



# SAN FRANCISCO PLANNING DEPARTMENT

---

## Executive Summary General Plan, Planning Code Text & Map Amendments; Development Agreement; Downtown Project & Conditional Use Authorizations

HEARING DATE: FEBRUARY 8, 2018

*Project Name:* 200 – 214 Van Ness Avenue (San Francisco Conservatory of Music)  
*Case Number:* 2015-012994GPA/PCA/DVA/MAP/DNX/CUA  
*Project Sponsor:* Suzanne Brown, on behalf of  
SF Conservatory of Music  
50 Oak Street  
San Francisco, CA 94102  
*Staff Contact:* Claudine Asbagh  
[claudine.asbagh@sfgov.org](mailto:claudine.asbagh@sfgov.org), 415-575-9165  
*Reviewed by:* Daniel A. Sider, AICP  
[dan.sider@sfgov.org](mailto:dan.sider@sfgov.org), 415-558-6697  
*Recommendation:* **Approval**

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

### PROJECT DESCRIPTION

The subject property presently contains two existing, adjacent buildings, comprising 12,360 square feet of office space most recently occupied by “Lighthouse for the Blind” and 27 dwelling units. The proposal would demolish both buildings and construct a 12-story (above two basement levels), 120-foot tall, 168,000 square-foot building (“Project”). The new building would include 113 units of student housing containing 420 beds for students of the San Francisco Conservatory of Music (“SFCM”) on the fourth through eleventh floors, 30 dwelling units generally on the second and third floors, 49,600 square feet of educational space, including educational, classroom, rehearsal space, faculty offices and two performance spaces at the ground and twelfth floors, 4,320 square feet of broadcasting studio space on the second level, and 2,600 square feet of ground-floor restaurant/retail space.

Of the new dwelling units, three are intended for occupancy by SFCM faculty while the remaining 27 would be (a) designated as replacement units for the 27 existing units that would be demolished and (b) subject to the Rent Stabilization Ordinance. An accompanying Development Agreement (“DA”) provides that the tenants of the existing units would be relocated into nearby short-term housing during construction of the Project prior to being relocated into the designated replacement units. Relocation costs would be borne entirely by the Project Sponsor, with monthly rents at both short-term and permanent units remaining unchanged aside from annual increases as permitted under rent control.

Staff from the Planning Department, the Office of Economic and Workforce Development (OEWD) and other agencies have worked extensively with SFCM to formulate a comprehensive planning and housing approach to the development of the site.

The Commission previously reviewed the Project as part of an informational hearing on January 11, 2018.

## **REQUIRED COMMISSION ACTION**

At the February 8 hearing, the Commission will consider action on the following matters, which are required to implement the Project:

1. Adoption of the General Plan Amendment;
2. Approval of the Zoning Map and Planning Code Text Amendments;
3. Approval of a Development Agreement (“DA”) and recommendation that the Board adopt the DA;
4. Approval of the Downtown Project Authorization with exceptions; and
5. Approval of the Conditional Use Authorization.

## **ENVIRONMENTAL REVIEW**

On December 27, 2017, the Planning Department's Environmental Review Office issued a Notice of Completion, and published a Preliminary Mitigated Negative Declaration (PMND) for the project that included a Mitigation Monitoring and Reporting program (MMRP) which is included as a Condition of Approval for the project. The comment period for the PMND expired on January 17, 2018 with no appeals. The PMND/IS. The Final Mitigated Negative Declaration (MND) was issued on January 23, 2018, and is available online at <http://tinyurl.com/sfceqadocs>. The Planning Department, Jonas Ionin, is the custodian of records, located in File No. 2015-012994ENV, at 1650 Mission Street, Fourth Floor, San Francisco, California.

## **HEARING NOTIFICATION**

TYPE	REQUIRED PERIOD	REQUIRED NOTICE DATE	ACTUAL NOTICE DATE	ACTUAL PERIOD
Classified News Ad	20 days	January 19, 2018	January 17, 2018	22 days
Posted Notice	20 days	January 19, 2018	January 19, 2018	20 days
Mailed Notice	20 days	January 19, 2018	January 18, 2018	21 days

## **COMMUNITY OUTREACH AND PUBLIC COMMENT**

Community outreach has included meetings with the Project's neighbors, local businesses, community groups, individual residents at 200 Van Ness, schools, and non-profits, including the Tenderloin Neighborhood Development Corporation, Van Ness Neighborhood Corridor Association, Civic Center CBD, Hayes Valley Neighborhood Association, SF School of the Arts, Housing Action Coalition, SPUR, Emerald Fund, San Francisco Ballet, San Francisco War Memorial, Davies Symphony Hall, and SF Jazz.

The Department has received two letters in support of the Project that are included in your packet.

## ISSUES AND OTHER CONSIDERATIONS

### Downtown Project Authorization

The Project has requested exceptions from Planning Code Requirements for Rear Yard, Usable Open Space, Obstructions Over Streets and Alleys, Group Housing Exposure, Ground Floor Design Requirements, Ground Level Wind Currents, and Off-Street Freight Loading. The requested exceptions as the deviations from the requirements are relatively minor in nature, and would enable sensitive, site-responsive architecture. Staff notes that exceptions for Obstructions, Ground Floor Design Requirements, Usable Open Space, and Group Housing Exposure are specifically contemplated in the accompanying Planning Code Text Amendment.

### Conditional Use Authorization

The project seeks a Conditional Use Authorization (CUA) to demolish and replace the 27 existing dwelling units and to exempt student housing from Floor Area Ratio (FAR). While the demolition of any residential units requires Conditional Use Authorization, the Project involves the robust tenant protection and relocation plan discussed above.

### Planning Code Map and Text Amendments

The proposed Ordinance includes a Zoning Map Amendment to reclassify the height and bulk of the project site from 96-X to 120-X and a Text Amendment to allow a height limit exemption and additional exceptions through Section 309, as discussed above.

### General Plan Amendments

On September 14, 2017, the Commission adopted Resolution No. 20089 to initiate the General Plan Amendment for the Project. This amendment would revise Map 5 of the Downtown Area Plan in order to reflect the increased height proposed under the accompanying Map amendment.

Development Agreement. The DA between the City and SFCM would establish a set of guaranteed public benefits for the Project. Among the Project's primary commitment is the housing replacement plan discussed above, which includes both interim and long-term replacement housing for existing tenants under the provisions of the Rent Stabilization Ordinance.

## RECOMMENDATION

Department Staff recommends that the Commission approve and adopt the various Motions and Resolutions required to implement the project.

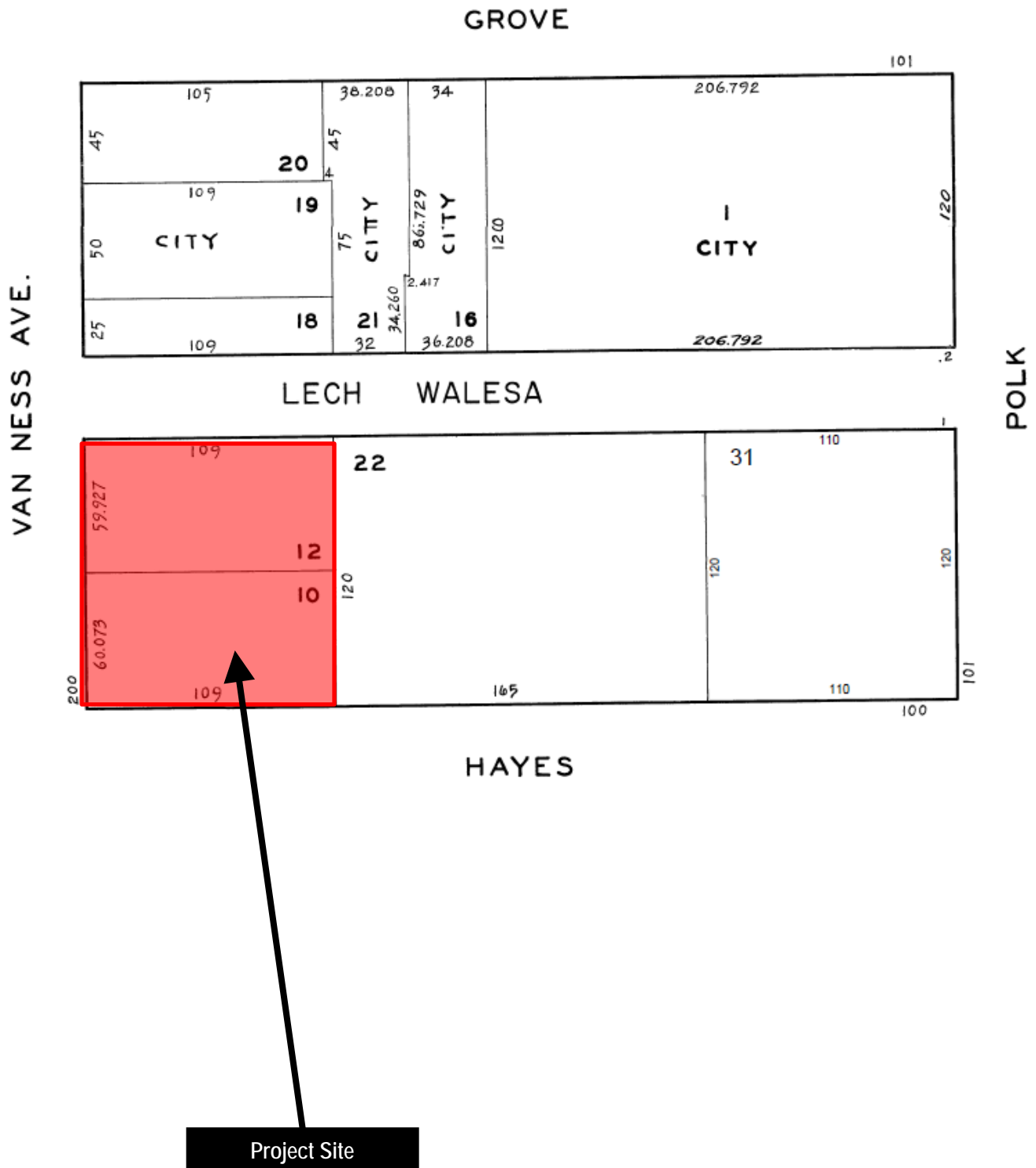
- The development of a dense institutional and residential building, along with cultural amenities is in conformity with the purposes of the C-3-G District;
- The Project would replace and improve the existing accessible housing on-site on a one-to-one basis, extend rent control protections to the replacement units, and provide for tenant relocation during the project's construction;
- The Project would create needed student and faculty housing in close proximity to the SFCM's existing campus, reducing impacts upon transportation and transit and lessening the burden on existing non-SFCM housing stock;
- The physical form of the project is responsive to a challenging site and harmonizes with the nearby Civic Center Historic District while being contemporary and architecturally distinct.

- The increased height afforded by the change in Height and Bulk District is in keeping with the broader urban form of the neighborhood and is comparable to immediately adjacent to the east, west, and south.

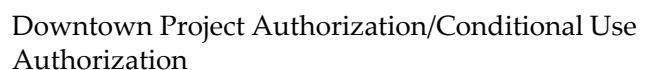
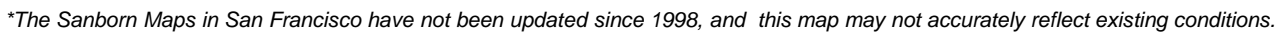
**Attachments:**

- 1) Draft Resolution-General Plan Amendment
  - a. Exhibit 1.A- Ordinance No. TBD
- 2) Draft Resolution-Planning Code Text Amendment & Zoning Map Amendments
  - a. Exhibit 2.A- Ordinance No. TBD
  - b. Exhibit 2.B- Height Map
- 3) Draft Resolution-Development Agreement
  - a. Exhibit 3.A- Development Agreement
  - b. Exhibit 3.B- Ordinance No. TBD
- 4) Draft Motion-Downtown Project Authorization
  - a. Exhibit 4.A-Conditions of Approval
  - b. Exhibit 4.B- Project Plans and Renderings, dated January 24, 2018
  - c. Exhibit 4.C- Mitigation Monitoring and Reporting Program
- 5) Draft Motion- Conditional Use Authorization
  - a. Exhibit 5.A- Conditions of Approval
- 6) Public Comment

# Parcel Map

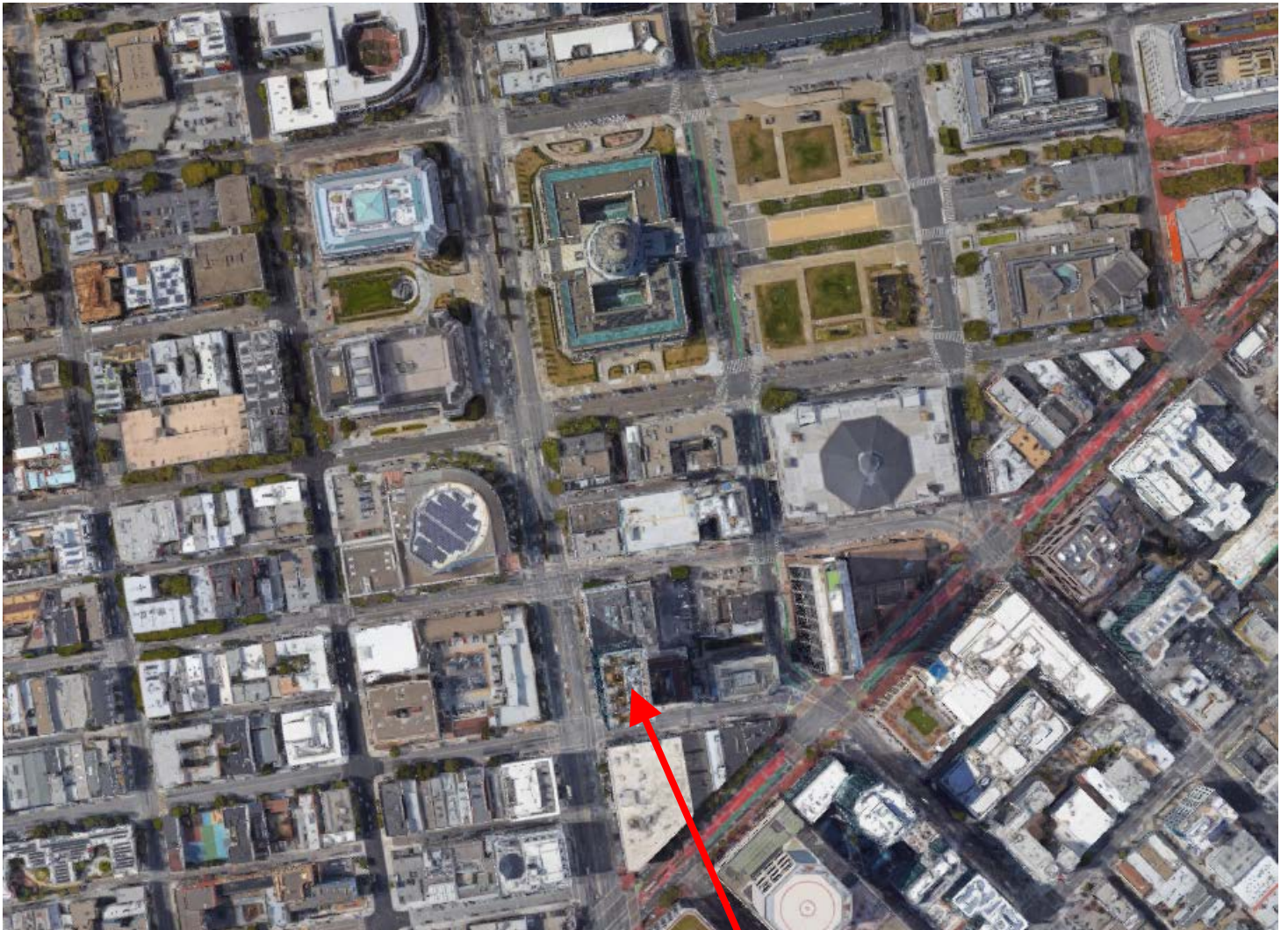


— 22 —





# Aerial Photo



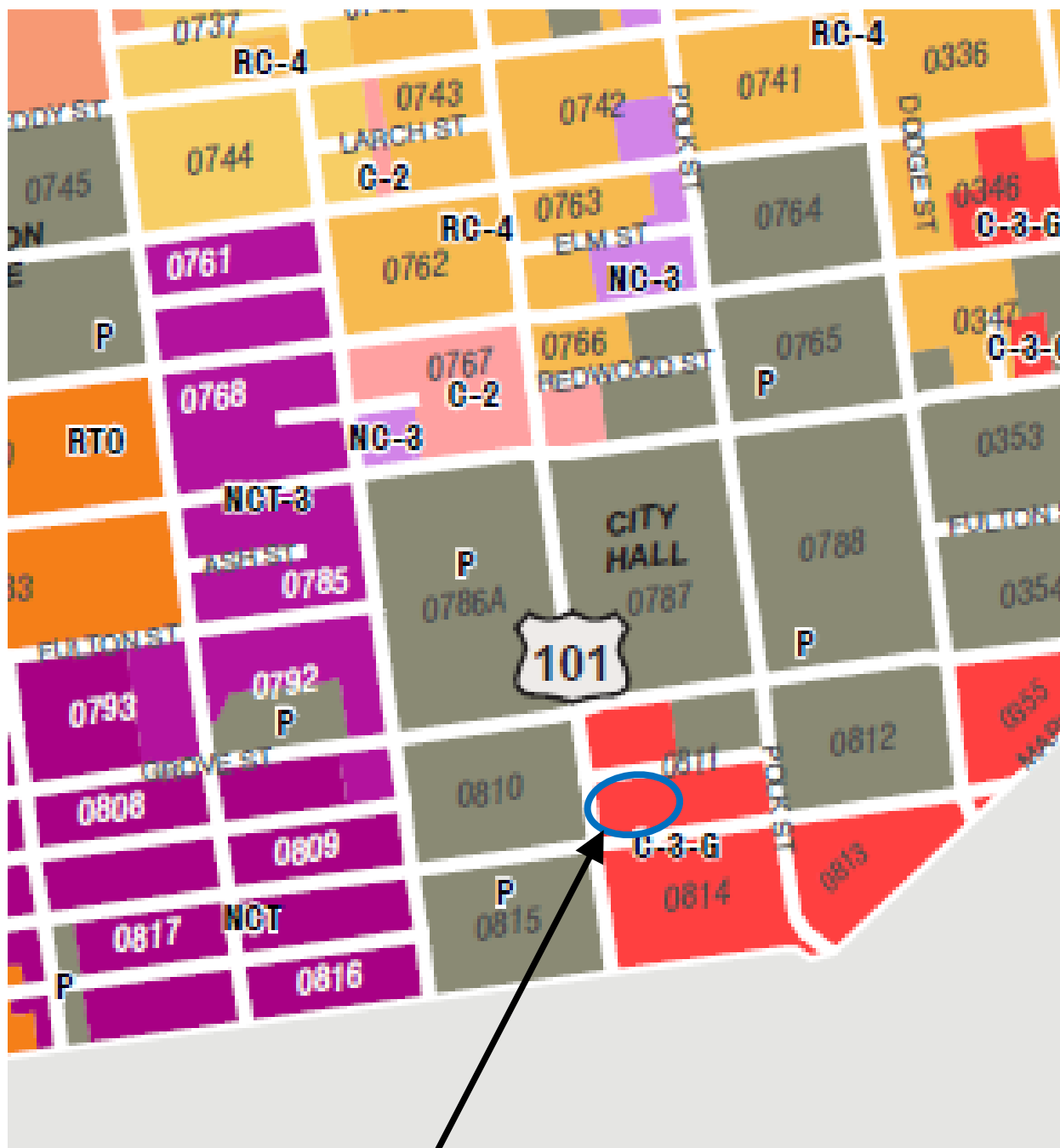
Project Site



Case No. 2015-012994DNX/CUA  
200 - 214 Van Ness Avenue

Downtown Project Authorization/Conditional Use  
Authorization

# Zoning District Map



## Project Site



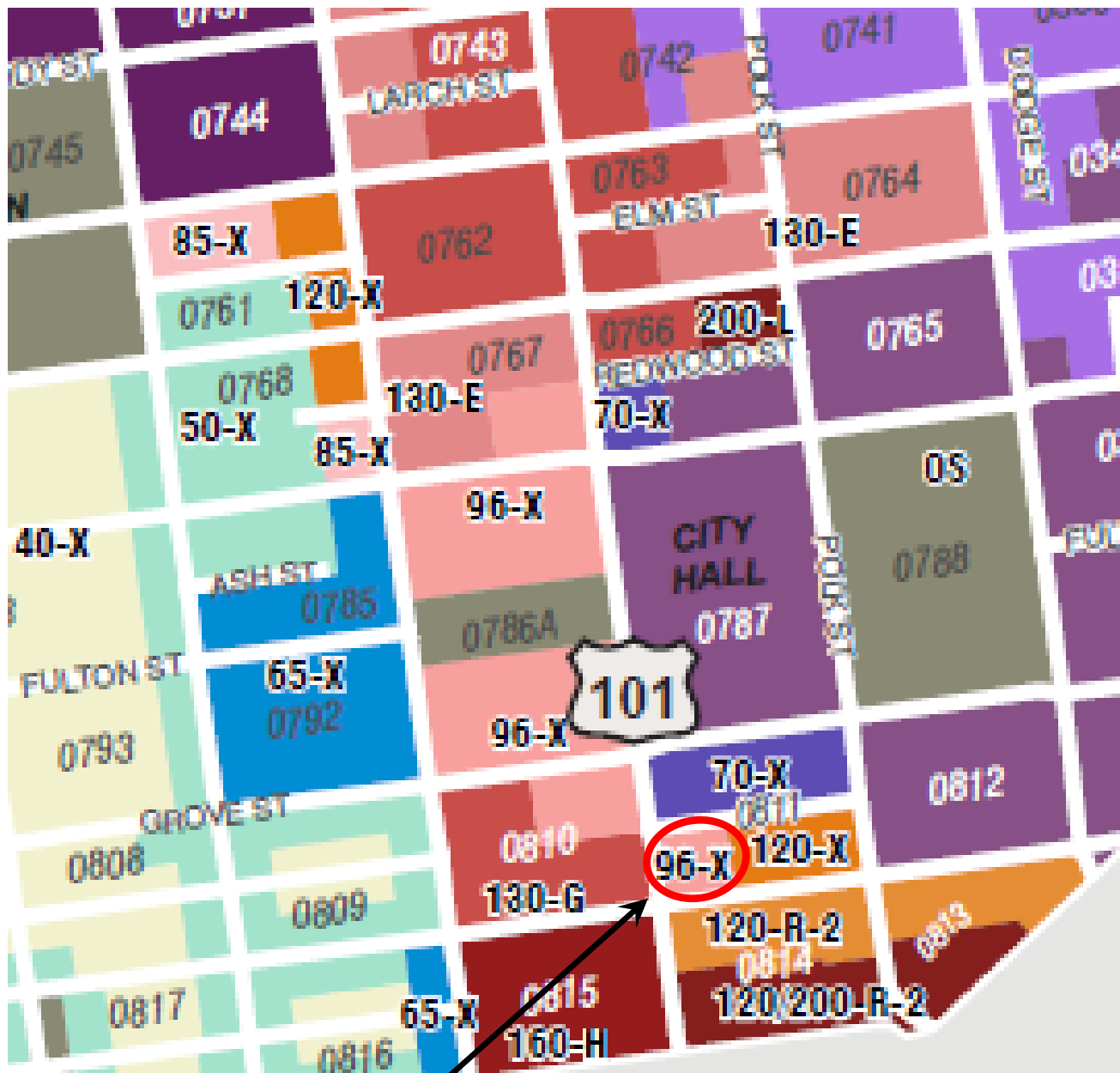
**Case No. 2015-012994DNX/CUA**

200 - 214 Van Ness Avenue

## Downtown Project Authorization/Conditional Use Authorization



# Height and Bulk Map



Project Site



Case No. 2015-012994DNX/CUA

200 - 214 Van Ness Avenue

Downtown Project Authorization/Conditional Use  
Authorization

# Site Photos





# SAN FRANCISCO PLANNING DEPARTMENT

---

## Planning Commission Draft Resolution

HEARING DATE: FEBRUARY 8, 2018

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

*Date:* January 25, 2018  
*Case No.:* **2015-012994GPA**  
*Project Address:* **200 – 214 Van Ness Avenue Street**  
*Existing Zoning:* C-3-G Downtown General  
96-X Height and Bulk District  
*Proposed Zoning:* C-3-G Downtown General  
120-X Height and Bulk District  
*Block/Lot:* 0811/010 and 012  
*Project Sponsor:* Suzanne Brown, on behalf of  
SF Conservatory of Music  
50 Oak Street  
San Francisco, CA 94102  
*Staff Contact:* Claudine Asbagh – (415) 575-9165  
Claudine.asbagh@sfgov.org

