façade facing a public right-of-way;
4. Public right-of-way, underground, under sidewalks with a minimum width of 12 feet, avoiding effects on streetscape elements, such as street trees; and based on Better Streets Plan guidelines;
5. Public right-of-way, underground; and based on Better Streets Plan guidelines;
6. Public right-of-way, above ground, screened from view; and based on Better Streets Plan guidelines;
7. On-site, in a ground floor façade (the least desirable location).

Unless otherwise specified by the Planning Department, Department of Public Work's Bureau of Street Use and Mapping (DPW BSM) should use this preference schedule for all new transformer vault installation requests.

For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 415-554-5810, <http://sfdpw.org>

11. Overhead Wiring. The Property owner will allow MUNI to install eyebolts in the building adjacent to its electric streetcar line to support its overhead wire system if requested by MUNI or MTA.

For information about compliance, contact San Francisco Municipal Railway (Muni), San Francisco Municipal Transit Agency (SFMTA), at 415-701-4500, www.sfmta.org

12. Noise, Ambient. Interior occupiable spaces shall be insulated from ambient noise levels. Specifically, in areas identified by the Environmental Protection Element, Map1, "Background Noise Levels," of the General Plan that exceed the thresholds of Article 29 in the Police Code, new developments shall install and maintain glazing rated to a level that insulate interior occupiable areas from Background Noise and comply with Title 24.

For information about compliance, contact the Environmental Health Section, Department of Public Health at (415) 252-3800, www.sfdph.org

13. Noise. Plans submitted with the building permit application for the approved project shall incorporate acoustical insulation and other sound proofing measures to control noise.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

14. **Street Trees.** Pursuant to Planning Code Section 138.1 (formerly 143), the Project Sponsor shall submit a site plan to the Planning Department prior to Planning approval of the building permit application indicating that street trees, at a ratio of one street tree of an approved species for every 20 feet of street frontage along public or private streets bounding the Project, with any remaining fraction of 10 feet or more of frontage requiring an extra tree, shall be provided. The street trees shall be evenly spaced along the street frontage except where proposed driveways or other street obstructions do not permit. The exact location, size and species of tree shall be as approved by the Department of Public Works (DPW). In any case in which DPW cannot grant approval for installation of a tree in the public right-of-way, on the basis of inadequate sidewalk width, interference with utilities or other reasons regarding the public welfare, and where installation of such tree on the lot itself is also impractical, the requirements of this Section 428 may be modified or waived by the Zoning Administrator to the extent necessary.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

15. **Odor Control Unit.** In order to ensure any significant noxious or offensive odors are prevented from escaping the premises once the project is operational, the building permit application to implement the project shall include air cleaning or odor control equipment details and manufacturer specifications on the plans. Odor control ducting shall not be applied to the primary façade of the building.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

PARKING AND TRAFFIC

16. **Car Share.** No fewer than one (1) car share space shall be made available, at no cost, to a certified car share organization for the purposes of providing car share services for its service subscribers.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

17. **Bicycle Parking.** The Project shall provide no fewer than nine (9) Class 1 bicycle parking spaces as required by Planning Code Sections 155.1 and 155.5.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

18. **Parking Maximum.** Pursuant to Central Subway Tunnel Boring Machine Extraction Site Special Use District, the Project shall provide no more than 27 off-street parking spaces.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

19. **Managing Traffic During Construction.** The Project Sponsor and construction contractor(s) shall coordinate with the Traffic Engineering and Transit Divisions of the San Francisco Municipal Transportation Agency (SFMTA), the Police Department, the Fire Department, the Planning Department, and other construction contractor(s) for any concurrent nearby Projects to manage traffic congestion and pedestrian circulation effects during construction of the Project.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

PROVISIONS

20. First Source Hiring. The Project shall adhere to the requirements of the First Source Hiring Construction and End-Use Employment Program approved by the First Source Hiring Administrator, pursuant to Section 83.4(m) of the Administrative Code. The Project Sponsor shall comply with the requirements of this Program regarding construction work and on-going employment required for the Project.

For information about compliance, contact the First Source Hiring Manager at 415-581-2335, www.onestopSF.org

21. Transit Impact Development Fee. Pursuant to Planning Code Section 411 (formerly Chapter 38 of the Administrative Code), the Project Sponsor shall pay the Transit Impact Development Fee (TIDF) as required by and based on drawings submitted with the Building Permit Application. Prior to the issuance of a temporary certificate of occupancy, the Project Sponsor shall provide the Planning Director with certification that the fee has been paid.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

22. Inclusionary Affordable Housing Program.

a. Pursuant to Planning Code Section 415 Pursuant to Planning Code 415.5, the Project Sponsor must pay an Affordable Housing Fee at a rate equivalent to the applicable percentage of the number of units in an off-site project needed to satisfy the Inclusionary Affordable Housing Program Requirement for the principal project. The applicable percentage for this project is twenty percent (20%).