**RESOLUTION TO ADOPT A GENERAL PLAN AMENDMENT FOR MAP 5 OF THE DOWNTOWN AREA PLAN PURSUANT TO PLANNING CODE SECTION 340. THE PROPOSED AMENDMENT WOULD AMEND MAP 5 OF THE DOWNTOWN AREA PLAN IN ORDER TO CHANGE THE HEIGHT DESIGNATION OF ASSESSOR'S BLOCK 811, LOTS 10 AND 12 (200-214 VAN NESS AVENUE) FROM 96-X TO 120-X. THE PROPOSED GENERAL PLAN AMENDMENT IS RELATED TO PLANNING CODE TEXT AND MAP AMENDMENTS TO ALLOW THE CONSTRUCTION OF A NEW BUILDING PROPOSED ON THE SUBJECT SITE.**

WHEREAS, Section 4.105 of the Charter of the City and County of San Francisco mandates that the Planning Commission shall periodically recommend to the Board of Supervisors for approval or rejection proposed amendments to the General Plan; and

WHEREAS, the San Francisco Conservatory of Music ("Project Sponsor") has filed an application requesting amendments to the General Plan, Planning Code, and Zoning Maps to facilitate the construction of a mixed use residential, educational/cultural development project known as the ("Project"); and

WHEREAS, pursuant to Planning Code Section 340(C), the Planning Commission ("Commission") initiated a General Plan Amendment for the 200 – 214 Van Ness Avenue Mixed-Use Project ("Project"), per Planning Commission Resolution No. 20089 on January 11, 2018; and

WHEREAS, the General Plan Amendment would revise map 5 of the Downtown Area Plan in order to change the height designation of assessor's block 811, lots 10 and 12 (200-214 van ness avenue) from 96-X to 120-X.

WHEREAS, the General Plan Amendment would enable the 200 – 214 Van Ness Avenue Mixed-Use Project. The 200 – 214 Van Ness Avenue Mixed-Use Project would demolish the existing structures and construct a 12-story (above two basement levels), 120-foot tall, approximately 168,200 square-foot building. The new building would include 420 student beds for students of the San Francisco Conservatory of Music (SFCM), 30 dwelling units, approximately 49,600 square feet of educational and performance space, 4,320 square feet of broadcasting studio space, and 2,600 square feet of ground-floor restaurant/retail space. Of the new dwelling units, 27 would be replacement units and three would be new units for SFCM faculty; and

WHEREAS, the Project proposes public benefits, including new ground floor retail, educational, ground floor and rooftop performance spaces that will expand and be available to the public for free and low-cost performances; and

WHEREAS, a Proposed Ordinance has been drafted in order to make the necessary amendments to the General Plan to implement the Project. The Office of the City Attorney has approved the Proposed Ordinance as to form; and

WHEREAS, on December 27, 2017, the Planning Department's Environmental Review Office issued a Notice of Completion, and published a Preliminary Mitigated Negative Declaration (PMND) for the project that included a Mitigation Monitoring and Reporting program (MMRP) which is included as a Condition of Approval for the project. The comment period for the PMND expired on January 17, 2018 with no appeals. The PMND/IS. The Final Mitigated Negative Declaration (MND) was issued on January 23, 2018, and is available online at <http://tinyurl.com/sfceqadocs>. The Planning Department Planning Department Commission Secretary is the custodian of records, located in File No. 2015-012994ENV, at 1650 Mission Street, Fourth Floor, San Francisco, California; and

WHEREAS, this Resolution approving this General Plan Amendment is a companion to other legislative approvals relating to the Project, including recommendation of approval of Planning Code Text and Map Amendments and recommendation for approval of the Development Agreement; and

WHEREAS, 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 Department staff and other interested parties; and

WHEREAS, the Commission has reviewed the proposed General Plan Amendment; and

WHEREAS, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the General Plan Amendment on February 8, 2018; and,

MOVED, that pursuant to Planning Code Section 302(b), the Commission adopts a Resolution to amend the General Plan based on the following:

## FINDINGS

1. The General Plan Amendment would enable construction of a project that will replace 27 dwelling units currently on-site on a one-for-one basis and provide tenants with a robust program for interim housing and relocation assistance during construction.
2. The General Plan Amendment would enable the construction of 113 student housing units with 420 beds for SFMC to house their own students, thus freeing up the City's existing housing stock for other residents.
3. The General Plan Amendment would enable the construction of a dense, mixed-use development on a relatively constrained site and enable a unique cultural building with teaching and performance spaces within the Civic Center District.
4. **General Plan Compliance.** The Planning Code Compliance Findings set forth in Motion No. XXXXX, Case No. 2015-012994DNX (Downtown Project Authorization, pursuant to Planning Code Section 309) apply to this Motion, and are incorporated herein as though fully set forth.
5. **Planning Code Section 101.1(b).** The Planning Code Priority Policy Findings set forth in Motion No. XXXXX, Case No. 2015-012994DNX (Downtown Project Authorization, pursuant to Planning Code Section 309) apply to this Motion, and are incorporated herein as though fully set forth.
6. **Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby APPROVES the proposed Ordinance as described in this Resolution and attached as Exhibit A.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on February 8, 2018.

Jonas P. Ionin  
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED:

THIS PAGE INTENTIONALLY LEFT BLANK

# **EXHIBIT 2.A:**

GENERAL PLAN ORDINANCE



THIS PAGE INTENTIONALLY LEFT BLANK

[General Plan - Amendment for San Francisco Conservatory of Music Project at 200-214 Van Ness Avenue]

**Ordinance amending the General Plan to revise the Map of Proposed Height and Bulk Districts in the Downtown Area Plan for the San Francisco Conservatory of Music Project at 200-214 Van Ness Avenue; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan and the eight priority policies of Planning Code, Section 101.1.**

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

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

Section 1. Findings.

(a) At its hearing on \_\_\_\_\_, 2018, and prior to its action recommending to the Board of Supervisors the proposed General Plan amendment set forth in this ordinance, the Planning Commission (by Motion No. \_\_\_\_\_) approved a Mitigated Negative Declaration ("MND") for the San Francisco Conservatory of Music project at 200-214 Van Ness Avenue ("Project") pursuant to the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.), the CEQA Guidelines (14 California Code of Regulations, Sections 15000 et seq.), and Chapter 31 of the Administrative Code. A copy of Planning Commission Motion No. \_\_\_\_\_ is on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_ and is incorporated herein by reference. The Board of Supervisors has

1 reviewed the MND in connection with the actions contemplated herein and concurs with its  
2 conclusions, affirms the Planning Commission's approval of the MND, and finds that the  
3 actions contemplated in this ordinance are within the scope of the Project described and  
4 analyzed in the MND.

5 (b) On \_\_\_\_\_, 2018, in Resolution No. \_\_\_\_\_, the Planning Commission  
6 found that the actions contemplated in this ordinance are consistent, on balance, with the  
7 City's General Plan, as it is proposed to be amended, and with the eight priority policies of  
8 Planning Code Section 101.1. The Board adopts these findings as its own. A copy of said  
9 Resolution is on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_, and is  
10 incorporated herein by reference.

11  
12 Section 2. The General Plan is hereby amended by revising Map 5, Proposed Height  
13 and Bulk Districts, in the Downtown Area Plan, to change the height of Assessor's Block 811,  
14 Lots 10 and 12, from 96-X to 120-X.

15  
16 Section 3. Effective and Operative Dates.

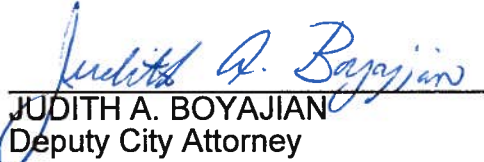
17 (a) This ordinance shall become effective 30 days after enactment. Enactment occurs  
18 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not  
19 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the  
20 Mayor's veto of the ordinance.

21 (b) This ordinance shall become operative on, and no rights or duties effected until,  
22 the later of (1) its effective date or (2) the date that the ordinance approving the Development  
23 Agreement for the Project and the ordinance approving amendments to Section 260 of the  
24 Planning Code and the Zoning Map authorizing a height limit exception for additional building  
25

1 envelope have both become effective. Copies of said ordinances are on file with the Clerk of  
2 the Board of Supervisors in File No. \_\_\_\_\_.

3  
4 APPROVED AS TO FORM:  
5 DENNIS J. HERRERA, City Attorney

6 By:

  
JUDITH A. BOYAJIAN  
Deputy City Attorney

7  
8 n:\leganas2018\1800333\01248230.docx

THIS PAGE INTENTIONALLY LEFT BLANK



# SAN FRANCISCO PLANNING DEPARTMENT

---

## Planning Commission Draft Resolution

HEARING DATE: FEBRUARY 8, 2018

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

*Date:* January 25, 2018  
*Case No.:* **2015-012994PCA/ MAP**  
*Project Address:* **200 – 214 Van Ness Avenue Street**  
*Existing Zoning:* C-3-G Downtown General  
96-X Height and Bulk District  
*Proposed Zoning:* C-3-G Downtown General  
120-X Height and Bulk District  
*Block/Lot:* 0811/010 and 012  
*Project Sponsor:* Suzanne Brown, on behalf of  
SF Conservatory of Music  
50 Oak Street  
San Francisco, CA 94102  
*Staff Contact:* Claudine Asbagh – (415) 575-9165  
[Claudine.asbagh@sfgov.org](mailto:Claudine.asbagh@sfgov.org)

**RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO AUTHORIZE A HEIGHT LIMIT EXCEPTION FOR THE SAN FRANCISCO CONSERVATORY OF MUSIC PROJECT AT 200-214 VAN NESS AVENUE FOR ADDITIONAL BUILDING ENVELOPE THAT WILL BE USED TO ENCLOSE OR SCREEN SPECIFIED FEATURES FROM VIEW, ALLOW INCREASED ROOF HEIGHT FOR PERFORMANCE AND COMMON SPACE, AND PROVIDE ADDITIONAL VISUAL INTEREST TO THE ROOF OF THE STRUCTURE; AMEND THE ZONING MAP TO CHANGE THE HEIGHT DESIGNATION OF ASSESSOR'S BLOCK 811, LOTS 10 AND 12, FROM 96-X TO 120-X; AFFIRM THE PLANNING DEPARTMENT'S DETERMINATION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; MAKE FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE, SECTION 101.1; AND ADOPT FINDINGS OF PUBLIC NECESSITY, CONVENIENCE, AND WELFARE UNDER PLANNING CODE, SECTION 302.**

WHEREAS, on September 29, 2015, Lawrence Badiner on behalf of the San Francisco Conservatory of Music ("Project Sponsor" or "SFCM") filed an application with the Planning Department ("Department") for Environmental Review, to demolish the existing three-story residential building at 200 Van Ness Avenue and the two-story commercial building at 214 Van Ness Avenue and construct a 12-story over two-level basement, approximately 120-foot tall building with up to 420 student beds in 113 group housing units, up to 30 dwelling units (including 27 replacement units), approximately 49,600 Gross Square Feet (GSF) of educational/institutional use with approximately 2,900 gsf of ground floor restaurant/retail space; and

WHEREAS, on September 28, 2016, the Project Sponsor filed an application with the Department for a Determination of Compliance with Planning Code Section 309 as modified and supplemented on November

14, 2017, with exceptions to the requirements for Rear Yard (Section 134), Open Space (Section 135), Obstructions Over Streets and Alleys (Section 136), Group Housing Exposure (Section 140), Ground (Section 145.1), Reduction of Ground-Level Wind Currents in C-3 Districts (Section 148), and Off-Street Loading (Section 161) within the C-3-G (Downtown General) District; and

WHEREAS, on September 28, 2016, the Project Sponsor also filed an application with the Department for a Conditional Use Authorization as modified and supplemented on November 14, 2017, under Planning Code Sections 124(f), 124(k), 215(b), 303 and 317, to remove and replace 27 existing dwelling units to allow additional square footage above that permitted by the base FAR limit for Student Housing as defined in Section 102 within the C-3-G (Downtown General) District and a 96-X Height and Bulk District; and

WHEREAS, on November 14, 2017, the Project Sponsor filed an application to reclassify the existing 96-X Height and Bulk District to a 120-X Height and Bulk District, amend Map 5 of the Downtown Plan of the General Plan, amend the HT02 Height Map of the Zoning Map and amend Section 260 of the Planning Code; and

WHEREAS, on December 27, 2017, the Planning Department's Environmental Review Office issued a Notice of Completion, and published a Preliminary Mitigated Negative Declaration (PMND) for the project that included a Mitigation Monitoring and Reporting program (MMRP) which is included as a Condition of Approval for the project. The comment period for the PMND expired on January 17, 2018 with no appeals. The PMND/IS. The Final Mitigated Negative Declaration (MND) was issued on January 23, 2018, and is available online at <http://tinyurl.com/sfceqadocs>. The Planning Department Planning Department Commission Secretary is the custodian of records, located in File No. 2015-012994ENV, at 1650 Mission Street, Fourth Floor, San Francisco, California; and

WHEREAS, on January 10, 2018, after extensive discussions with City staff, the Project Sponsor also filed an application with the Department for a Development Agreement, under Administrative Code Article 56, which include the specified public benefits above and beyond that required by City codes, including the expanding the City's supply of student housing, replacing 27 existing units on site, assuring the interim relocation and right to return of the existing tenants, creating much needed state-of-the-art educational and performance space, providing added artistic and cultural resources, while providing development certainty to the Project Sponsor; and

WHEREAS, on January 11, 2018, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting and to consider the proposed Ordinance on February 8, 2018; and

WHEREAS, the Planning 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 Department staff and other interested parties; and

WHEREAS, this Resolution approving these Planning Code Text Amendments is a companion to other legislative approvals relating to the Project, including recommendation of approval of General Plan Amendments and recommendation for approval of the Development Agreement; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and



WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, that the Planning Commission hereby approves the proposed ordinance based on the following:

**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 Planning Code Text Amendments would enable construction of a project that will replace 27 dwelling units currently on-site on a one-for-one basis and provide tenants with a robust program for interim housing and relocation assistance during construction.
2. The Planning Code Text Amendments would enable the construction of 113 student housing units with 420 beds for SFMC to house their own students, thus freeing up the City's existing housing stock for other residents.
3. The Zoning Map Amendment would enable the construction of a dense, mixed-use development on a relatively constrained site and enable a unique cultural building with teaching and performance spaces within the Civic Center District.
4. **General Plan Compliance.** The Planning Code Compliance Findings set forth in Motion No. XXXXX, Case No. 2015-012994DNX (Downtown Project Authorization, pursuant to Planning Code Section 309) apply to this Motion, and are incorporated herein as though fully set forth.
5. **Planning Code Section 101.1(b).** The Planning Code Priority Policy Findings set forth in Motion No. XXXXX, Case No. 2015-012994DNX (Downtown Project Authorization, pursuant to Planning Code Section 309) apply to this Motion, and are incorporated herein as though fully set forth.
6. **Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302

NOW THEREFORE BE IT RESOLVED that the Commission hereby APPROVES the proposed Ordinance as described in this Resolution.

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on February 8, 2018.

Jonas P. Ionin  
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED: February 8, 2018

THIS PAGE INTENTIONALLY LEFT BLANK

## **EXHIBIT 3.A:**

Planning Code Text Amendment & Zoning Map Amendment ORDINANCE

THIS PAGE INTENTIONALLY LEFT BLANK

[Planning Code, Zoning Map - San Francisco Conservatory of Music Project at 200-214 Van Ness Avenue]

**Ordinance amending the Planning Code to authorize a height limit exception for the San Francisco Conservatory of Music Project at 200-214 Van Ness Avenue for additional building envelope that will be used to enclose or screen specified features from view, allow increased roof height for performance and common space, and provide additional visual interest to the roof of the structure; amending the Zoning Map to change the height designation of Assessor's Block 811, Lots 10 and 12, from 96-X to 120-X; affirming the Planning Commission's determination under the California Environmental Quality Act; making findings of consistency with the General Plan and the eight priority policies of Planning Code, Section 101.1; and adopting findings of public necessity, convenience, and welfare under Planning Code, Section 302.**

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

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

Section 1. Findings.

(a) At its hearing on \_\_\_\_\_, 2018, and prior to its action recommending to the Board of Supervisors the proposed Planning Code and Zoning Map amendments set forth in this ordinance, the Planning Commission (by Motion No. \_\_\_\_\_) approved a Mitigated Negative Declaration ("MND") for the San Francisco Conservatory of Music project at 200-214 Van Ness Avenue ("Project") pursuant to the California Environmental Quality Act (California

1 Public Resources Code Sections 21000 et seq.), the CEQA Guidelines (14 California Code of  
2 Regulations, Sections 15000 et seq.), and Chapter 31 of the Administrative Code. A copy of  
3 Planning Commission Motion No. \_\_\_\_\_ is on file with the Clerk of the Board of Supervisors  
4 in File No. \_\_\_\_\_ and is incorporated herein by reference. The Board of Supervisors  
5 has reviewed the MND in connection with the actions contemplated herein and concurs with  
6 its conclusions, affirms the Planning Commission's approval of the MND, and finds that the  
7 actions contemplated in this ordinance are within the scope of the Project described and  
8 analyzed in the MND.

9 (b) On \_\_\_\_\_, 2018, in Resolution No. \_\_\_\_\_, the Planning Commission  
10 found that the actions contemplated in this ordinance are consistent, on balance, with the  
11 City's General Plan, as it is proposed to be amended, and with the eight priority policies of  
12 Planning Code Section 101.1. The Board adopts these findings as its own. A copy of said  
13 Resolution is on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_, and is  
14 incorporated herein by reference.

15 (c) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this  
16 ordinance will serve the public necessity, convenience, and welfare for the reasons stated in  
17 Planning Commission Resolution No. \_\_\_\_\_.  
18

19 Section 2. The Planning Code is hereby amended by revising Section 260, to read as  
20 follows:

21 **SEC. 260. HEIGHT LIMITS: MEASUREMENT.**

22 \* \* \* \*

23 (b) **Exemptions.** In addition to other height exceptions permitted by this Code, the  
24 features listed in this subsection (b) shall be exempt from the height limits established by this  
25 Code, in an amount up to but not exceeding that which is specified.

1           (1) The following features shall be exempt; provided the limitations indicated  
2 for each are observed; and provided further that the sum of the horizontal areas of all features  
3 listed in this subsection (b)(1) shall not exceed ~~20% percent~~ of the horizontal area of the roof  
4 above which they are situated, or, in C-3 Districts; and in the Rincon Hill Downtown  
5 Residential District, where the top of the building has been separated into a number of  
6 stepped elements to reduce the bulk of the upper tower, of the total of all roof areas of the  
7 upper towers; and provided further that in any R, RC-3, or RC-4 District the sum of the  
8 horizontal areas of all such features located within the first 10 feet of depth of the building, as  
9 measured from the front wall of the building, shall not exceed ~~20% percent~~ of the horizontal  
10 area of the roof in such first 10 feet of depth.

11           As an alternative, the sum of the horizontal areas of all features listed in this subsection  
12 (b)(1) may be equal to but not exceed ~~20% percent~~ of the horizontal area permitted for  
13 buildings and structures under any bulk limitations in Section 270 of this Code applicable to  
14 the subject property.

15           Any such sum of ~~20% percent~~ heretofore described may be increased to ~~30% percent~~ by  
16 unroofed screening designed either to obscure the features listed under (A) and (B) below or  
17 to provide a more balanced and graceful silhouette for the top of the building or structure.

18           (A) Mechanical equipment and appurtenances necessary to the  
19 operation or maintenance of the building or structure itself, including chimneys, ventilators,  
20 plumbing vent stacks, cooling towers, water tanks, panels or devices for the collection of solar  
21 or wind energy, and window-washing equipment, together with visual screening for any such  
22 features. This exemption shall be limited to the top 10 feet of such features where the height  
23 limit is 65 feet or less, and the top 16 feet of such features where the height limit is more than  
24 65 feet.  
25



1 (B) Elevator, stair and mechanical penthouses, fire towers, skylights, and  
2 dormer windows. This exemption shall be limited to the top 10 feet of such features where the  
3 height limit is 65 feet or less, and the top 16 feet of such features where the height limit is  
4 more than 65 feet. However, for elevator penthouses, the exemption shall be limited to the top  
5 16 feet and limited to the footprint of the elevator shaft, regardless of the height limit of the  
6 building. The design of all elevator penthouses in Residential Districts shall be consistent with  
7 the "Residential Design Guidelines" as adopted and periodically amended for specific areas or  
8 conditions by the City Planning Commission.

9 The Zoning Administrator may, after conducting a public hearing, grant a further height  
10 exemption for an elevator penthouse for a building with a height limit of more than 65 feet but  
11 only to the extent that the Zoning Administrator determines that such an exemption is required  
12 to meet state or federal laws or regulations. All requests for height exemptions for elevator  
13 penthouses located in Residential or Neighborhood Commercial Districts shall be subject to  
14 the neighborhood notification requirements of Sections 311 and 312 of this Code.

15 \* \* \* \*

16 (L) ~~[Reserved.]~~ In the C-3-G District, on sites fronting on Van Ness Avenue in  
17 the 120-X height district, additional building volume used to enclose or screen from view the features  
18 listed under subsections (b)(1)(A) and (b)(1)(B) above, to allow increased roof height for performance  
19 and common space, and to provide additional visual interest to the roof of the structure. The rooftop  
20 form created by the added volume shall not be subject to the percentage coverage limitations otherwise  
21 applicable to this subsection (b)(1)(L), but shall meet the requirements of Section 141 and shall not  
22 exceed 16 feet in height, measured as provided in subsection (a) above. Buildings that are eligible for  
23 this exemption are also eligible for exceptions to any quantitative standards set forth in Article 1.2 of  
24 this Code through Section 309 of this Code.

Section 3. The Zoning Map is hereby amended by revising Sectional Map HT-2 as follows:

<u>Description of Property</u>	<u>Height District to be Superseded</u>	<u>Height District hereby Approved</u>
Assessor's Block 811, Lots 10 and 12	96-X	120-X

Section 4. Effective and Operative Dates.

(a) This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

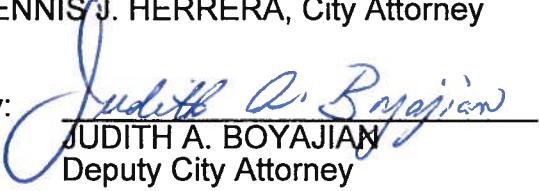
(b) This ordinance shall become operative on, and no rights or duties effected until, the later of (1) its effective date or (2) the date that the ordinance approving the Development Agreement for the Project and the ordinance approving amendments to the General Plan for the Project have both become effective. Copies of said ordinances are on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_.

Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment

1 additions, and Board amendment deletions, in accordance with the "Note" that appears under  
2 the official title of the ordinance.

3  
4 APPROVED AS TO FORM:  
5 DENNIS J. HERRERA, City Attorney

6 By:

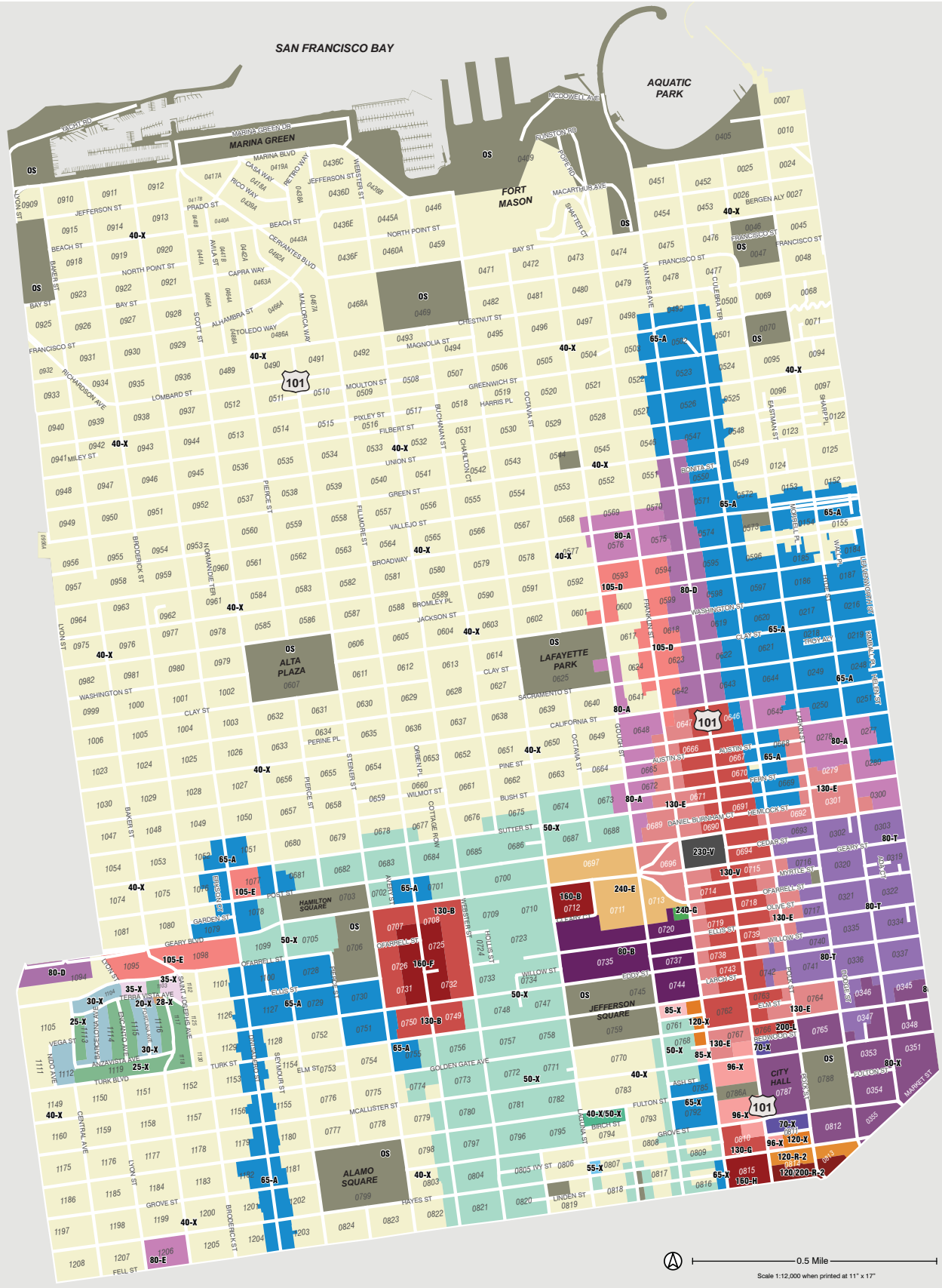
  
7 JUDITH A. BOYAJIAN  
8 Deputy City Attorney

n:\legana\as2018\1800333\01248229.docx

## **EXHIBIT 3.B:**

ZONING CODE HEIGHT MAP

THIS PAGE INTENTIONALLY LEFT BLANK



# San Francisco Zoning Map

## HEIGHT AND BULK DISTRICTS

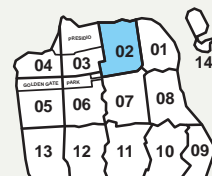
- OS** ← "Open Space" District
- "Numbers" are Height Limits in feet. See Planning Code Section 250 and following.
- "Letters" refer to Bulk Limits. See Planning Code Section 270.
- 00-Z-1** ← "Suffix Numbers" identify districts in which special regulations apply. See Planning Code Sections 263 and following.

The Zoning Map of the City and County of San Francisco is established by sections 105 and 106 of the Planning Code, a part of the San Francisco Municipal Code. Zoning Use Districts are established by sections 201, 702, 802, and 902 of the Planning Code. This map incorporates Board of Supervisors' ordinances enacted through July 2016.

**Disclaimer:** The City and County of San Francisco (CCSF) does not guarantee the accuracy, adequacy, completeness or usefulness of any information. CCSF provides this information on an "as is" basis without warranties of merchantability or fitness for a particular purpose, and assumes no responsibility for anyone's use of the information.

© 2016 City and County of San Francisco

**San Francisco Planning**



**SHEET HT02**

WEBSTER 20160701

THIS PAGE INTENTIONALLY LEFT BLANK



# SAN FRANCISCO PLANNING DEPARTMENT

---

## Planning Commission Draft Resolution

HEARING DATE: FEBRUARY 8, 2018

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

*Date:* January 25, 2018  
*Case No.:* **2015-012994DVA**  
*Project Address:* **200 – 214 Van Ness Avenue Street**  
*Existing Zoning:* C-3-G Downtown General  
96-X Height and Bulk District  
*Proposed Zoning:* C-3-G Downtown General  
120-X Height and Bulk District  
*Block/Lot:* 0811/010 and 012  
*Project Sponsor:* Suzanne Brown, on behalf of  
SF Conservatory of Music  
50 Oak Street  
San Francisco, CA 94102  
*Staff Contact:* Claudine Asbagh – (415) 575-9165  
Claudine.asbagh@sfgov.org

**RESOLUTION RECOMMENDING THAT THE BOARD OF SUPERVISORS APPROVE A DEVELOPMENT AGREEMENT BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO CONSERVATORY OF MUSIC, FOR CERTAIN REAL PROPERTY LOCATED AT 200 – 214 VAN NESS AVENUE, ASSESSOR'S BLOCK 0811, LOTS 010 AND 012, AND ADOPTING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND PLANNING CODE SECTION 101.1.**

WHEREAS, Chapter 56 of the San Francisco Administrative Code sets forth the procedure by which a request for a development agreement will be processed and approved in the City and County of San Francisco; and

WHEREAS, the Development Agreement would enable the 200 – 214 Van Ness Avenue Mixed-Use Project. The 200 – 214 Van Ness Avenue Mixed-Use Project ("Project") would demolish the existing structures and construct a 12-story (above two basement levels), 120-foot tall, approximately 168,200 square-foot building. The new building would include 420 student beds for students of the San Francisco Conservatory of Music (SFCM), 30 dwelling units, approximately 49,600 square feet of educational and performance space, 4,320 square feet of broadcasting studio space, and 2,600 square feet of ground-floor restaurant/retail space. Of the new dwelling units, 27 would be replacement units and three would be new units for SFCM faculty; and



WHEREAS, in furtherance of the Project and the City's role in subsequent approval actions relating to the Project, the City and SFCM negotiated a development agreement for development of the Project site, a copy of which is attached as Exhibit A (the "Development Agreement").

WHEREAS, the City has determined that as a result of the development of the Project site in accordance with the Development Agreement, clear benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies, as more particularly described in the Development Agreement.

WHEREAS, the Development Agreement shall be executed by the Director of Planning and City Attorney, subject to prior approval by the Board of Supervisors.

WHEREAS, on December 27, 2017, the Planning Department's Environmental Review Office issued a Notice of Completion, and published a Preliminary Mitigated Negative Declaration (PMND) for the project that included a Mitigation Monitoring and Reporting program (MMRP) which is included as a Condition of Approval for the project. The comment period for the PMND expired on January 17, 2018 with no appeals. The PMND/IS. The Final Mitigated Negative Declaration (MND) was issued on January 23, 2018, and is available online at <http://tinyurl.com/sfceqadocs>. The Planning Department Planning Department Commission Secretary is the custodian of records, located in File No. 2015-012994ENV, at 1650 Mission Street, Fourth Floor, San Francisco, California.

WHEREAS, on February 8, 2018, by Motion Nos. XXXXX, XXXX, XXXX, and XXXXX, the Commission adopted findings in connection with its approval Project, including Planning Code Text and Map Amendments, General Plan Amendment, Downtown Project Authorization, and Conditional Use Authorization which findings are hereby incorporated herein by this reference as if fully set forth.

WHEREAS, on February 8, 2018, by the afore mentioned motions, the Commission also adopted findings regarding the Project's consistency with the General Plan and Planning Code Section 101.1.

**NOW THEREFORE BE IT RESOLVED** that the Commission recommends approval of the Development Agreement, in substantially the form attached hereto as Exhibit A.

**AND BE IT FURTHER RESOLVED**, that the Commission finds that the application, public notice, Planning Commission hearing, and Planning Director reporting requirements regarding the Development Agreement negotiations contained in Administrative Code Chapter 56 required of the Planning Commission and the Planning Director have been substantially satisfied in light of the regular monthly meetings held for the last two years, the public informational hearings provided by the Planning Department staff at the Planning Commission, the provision of required public notices, and the information contained in the Director's Report.

**AND BE IT FURTHER RESOLVED**, that the Commission authorizes the Planning Director to take such actions and make such changes as deemed necessary and appropriate to implement this Commission's recommendation of approval and to incorporate recommendations or changes from other City agencies and/or the Board, provided that such changes do not materially increase any obligations of the City or materially decrease any benefits to the City contained in the Development Agreement attached as Exhibit A.

**Draft Resolution**  
**Hearing Date: February 8, 2018**

**Case No. 2015-012994DVA**  
**200 – 214 Van Ness Avenue**  
**Development Agreement**

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on February 8, 2018.

Jonas P. Ionin  
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED: February 8, 2018

THIS PAGE INTENTIONALLY LEFT BLANK

# **EXHIBIT 4.A:**

DEVELOPMENT AGREEMENT

THIS PAGE INTENTIONALLY LEFT BLANK

RECORDING REQUESTED BY  
CLERK OF THE BOARD OF SUPERVISORS  
OF THE CITY AND COUNTY OF SAN FRANCISCO

(Exempt from Recording Fees  
Pursuant to Government Code  
Section 27383)

AND WHEN RECORDED MAIL TO:

Angela Calvillo  
Clerk of the Board of Supervisors  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

**FOCUSED DEVELOPMENT AGREEMENT**

**BY AND BETWEEN**

**THE CITY AND COUNTY OF SAN FRANCISCO**

**AND THE SAN FRANCISCO CONSERVATORY OF MUSIC**

**Block 0811; Lot 010 and Block 0811; Lot 012.**

## **TABLE OF CONTENTS**

### **Table of Contents**

1.	DEFINITIONS.....	5
2.	EFFECTIVE DATE; TERM.....	14
2.1	Effective Date .....	14
2.2	Term.....	14
3.	GENERAL RIGHTS AND OBLIGATIONS .....	14
3.1	Development of the Project .....	14
4.	PUBLIC BENEFITS; SFCM OBLIGATIONS AND CONDITIONS TO SFCM'S PERFORMANCE .....	14
4.1	Public Benefits Exceed Those Required by Existing Ordinances and Regulations .....	14
4.2	Conditions to Performance of Public Benefits.....	16
4.3	No Additional CEQA Review Required; Reliance on MND for Future Discretionary Approvals .....	16
4.4	Nondiscrimination.....	17
4.5	City Cost Recovery .....	17
4.6	Prevailing Wages .....	19
4.7	Indemnification of City.....	19
5.	VESTING AND CITY OBLIGATIONS.....	20
5.1	Vested Rights .....	20
5.2	Existing Standards .....	21
5.3	Criteria for Later Approvals.....	21
5.4	Strict Building Code Compliance .....	22
5.5	Denial of a Later Approval .....	22
5.6	New City Laws .....	23
5.7	Fees and Exactions.....	25
5.8	Changes in Federal or State Laws.....	26
5.9	No Action to Impede Approvals .....	29
5.10	Estoppel Certificates .....	29
5.11	Existing, Continuing Uses and Interim Uses .....	30
5.12	Costa-Hawkins Rental Housing Act .....	30
5.13	Application of the San Francisco Rent Ordinance and Ellis Act Waiver .....	32
5.14	Taxes .....	33
6.	NO DEVELOPMENT OBLIGATION.....	33
7.	MUTUAL OBLIGATIONS.....	34
7.1	Notice of Completion, Revocation or Termination .....	34
7.2	General Cooperation; Agreement to Cooperate.....	34

7.3	Good Faith and Fair Dealing.....	36
7.4	Other Necessary Acts.....	36
8.	PERIODIC REVIEW OF SFCM'S COMPLIANCE.....	37
8.1	Annual Review.....	37
8.2	Review Procedure .....	37
9.	ENFORCEMENT OF AGREEMENT; DEFAULT; REMEDIES .....	39
9.1	Enforcement.....	39
9.2	Meet and Confer Process .....	39
9.3	Default.....	40
9.4	Remedies.....	40
9.5	Time Limits; Waiver; Remedies Cumulative .....	42
9.6	Attorneys' Fees.....	43
10.	FINANCING; RIGHTS OF MORTGAGEES.....	44
10.1	SFCM's Right to Mortgage .....	44
10.2	Mortgagee Not Obligated to Construct.....	44
10.3	Copy of Notice of Default and Notice of Failure to Cure to Mortgagee .....	45
10.4	Mortgagee's Option to Cure Defaults .....	45
10.5	Mortgagee's Obligations with Respect to the Property.....	46
10.6	No Impairment of Mortgage .....	47
10.7	Cured Defaults .....	47
11.	AMENDMENT; TERMINATION; EXTENSION OF TERM.....	47
11.1	Amendment or Termination.....	47
11.2	Early Termination Rights.....	47
11.3	Termination and Vesting.....	48
11.4	Amendment Exemptions.....	48
11.5	Extension Due to Legal Action or Referendum; Excusable Delay.....	49
12.	TRANSFER OR ASSIGNMENT; RELEASE; CONSTRUCTIVE NOTICE.....	51
12.1	Permitted Transfer of this Agreement.....	51
12.2	Notice of Transfer .....	51
12.3	Release of Liability .....	52
12.4	Responsibility for Performance .....	52
12.5	Constructive Notice .....	53
12.6	Rights of SFCM .....	53
13.	SFCM REPRESENTATIONS AND WARRANTIES .....	54
13.1	Interest of SFCM; Due Organization and Standing.....	54
13.2	No Inability to Perform; Valid Execution.....	54
13.3	Conflict of Interest .....	54
13.4	Notification of Limitations on Contributions .....	55
13.5	Other Documents .....	55
13.6	No Bankruptcy .....	56



14.	MISCELLANEOUS PROVISIONS.....	56
14.1	Entire Agreement.....	56
14.2	Incorporation of Exhibits .....	56
14.3	Binding Covenants; Run With the Land.....	56
14.4	Applicable Law and Venue.....	57
14.5	Construction of Agreement.....	57
14.6	Project Is a Private Undertaking; No Joint Venture or Partnership .....	58
14.7	Recordation .....	58
14.8	Obligations Not Dischargeable in Bankruptcy .....	58
14.9	Survival .....	58
14.10	Signature in Counterparts .....	58
14.11	Notices .....	58
14.12	Limitations on Actions.....	59
14.13	Severability .....	60
14.14	MacBride Principles.....	60
14.15	Tropical Hardwood and Virgin Redwood.....	60
14.16	Sunshine.....	61
14.17	Non-Liability of City Officials and Others.....	61
14.18	Non-Liability of SFCM Officers and Others .....	61
14.19	No Third Party Beneficiaries .....	62

## **EXHIBITS**

- A-1 Project Site Plan
- A-2 Legal Description
- B Project Description
- C Replacement Housing and Interim Relocation Plan
- D List of Approvals
- E SFCM On-site Public Art Program
- F. Form of Assignment and Assumption Agreement
- G. Form of NSR

**SFCM Edits 1.16.18**

**FOCUSED DEVELOPMENT AGREEMENT  
BY AND BETWEEN  
THE CITY AND COUNTY OF SAN FRANCISCO  
AND THE SAN FRANCISCO CONSERVATORY OF MUSIC**

This Focused Development Agreement, dated for reference purposes only as of \_\_\_\_\_, 2018, is between the City and County of San Francisco, a political subdivision and municipal corporation of the State of California (the "**City**"), acting by and through its Planning Department, and the San Francisco Conservatory of Music, a California non-profit public benefit corporation ("**SFCM**"). The City and SFCM are also sometimes referred to individually as a "**Party**" and together as the "**Parties**". Capitalized terms not defined when introduced shall have the meanings given in Article 1.

**RECITALS**

This Agreement is made with reference to the following facts:

A. SFCM is a non-profit educational institution which has provided internationally acclaimed music education in San Francisco for 100 years. SFCM's 50 Oak Street campus was created in 2006 and included the rehabilitation and restoration of an important historic resource. Since then, SFCM has become a critical part of the City's Civic Center area cultural district, while serving over 400 students a year, both graduate and undergraduate, most of whom receive scholarship support.

B. SFCM employs over 300 faculty and staff in educating students and in providing a wide range of free and low-cost community programming, including over 400 free public performances annually ("Free Public Performances"); numerous live music programs in schools,

hospitals, retirement and children's facilities; a community performance program in which SFCM students gain experience and income while providing more than 200 free performances each year; and student instruction to over 1,600 students at public elementary, middle and high schools each year.

C. In 2014, SFCM acquired the property located at 200 and 214 Van Ness Avenue in San Francisco, California, as more particularly described on the site plan attached as Exhibit A-1 and in the legal description attached as Exhibit A-2 (together the "**Project Site**"). The Project Site is located in the C-3-G Zoning Use District and in the 96-X Height and Bulk District, immediately adjacent to a 120-X Height and Bulk District. The Project Site currently contains an approximately 30,000 square foot office and a residential building with twenty-seven (27) units.

D. SFCM proposes to demolish the two existing buildings and create a student housing focused mixed-use project on the Project Site with approximately four hundred twenty (420) student housing beds, three (3) faculty units, one-for-one replacement of the existing twenty-seven (27) residential units with modern, contemporary code complying units (the "**Replacement Units**"), educational and performance space, and ground floor retail / restaurant uses, all in an approximately 168,000 gross square foot building and as more specifically described in Exhibit B (the "**Project**"). The Project is designed to permit SFCM to continue to provide exceptional music education and strengthen San Francisco's civic center arts and cultural district by providing student housing and related facilities while insuring modern replacement housing for existing tenants and alleviating pressure on San Francisco's existing housing stock.

E. As part of its Replacement Housing and Interim Relocation Plan, SFCM will provide current tenants with a clear right to return to the Replacement Units at current rents and voluntarily submit the Replacement Units to the ongoing jurisdiction of the San Francisco Rent Control Ordinance (the "**Rent Control Ordinance**"). In addition, existing tenants will be provided with similar interim housing and relocation and other assistance during construction of the Project, all as more specifically described on Exhibit C (the "**Replacement Housing and Interim Relocation Plan**").

F. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Section 65864 *et seq.* (the "**Development Agreement Statute**"), which authorizes the City to enter into a development agreement with any person having a legal or equitable interest in real property regarding the development of such property. Pursuant to Government Code Section 65865, the City adopted Chapter 56 of the Administrative Code ("**Chapter 56**") establishing procedures and requirements for entering into a development agreement pursuant to the Development Agreement Statute. The Parties are entering into this Agreement in accordance with the Development Agreement Statute and Chapter 56.

G. In addition to the overall public benefits to the City from SFCM generally, and the Project in particular, the City has determined that as a result of the development of the Project in accordance with this Agreement additional clear benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies. Major additional public benefits to the City from the Project include (1) providing approximately 420 student housing beds to alleviate pressure on the City's impacted housing stock; (2) the

replacement of dated rental housing in a manner exceeding that required under state law;  
(3) building the Replacement Units on-site; (4) activating the street with retail/performance uses,  
and (5) creation of new top and ground floor performance and events space available for public  
use at market rates.

H. It is the intent of the Parties that all acts referred to in this Agreement shall be accomplished in a way as to fully comply with the California Environmental Quality Act (California Public Resources Code Section 21000 *et seq.*; "**CEQA**"), the CEQA Guidelines (Title 14, California Code of Regulations, Section 15000 *et seq.*); ("**CEQA Guidelines**"), the Development Agreement Statute, Chapter 56, the Planning Code, the Enacting Ordinance and all other applicable Laws in effect as of the Effective Date. This Agreement does not limit the City's obligation to comply with applicable environmental Laws, including CEQA, before taking any discretionary action regarding the Project, or the SFCM's obligation to comply with all applicable Laws in connection with the development of the Project.

I. The Final Mitigated Negative Declaration ("**MND**") was prepared for the Project and published on December 27, 2017. On \_\_\_\_\_, 2018, the Planning Commission held a public hearing on this Agreement and the Project, duly noticed and conducted under the Development Agreement Statute and Chapter 56. Following the public hearing, the Planning Commission by Motion No. \_\_\_\_ determined among other things that the MND thoroughly analyzes the Project [**the "CEQA Findings"**] and further determined by Resolution No. \_\_\_\_ that the Project and this Agreement will, as a whole, and taken in their entirety, continue to be consistent with the objectives, policies, general land uses and programs specified in the General Plan, as amended, and the policies set forth in Section 101.1 of the Planning Code (together the "**General Plan Consistency Findings**"). On \_\_\_\_\_, 2018, the Board of Supervisors, in

Motion No. [\_\_\_\_], affirmed the decisions of the Planning Commission and the General Plan Consistency Finding. The information in the CEQA Findings has been fully reviewed and considered by the City in connection with this Agreement.