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.

b. Other Conditions. The Project is subject to the requirements of the Inclusionary Affordable Housing Program under Section 415 et seq. of the Planning Code and the terms of the City and County of San Francisco Inclusionary Affordable Housing Program Monitoring and Procedures Manual ("Procedures Manual"). The Procedures Manual, as amended from time to time, is incorporated herein by reference, as published and adopted by the Planning Commission, and as required by Planning Code Section 415. Terms used in these conditions of approval and not otherwise defined shall have the meanings set forth in the Procedures Manual. A copy of the Procedures Manual can be obtained at the Mayor's Office of Housing ("MOH") at 1 South Van Ness Avenue or on the Planning Department or Mayor's Office of Housing's websites, including on the internet at:

<http://sf-planning.org/Modules/ShowDocument.aspx?documentid=4451>.

As provided in the Inclusionary Affordable Housing Program, the applicable Procedures Manual is the manual in effect at the time the subject units are made available for sale or rent.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.

- i.** The Project Sponsor must pay the Fee in full sum to the Development Fee Collection Unit at the DBI for use by MOH prior to the issuance of the first construction document, with an option for the Project Sponsor to defer a portion of the payment prior to issuance of the first certificate of

occupancy upon agreeing to pay a deferral surcharge that would be deposited into the Citywide Inclusionary Affordable Housing Fund in accordance with Section 107A.13.3 of the San Francisco Building Code.

- ii. Prior to the issuance of the first construction permit by the DBI for the Project, the Project Sponsor shall record a Notice of Special Restriction on the property that records a copy of this approval. The Project Sponsor shall promptly provide a copy of the recorded Notice of Special Restriction to the Department and to MOH or its successor.
- iii. If project applicant fails to comply with the Inclusionary Affordable Housing Program requirement, the Director of DBI shall deny any and all site or building permits or certificates of occupancy for the development project until the Planning Department notifies the Director of compliance. A Project Sponsor's failure to comply with the requirements of Planning Code Sections 415 et seq. shall constitute cause for the City to record a lien against the development project and to pursue any and all other remedies at law.

MONITORING - AFTER ENTITLEMENT

23. Enforcement. Violation of any of the Planning Department conditions of approval contained in this Motion or of any other provisions of Planning Code applicable to this Project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

24. Revocation due to Violation of Conditions. Should implementation of this Project result in complaints from interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and found to be in violation of the Planning Code and/or the specific conditions of approval for the Project as set forth in Exhibit A of this Motion, the Zoning Administrator shall refer such complaints to the Commission, after which it may hold a public hearing on the matter to consider revocation of this authorization.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

OPERATION

25. Garbage, Recycling, and Composting Receptacles. Garbage, recycling, and compost containers shall be kept within the premises and hidden from public view, and placed outside only when being serviced by the disposal company. Trash shall be contained and disposed of pursuant to garbage and recycling receptacles guidelines set forth by the Department of Public Works.

For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 415-554-5810, <http://sfdpw.org>

26. Sidewalk Maintenance. The Project Sponsor shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works Streets and Sidewalk Maintenance Standards.

For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works, 415-695-2017, <http://sfdpw.org>

27. Noise Control. The premises shall be adequately soundproofed or insulated for noise and operated so that incidental noise shall not be audible beyond the premises or in other sections of the building and fixed-source equipment noise shall not exceed the decibel levels specified in the San Francisco Noise Control Ordinance.

For information about compliance with the fixed mechanical objects such as rooftop air conditioning, restaurant ventilation systems, and motors and compressors with acceptable noise levels, contact the Environmental Health Section, Department of Public Health at (415) 252-3800, www.sfdph.org

For information about compliance with the construction noise, contact the Department of Building Inspection, 415-558-6570, www.sfdbi.org

For information about compliance with the amplified sound including music and television contact the Police Department at 415-553-0123, www.sf-police.org

28. Odor Control. While it is inevitable that some low level of odor may be detectable to nearby residents and passersby, appropriate odor control equipment shall be installed in conformance with the approved plans and maintained to prevent any significant noxious or offensive odors from escaping the premises.

For information about compliance with odor or other chemical air pollutants standards, contact the Bay Area Air Quality Management District, (BAAQMD), 1-800-334-ODOR (6367), www.baaqmd.gov and Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

29. Community Liaison. Prior to issuance of a building permit to construct the project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

30. Hours of Operation. The subject establishment is limited to the following hours of operation: 6:00a.m. to 2:00 a.m.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org