J. On \_\_\_\_\_, 2018, the Board of Supervisors, having received the Planning Commission's recommendations, held a public hearing on this Agreement pursuant to the Development Agreement Statute and Chapter 56. Following the public hearing, the Board incorporated by reference the CEQA Findings, General Plan Consistency Findings and approved this Agreement.

K. On \_\_\_\_\_, 2018, the Board adopted Ordinance Nos. [\_\_\_\_], amending the General Plan and the Planning Code, Zoning Map, and adopted Ordinance No. [\_\_\_\_], approving this Agreement (File No. [\_\_\_\_]) and authorizing the Planning Director to execute this Agreement on behalf of the City (the "**Enacting Ordinance**"). The Enacting Ordinance took effect on \_\_\_\_\_, 2018.

Now therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### **AGREEMENT**

**1. DEFINITIONS** In addition to the definitions set forth in the above preamble paragraph, Recitals and elsewhere in this Agreement, the following definitions shall apply to this Agreement:

1.1 "**Administrative Code**" means the San Francisco Administrative Code.

1.2 "**Agreement**" means this Focused Development Agreement and its Exhibits and any amendments thereto.

1.3     **"Annual Review Date"** has the meaning set forth in Section 8.1.

1.4     **"Applicable Laws"** has the meaning set forth in Section 5.2 (where not capitalized, "applicable Law" has its plain meaning and refers to Laws as otherwise defined herein).

1.5     **"Approvals"** means the City approvals, entitlements, and permits listed on Exhibit D, and any Later Approval.

1.6     **"Assignment and Assumption Agreement"** has the meaning set forth in Section 12.2.

1.7     **"Board of Supervisors"** or **"Board"** means the Board of Supervisors of the City and County of San Francisco.

1.8     **"Building"** or **"Buildings"** means the buildings on and to be constructed on the Project Site, as generally provided in the Project Description attached as Exhibit B.

1.9     **"Building Parcel"** means a portion of a Building as may be subdivided into commercial condominiums or similar parcels, as applicable.

1.10    **"CEQA"** has the meaning set forth in Recital H.

1.11    **"CEQA Findings"** has the meaning set forth in Recital I.

1.12    **"CEQA Guidelines"** has the meaning set forth in Recital H.

1.13    **"Chapter 56"** has the meaning set forth in Recital F.

1.14    **"City"** means the City as defined in the opening paragraph of this Agreement. Unless the context or text specifically provides otherwise, references to the City means the City acting by and through the Planning Director or, as necessary, the Planning Commission or the Board of Supervisors.



1.15    **"City Agency" or "City Agencies"** means the City departments, agencies, boards, commissions, and bureaus that execute or consent to this Agreement, or are controlled by persons or commissions that have executed or consented to this Agreement, that have subdivision or other permit, entitlement or approval authority or jurisdiction over development of the Project, or any improvement located on or off the Project Site, including, without limitation, the City Administrator, Planning Department, Mayor's Office of Housing and Community Development ("**MOHCD**"), Office of Economic and Workforce Development ("**OEWD**"), SFMTA, DPW, DBI, together with any successor City agency, department, board, or commission. Nothing in this Agreement shall affect the jurisdiction under the City's Charter of a City department that has not approved or consented to this Agreement in connection with the issuance of a Later Approval. The City actions and proceedings subject to this Agreement shall be through the Planning Department, as well as affected City Agencies (and when required by applicable Law, the Board of Supervisors).

1.16    **"City Attorney's Office"** means the Office of the City Attorney of the City and County of San Francisco.

1.17    **"City Costs"** means the actual and reasonable costs incurred by a City Agency in preparing, adopting or amending this Agreement, in performing its obligations or defending its actions under this Agreement or otherwise contemplated by this Agreement, as determined on a time and materials basis, including reasonable attorneys' fees and costs but excluding work, hearings, costs or other activities contemplated or covered by Processing Fees; provided, however, City Costs shall not include any costs incurred by a City Agency in connection with a City Default or which are payable by the City under Section 4.5 when SFCM is the prevailing party.

1.18 **"City Parties"** has the meaning set forth in Section 4.7.

1.19 **"City Report"** has the meaning set forth in Section 8.2.2.

1.20 **"City-Wide"** means all real property within the territorial limits of the City and County of San Francisco, not including any property owned or controlled by the United States or by the State of California and therefore not subject to City regulation.

1.21 **"Commence Construction"** means groundbreaking in connection with the commencement of physical construction of the Building foundation, but specifically excluding the demolition or partial demolition of existing structures.

1.22 **"Costa-Hawkins Act"** has the meaning set forth in Section 5.12.

1.23 **"Default"** has the meaning set forth in Section 9.3.

1.24 **"Development Agreement Statute"** has the meaning set forth in Recital F, as in effect as of the Effective Date.

1.25 **"DPW"** means the San Francisco Department of Public Works.

1.26 **"Effective Date"** has the meaning set forth in Section 2.1.

1.27 **"Enacting Ordinance"** has the meaning set forth in Recital K.

1.28 **"Excusable Delay"** has the meaning set forth in Section 11.5.2.

1.29 **"Existing Standards"** has the meaning set forth in Section 5.2.

1.30 **"Existing Tenant"** has the meaning set forth in the Replacement Housing and Interim Relocation Plan.

1.31 **"Existing Uses"** means all existing lawful uses of the existing Buildings and improvements (and including, without limitation, pre-existing, non-conforming uses under the Planning Code) on the Project Site as of the Effective Date, as the same may be modified by the Approvals and any Later Approvals.

1.32 **"Federal or State Law Exception"** has the meaning set forth in Section 5.8.1.

1.33 **"Finally Granted"** means (i) any and all applicable appeal periods for the filing of any administrative or judicial appeal challenging the issuance or effectiveness of any of the Approvals, this Agreement or the MND shall have expired and no such appeal shall have been filed, or if such an administrative or judicial appeal is filed, the Approvals, this Agreement or the MND, as applicable, shall have been upheld by a final decision in each such appeal without adverse effect on the applicable Approval, this Agreement or the MND and the entry of a final judgment, order or ruling upholding the applicable Approval, this Agreement or the MND and (ii) if a referendum petition relating to this Agreement is timely and duly circulated and filed, certified as valid and the City holds an election, the date the election results on the ballot measure are certified by the Board of Supervisors in the manner provided by the Elections Code reflecting the final defeat or rejection of the referendum.

1.34 **"Foreclosed Property"** has the meaning set forth in Section 10.5.

1.35 **"General Plan Consistency Findings"** has the meaning set forth in Recital I.

1.36 **"Impact Fees and Exactions"** means any fees, contributions, special taxes, exactions, impositions, and dedications charged by the City, whether as of the date of this Agreement or at any time thereafter during the Term, in connection with the development of Projects, including but not limited to transportation and transit fees, child care requirements or in-lieu fees, housing (including affordable housing) requirements or fees, dedication or reservation requirements, and obligations for on-or off-site improvements. Impact Fees and Exactions shall not include Processing Fees, taxes or special assessments or school district fees,

and SFPUC Capacity Charges, all of which shall be due and payable by SFCM as and when due in accordance with Applicable Laws.

1.37 **"Later Approval"** means (i) any other land use approvals, entitlements, or permits from the City or any City Agency other than the Approvals, that are consistent with the Approvals and that are necessary or advisable for the implementation of the Project, including without limitation, demolition permits, grading permits, site permits, Building permits, lot line adjustments, sewer and water connection permits, major and minor encroachment permits, street and sidewalk modifications, street improvement permits, permits to alter, certificates of occupancy, transit stop relocation permits, subdivision and commercial condominium maps, improvement plans, lot mergers, lot line adjustments, and re-subdivisions. A Later Approval shall also include any amendment to the foregoing land use approvals, entitlements, or permits, or any amendment to the Approvals that are sought by SFCM and approved by the City in accordance with the standards set forth in this Agreement.

1.38 **"Law(s)"** means the Constitution and laws of the United States, the Constitution and laws of the State of California, the laws of the City and County of San Francisco, and any codes, statutes, rules, regulations, or executive mandates thereunder, and any State or Federal court decision (including any order, injunction or writ) thereunder. The term **"Laws"** shall refer to any or all Laws as the context may require.

1.39 **"Litigation Extension"** has the meaning set forth in Section 11.5.1.

1.40 **"Losses"** has the meaning set forth in Section 4.7.

1.41 **"Material Change"** means any modification that would materially alter the rights, benefits or obligations of the City or SFCM under this Agreement that is not consistent with the Project or that (i) extends the Term, (ii) changes the permitted uses of the

Project Site, (iii) decreases the Public Benefits, (iv) increases the maximum height, density, bulk or size of the Project, (v) changes parking ratios, or (vi) changes the Impact Fees and Exactions.

1.42 "**MND**" has the meaning set forth in Recital I.

1.43 "**Mortgage**" means a mortgage, deed of trust or other lien (including, without limitation, requirements for any New Market Tax Credits) on all or part of the Project Site to secure an obligation made by the applicable property owner.

1.44 "**Mortgagee**" means (i) any mortgagee or beneficiary under a Mortgage, and (ii) a person or entity that obtains title to all or part of the Project Site as a result of foreclosure proceedings or conveyance or other action in lieu thereof, or other remedial action.

1.45 "**Municipal Code**" means the San Francisco Municipal Code.

1.46 "**New City Laws**" has the meaning set forth in Section 5.6.

1.47 "**Notice of Special Restrictions**" has the meaning set forth in Section 5.13.

1.48 "**OEWD**" means the San Francisco Office of Economic and Workforce Development.

1.49 "**Official Records**" means the official real estate records of the City and County of San Francisco, as maintained by the City's Assessor-Recorder's Office.

1.50 "**Party**" and "**Parties**" has the meaning set forth in the opening paragraph of this Agreement and shall also include any party that becomes a party to this Agreement, such as a Transferee.

1.51 "**Planning Code**" means the San Francisco Planning Code.

1.52 "**Planning Commission**" means the Planning Commission of the City and County of San Francisco.

1.53 **"Planning Department"** means the Planning Department of the City and County of San Francisco.

1.54 **"Planning Director"** means the Director of Planning of the City and County of San Francisco.

1.55 **"Processing Fees"** means the standard fee imposed by the City upon the submission of an application for a permit or approval, which is not an Impact Fee or Exaction, in accordance with the City practice on a City-Wide basis.

1.56 **"Project"** means the mixed use development project as described in Recital D and Exhibit B and the Approvals, together with SFCM's rights and obligations under this Agreement.

1.57 **"Project Site"** has the meaning set forth in Recital A, and as more particularly described in Exhibits A-1 and A-2.

1.58 **"Public Benefits"** has the meaning set forth in Section 4.1.

1.59 **"Public Health and Safety Exception"** has the meaning set forth in Section 5.8.1.

1.60 **"Replacement Housing and Interim Relocation Housing Program"** is set forth in Exhibit C.

1.61 **"Replacement Units"** has the meaning set forth in Recital D.

1.62 **"Rent Control Ordinance"** has the meaning set forth in Recital E.

1.63 **"SFCM"** has the meaning set forth in the opening paragraph of this Agreement, and shall also include (i) any Transferee as to the applicable Transferred Property, and (ii) any Mortgagee or assignee thereof that acquires title to any Foreclosed Property but only as to such Foreclosed Property.

1.64    **"SFMTA"** means the San Francisco Municipal Transportation Agency.

1.65    **"SFPUC"** means the San Francisco Public Utilities Commission.

1.66    **"SFPUC Capacity Charges"** means all water and sewer capacity and connection fees and charges payable to the SFPUC, as and when due in accordance with the applicable City requirements.

1.67    **"Subdivision Code"** means the San Francisco Subdivision Code.

1.68    **"Subdivision Map Act"** means the California Subdivision Map Act, California Government Code § 66410 *et seq.*

1.69    **"Term"** has the meaning set forth in Section 2.2.

1.70    **"Third-Party Challenge"** means any administrative, legal or equitable action or proceeding instituted by any party other than the City or SFCM challenging the validity or performance of any provision of this Agreement, the Project, the Approvals or Later Approvals, the adoption or certification of the MND or other actions taken pursuant to CEQA, or other approvals under Laws relating to the Project, any action taken by the City or SFCM in furtherance of this Agreement, or any combination thereof relating to the Project or any portion thereof.

1.71    **"Transfer," "Transferee" and "Transferred Property"** have the meanings set forth in Section 12.1, and in all events excludes (1) a transfer of ownership or membership interests in SFCM or any Transferee, (2) grants of easement or of occupancy rights for existing or completed Buildings or other improvements (including, without limitation, space leases in Buildings), and (3) the placement of a Mortgage on the Project Site.

1.72    **"Vested Elements"** has the meaning set forth in Section 5.1.

## **2. EFFECTIVE DATE; TERM**

2.1 Effective Date. This Agreement shall take effect upon the later of (i) the full execution and delivery of this Agreement by the Parties and (ii) the date the Enacting Ordinance is effective and operative ("**Effective Date**").

2.2 Term. The term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect for ten (10) years thereafter unless extended or earlier terminated as provided herein ("**Term**"); provided, however, that the Term shall be extended for each day of a Litigation Extension and Excusable Delay. The term of any Approval, tentative Subdivision Map, and any subsequent subdivision map shall be for the longer of (x) the Term or (y) the term otherwise allowed under the Subdivision Map Act.

## **3. GENERAL RIGHTS AND OBLIGATIONS**

3.1 Development of the Project. SFCM shall have the vested right to develop the Project in accordance with and subject to the provisions of this Agreement, and the City shall consider and process all Later Approvals for development of the Project in accordance with and subject to the provisions of this Agreement. The Parties acknowledge (i) that SFCM has obtained all Approvals from the City required to Commence Construction of the Project, other than any required **Later Approvals** and (ii) that SFCM may proceed in accordance with this Agreement with the construction and, upon completion, use and occupancy of the Project as a matter of right, subject, only if applicable, to the attainment of any required Later Approvals.

## **4. PUBLIC BENEFITS; SFCM OBLIGATIONS AND CONDITIONS TO SFCM'S PERFORMANCE**

4.1 Public Benefits Exceed Those Required by Existing Ordinances and Regulations. The Parties acknowledge and agree that the development of the Project in



accordance with this Agreement provides a number of public benefits to the City beyond those achievable through existing Laws, including, but not limited to:

(a) Expanding the City's supply of housing by adding approximately 420 student housing beds and three faculty units, while concurrently alleviating severe pressure on the City's existing housing stock;

(b) The Replacement Housing and Interim Relocation Plan, including: one-for-one replacement of the existing twenty-seven (27) substandard residential units with the Replacement Units; providing current tenants with a clear right to return to the Replacement Units at current rents; voluntary submittal of the Replacement Units to the ongoing jurisdiction of the Rent Control Ordinance; and providing existing tenants with similar interim housing and relocation and other assistance during construction of the Project, all as more specifically described in Exhibit C; and

(c) 45,200 gross square feet of much needed state-of-the-art educational and performance space, providing added artistic and cultural resources to the City generally, and the Civic Center cultural area specifically, which includes creation of active uses on Van Ness Avenue and Hayes Street in approximately 7,200 gross square feet of ground floor retail/restaurant and performance space in the Project. The top floor performance space is approximately 5,000 gross square feet. The ground floor and top floor performance spaces will be available for public use at market rates when not committed to SFCM uses. Additionally, SFCM will provide music performances free to the public within the ground floor public performance space, which performances will be in addition to the Free Public Performances already provided by SFCM.

The above Sections 4.1(a), (b) and (c) are together the "**Public Benefits**".

The City acknowledges and agrees that a number of the Public Benefits would not be otherwise achievable without the express agreement of SFCM under this Agreement. SFCM acknowledges and agrees that, as a result of the benefits to SFCM under this Agreement, SFCM has received good and valuable consideration for its provision of the Public Benefits, and that the City would not be willing to enter into this Agreement without the Public Benefits. The Public Benefits shall be provided in the time and manner set forth in the Approvals; provided, however, the Public Benefits under the Replacement Housing and Interim Relocation Plan shall commence and survive the expiration or termination of this Agreement as provided in Exhibit C.

4.2 Conditions to Performance of Public Benefits. SFCM's obligation to perform each Public Benefit is expressly conditioned upon each and all of the following conditions precedent:

- (a) All Approvals for the Project shall have been Finally Granted; and
- (b) SFCM shall have obtained all Later Approvals necessary to

Commence and complete Construction and the same shall have been Finally Granted.

4.3 No Additional CEQA Review Required; Reliance on MND for Future Discretionary Approvals. The Parties acknowledge that the MND prepared for the Project complies with CEQA. The Parties further acknowledge that the MND contains a thorough analysis of the Project. Accordingly, the City does not intend to conduct any further environmental review or impose any additional mitigation under CEQA for any aspect of the Project vested under this Agreement. The City shall rely on the MND, to the greatest extent possible in accordance with applicable Laws, in all future discretionary actions related to the Project; provided, however, that nothing shall prevent or limit the discretion of the City to conduct additional environmental review in connection with any Later Approvals to the extent

that such additional environmental review is required by applicable Laws, including CEQA. The Parties expressly acknowledge that the MND is intended to be used in connection with each of the Later Approvals to the extent appropriate and permitted under applicable Law. Nothing in this Agreement shall limit the ability of the City to impose conditions on any new, discretionary permit resulting from Material Changes as such conditions are determined by the City to be necessary to mitigate adverse environmental impacts identified through the CEQA process and associated with the Material Changes or otherwise to address significant environmental impacts as defined by CEQA created by an approval or permit; provided, however, any such conditions must be in accordance with applicable Law.

4.4 Nondiscrimination. In the performance of this Agreement, SFCM agrees not to discriminate against any employee, City employee working with SFCM's contractor or subcontractor, applicant for employment with such contractor or subcontractor, 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.

4.5 City Cost Recovery.

4.5.1 SFCM shall timely pay to the City all Impact Fees and Exactions applicable to the Project or the Project Site as set forth in Section 5.7.

4.5.2 SFCM shall timely pay to the City all Processing Fees applicable to the processing or review of applications for the Approvals and Later Approvals.

4.5.3 SFCM shall pay to the City all City Costs incurred in connection with the drafting and negotiation of this Agreement, defending the Approvals and Later Approvals, and in processing and issuing any Later Approvals or administering this Agreement (except for the costs that are covered by Processing Fees), within sixty (60) days following receipt of a written invoice complying with Section 4.5.4 from the City.

4.5.4 OEWD shall provide SFCM on a quarterly basis (or such alternative period as agreed to by the Parties) a reasonably detailed statement showing costs incurred by OEWD, the City Agencies and the City Attorney's Office, including the hourly rates for each City staff member at that time, the total number of hours spent by each City staff member during the invoice period, any additional costs incurred by the City Agencies and a brief non-confidential description of the work completed (provided, for the City Attorney's Office, the billing statement will be reviewed and approved by OEWD but the cover invoice forwarded to SFCM will not include a description of the work). OEWD will use reasonable efforts to provide an accounting of time and costs from the City Attorney's Office and each City Agency in each invoice; provided, however, if OEWD is unable to provide an accounting from one or more of such parties, then OEWD may send an invoice to SFCM that does not include the charges of such party or parties without losing any right to include such charges in a future or supplemental invoice but subject to the eighteen (18) month deadline set forth below in this Section 4.5.4. SFCM's obligation to pay the City Costs shall survive the termination of this Agreement. SFCM shall have no obligation to reimburse the City for any City Cost that is not invoiced to SFCM within eighteen (18) months from the date the City Cost was incurred. The City will maintain records, in reasonable detail, with respect to any City Costs and upon written request of SFCM, and to the extent not confidential, shall make such records available for inspection by SFCM.

4.5.5 If SFCM in good faith disputes any portion of an invoice, then within sixty (60) days following receipt of the invoice SFCM shall provide notice of the amount disputed and the reason for the dispute, and the Parties shall use good faith efforts to reconcile the dispute as soon as practicable. SFCM shall have no right to withhold the disputed amount. If any dispute is not resolved within ninety (90) days following SFCM's notice to the City of the dispute, SFCM may pursue all remedies at law or in equity to recover the disputed amount.

4.6 Prevailing Wages. To the extent otherwise required by law, SFCM agrees that all persons performing labor in the construction of any public improvements on the Project Site, if any, shall be paid not less than the highest prevailing rate of wages for the labor so performed consistent with the requirements of Section 6.22(E) of the Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California, and SFCM shall include this requirement in any construction contract entered into by SFCM for any such public improvements. Upon request and if applicable, SFCM and its contractors will provide to City any workforce payroll records as needed to confirm compliance with this section.

4.7 Indemnification of City. SFCM shall indemnify, reimburse, and hold harmless the City and its officers, agents and employees (the "**City Parties**") from and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims ("**Losses**") arising or resulting directly or indirectly from (i) any third party claim arising from a Default by SFCM under this Agreement, (ii) SFCM's failure to comply with any Approval or Later Approval, (iii) the failure of any improvements constructed pursuant to the Approvals or Later Approvals to comply with any Federal or State Laws, the Existing Standards or any permitted New City Laws, (iv) any accident, bodily injury, death, personal injury, or loss of or

damage to property occurring on the Project Site (or the public right of way adjacent to the Project Site) in connection with the construction by SFCM or its agents or contractors of any improvements pursuant to the Approvals, Later Approvals or this Agreement, (v) a Third-Party Challenge instituted against the City or any of the City Parties, (vi) any dispute between SFCM, its contractors or subcontractors relating to the construction of any part of the Project, and (vii) any dispute between SFCM and any Transferee or any subsequent owner of any of the Project Site relating to any assignment of this Agreement or the obligations that run with the land, or any dispute between SFCM and any Transferee or other person relating to which party is responsible for performing certain obligations under this Agreement, each regardless of the negligence of and regardless of whether liability without fault is imposed or sought to be imposed on the City or any of the City Parties, except to the extent that any of the foregoing indemnification obligations is void or otherwise unenforceable under applicable Law, and except to the extent such Loss is the result of the negligence or willful misconduct of the City Parties. The foregoing indemnity shall include, without limitation, reasonable attorneys' fees and costs and the City's reasonable cost of investigating any claims against the City or the City Parties. All indemnifications set forth in this Agreement shall survive the expiration or termination of this Agreement, to the extent such indemnification obligation arose from an event occurring before the expiration or termination of this Agreement.

## **5. VESTING AND CITY OBLIGATIONS**

5.1 Vested Rights. By the Approvals, the City has made a policy decision that the Project, as described in and as may be modified in accordance with the Approvals, is in the best interests of the City and promotes the public health, safety and welfare. SFCM shall have the vested right to develop the Project as set forth in this Agreement, including without limitation

with the following vested elements: the locations and numbers of buildings proposed, the land uses, height and bulk limits, including the maximum density, intensity and gross square footages, the permitted uses, the provisions for student housing, replacement housing, open space, vehicular access, and parking, (collectively, the "**Vested Elements**"; provided the Existing Uses on the Project Site shall also be included as Vested Elements). The Vested Elements are subject to and shall be governed by Applicable Laws including the Planning Code. The expiration of any building permit or Approval shall not limit the Vested Elements, and SFCM shall have the right to seek and obtain subsequent building permits or approvals, including Later Approvals, at any time during the Term, any of which shall be governed by Applicable Laws. Each Later Approval, once granted, shall be deemed an Approval for purposes of this Section 5.1.

5.2 Existing Standards. The City shall process, consider, and review all Later Approvals in accordance with (i) the Approvals, (ii) the San Francisco General Plan, the Municipal Code (including the Subdivision Code), and all other applicable City policies, rules and regulations, as each of the foregoing is in effect on the Effective Date ("**Existing Standards**"), as the same may be amended or updated in accordance with permitted New City Laws as set forth in Section 5.6, and (iii) this Agreement (collectively, "**Applicable Laws**"). Notwithstanding the foregoing, for the avoidance of confusion the parties acknowledge that the Planning Code section 415 *et seq.* inclusionary affordable housing program is not an Applicable Law hereunder.

5.3 Criteria for Later Approvals. SFCM shall be responsible for obtaining all required Later Approvals before the start of any construction. The City, in granting the Approvals and vesting the Project through this Agreement, is limiting its future discretion with respect to Later Approvals to the extent that they are consistent with the Approvals and this

Agreement. The City shall not disapprove applications for Later Approval based upon an item or element that is consistent with the Approvals, and shall consider all such applications in accordance with its customary practices (subject to the requirements of this Agreement). The City may subject a Later Approval to any condition that is necessary to bring the Later Approval into compliance with Applicable Laws. For any part of a Later Approval request that has not been previously reviewed or considered by the applicable City Agency (such as additional details or plans), the City Agency shall exercise its discretion consistent with the Planning Code and the Approvals and otherwise in accordance with the City's customary practice. Nothing in this Agreement shall preclude the City from applying New City Laws for any development not within the definition of the "Project" under this Agreement.

5.4 Strict Building Code Compliance. Notwithstanding anything in this Agreement to the contrary, when considering any application for a Later Approval, the City or the applicable City Agency shall apply the applicable provisions, requirements, rules, or regulations that are contained in the San Francisco Building Codes, including the Public Works Code (which includes the Stormwater Management Ordinance), Subdivision Code, Mechanical Code, Electrical Code, Green Building Code, Housing Code, Plumbing Code, Fire Code, or other uniform construction codes applicable on a City-Wide basis.

5.5 Denial of a Later Approval. If the City denies any application for a Later Approval that implements any aspect of the Project, the City must specify in writing the reasons for such denial and shall suggest modifications required for approval of the application. Any such specified modifications shall be consistent with Applicable Laws and City staff shall approve the application if it is subsequently resubmitted for City review and corrects or mitigates, to the City's reasonable satisfaction, the stated reasons for the earlier denial in a



manner that is consistent and compliant with Applicable Laws and does not include new or additional information or materials that give the City a reason to object to the application under the standards set forth in this Agreement.

5.6 New City Laws. All future changes to Existing Standards and any other Laws, plans or policies adopted by the City or adopted by voter initiative after the Effective Date ("**New City Laws**") shall apply to the Project and the Project Site except to the extent they conflict with this Agreement or the terms and conditions of the Approvals. In the event of such a conflict, the terms of this Agreement and the Approvals shall prevail, subject to the terms of Section 5.8.

5.6.1 New City Laws shall be deemed to conflict with this Agreement and the Approvals if they:

(a) limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the square footage or number of proposed Building or change the location of proposed Building or change or reduce other improvements from that permitted under the Approvals;

(b) limit or reduce the height or bulk of the Project, or any part thereof, or otherwise require any reduction in the height or bulk of the Building or other improvements that are part of the Project under the Approvals;

(c) limit, reduce or change the location of vehicular access, parking or loading from that permitted under the Approvals;

(d) limit any land uses for the Project from that permitted under the Approvals or the Existing Uses;

(e) change or limit the Approvals or Existing Uses;

(f) materially delay, limit or control the rate, timing, phasing, or sequencing of the Project, including the demolition of existing buildings at the Project Site, except as expressly set forth in this Agreement;

(g) require the issuance of permits or approvals by the City other than those required under the Existing Standards, except for permits or approvals required on a City-Wide basis, that relate to the construction of improvements, and that do not prevent construction of the Project as intended by this Agreement;

(h) limit or control the availability of public utilities, services or facilities, or any privileges or rights to public utilities, services, or facilities for the Project;

(i) materially and adversely limit the processing or procuring of applications and approvals of Later Approvals that are consistent with Approvals; or

(j) impose new or modified Impact Fees and Exactions on the Project (as is expressly prohibited in Section 5.7.2).

5.6.2 SFCM shall have the right, from time to time and at any time, to file subdivision map applications (including phased final map applications and development-specific condominium map or plan applications) with respect to some or all of the Project Site, to subdivide, reconfigure or merge the parcels comprising the Project Site as may be necessary or desirable in order to create separate condominium units within the Project. The specific boundaries of parcels shall be set by SFCM and approved by the City during the subdivision process. Nothing in this Agreement shall authorize SFCM to subdivide or use any of the Project Site for purposes of sale, lease or financing in any manner that conflicts with the Subdivision Map Act or with the Subdivision Code. Nothing in this Agreement shall prevent the City from enacting or adopting changes in the methods and procedures for processing subdivision and

parcel maps so long as such changes do not conflict with the provisions of this Agreement or with the Approvals.

5.7 Fees and Exactions.

5.7.1 Generally. The Project shall only be subject to the Processing Fees and Impact Fees and Exactions as set forth in this Section 5.7, and the City shall not impose any new Processing Fees or new or modified Impact Fees and Exactions on the development of the Project or impose new conditions or requirements for the right to develop the Project (including required contributions of land, public amenities or services) except as set forth in this Agreement. The Parties acknowledge that the provisions contained in this Section 5.7 are intended to implement the intent of the Parties that SFCM have the right to develop the Project pursuant to specified and known criteria and rules, and that the City receive the benefits which will be conferred as a result of such development without abridging the right of the City to act in accordance with its powers, duties and obligations, except as specifically provided in this Agreement.

5.7.2 Impact Fees and Exactions. During the Term, as extended by the Litigation Extension and Excusable Delay (if any), no Impact Fees and Exactions shall apply to the Project or components thereof except for (i) the SFPUC Capacity Charges, (ii) those in effect as of the Effective Date (exclusive of Planning Code Section 415, which does not apply), and (iii) as expressly set forth below in this Section 5.7.2. The Impact Fees and Exactions and SFPUC Capacity Charges shall be calculated at the time payable in accordance with the City requirements on that date. Accordingly, SFCM shall be subject to any increase or decrease in the fee amount payable, but will not be subject to any new types of Impact Fees and Exactions or modification to existing Impact Fees and Exactions (*e.g.*, any increase in the required number or

percentage of affordable housing units, any change in the minimum or maximum area median income (AMI) percentage levels for the affordable housing pricing or income eligibility, changes to unit type requirements, or any reduction in the threshold of applicability for imposition of a fee, such as square footage), or any increase in any fee in excess of the annual or other regularly scheduled increase in such fee (e.g., annual increases based on the Annual Infrastructure Construction Cost Inflation Estimate, Consumer Price Index, Cost of Living Adjustment, or other index) after the Effective Date.

5.7.2.1 Art Fee. Notwithstanding the provisions of Planning Code Section 429, *et seq.*, SFCM will satisfy the on-site public art work provisions thereof by providing on-site public art visible to the public in the manner described in Exhibit E.

5.7.3 Processing Fees. SFCM shall pay all Processing Fees in effect, on a City-wide basis, at the time that SFCM applies for a Later Approval for which such Processing Fee is payable in connection with the applicable part of the Project.

5.8 Changes in Federal or State Laws.

5.8.1 City's Exceptions. Notwithstanding any provision in this Agreement to the contrary, each City Agency having jurisdiction over the Project shall exercise its discretion under this Agreement in a manner that is consistent with the public health and safety and shall at all times retain its respective authority to take any action that is necessary to protect the physical health and safety of the public (the "**Public Health and Safety Exception**") or reasonably calculated and narrowly drawn to comply with applicable changes in Federal or State Law affecting the physical environment (the "**Federal or State Law Exception**"), including the authority to condition or deny a Later Approval or to adopt a new Law applicable to the Project so long as such condition or denial or new regulation (i)(a) is limited solely to

addressing a specific and identifiable issue in each case required to protect the physical health and safety of the public, or (b) is required to comply with a Federal or State Law and in each case not for independent discretionary policy reasons that are inconsistent with the Approvals or this Agreement and (ii) is applicable on a City-Wide basis to the same or similarly situated uses and applied in an equitable and non-discriminatory manner. SFCM retains the right to dispute any City reliance on the Public Health and Safety Exception or the Federal or State Law Exception.

5.8.2 Changes in Federal or State Laws. If Federal or State Laws issued, enacted, promulgated, adopted, passed, approved, made, implemented, amended, or interpreted after the Effective Date have gone into effect and (i) preclude or prevent compliance with one or more provisions of the Approvals or this Agreement, or (ii) materially and adversely affect SFCM's or the City's rights, benefits or obligations under this Agreement, then such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such Federal or State Law. In such event, this Agreement shall be modified only to the extent necessary or required to comply with such Law, subject to the provisions of Section 5.8.4, as applicable.

5.8.3 Changes to Development Agreement Statute. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute. No amendment of or addition to the Development Agreement Statute which would affect the interpretation or enforceability of this Agreement or increase the obligations or diminish the development rights of SFCM hereunder, or increase the obligations or diminish the benefits to the City hereunder shall be applicable to this Agreement unless such amendment or addition is

specifically required by Law or is mandated by a court of competent jurisdiction. If such amendment or change is permissive rather than mandatory, this Agreement shall not be affected.

5.8.4 Termination of Agreement. If any of the modifications, amendments or additions described in Section 5.8.2 or this Section 5.8.3, or any changes in Federal or State Laws described above, would materially and adversely affect the construction, development, use, operation, or occupancy of the Project as currently contemplated by the Approvals, or any material portion thereof, such that the Project, or the applicable portion thereof, becomes economically infeasible (a "**Law Adverse to SFCM**"), then SFCM shall notify the City and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties. If any of the modifications, amendments or additions described in Sections 5.8.2 or 5.8.3 or any changes in Federal or State Laws described thereunder would materially and adversely affect or limit the Public Benefits (a "**Law Adverse to the City**"), then the City shall notify SFCM and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties. Upon receipt of a notice under this Section 5.8.4, the Parties agree to meet and confer in good faith for a period of not less than ninety (90) days in an attempt to resolve the issue. If the Parties cannot resolve the issue in ninety (90) days or such longer period as may be agreed to by the Parties, then the Parties shall mutually select a mediator at JAMS in San Francisco for nonbinding mediation for a period of not less than thirty (30) days. If the Parties remain unable to resolve the issue following such mediation, then (i) SFCM shall have the right to terminate this Agreement as to the affected portions of the Project following a Law Adverse to SFCM upon not less than thirty (30) days prior notice to the City, and (ii) the City shall have the right to terminate this Agreement as to the affected portions of the Project following a Law Adverse to the City upon

not less than thirty (30) days prior notice to SFCM; provided: (a) notwithstanding any such termination, SFCM shall be required to complete the Public Benefits tied to a particular Building that has Commenced Construction as set forth in Section 4.1 if SFCM proceeds with construction of such Building, and (b) in the event of a partial termination, SFCM shall be required to complete the Public Benefits tied to any Building remaining to be built if SFCM Commences Construction of the applicable Building and proceeds with such construction. Notwithstanding the foregoing, if SFCM Transfers some but not all of the Project or a party takes title to Foreclosed Property constituting only a portion of the Project, and, therefore, there is more than one party that assumes obligations of SFCM under this Agreement, then only the Party holding the interest in such portion of the Project shall have the right to terminate this Agreement as to such portion of the Project (and only as to such portion), and no termination of this Agreement by such Party as to such Party's portion of the Project shall effect a termination of this Agreement as to any other portion of the Project.

5.9 No Action to Impede Approvals. Except and only as required under Section 5.8, the City shall take no action under this Agreement nor impose any condition on the Project that would conflict with this Agreement or the Approvals. An action taken or condition imposed shall be deemed to be in conflict with this Agreement or the Approvals if such actions or conditions result in the occurrence of one or more of the circumstances identified in Section 5.6.1.

5.10 Estoppel Certificates. SFCM may, at any time, and from time to time, deliver notice to the Planning Director requesting that the Planning Director certify to SFCM, a potential Transferee, or a potential lender to SFCM, in writing that to the best of the Planning Director's knowledge: (i) this Agreement is in full force and effect and a binding obligation of

the Parties; (ii) this Agreement has not been amended or modified, and if so amended or modified, identifying the amendments or modifications and stating their date and providing a copy or referring to the recording information; (iii) SFCM is not in Default in the performance of its obligations under this Agreement, or if in Default, to describe therein the nature and amount of any such Defaults; and (iv) the findings of the City with respect to the most recent annual review performed pursuant to Section 8. The Planning Director, acting on behalf of the City, shall execute and return such certificate within forty-five (45) days following receipt of the request.

5.11 Existing, Continuing Uses and Interim Uses. The Parties acknowledge that the Existing Uses are lawfully authorized uses and may continue as such uses may be modified by the Project, provided that any modification thereof not a component of or contemplated by the Project is subject to Planning Code Section 178 and the applicable provisions of Section 5. SFCM may install interim or temporary uses on the Project Site, which uses must be consistent with those uses allowed under the Project's zoning.

5.12 Costa-Hawkins Rental Housing Act.

5.12.1 Non-Applicability. Chapter 4.3 of the California Government Code directs public agencies to grant concessions and incentives to private developers for the production of housing for lower income households. The Costa-Hawkins Rental Housing Act, California Civil Code sections 1954.50 et seq. (the "**Costa-Hawkins Act**") provides for no limitations on the establishment of the initial and all subsequent rental rates for a dwelling unit with a certificate of occupancy issued after February 1, 1995, with exceptions, including an exception for dwelling units constructed pursuant to a contract with a public agency in consideration for a direct financial contribution or any other form of assistance specified in



Chapter 4.3 of the California Government Code (section 1954.52(b)). The Parties agree that the Costa-Hawkins Act does not and in no way shall limit or otherwise affect the restriction of rental charges for the Replacement Units consistent with the Replacement Housing and Interim Relocation Plan and Notice of Special Restrictions. This Agreement falls within the express exception to the Costa-Hawkins Act, Section 1954.52(b) because this Agreement is a contract with a public entity in consideration for contributions and other forms of assistance specified in Chapter 4.3 (commencing with Section 65919 of Division 1 of Title 7 of the California Government Code). The City and SFCM would not be willing to enter into this Agreement without the understanding and agreement that Costa-Hawkins Act provisions set forth in California Civil Code section 1954.52(a) do not apply to the Replacement Units as a result of the exemption set forth in California Civil Code section 1954.52(b) for the reasons set forth in this Section 5.12.

5.12.2 General Waiver. SFCM, on behalf of itself and all of its successors and assigns of all or any portion of the Project Site, agrees not to challenge and expressly waives, now and forever, any and all rights to challenge the requirements of this Agreement related to the applicability of the Rent Control Ordinance to the Replacement Units as set forth in the Replacement Housing and Interim Relocation Plan under the Costa-Hawkins Act (as the Costa-Hawkins Act may be amended or supplanted from time to time). If and to the extent such general covenants and waivers are not enforceable under Law, the Parties acknowledge and that they are important elements of the consideration for this Agreement and the Parties should not have the benefits of this Agreement without the burdens of this Agreement. Accordingly, if SFCM challenges the application of this covenant and waiver, then

such breach will be an Event of Default and City shall have the right to terminate this Agreement as to the portion of the Project under the ownership or control of SFCM.

5.12.3 Inclusion in All Assignment and Assumption Agreements and Recorded Restrictions. SFCM shall include the provisions of this Section 5.12 in any and all assignment and assumption agreements, and any and all recorded restrictions, for any portion of the Project Site that includes or will include Replacement Units.

5.13 Application of the San Francisco Rent Ordinance and Ellis Act Waiver. SFCM agrees to maintain the Replacement Units as rent controlled under the Rent Control Ordinance, which commitment shall survive the expiration of this Agreement for so long as the Rent Control Ordinance, or a similar successor ordinance, remains in effect. Such commitment does not depend upon the initial occupancy of the Replacement Unit by an existing tenant, and such commitment shall be evidenced by the Notice of Special Restrictions generally in the form attached hereto as Exhibit H and as specified in the attached Replacement Housing Plan. In furtherance of the principles of the Replacement Housing Plan, SFCM shall, as part of the Notice of Special Restrictions attached hereto as Exhibit G, waives any and all rights to evict any tenants in a Replacement Unit (including any Existing Tenants or other tenants) under the Ellis Act (California Government Code Section 7060 et seq.) and any other laws or regulations that permit owner move-in evictions for any of the Replacement Units for so long as the Replacement Housing Units are subject to the Rent Control Ordinance.

SFCM shall include the provisions of this Section 5.13 in any and all assignment and assumption agreements, and any and all recorded restrictions, for any portion of the Project Site that includes or will include Replacement Units.

5.14 Taxes. Nothing in this Agreement alters the limitations imposed by Law on the City's ability to impose or increase taxes or special assessments, or any equivalent or substitute tax or assessment, provided on the Project Site or SFCM as its owner, provided (i) the City shall not institute, on its own initiative, proceedings for any new or increased special tax or special assessment for a land-secured financing district (including the special taxes under the Mello-Roos Community Facilities Act of 1982 (Government Code §§ 53311 *et seq.*) but not including business improvement districts or community benefit districts formed by a vote of the affected property owners) that includes the Project Site unless the new district is City-Wide or SFCM gives its prior written consent to or requests such proceedings, and (ii) no such tax or assessment shall be targeted or directed at the Project, including, without limitation, any tax or assessment targeted solely at all or any part of the Project Site. Nothing in the foregoing or in this Agreement shall permit the City to impose any tax or assessment against the Project or the Project Site, any portion thereof or SFCM that is otherwise prohibited by Law and in any event, if permitted, must be one that applies to all similarly-situated property on a City-Wide basis.

## **6. NO DEVELOPMENT OBLIGATION**

There is no requirement under this Agreement that SFCM initiate or complete development of the Project, or any portion thereof. There is also no requirement that development be initiated or completed within any period of time or in any particular order, subject to the requirement of the Replacement Housing and Interim Relocation Plan. The development of the Project is subject to numerous factors that are not within the control of SFCM or the City, such as availability of financing, interest rates, access to capital, and similar factors. Except as expressly required by this Agreement, the City acknowledges that SFCM may develop the Project in such order and at such rate and times as SFCM deems appropriate within

the exercise of its sole and subjective business judgment. In *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), the California Supreme Court ruled that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development and controlling the parties' agreement. It is the intent of the Parties to avoid such a result by acknowledging and providing for the timing of development of the Project in the manner set forth herein. The City acknowledges that such a right is consistent with the intent, purpose and understanding of the Parties to this Agreement, and that without such a right, SFCM's development of the Project would be subject to the uncertainties sought to be avoided by the Development Agreement Statute, Chapter 56 and this Agreement.

## **7. MUTUAL OBLIGATIONS**

7.1 Notice of Completion, Revocation or Termination. Within thirty (30) days after any early revocation or termination of this Agreement (as to all or any part of the Project Site), the Parties agree to execute a written statement acknowledging such revocation or termination, signed by the appropriate agents of the City and SFCM, and record such instrument in the Official Records. In addition, within thirty (30) days after SFCM's request, when each Building and all of the Public Benefits tied to that Building have also been completed, the City and SFCM shall execute and record a notice of completion in the form attached as Exhibit F for the applicable property.

7.2 General Cooperation; Agreement to Cooperate. The Parties agree to cooperate with one another to expeditiously implement the Project in accordance with the Approvals, any Later Approvals and this Agreement, and to undertake and complete all actions or proceedings reasonably necessary or appropriate to ensure that the objectives of this Agreement, the Approvals and any Later Approvals are implemented, including as may be

required of the City to facilitate New Market Tax Credits. Except for ordinary administrative costs of the City, nothing in this Agreement obligates the City to spend any sums of money or incur any costs other than City Costs or costs that SFCM reimburses through the payment of Processing Fees. The Parties agree that the Planning Department will act as the City's lead agency to facilitate coordinated City review of applications for the Project. As such, Planning Department staff will: (i) work with SFCM to ensure that all such applications to the City are technically sufficient and constitute complete applications and (ii) interface with City staff responsible for reviewing any application under this Agreement to facilitate an orderly, efficient approval process that avoids delay and redundancies.

7.2.1 SFCM shall assist and cooperate with the City at SFCM's own expense in connection with any Third-Party Challenge. The City Attorney's Office may use its own legal staff or outside counsel in connection with defense of the Third-Party Challenge, at the City Attorney's sole discretion. SFCM shall reimburse the City for its actual costs in defense of the action or proceeding, including but not limited to the time and expenses of the City Attorney's Office (at the non-discounted rates then charged by the City Attorney's Office) and any consultants; provided, however, SFCM shall have the right to monthly invoices for all such costs.

7.2.2 To the extent that any such action or proceeding challenges or a judgment is entered limiting SFCM's right to proceed with the Project or any material portion thereof under this Agreement (whether the Project commenced or not), including the City's actions taken pursuant to CEQA, SFCM may elect to terminate this Agreement either in its entirety or only as to certain portions of the Project. Upon any such termination (or, upon the entry of a judgment terminating this Agreement, if earlier), the City and SFCM shall jointly seek

to have the Third-Party Challenge dismissed and SFCM shall have no obligation to reimburse City defense costs that are incurred after the dismissal (other than, in the case of a partial termination by SFCM, any defense costs with respect to the remaining portions of the Project). Notwithstanding the foregoing, if SFCM Transfers some but not all of the Project, or a party takes title to Foreclosed Property constituting only a portion of the Project, and, therefore, there is more than one party that assumes obligations of SFCM under this Agreement, then only the Party holding the interest in such portion of the Project shall have the right to terminate this Agreement as to such portion of the Project (and only as to such portion), and no termination of this Agreement by such Party as to such Party's portion of the Project shall effect a termination of this Agreement as to any other portion of the Project.

7.2.3 The filing of any Third Party Challenge shall not delay or stop the development, processing or construction of the Project or the issuance of Later Approvals unless the third party obtains a court order preventing the activity.

7.3 Good Faith and Fair Dealing. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement and implementing the Approvals and any Later Approvals.

7.4 Other Necessary Acts. Each Party shall use good faith efforts to take such further actions as may be reasonably necessary to carry out this Agreement, the Approvals and any Later Approvals, in accordance with the terms of this Agreement (and subject to all Applicable Laws) in order to provide and secure to each Party the full and complete enjoyment of its rights and privileges hereunder.

## **8. PERIODIC REVIEW OF SFCM'S COMPLIANCE**

8.1 Annual Review. Pursuant to Section 65865.1 of the Development Agreement Statute and Section 56.17 of the Administrative Code (as of the Effective Date), at the beginning of the second week of each January following final adoption of this Agreement and for so long as the Agreement is in effect (the "**Annual Review Date**"), the Planning Director shall commence a review to ascertain whether SFCM has, in good faith, complied with the Agreement. The Planning Department may, at the Director's discretion, provide notice to SFCM not less than thirty (30) days prior to the Annual Review Date that the review will comment at a specified date later in the calendar year not later than six (6) months from the Annual Review Date. The failure to commence such review in January shall not waive the Planning Director's right to do so later in the calendar year. The Planning Director may elect to forego an annual review if no significant construction work occurred on the Project Site during that year, or if such review is otherwise not deemed necessary.

8.2 Review Procedure. In conducting the required initial and annual reviews of SFCM's compliance with this Agreement, the Planning Director shall follow the process set forth in this Section 8.2.

8.2.1 Required Information from SFCM. Upon request by the Planning Director, but not more than sixty (60) days nor less than forty-five (45) days after the later of the Annual Review Date or the date of the request from the Planning Director, SFCM shall provide a letter to the Planning Director explaining, with appropriate backup documentation, SFCM's compliance with this Agreement for the preceding calendar year including, but not limited to compliance with the relevant provisions of this Agreement relating to Public Benefits, and particularly the Replacement Housing and Interim Relocation Plan. The burden of proof, by

substantial evidence, of compliance is upon SFCM. The Planning Director shall post a copy of SFCM's submittals on the Planning Department's website. The compliance statement shall be deemed to satisfy requirements for and be submitted in lieu of any Update otherwise required pursuant to Planning Code Sections 304.5(b) and (f).

8.2.2 City Report. Within sixty (60) days after SFCM submits such letter, the Planning Director shall review the information submitted by SFCM and all other available evidence regarding SFCM's compliance with this Agreement, and shall consult with applicable City Agencies as appropriate. All such available evidence, including final staff reports, shall, upon receipt by the City, be made available as soon as possible to SFCM. The Planning Director shall notify SFCM in writing whether SFCM has complied with the terms of this Agreement (the "**City Report**"), and post the City Report on the Planning Department's website. If the Planning Director finds SFCM not in compliance with this Agreement, then the City may pursue available rights and remedies in accordance with this Agreement and Chapter 56. The City's failure to initiate or to timely complete the annual review shall not be a Default and shall not be deemed to be a waiver of the right to do so at a later date. All costs incurred by the City under this Section shall be included in the City Costs.

8.2.3 Effect on Transferees. If SFCM has effected a Transfer so that its interest in the Project Site has been divided between SFCM and Transferees or between or among Transferees, then the annual review hereunder shall be conducted separately with respect to SFCM and each Transferee, and if appealed, the Planning Commission and Board of Supervisors shall make its determinations and take its action separately with respect to SFCM and each Transferee, as applicable, pursuant to Administrative Code Chapter 56. If the Board of Supervisors terminates, modifies or takes such other actions as may be specified in



Administrative Code Chapter 56 and this Agreement in connection with a determination that SFCM or a Transferee has not complied with the terms and conditions of this Agreement, such action by the Planning Director, Planning Commission, or Board of Supervisors shall be effective only as to the Party to whom the determination is made and the portions of the Project Site in which such Party has an interest.

8.2.4 Default. The rights and powers of the City under this Section 8.2 are in addition to, and shall not limit, the rights of the City to terminate or take other action under this Agreement on account of the commission by SFCM of a Default.

## **9. ENFORCEMENT OF AGREEMENT; DEFAULT; REMEDIES**

9.1 Enforcement. As of the date of this Agreement, the only Parties to this Agreement are the City and SFCM. Except as expressly set forth in Article 12 of this Agreement, this Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever.

9.2 Meet and Confer Process. Before sending a notice of default in accordance with Section 9.3, the Party which may assert that the other Party has failed to perform or fulfill its obligations under this Agreement shall first attempt to meet and confer with the other Party to discuss the alleged failure and shall permit such Party a reasonable period, but not less than ten (10) days, to respond to or cure such alleged failure; provided, however, the meet and confer process shall not be required (i) for any failure to pay amounts due and owing under this Agreement, or (ii) if a delay in sending a notice pursuant to Section 9.3 would impair, prejudice or otherwise adversely affect a Party or its rights under this Agreement. The Party asserting such failure shall request that such meeting and conference occur within three (3) business days following the request and if, despite the good faith efforts of the requesting Party,

such meeting has not occurred within seven (7) business days of such request, then such Party shall be deemed to have satisfied the requirements of this Section and may proceed in accordance with the issuance of a notice of default under Section 9.3.

9.3 Default. The following shall constitute a "**Default**" under this Agreement:

(i) the failure to make any payment within sixty (60) days following notice that such payment was not made when due and demand for compliance; and (ii) the failure to perform or fulfill any other material term, provision, obligation, or covenant of this Agreement and the continuation of such failure for a period of sixty (60) days following notice and demand for compliance.

Notwithstanding the foregoing, if a failure can be cured but the cure cannot reasonably be completed within sixty (60) days, then it shall not be considered a Default if a cure is commenced within said 60-day period and diligently prosecuted to completion thereafter. Any notice of default given by a Party shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured (if at all).

Notwithstanding any other provision in this Agreement to the contrary, if SFCM Transfers some but not all of the Project or a party takes title to Foreclosed Property constituting only a portion of the Project, and, therefore there is more than one Party that assumes obligations of SFCM under this Agreement, there shall be no cross-default between the separate Parties that assumed SFCM obligations. Accordingly, a default by one Transferee shall not be a Default by any other party that owns or controls a different portion of the Project Site.

9.4 Remedies.

9.4.1 Specific Performance. Subject to, and as limited by, the provisions of Sections 9.4.3, 9.4.4, 9.5, and the Replacement Housing and Interim Relocation Plan, in the

event of a Default, the remedies available to a Party shall include specific performance of this Agreement in addition to any other remedy available at law or in equity.

9.4.2 Termination. Subject to the limitation set forth in Section 9.4.4, in the event of a Default, the non-defaulting Party may elect to terminate this Agreement by sending a notice of termination to the other Party, which notice of termination shall state the Default. Notwithstanding the foregoing, if SFCM Transfers some but not all of the Project or a party takes title to Foreclosed Property constituting only a portion of the Project, and, therefore, there is more than one party that assumes obligations of SFCM under this Agreement, then only the Party holding the interest in such portion of the Project and who has defaulted shall be subject to termination and then only as to such portion of the Project, and no such termination of this Agreement shall effect a termination of this Agreement as to any other portion of the Project. Any such termination shall be effective upon the date set forth in the notice of termination, which shall in no event be earlier than sixty (60) days following delivery of the notice. The City's right to terminate this Agreement shall be further limited by the provisions of Sections 9.3 and 12.3, regarding cross-default.

9.4.3 Limited Damages. The Parties have determined that except as set forth in this Section 9.4.3, (i) monetary damages are generally inappropriate, (ii) it would be extremely difficult and impractical to fix or determine the actual damages suffered by a Party as a result of a Default hereunder, and (iii) equitable remedies and remedies at law, not including damages but including specific performance and termination, are particularly appropriate remedies for enforcement of this Agreement. Consequently, SFCM agrees that the City shall not be liable to SFCM for damages under this Agreement, and the City agrees that SFCM shall not be liable to the City for damages under this Agreement, and each covenants not to sue the other

for or claim any damages under this Agreement and expressly waives its right to recover damages under this Agreement, except as follows: (1) either Party shall have the right to recover actual damages only (and not consequential, punitive or special damages, each of which is hereby expressly waived) for a Party's failure to pay sums to the other Party as and when due under this Agreement, (2) the City shall have the right to recover actual damages for SFCM's failure to make any payment due under any indemnity in this Agreement, and (3) either Party shall have the right to recover reasonable attorneys' fees and costs as set forth in Section 9.6. For purposes of the foregoing, "**actual damages**" means the actual amount of the sum due and owing under this Agreement, with interest as provided by Law, together with such judgment collection activities as may be ordered by the judgment, and no additional sums.

9.4.4 City Processing/Certificates of Occupancy. The City shall not be required to process any requests for approval or take other actions under this Agreement during any period in which payments due the City from SFCM are past due; provided, however, if SFCM has conveyed or transferred some but not all of the Project or a party takes title to Foreclosed Property constituting only a portion of the Project, and, therefore, there is more than one party that assumes obligations of SFCM under this Agreement, then the City shall continue to process requests and take other actions as to the other portions of the Project so long as the applicable party as to that portion of the Project is current on payments due the City. The City shall have the right to withhold the final certificate of occupancy for the Building until completion of construction of the Replacement Units.

9.5 Time Limits; Waiver; Remedies Cumulative. Failure by a Party to insist upon the strict or timely performance of any of the provisions of this Agreement by the other Party, irrespective of the length of time for which such failure continues, shall not constitute a

waiver of such Party's right to demand strict compliance by such other Party in the future. No waiver by a Party of any condition or failure of performance, including a Default, shall be effective or binding upon such Party unless made in writing by such Party, and no such waiver shall be implied from any omission by a Party to take any action with respect to such failure. No express written waiver shall affect any other condition, action or inaction, or cover any other period of time, other than any condition, action or inaction and/or period of time specified in such express waiver. One or more written waivers under any provision of this Agreement shall not be deemed to be a waiver of any subsequent condition, action or inaction, and the performance of the same or any other term or provision contained in this Agreement. Nothing in this Agreement shall limit or waive any other right or remedy available to a Party to seek injunctive relief or other expedited judicial and/or administrative relief to prevent irreparable harm.

9.6 Attorneys' Fees. Should legal action be brought by either Party against the other for a Default under this Agreement or to enforce any provision herein, the prevailing Party in such action shall be entitled to recover its reasonable attorneys' fees and costs. For purposes of this Agreement, "**reasonable attorneys' fees and costs**" means the reasonable fees and expenses of counsel to the Party, which may include printing, duplicating and other expenses, air freight charges, hiring of experts and consultants, and fees billed for law clerks, paralegals, librarians, and others not admitted to the bar but performing services under the supervision of an attorney. The term "**reasonable attorneys' fees and costs**" shall also include, without limitation, all such reasonable fees and expenses incurred with respect to appeals, mediation, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. For the purposes of this Agreement,

the reasonable fees of attorneys of City Attorney's Office 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 Office'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.

## **10. FINANCING; RIGHTS OF MORTGAGEES**

10.1 SFCM's Right to Mortgage. Nothing in this Agreement limits the right of SFCM to Mortgage or otherwise encumber all or any portion of the Project Site for the benefit of any Mortgagee as security for one or more loans. SFCM represents that, as of the date of this Agreement, there are no Mortgages on the Project Site as of the Effective Date.

10.2 Mortgagee Not Obligated to Construct. Notwithstanding any of the provisions of this Agreement, including, but not limited to, those which are or are intended to be covenants running with the land, a Mortgagee, including any Mortgagee who obtains title to the Project Site or any part thereof as a result of foreclosure proceedings, or conveyance or other action in lieu thereof, or other remedial action, shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or any part thereof or to guarantee such construction or completion. Nothing in this Section or any other Section or provision of this Agreement shall be deemed or construed to permit or authorize any Mortgagee or any other person or entity to devote the Project Site or any part thereof to any uses other than uses consistent with this Agreement and the Approvals, and nothing in this Section shall be deemed to give any Mortgagee or any other person or entity the right to construct any improvements under this Agreement (other than as needed to conserve or protect improvements or construction

already made) unless or until such person or entity assumes SFCM's obligations under this Agreement.

10.3 Copy of Notice of Default and Notice of Failure to Cure to Mortgagee.

Whenever the City shall deliver any notice or demand to the SFCM with respect to any breach or default by the SFCM in its obligations under this Agreement, the City shall at the same time forward a copy of such notice or demand to each Mortgagee having a Mortgage on the real property which is the subject of the breach or default who has previously made a written request to the City therefor, at the last address of such Mortgagee specified by such Mortgagee in such notice. In addition, if such breach or default remains uncured for the period permitted with respect thereto under this Agreement, the City shall deliver a notice of such failure to cure such breach or default to each such Mortgagee at such applicable address. A delay or failure by the City to provide such notice required by this Section shall extend for the number of days until notice is given, the time allowed to the Mortgagee for cure. In accordance with Section 2924b of the California Civil Code, the City shall have the right to record in the Official Records with respect to the Project Site a request that a copy of any notice of default and a copy of any notice of sale under any Mortgage be mailed to the City at the address for notices under this Agreement.

10.4 Mortgagee's Option to Cure Defaults. After receiving any notice of failure to cure referred to in Section 10.3, each Mortgagee shall have the right, at its option, to commence within the same period as the SFCM to remedy or cause to be remedied any Default, plus an additional period of: (a) thirty (30) days to cure a monetary Default; and (b) sixty (60) days to cure a non-monetary event of default which is susceptible of cure by the Mortgagee without obtaining title to the applicable property. If an event of default is not cured within the applicable cure period, the City nonetheless shall refrain from exercising any of its remedies with

respect to the event of default if, within the Mortgagee's applicable cure period: (i) the Mortgagee notifies the City that it intends to proceed with due diligence to foreclose the Mortgage or otherwise obtain title to the subject property; and (ii) the Mortgagee commences foreclosure proceedings within sixty (60) days after giving such notice, and thereafter diligently pursues such foreclosure to completion; and (iii) after obtaining title, the Mortgagee diligently proceeds to cure those events of default: (A) which are required to be cured by the Mortgagee and are susceptible of cure by the Mortgagee, and (B) of which the Mortgagee has been given notice by the City. Any such Mortgagee or Transferee of a Mortgagee who shall properly complete the improvements relating to the Project Site or applicable part thereof shall be entitled, upon written request made to the Agency, to a certificate of completion.

10.5 Mortgagee's Obligations with Respect to the Property. Notwithstanding anything to the contrary in this Agreement, no Mortgagee shall have any obligations or other liabilities under this Agreement unless and until it acquires title by any method to all or some portion of the Project Site (referred to hereafter as "**Foreclosed Property**"). A Mortgagee that, by foreclosure under a Mortgage, acquires title to any Foreclosed Property shall take title subject to all of the terms and conditions of this Agreement, to the extent applicable to the Foreclosed Property, including any claims for payment or performance of obligations which are due as a condition to enjoying the benefits of this Agreement and shall have all of the rights and obligations of SFCM under this Agreement as to the applicable Foreclosed Property. Upon the occurrence and continuation of an uncured default by a Mortgagee or Transferee in the performance of any of the obligations to be performed by such Mortgagee or Transferee pursuant to this Agreement, the City shall be afforded all its remedies for such uncured default as provided in this Agreement.



10.6 No Impairment of Mortgage. No default by SFCM under this Agreement shall invalidate or defeat the lien of any Mortgagee. No foreclosure of any Mortgage or other lien shall defeat, diminish, render invalid or unenforceable or otherwise impair SFCM's rights or obligations under this Agreement or constitute a default under this Agreement.

10.7 Cured Defaults. Upon the curing of any event of default by any Mortgagee within the time provided in this Article 10 the City's right to pursue any remedies with respect to the cured event of default shall terminate.

## **11. AMENDMENT; TERMINATION; EXTENSION OF TERM**

11.1 Amendment or Termination. This Agreement may only be amended with the mutual written consent of the City and SFCM; provided, however, that following a Transfer, the City and SFCM, or any Transferee, may amend this Agreement as it affects SFCM or the Transferee and the portion of the Project Site owned by SFCM or the Transferee without affecting other portions of the Project Site or other Transferees. Other than upon the expiration of the Term and except as provided in Sections 2.2, 5.8.4, 7.2.2, 9.4.2, and 11.2, this Agreement may only be terminated with the mutual written consent of the Parties. Any amendment to this Agreement that does not constitute a Material Change may be agreed to by the Planning Director (and, to the extent it affects any rights or obligations of a City department, with the approval of that City Department). Any amendment that is a Material Change will require the approval of the Planning Director, the Planning Commission and the Board of Supervisors (and, to the extent it affects any rights or obligations of a City department, after consultation with that City department).

11.2 Early Termination Rights. SFCM shall, upon thirty (30) days prior notice to the City, have the right, in its sole and absolute discretion, to terminate this Agreement in its

entirety at any time if SFCM does not Commence Construction on any part of the Project Site by the date which is five (5) years following the Effective Date. Thereafter, the City shall, upon sixty (60) days prior notice to SFCM, have the right, in its sole and absolute discretion, to terminate this Agreement if the SFCM has not Commenced Construction; provided SFCM can prevent any such termination by the City by providing to the City notice, within the above sixty (60) day period, of SFCM's intent to start construction and the SFCM thereafter Commences Construction within one hundred twenty (120) days following delivery of SFCM's notice to the City, or, if unable to actually Commence Construction within said time period, demonstrates reasonable, good faith and continuing efforts to Commence Construction, such as by pursuing all necessary Later Approvals, and thereafter promptly Commences Construction upon receipt of the Later Approvals.

11.3 Termination and Vesting. Any termination under this Agreement shall concurrently effect a termination of the Approvals with respect to the terminated portion of the Project Site, except as to any Approval pertaining to a Building that has commenced demolition in reliance thereon. In the event of any termination of this Agreement by SFCM resulting from a Default by the City and except to the extent prevented by such City Default, SFCM's obligation to complete the Public Benefits shall continue as to the Building that has been demolished and all relevant and applicable provisions of this Agreement shall be deemed to be in effect as such provisions are reasonably necessary in the construction, interpretation or enforcement to this Agreement as to any such surviving obligations. The City's and SFCM's rights and obligations under this Section 11.3 shall survive the termination of this Agreement.

11.4 Amendment Exemptions. No issuance of a Later Approval, or amendment of an Approval or Later Approval, shall by itself require an amendment to this Agreement, and

no change to the Project that is permitted under Applicable Law shall by itself require an amendment to this Agreement. Upon issuance or approval, any such matter shall be deemed to be incorporated automatically into the Project and vested under this Agreement (subject to any conditions set forth in the amendment or Later Approval). Notwithstanding the foregoing, if there is any direct conflict between the terms of this Agreement and a Later Approval, or between this Agreement and any amendment to an Approval or Later Approval, then the Parties shall concurrently amend this Agreement (subject to all necessary approvals in accordance with this Agreement) in order to ensure the terms of this Agreement are consistent with the proposed Later Approval or the proposed amendment to an Approval or Later Approval. The Planning Department and the Planning Commission, as applicable, shall have the right to approve changes to the Project in keeping with its customary practices and Applicable Law, and any such changes shall not be deemed to conflict with or require an amendment to this Agreement or the Approvals so long as they do not constitute a Material Change. If the Parties fail to amend this Agreement as set forth above when required, however, then the terms of this Agreement shall prevail over any Later Approval or any amendment to an Approval or Later Approval that conflicts with this Agreement.

11.5 Extension Due to Legal Action or Referendum; Excusable Delay.

11.5.1 Litigation and Referendum Extension. If any litigation is filed challenging this Agreement or an Approval having the direct or indirect effect of delaying this Agreement or any Approval (including but not limited to any CEQA determinations), including any challenge to the validity of this Agreement or any of its provisions, or if this Agreement or an Approval is suspended pending the outcome of an electoral vote on a referendum, then the Term of this Agreement and all Approvals shall be extended for the number of days equal to the

period starting from the commencement of the litigation or the suspension (or as to Approvals, the date of the initial grant of such Approval) to the end of such litigation or suspension (a "**Litigation Extension**"). The Parties shall document the start and end of a Litigation Extension in writing within thirty (30) days from the applicable dates.

11.5.2 "**Excusable Delay**" means the occurrence of an event beyond a Party's reasonable control which causes such Party's performance of an obligation to be delayed, interrupted or prevented, including, but not limited to: changes in Federal or State Laws; strikes or the substantial interruption of work because of labor disputes; inability to obtain materials; freight embargoes; civil commotion, war or acts of terrorism; inclement weather, fire, floods, earthquakes, or other acts of God; epidemics or quarantine restrictions; litigation; unforeseen site conditions (including archaeological resources or the presence of hazardous materials); or the failure of any governmental agency, public utility or communication service provider to issue a permit, authorization, consent or approval required to permit construction within the standard or customary time period for such issuing authority following SFCM's submittal of a complete application for such permit, authorization, consent or approval, together with any required materials. Excusable Delay shall not include delays resulting from failure to obtain financing or have adequate funds, changes in market conditions, or the rejection of permit, authorization or approval requests based upon SFCM's failure to satisfy the substantive requirements for the permit, authorization or approval request. In the event of Excusable Delay, the Parties agree that (i) the time periods for performance of the delayed Party's obligations impacted by the Excusable Delay shall be strictly limited to the period of such delay, interruption or prevention and the delayed Party shall, to the extent commercially reasonable, act diligently and in good faith to remove the cause of the Excusable Delay or otherwise complete the delayed obligation, and (ii)

following the Excusable Delay, a Party shall have all rights and remedies available under this Agreement, if the obligation is not completed within the time period as extended by the Excusable Delay. If an event which may lead to an Excusable Delay occurs, the delayed Party shall notify the other Party in writing of such occurrence as soon as possible after becoming aware that such event may result in an Excusable Delay, and the manner in which such occurrence is likely to substantially interfere with the ability of the delayed Party to perform under this Agreement.

## **12. TRANSFER OR ASSIGNMENT; RELEASE; CONSTRUCTIVE NOTICE**

12.1 Permitted Transfer of this Agreement. At any time, SFCM shall have the right to convey, assign or transfer all of its right, title and interest in and to all or part of the Project Site or a Building Parcel (a "**Transfer**") without the City's consent, provided that it also transfers to such party (the "**Transferee**") all of its interest, rights or obligations under this Agreement with respect to such portion of the Project Site together with any portion required to complete the Public Benefits for such portion (the "**Transferred Property**"). Notwithstanding anything to the contrary in this Agreement, if SFCM Transfers a Building Parcel, then the obligations to perform and complete the Public Benefits as to that Building Parcel shall be the sole responsibility of the applicable Transferee (*i.e.*, the person or entity that is the Transferee of the applicable Building Parcel); provided, however, that any ongoing obligations (such as open space operation and maintenance) may be transferred to a residential, commercial or other management association ("**CMA**") on commercially reasonable terms so long as the CMA has the financial capacity and ability to perform the obligations so transferred.

12.2 Notice of Transfer. SFCM shall provide not less than ten (10) days' notice to the City before any proposed Transfer of its interests, rights and obligations under this

Agreement, together with a copy of the assignment and assumption agreement for that parcel (the "**Assignment and Assumption Agreement**") with a legal description. The Assignment and Assumption Agreement shall be in recordable form, in substantially the form attached as Exhibit F (and shall include the indemnifications, covenants not to challenge the enforceability of this Agreement and not to sue the City for disputes between SFCM and any Transferee, and the other provisions of this Agreement required to be included therein. ) Any material changes to the attached form will be subject to the review and approval of the Director of Planning which shall not be unreasonably withheld or delayed.

12.3 Release of Liability. Upon recordation of any Assignment and Assumption Agreement (following the City's approval of any material changes thereto as required pursuant to Section 12.2 above), the assignor shall be released from any prospective liability or obligation under this Agreement related to the Transferred Property, as specified in the Assignment and Assumption Agreement, and the assignee/Transferee shall be deemed to be "SFCM" under this Agreement with all rights and obligations related thereto with respect to the Transferred Property. Notwithstanding anything to the contrary contained in this Agreement, if a Transferee Defaults under this Agreement, such default shall not constitute a Default by SFCM or any other Transferee with respect to any other portion of the Project Site and shall not entitle the City to terminate or modify this Agreement with respect to such other portion of the Project Site, except as otherwise provided herein. Additionally, the annual review provided by Section 8 shall be conducted separately as to SFCM and each Transferee and only as to those obligations that SFCM or such Transferee has under this Agreement.

12.4 Responsibility for Performance. The City is entitled to enforce each and every such obligation assumed by each Transferee directly against the Transferee as if the

Transferee were an original signatory to this Agreement with respect to such obligation. Accordingly, in any action by the City against a Transferee to enforce an obligation assumed by the Transferee, the Transferee shall not assert as a defense against the City's enforcement of performance of such obligation that such obligation (i) is attributable to SFCM's breach of any duty or obligation to the Transferee arising out of the Transfer or the Assignment and Assumption Agreement or any other agreement or transaction between SFCM and the Transferee, or (ii) relates to the period before the Transfer.

12.5 Constructive Notice. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project Site is, and shall be, constructively deemed to have consented to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project Site. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project Site and undertakes any development activities at the Project Site, is, and shall be, constructively deemed to have consented and agreed to, and is obligated by all of the terms and conditions of this Agreement (as such terms and conditions apply to the Project Site or applicable portion thereof), whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project Site.

12.6 Rights of SFCM. The provisions in this Section 12 shall not be deemed to prohibit or otherwise restrict SFCM from (i) granting easements or licenses to facilitate development of the Project Site, (ii) encumbering the Project Site or any portion of the improvements thereon by any Mortgage, (iii) granting an occupancy leasehold interest in portions of the Project Site, (iv) entering into a joint venture agreement or similar partnership

agreement to fulfill its obligations under this Agreement, or (v) transferring all or a portion of the Project Site pursuant to a foreclosure, conveyance in lieu of foreclosure, or other remedial action in connection with a Mortgage, and none of the foregoing shall constitute a Transfer for which the City's consent is required.

### **13. SFCM REPRESENTATIONS AND WARRANTIES**

13.1 Interest of SFCM; Due Organization and Standing. SFCM represents that it is the legal or beneficial owner of the Project Site, with the right and authority to enter into this Agreement. SFCM is a California not-for-profit organization, duly organized and validly existing and in good standing under the Laws of the State of California. SFCM has all requisite power to own its property and authority to conduct its business as presently conducted. SFCM represents and warrants that there is no existing lien or encumbrance recorded against the Project Site that, upon foreclosure or the exercise of remedies, would permit the beneficiary of the lien or encumbrance to eliminate or wipe out the obligations set forth in this Agreement that run with applicable land.

13.2 No Inability to Perform; Valid Execution. SFCM represents and warrants that it is not a party to any other agreement that would conflict with SFCM's obligations under this Agreement and it has no knowledge of any inability to perform its obligations under this Agreement. The execution and delivery of this Agreement and the agreements contemplated hereby by SFCM have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of SFCM, enforceable against SFCM in accordance with its terms.

13.3 Conflict of Interest. Through its execution of this Agreement, SFCM acknowledges that it is familiar with the provisions of Section 15.103 of the City's Charter,



Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the California Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the Term.

13.4 Notification of Limitations on Contributions. Through execution of this Agreement, SFCM acknowledges that it is familiar with Section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City, whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for the contract until three (3) months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

13.5 Other Documents. To the current, actual knowledge of \_\_\_\_\_, after reasonable inquiry, no document furnished by SFCM to the City with its application for this Agreement nor this Agreement contains any untrue statement of material fact or omits a material fact necessary to make the statements contained therein, or herein, not misleading under the circumstances under which any such statement shall have been made.

13.6 No Bankruptcy. SFCM represents and warrants to the City that SFCM has neither filed nor is 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 SFCM's knowledge, no such filing is threatened.

#### **14. MISCELLANEOUS PROVISIONS**

14.1 Entire Agreement. This Agreement, including the preamble paragraph, Recitals and Exhibits, and the agreements between the Parties specifically referenced in this Agreement, constitutes the entire agreement between the Parties with respect to the subject matter contained herein.

14.2 Incorporation of Exhibits. Except for the Approvals which are listed solely for the convenience of the Parties, each Exhibit to this Agreement is incorporated herein and made a part hereof as if set forth in full. Each reference to an Exhibit in this Agreement shall mean that Exhibit as it may be updated or amended from time to time in accordance with the terms of this Agreement.

14.3 Binding Covenants; Run With the Land. Pursuant to Section 65868 of the Development Agreement Statute, from and after recordation of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and, subject to the provisions of this Agreement, including without limitation Section 12, their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring the Project Site, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. Subject to the

provisions of this Agreement, including without limitation Section 12, all provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants and benefits running with the land pursuant to applicable Law, including but not limited to California Civil Code Section 1468.

14.4 Applicable Law and Venue. This Agreement has been executed and delivered in and shall be interpreted, construed, and enforced in accordance with the Laws of the State of California. All rights and obligations of the Parties under this Agreement are to be performed in the City and County of San Francisco, and the City and County of San Francisco shall be the venue for any legal action or proceeding that may be brought, or arise out of, in connection with or by reason of this Agreement.

14.5 Construction of Agreement. The Parties have mutually negotiated the terms and conditions of this Agreement and its terms and provisions have been reviewed and revised by legal counsel for both the City and SFCM. Accordingly, no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement. Language in this Agreement shall be construed as a whole and in accordance with its true meaning. The captions of the paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction. Each reference in this Agreement to this Agreement or any of the Approvals shall be deemed to refer to this Agreement or the Approvals as amended from time to time pursuant to the provisions of this Agreement, whether or not the particular reference refers to such possible amendment. In the event of a conflict between the provisions of this Agreement and Chapter 56, the provisions of this Agreement will govern and control.

14.6 Project Is a Private Undertaking; No Joint Venture or Partnership. The development proposed to be undertaken by SFCM on the Project Site is a private development. The City has no interest in, responsibility for, or duty to third persons concerning any of said improvements. SFCM shall exercise full dominion and control over the Project Site, subject only to the limitations and obligations of SFCM contained in this Agreement. Nothing contained in this Agreement, or in any document executed in connection with this Agreement, shall be construed as creating a joint venture or partnership between the City and SFCM. Neither Party is acting as the agent of the other Party in any respect hereunder. SFCM is not a state or governmental actor with respect to any activity conducted by SFCM hereunder.

14.7 Recordation. Pursuant to the Development Agreement Statute and Chapter 56, the Clerk of the Board of Supervisors shall have a copy of this Agreement recorded in the Official Records within ten (10) days after the Effective Date of this Agreement or any amendment thereto, at no cost to SFCM.

14.8 Obligations Not Dischargeable in Bankruptcy. SFCM's obligations under this Agreement are not dischargeable in bankruptcy.

14.9 Survival. Following expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect except for any provision which, by its express terms, survive the expiration or termination of this Agreement.

14.10 Signature in Counterparts. This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

14.11 Notices. Any notice or communication required or authorized by this Agreement shall be in writing and may be delivered personally or by registered mail, return

receipt requested. Notice, whether given by personal delivery or registered mail, shall be deemed to have been given and received upon the actual receipt by any of the addressees designated below as the person to whom notices are to be sent. Either Party to this Agreement may at any time, upon notice to the other Party, designate any other person or address in substitution of the person and address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

To City:

John Rahaim  
Director of Planning  
San Francisco Planning Department  
1650 Mission Street, Suite 400  
San Francisco, California 94102

with a copy to:

Dennis J. Herrera, Esq.  
City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Attn: Real Estate/Finance, SFCM Project

To SFCM:

Kathryn Wittenmyer  
Vice President, Finance and Administration  
San Francisco Conservatory of Music  
50 Oak Street  
San Francisco, CA 94102-6011

with a copy to:

Provost and Dean  
San Francisco Conservatory of Music  
50 Oak Street  
San Francisco, CA 94102-6011

14.12 Limitations on Actions. Pursuant to Section 56.19 of the Administrative Code, any decision of the Board of Supervisors made pursuant to Chapter 56 shall be final. Any

court action or proceeding to attack, review, set aside, void, or annul any final decision or determination by the Board of Supervisors shall be commenced within ninety (90) days after such decision or determination is final and effective. Any court action or proceeding to attack, review, set aside, void or annul any final decision by (i) the Planning Director made pursuant to Administrative Code Section 56.15(d)(3) or (ii) the Planning Commission pursuant to Administrative Code Section 56.17(e) shall be commenced within ninety (90) days after said decision is final.

14.13 Severability. Except as is otherwise specifically provided for in this Agreement with respect to any Laws which conflict with this Agreement, if any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect unless enforcement of the remaining portions of this Agreement would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

14.14 MacBride Principles. The City 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 also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. SFCM acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

14.15 Tropical Hardwood and Virgin Redwood. The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood

wood product, virgin redwood, or virgin redwood wood product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

14.16 Sunshine. SFCM understands and agrees that under the City's Sunshine Ordinance (Administrative Code, Chapter 67) and the California Public Records Act (California Government Code Section 250 *et seq.*), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. To the extent that SFCM in good faith believes that any financial materials reasonably requested by the City constitutes a trade secret or confidential proprietary information protected from disclosure under the Sunshine Ordinance and other Laws, SFCM shall mark any such materials as such. When a City official or employee receives a request for information that has been so marked or designated, the City may request further evidence or explanation from SFCM. If the City determines that the information does not constitute a trade secret or proprietary information protected from disclosure, the City shall notify SFCM of that conclusion and that the information will be released by a specified date in order to provide SFCM an opportunity to obtain a court order prohibiting disclosure.

14.17 Non-Liability of City Officials and Others. Notwithstanding anything to the contrary in this Agreement, no individual board member, director, commissioner, officer, employee, official or agent of City or other City Parties shall be personally liable to SFCM, its successors and assigns, in the event of any Default by City, or for any amount which may become due to SFCM, its successors and assigns, under this Agreement.

14.18 Non-Liability of SFCM Officers and Others. Notwithstanding anything to the contrary in this Agreement, no individual board member, director, officer, employee, official, partner, employee, or agent of SFCM or any affiliate of SFCM shall be personally liable to City,

its successors and assigns, in the event of any Default by SFCM, or for any amount which may become due to City, its successors and assign, under this Agreement.

14.19 No Third Party Beneficiaries. There are no third party beneficiaries to this Agreement.

*[signatures follow on next page]*



IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day  
and year first above written.

CITY:

Approved as to form:

CITY AND COUNTY OF SAN  
FRANCISCO,  
a municipal corporation

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
John Rahaim  
Director of Planning

By: \_\_\_\_\_  
Heidi J. Gewertz, Deputy City Attorney

Approved on \_\_\_\_\_, 2018  
Board of Supervisors Ordinance No. \_\_\_\_\_

SAN FRANCISCO CONSERVATORY OF MUSIC,  
A California public benefit not-for-profit corporation

By: \_\_\_\_\_  
Name: David Stull  
Its: President

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of San Francisco )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, 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 \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of San Francisco )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, 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 \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of San Francisco )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, 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 \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of San Francisco )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, 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 \_\_\_\_\_



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of San Francisco )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, 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 \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of San Francisco )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, 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.

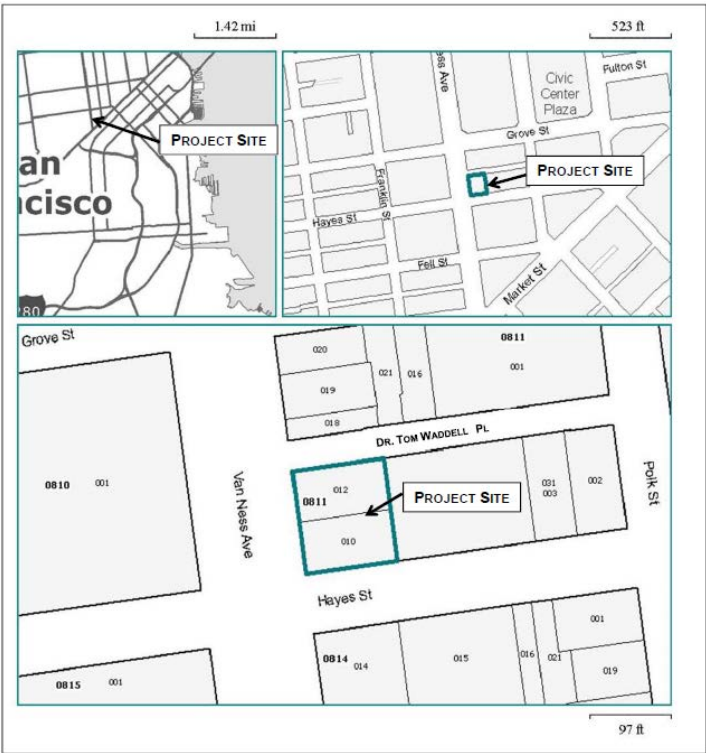
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

**Exhibit A-1**

**Site Plan**



## **Exhibit A-2**

### **Legal Description**

Real property in the City of San Francisco, County of San Francisco, State of California, described as follows:

#### **PARCEL ONE:**

BEGINNING AT THE POINT OF THE INTERSECTION OF THE EASTERLY LINE OF VAN NESS AVENUE WITH THE SOUTHERLY LINE OF IVY STREET; RUNNING THENCE ALONG SAID LINE OF VAN NESS AVENUE SOUTHERLY 59 FEET 11-1/8 INCHES; THENCE AT A RIGHT ANGLE EASTERLY 109 FEET; THENCE AT A RIGHT ANGLE NORTHERLY 59 FEET 11-1/8 INCHES TO THE SAID SOUTHERLY LINE OF IVY STREET; THENCE ALONG THE LAST MENTIONED LINE WESTERLY 109 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF WESTERN ADDITION BLOCK NO. 68.

#### **PARCEL TWO:**

COMMENCING AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF HAYES STREET AND THE EASTERLY LINE OF VAN NESS AVENUE; RUNNING THENCE NORTHERLY AND ALONG SAID LINE OF VAN NESS AVENUE 60 FEET, 0-7/8 INCHES; THENCE AT A RIGHT ANGLE EASTERLY 109 FEET; THENCE AT A RIGHT ANGLE SOUTHERLY 60 FEET, 0-7/8 INCHES TO THE NORTHERLY LINE OF HAYES STREET; THENCE AT A RIGHT ANGLE WESTERLY AND ALONG SAID LINE OF HAYES STREET 109 FEET TO THE POINT OF COMMENCEMENT.

BEING PART OF WESTERN ADDITION BLOCK NO. 68.

APN: Lot 012; Block 0811 (Affects Parcel One)  
Lot 010; Block 0811 (Affects Parcel Two)

## **Exhibit B**

### **Project Description**

SFCM proposes to construct a mixed-use building containing student housing with approximately 420 student beds in 113 separate units. The student housing component will include two-and three-bedroom units, and the bedrooms will be a mix of single and double occupancy. The building will also include 3 faculty dwelling units in approximately 2,800 gross square feet, approximately 45,200 gross square feet of education / classrooms / rehearsal space, approximately 3,000 gross square feet of ground floor retail/restaurant uses, approximately 7,200 gross square feet of performance space located on the ground (2,000 gross square feet) and eleventh floors (5,000 gross square feet), and could include approximately 4,320 gross square feet of broadcasting studio space, approximately 2,720 gross square feet of open space, and 27 replacement housing units, all within an approximately 168,200 gross square foot (about 153,200 gsf of floor area under the Planning Code), twelve-story, 120 foot building at 200-214 Van Ness Avenue. The Project contains approximately 164 Class 1 bicycle spaces, 20 Class 2 bicycle spaces, two on-street loading spaces. It has no off-street parking.

The Project will include demolition of two existing structures on the site totaling approximately 30,000 square feet: one previously used as office space and one a 27-unit apartment building. The Project includes a specific program for existing tenants to return to a new similar rent controlled unit with interim relocation and assistance during construction as more particularly described in Exhibit C to the Development Agreement to which this Exhibit B is attached.

Together the foregoing constitutes the "**Project**".



## Exhibit C

### Replacement Housing and Interim Relocation Plan

This Replacement Housing and Interim Relocation Plan (the "Plan") has been prepared as part of the Development Agreement (the "Development Agreement") between the San Francisco Conservatory of Music ("SFCM") and the City and County of San Francisco relative to the redevelopment of 200 and 214 Van Ness. SFCM will demolish the current structures located at 200 and 214 Van Ness and construct a new 165,000 square foot building. The new building will provide new housing for SFCM students and faculty as well as performance space, educational spaces and 27 replacement housing units ("Replacement Housing Element") for the 27 housing units currently located at 200 Van Ness (as more specifically defined in the Development Agreement, the "Project"). The 27 replacement housing units will be modern apartments consisting of six studio apartments and 21 one-bedroom apartments with a separate secure entrance and elevator.

The purpose of this document is to inform the tenants of 200 Van Ness of the plan for their proposed relocation and their rights under this Plan, including the right to relocate to one of the new replacement units at their current rent controlled rents as well as rights to temporary replacement housing while the Project is under construction. A list of the units and the size of the units is attached to this Exhibit as Attachment 1.

#### Objectives of Plan.

1. Minimize the disruption to the Existing Tenants (as defined below) of 200 Van Ness during the construction of the Project and ensure that all Existing Tenants receive relocation benefits to prevent displacement.
2. Provide permanent replacement housing for Existing Tenants in the Replacement Housing Element of the Project, including Existing Tenants with Section 8 Certificates. The permanent replacement housing will be comparable or better than existing units and of similar size to existing units, both in the number of bedrooms and square footage.
3. Initial rent for Existing Tenants of 200 Van Ness for the permanent replacement housing in the Replacement Housing Element of the Project will be set at the Existing Tenant's rent at their unit at 200 Van Ness immediately prior to relocation increased only by the San Francisco Rent Board annual general rent increases during construction.
4. Existing Tenants returning to the Project will be entitled to all of the protections of the San Francisco Rent Ordinance and the units in the Replacement Housing Element of the Project will be subject to rent control pursuant to the San Francisco Rent Ordinance.
5. Prior to and as a condition to commencement of construction of the Project, SFCM will provide the Existing Tenants with temporary comparable replacement housing, with Existing Tenants paying the same rent the Existing Tenant is paying for their current unit at 200 Van Ness.
6. The SFCM will pay Existing Tenants' moving costs to move to the temporary replacement housing and the subsequent move to the newly constructed permanent replacement unit in the Project, as further described below.

#### Existing Tenants.

Existing Tenants of 200 Van Ness will have relocation rights as specified in this Plan. For purposes of this Plan, Existing Tenants are defined as the following:

- Any tenant residing at 200 Van Ness as of the effective date of the Development Agreement listed on a lease or rental agreement with SFCM, including tenants listed on leases or rental agreements with the former owner who continue to reside at 200 Van Ness.
- Any minor residing with a tenant listed on a lease or rental agreement with the Owner.
- Any person residing in a unit at 200 Van Ness as of the effective date of the Development Agreement with the consent of the SFCM including roommates of Existing Tenants consented to by SFCM.

The following will not be considered Existing Tenants for purposes of relocation and eligibility for a Permanent Replacement Unit under this Plan

- Any temporary guests or occupants of units occupied by Existing Tenants, including any Airbnb or similar type of guests
- Any unauthorized subtenants of Existing Tenants.
- Any unlawful occupant as determined by a court of law.
- An Existing Tenant who, prior to receipt of the Initial Notice to Move, voluntarily vacates his or her unit at 200 Van Ness or is evicted for good cause. Eviction for good cause shall be evidenced by a final non-appealable court order or the tenant's vacation of the unit after receipt of a validly issued eviction notice.

No later than 30 days after the effective date of the Development Agreement each occupant of 200 Van Ness will be notified in writing by SFCM whether he or she has been determined to qualify as an Existing Tenant. If the resident disagrees with the determination, then the resident may file a grievance in accordance with the grievance procedures set forth in this Plan.

#### Relocation During Construction.

During construction of the Project, Existing Tenants may select from the following options. Each household will be allowed to elect a single option, regardless of how many Existing Tenants reside in the household. If the Existing Tenants cannot agree upon the option, the entire household will be offered the Rent Differential Payment.

##### 1. Temporary Replacement Unit Option.

- a. SFCM will master lease comparable replacement units for all Existing Tenants selecting the Temporary Replacement Unit Option ("Temporary Replacement Units"). Temporary Replacement Units will be considered comparable if they are of similar size to the Existing Tenant's unit at 200 Van Ness with the same number of bedrooms and include similar housing services as currently provided at 200 Van Ness. SFCM will make every

effort to provide Temporary Replacement Units in the same neighborhood as 200 Van Ness but Temporary Replacement Units may be located elsewhere in the City depending upon availability of units.

- b. Prior to offering Temporary Replacement Units to the Existing Tenants, SFCM will conduct interviews with the Existing Tenants to determine location preferences for the Temporary Replacement Units as well as any special needs of the Existing Tenants such as accessibility features, need to be in a particular location because of schools, employment or medical needs, etc. SFCM will use every effort to accommodate Existing Tenant's particular needs with regards to location of the Temporary Replacement Units.
- c. SFCM will pay Existing Tenants' Moving Expenses, as defined below, to move to the Temporary Replacement Unit as set forth below in this Plan.
- d. Existing Tenants electing to move to the Temporary Replacement Unit provided by SFCM will enter into a lease or rental agreement with SFCM for the Temporary Replacement Unit on substantially the same terms and conditions, including rental rate, as their existing lease at 200 Van Ness subject to inclusion of any particular rules and regulations associated with the Temporary Replacement Unit.
- e. SFCM will pay for any utility reconnection fees or charges incurred by the Existing Tenant moving to the Temporary Replacement Units, including P.G.&E., telephone, cable TV and Internet services (if the Existing Tenant currently has cable TV and Internet services at 200 Van Ness).
- f. Existing Tenants will be required to comply with the terms of their lease or rental agreement with SFCM during the construction period while living in the Temporary Replacement Unit, along with the rules and regulations that may exist at the temporary location. Existing Tenants who fail to comply with the terms of their rental agreement and/or the rules and regulations for the Temporary Replacement Unit may be subject to eviction and jeopardize their opportunity for permanent relocation at the Replacement Housing Element of the Project.
- g. SFCM will work with the San Francisco Housing Authority to ensure that Existing Tenants with Section 8 vouchers who elect to move to a Temporary Replacement Unit continue to be eligible for their voucher during the temporary displacement period.

2. Rent Differential Payment.

- a. As an alternative to moving to the Temporary Replacement Units, Existing Tenants may elect to either move in with friends and family during the construction period or find their own temporary housing. If an Existing Tenant makes such an election, SFCM will pay to the Existing Tenant a monthly rent differential payment equal to the difference between the Existing Tenant's rent at 200 Van Ness immediately prior to the commencement of construction and the rent at a comparable Temporary Replacement Unit secured by SFCM during the construction period ("Rent Differential Payment"). SFCM shall make the Rent Differential Payment to the Existing Tenant on a monthly basis unless otherwise approved by the City. Existing Tenants electing the Rent Differential Payment will also receive Moving Expenses as defined below. Existing Tenants electing to receive the Rent Differential Payment rather than moving to Temporary Replacement Units are responsible for keeping SFCM informed of their contact information for purposes of receiving the Rent Differential Payments and providing notices of availability of the Replacement Housing in the Project. SFCM cannot guaranty that Existing Tenants who elect the Rent Differential Payment at the commencement of construction will have the option during construction to change their election and move to a Temporary Replacement Unit.

Permanent Replacement Units.

All Existing Tenants who remain in good standing pursuant to their rental agreement or lease with SFCM until completion of construction of the new Project and Existing Tenants who elect to receive the Rent Differential Payment will be offered a new permanent replacement unit in the Replacement Housing Element of the Project ("Permanent Replacement Units").

1. The new Permanent Replacement Units will be of similar size as the Existing Tenant's current unit with the same number of bedrooms and the same or better amenities as the current units.
2. Existing Tenants moving to a Permanent Replacement Unit in the Project will be offered a lease on substantially the same terms as the existing rental agreement or lease, subject to such changes as are necessary to address the upgraded features of the Permanent Replacement Units.
3. Rents for the Permanent Replacement Units will be the rent the Existing Tenant was paying at 200 Van Ness prior to commencement of construction increased only by the annual rent increases approved by the San Francisco Rent Board during construction of the Project.

4. All of the units in the Replacement Housing Element of the Project will be permanently rent controlled for so long as the San Francisco Rent Ordinance is effective. For so long as the units in the Replacement Housing Element of the Project are subject to the San Francisco Rent Ordinance, SFCM shall not exercise its rights to remove any Permanent Replacement Unit from the rental housing market in accordance with the California Government Code Section 7060 et seq. and San Francisco Rent Ordinance Section 37(a)(13).
5. SFCM will pay Existing Tenants Moving Expenses, as defined below, to move to the Permanent Replacement Unit in accordance with the section on Moving Expenses of this Plan.
6. SFCM will pay for any utility connection fees or charges incurred by the Existing Tenant moving to a Permanent Replacement Units, including P.G. & E., Telephone, cable TV and Internet services (if the Existing Tenant currently has cable TV and Internet services).
7. SFCM will enter into any necessary contracts with the San Francisco Housing Authority and participate in any required inspections to allow Existing Tenants with Section 8 vouchers to continue to use those vouchers in the Permanent Replacement Units.

Existing Tenants Electing Not to Accept a Permanent Replacement Unit.

All Existing Tenants will be offered the opportunity to move to a Permanent Replacement Unit. Existing Tenants who elect to accept a Temporary Replacement Unit or the Monthly Rent Differential but who elect not to accept a Permanent Replacement Unit in the new Project will be paid Moving Expenses as set forth in this Plan, if the Existing Tenant moves from the Temporary Replacement Unit, plus the relocation payment benefits consistent with Section 37.9C of the San Francisco Rent Ordinance.

In lieu of receiving (i) a Temporary Replacement Unit or a Rent Differential Payment and (ii) a Permanent Replacement Unit in the Project, Existing Tenants may elect a buy out on terms and conditions to be negotiated with SFCM. As a condition of any buyout agreement, the Existing Tenant will be required to waive any rights to any relocation benefits provided in this Plan or pursuant to law and the Existing Tenant's right to return to a Permanent Replacement Unit. All of the Existing Tenants residing in a single unit must agree to the buyout. SFCM shall comply with the provisions of Section 37.9E of the San Francisco Rent Ordinance when negotiating any buy out with an Existing Tenant. SFCM shall provide an Existing Tenant with the written disclosure required by Section 37.9E (d) of the San Francisco Rent Ordinance within ten (10) days of SFCM receiving notice from the Existing Tenant of its election to negotiate a buy out in response to the Initial Notice to Move.

### Moving Expenses.

1. Moving expenses for both the Existing Tenant's move from 200 Van Ness prior to construction and the Existing Tenant's move to a Permanent Replacement Unit will be paid based on the actual cost of a professional mover or a fixed payment based on the number of rooms in the Existing Tenant's apartment ("Moving Expenses") as follows:
  - a. The Existing Tenant may elect to retain the services of a licensed professional mover, in which case SFCM will pay the actual cost of moving services including packing expenses based on the lower of at least two bids, subject to approval by SFCM.
  - b. The Existing Tenant may elect to receive a fixed payment for Moving Expenses based on a room count in the existing apartment and take responsibility for his or her own move. The fixed payment will be based on the then current schedule published by the California Department of Transportation for moving costs.
  - c. As an alternative, the Existing Tenant may allow SFCM to conduct the move using professional movers.

### Relocation Process.

SFCM will take the following steps to notify and relocate the Existing Tenants.

1. Initial Move to Temporary Replacement Housing.
  - a. Prior to commencement of construction of the Project SFCM will provide Existing Tenants with regular written notices of the Project status and projected timing for construction.
  - b. No later than ninety (90) days prior to the date on which any building occupant is required to move out of their current unit, SFCM will provide a written notice to all Existing Tenants and the Rent Board ("Initial Notice to Move") substantially in the form attached to this Exhibit as Attachment 2 that contains the following:
    - i. The name of all of the Existing Tenants occupying a particular unit qualifying for relocation benefits under this Plan;
    - ii. The Existing Tenants' unit type (studio or one bedroom);
    - iii. The address of the proposed Temporary Replacement Housing and times during which the Existing Tenants will be provided an opportunity to view the proposed Temporary Replacement Housing, if the address is available at the time of the Initial Notice to Move;
    - iv. The amount of the Rent Differential Payment that the Existing Tenant would receive if the Existing Tenant elects to accept a Rent Differential Payment rather than Temporary Replacement Housing during construction;
    - v. The anticipated move date for the Existing Tenants;

- vi. The anticipated date that the Permanent Replacement Unit will be available;
  - vii. Notification that Existing Tenant, in lieu of (i) accepting Temporary Replacement Housing or a Rent Differential Payment and (ii) the right to occupy a Permanent Replacement Unit may negotiate a buy out with SFCM;
  - viii. A copy of this Plan; and
  - ix. Contact information for who the Existing Tenant should contact to coordinate moving and for any questions.
- c. No later than sixty (60) days prior to the date on which the Existing Tenant is required to move out of their current unit, SFCM will provide the Existing Tenants with an additional notice ("Additional Notice to Move") that includes the following:
- i. The updated anticipated move date for the Existing Tenant;
  - ii. The address of the specific Temporary Replacement Unit selected for the Existing Tenant if the Existing Tenant has elected to move to the Temporary Replacement Unit;
  - iii. A copy of the lease or rental agreement to be signed by the Existing Tenant for the Temporary Replacement Unit if the Existing Tenant has elected to move to the Temporary Replacement Units;
  - iv. Information about moving expenses and moving services; and
  - v. If the Existing Tenant has elected to accept the Rent Differential Payment, the payment schedule for such payments.
- d. During construction of the Project, SFCM will provide regular updates on the construction of the Project including the projected occupancy dates for Existing Tenants returning to the Project ("Quarterly Progress Notices"). Notice shall be provided no less often than quarterly but may be provided more frequently if changes in the construction schedule warrant.

## 2. Move to Permanent Replacement Units.

- a. No less than one hundred twenty (120) days before the Existing Tenants are expected to relocate to a Permanent Replacement Unit in the Project, SFCM will provide each Existing Tenant (other than Existing Tenants who elected a buyout) with notice of the anticipated relocation date for the Existing Tenants to relocate to the Permanent Replacement Units and dates and time for the Existing Tenants to visit the Project to view the Permanent Replacement Units or to meet with SFCM to review floor plans for the Permanent Replacement Units ("Permanent Relocation Notice"). The notice will include a Replacement Unit Preference Form for the Existing Tenants to complete after viewing the Permanent Replacement Units ranking their preference for particular replacement units.

- b. SFCM will provide updated notices to the Existing Tenants of their move dates to move into the Permanent Replacement Units, but in all events Existing Tenants will receive a minimum of a sixty (60) day notice to move to the Permanent Replacement Unit.
- c. Each Existing Tenant will have the opportunity to deliver to SFCM the Replacement Unit Preference Notice within thirty (30) days of receipt of the Replacement Unit Preference Notice. Existing Tenants who intend to return to the Project upon completion of construction who do not return a Replacement Unit Preference Notice will be assigned a Permanent Replacement Unit in the Project selected by SFCM.
- d. SFCM will allocate the Permanent Replacement Units to the Existing Tenants based on the Existing Tenant's seniority as determined by the date the Existing Tenant commenced occupancy of 200 Van Ness. If SFCM cannot determine the commencement date for an Existing Tenant or if Existing Tenants have the same commencement date, SFCM will select the Existing Tenant's Permanent Replacement Unit by a random process.
- e. SFCM will notify the Existing Tenants of their designated Permanent Replacement Unit at least sixty (60) days prior to the projected move-in date ("Notice of Designated Permanent Relocation Unit"). At the same time that SFCM notifies the Existing Tenants of their designated Permanent Replacement Unit, SFCM will provide the Existing Tenants with an amended lease reflecting the Permanent Replacement Unit. Existing Tenants will have thirty (30) days from receipt of the notice of designated Permanent Replacement Unit and the amended lease to return the signed lease to SFCM. Failure to return the signed lease to SFCM may result in the Existing Tenant no longer being eligible to move into the Permanent Replacement Unit or the Replacement Housing Element of the Project. SFCM will also deliver to the Existing Tenants that are occupying Temporary Replacement Units secured by SFCM a sixty (60) day notice to vacate such Temporary Replacement Unit ("Notice to Vacate Temporary Replacement Unit").

### 3. Move from Temporary Replacement Housing.

All SFCM obligations to subsidize the rent of any Existing Tenant in the Temporary Replacement Units or make the Rent Differential Payments shall terminate as of the later of (i) expiration of the sixty (60) day notice to vacate or (ii) the move in date for the Project. Existing Tenants that continue to reside in a Temporary Replacement Unit after the expiration of the sixty (60) day notice to vacate may be subject to eviction if they fail to move.

### Grievance Procedure.

Any resident of 200 Van Ness who is dissatisfied with any determination made by the SFCM related to relocation should first contact SFCM to discuss his or her concerns and attempt to



resolve the issue. If the resident remains dissatisfied, the resident shall be entitled to file a petition with the San Francisco Rent Board to challenge SFCM's determination of who is an Existing Tenant, the Existing Tenant's assignment to Temporary Replacement Units and SFCM's designation of a Permanent Replacement Unit. If a resident files a petition with the Rent Board, the Rent Board shall hear such petition in accordance with its standard hearing procedures. Any petition filed by a resident challenging a decision by SFCM related to this Plan must be filed with the San Francisco Rent Board no later than thirty (30) days after the resident receives notice from SFCM of such decision.

#### Eviction Policy.

Eviction will be permissible only as a last resort if residents of 200 Van Ness fail to vacate the building after receipt of all required notices or if Existing Tenants fail to vacate the Temporary Replacement Unit after a Permanent Replacement Unit in the Project has been made available to them. In addition SFCM may evict Existing Tenants from 200 Van Ness or from the Temporary Replacement Unit for nonpayment of rent, serious violations of the rental agreement, repeated violations of the rules and regulations, a dangerous or illegal act in the unit or as otherwise permitted under law.

#### Notices.

All notices required to be delivered in writing by SFCM pursuant to this Plan will be delivered by certified U.S. Mail and may also be personally delivered to the Tenants. All notices will be translated into the primary language of the Existing Tenants.

#### Compliance with Planning Code Sections 415 and 207.

This Replacement Housing and Interim Relocation Plan is in lieu of and constitutes full satisfaction of San Francisco Planning Code Sections 415 and 207, if and to the extent such provisions are otherwise applicable to the Project.

### ATTACHMENT 1

#### UNITS BY SIZE AT 200 VAN NESS

San Francisco Conservatory of Music  
Replacement Housing and Interim Relocation Plan- 200 Van Ness Avenue  
Attachment 1  
Existing Units by Size at 200 Van Ness

EXISTING UNIT NUMBER	EXISTING UNIT TYPE	EXISTING UNIT NET AREA (SF)
101	1 BDRM	480
102	1 BDRM	483
103	1 BDRM	500
104	1 BDRM	551
105	STUDIO	328
106	STUDIO	388
107	1 BDRM	498
108	1 BDRM	500
109	1 BDRM	471
201	1 BDRM	482
202	1 BDRM	537
203	1 BDRM	501
204	1 BDRM	515
205	STUDIO	328
206	STUDIO	377
207	1 BDRM	498
208	1 BDRM	500
209	1 BDRM	471
301	1 BDRM	482
302	1 BDRM	537
303	1 BDRM	501
304	1 BDRM	515
305	STUDIO	328
306	STUDIO	377
307	1 BDRM	498
308	1 BDRM	500
309	1 BDRM	471

ATTACHMENT 2

DRAFT INITIAL NOTICE OF MOVE

INITIAL NOTICE TO MOVE

To: \_\_\_\_\_

The San Francisco Conservatory of Music ("SFCM") has received its entitlements for the construction of the new building that requires the demolition of 200 Van Ness and expects to commence construction no later than \_\_\_\_\_. As you are aware construction of the new building will require that you temporarily relocate during construction. Upon completion of construction of the new building you will be offered the opportunity to move to a new \_\_\_\_\_ bedroom **[fill in appropriate number of bedrooms]** apartment in the new building. The new project is expected to be completed \_\_\_\_\_. The rent for the new apartment will not exceed the rent you are currently paying plus any general rent increases that are approved by the San Francisco Rent Board during the construction period.

This notice will serve as your ninety (90) day notice to move. You must vacate your apartment at 200 Van Ness, Unit no. \_\_\_\_\_ no later than \_\_\_\_\_ **[fill in date that is at least 90 days from the date the notice is delivered]**.

**Temporary Replacement Unit**

SFCM has rented apartments at \_\_\_\_\_ **[fill in address of replacement apartment]**, San Francisco that are available to you to rent during the construction period. If you elect to move into an apartment rented by SFCM you will be responsible for continuing to pay to SFCM the rent you are paying now at 200 Van Ness during the construction period. SFCM will pay the difference between your current rent and the rent at \_\_\_\_\_.

**OR**

**Rent Differential Payment**

If you do not want to move to \_\_\_\_\_ **[fill in address of replacement apartments]**, you may elect to find your own temporary housing during the construction period in which event SFCM will pay you a monthly rent differential payment in the amount of \_\_\_\_\_ **[amount will be the difference between the tenant's current rent at 200 Van Ness and the rent being paid by SFCM at the units rented by SFCM for tenants]**. This amount represents the difference between your current rent and the rent for a comparable apartment at \_\_\_\_\_ **[fill in address of replacement apartments rented by SFCM]**. If you choose to accept the rent differential payment rather than moving into an apartment at \_\_\_\_\_, you are still eligible to rent a new unit from SFCM at the new building once construction is complete, but

you must keep SFCM informed of where you are living and how SFCM can best reach you to provide you with notices related to the completion of the project.

### **Moving Expense**

SFCM will also pay your moving costs, including packing costs for your possessions. Alternatively, you have the right to move your own possessions and receive a moving expense allowance from SFCM. SFCM will also pay for any utility hook-up fees or charges incurred at the new unit, including cable TV and internet service initiation fees to the extent you had these utilities in your current apartment. You are responsible for arranging your own utility services, including but not limited to gas, electricity, telephone, cable TV and internet service and submitting your claim for reimbursement for any hook-up fees or charges.

Attached to this notice is a copy of the Relocation Plan approved by the City and County of San Francisco as part of the approvals for the new building that provides additional information on your options regarding temporary and permanent relocation.

If you would prefer to negotiate a buy out with SFCM in lieu of accepting (i) a Temporary Replacement Unit or the Rent Differential Payment; and (ii) the right to rent an apartment at the newly constructed project, SFCM is willing to negotiate a buy out on terms to be mutually agreed upon by you and SFCM. Please let SFCM know if you would prefer to negotiate a buyout.

SFCM will be in touch to discuss your relocation options with you. If you have questions please feel free to call \_\_\_\_\_. SFCM will provide you with additional notices regarding your move date closer to your move date, but you should begin preparing to move.

# ATTACHMENT 3

## REQUIRED NOTICE PURSUANT TO PLAN

Required Notice	When Given	Contents	Existing Tenant Response Required, if any
Qualification as an Existing Tenant	No later than 30 days after effective date of Development Agreement	SFCM's determination of which residents are eligible for relocation benefits and a Permanent Replacement Unit in the Project	Resident has 30 days after receipt of notice to file a grievance with the San Francisco Rent Board if resident disagrees with SFCM's determination
Initial Notice to Move	At least 90 days prior to residents being required to move from 200 Van Ness	<ol style="list-style-type: none"> <li>1. Address of Temporary Relocation Unit</li> <li>2. Amount of Rent Differential Payment</li> <li>3. Projected Date of Move from 200 Van Ness</li> <li>4. Projected Date Permanent Replacement Units will be available</li> </ol>	Existing Tenant will be contacted by SFCM within 30 days of Initial Notice to Move to discuss options and Existing Tenant's election regarding a Temporary Relocation Unit or the Rent Differential Payment
Additional Notice to Move	At least 60 days prior to residents being required to move from 200 Van Ness	<ol style="list-style-type: none"> <li>1. Updated move date from 200 Van Ness</li> <li>2. Address of Existing Tenants specific Temporary Relocation Unit</li> <li>3. Copy of lease for Temporary Relocation Unit</li> <li>4. Payment schedule for Rent Differential Payment if Existing Tenant has elected Rent Differential Payment</li> </ol>	N/A
Quarterly Progress Notices	At least quarterly during construction of project	Update on construction progress	N/A
Permanent Relocation Notice including Replacement Unit Preference Notice	At least 120 days prior to Permanent Replacement Unit being available	<ol style="list-style-type: none"> <li>1. Date that Permanent Relocation Units will be available for move-in</li> <li>2. Dates when Existing Tenants can view Permanent</li> </ol>	Existing Tenant to return Replacement Unit Preference Notice within 30 days of receipt.

	for Existing Tenants	Relocation Units or floor plans 3. Replacement Unit Preference Notice to be completed by Existing Tenant	
Notice of Designated Permanent Replacement Unit	At least 60 days prior to Permanent Replacement Unit being available for occupancy	Designates the Permanent Replacement Unit Includes Lease for Permanent Replacement Unit	Return lease for Permanent Replacement Unit within 30 days of receipt
Notice to Vacate Temporary Relocation Units	At least 60 days prior to move-in date for Permanent Replacement Unit	Move-in Date for Permanent Replacement Unit	

## **Exhibit D**

### **Approvals**

1. Mitigated Negative Declaration;
2. General Plan amendment to Map 5 of the Downtown Area Plan to include the Project Site in the adjacent 120-X Zoning District;
3. Planning Code amendment (a) for height district reclassification to include the Project Site in the adjacent 120-X Zoning District by amending Zoning Map HT-2, and (b) to permit an exemption to the height calculation for certain roof structures and performance space, and to allow exceptions from the quantitative standards of Article 1.2 of the Planning Code for such projects through the Planning Code Section 309 process;
4. Downtown Project Authorization §309 exceptions for rear yard, loading, residential open space, group housing open space, obstructions over streets and alleys, group housing exposure, ground floor height (for portions of ground floor), and ground level wind currents;
5. Conditional Use Authorizations for §124 exclusion of student housing from FAR and §317 dwelling unit removal;
6. Lot merger;
7. Administrative Code Chapter 56 Enacting and conforming Ordinance.

## **Exhibit E**

### **On-Site Public Art Program**

The San Francisco Conservatory of Music will satisfy the on-site Public Art provisions of Code Section 429.4 by implementing the following SFCM Public Music Art Program:

- A. SFCM will provide permanent, rotating instrument or archival displays clearly visible to the public at the Project site, inviting all who pass by to engage with and be inspired by the physical manifestation of the creation of music. Display(s) will be visible from the street and located in one or more of the following areas (i) in or visible through the windows of the first floor of the northwest corner of the 200 Van Ness Avenue building – (visible from Van Ness Avenue); (ii) the first floor windows along Hayes Street; and (iii) within the building lobby area
  
- B. (1) The display will include curated information about the instrument, its history, and ways to interact with the instrument or hear it being played. For example, a website address or scannable barcode would allow the viewer to hear a recording or see a video of the instrument being played, and when possible, to learn where it will be used in a live local performance. SFCM will strive to coordinate the display with a performance featuring the instrument. The curated information will be provided through either a video screen or a projection device.  
  
(2) Displays will explore various instruments or artifacts within SFCM's instrument collection, including rare and historical instruments that the public would be unlikely to encounter elsewhere. Displays will consist of instruments that are currently in storage and/or not available for public view. For example, SFCM houses an acclaimed guitar collection at its existing 50 Oak Street campus featuring rare instruments made by the great classical and flamenco guitar makers of the 19th and 20th centuries. SFCM is unable to display collections such as these to the public in its current facility, but the Van Ness location would give it the opportunity to show instruments to thousands of people passing through the city's "arts corridor."  
  
(3) Instruments to be displayed may include double bass, cellos, violins, brass instruments, wind instruments, guitars, and pianos. Displays may also include scores or other archival materials, including materials illuminating the institution's 100 year history in San Francisco, which has been home to numerous world-renowned musicians including Isaac Stern, Yehudi Menuhin, John Adams, and many more.
  
- C. The Conservatory will exercise the same standards of artistic excellence it applies to all of its endeavors and will work with a professional consultant to determine how to make the entire display most engaging and appealing. In addition to implementing its on-site public art commitment as described above, SFCM also anticipates exploring various creative opportunities to communicate, stimulate and inspire the imagination and to demonstrate the exciting new and emerging, as well as the more traditional, interface between auditory and visual art through various medium.



- D. SFCM shall ensure that its on-site Public Art program will be of equivalent value to the Public Art Fee based on reasonable valuation methods such as insured value of the instruments utilized in its on-site Public Arts program

**Exhibit F**

**Form of Assignment and Assumption Agreement**

RECORDING REQUESTED BY  
CLERK OF THE BOARD OF SUPERVISORS  
OF THE CITY AND COUNTY OF SAN FRANCISCO

(Exempt from Recording Fees  
Pursuant to Government Code  
Section 27383)

AND WHEN RECORDED MAIL TO:

[Angela Calvillo]  
Clerk of the Board of Supervisors  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

**RELATIVE TO FOCUSED DEVELOPMENT AGREEMENT FOR THE SAN FRANCISCO**

**CONSERVATORY OF MUSIC**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (hereinafter, the "**Assignment**") is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ ("**Assignor**") and \_\_\_\_\_, a \_\_\_\_\_ ("**Assignee**").

**RECITALS**

A. The San Francisco Conservatory of Music, a California non-profit public benefit corporation ("**SFCM**"), and the City and County of San Francisco, a political subdivision and municipal corporation of the State of California (the "**City**"), entered into that certain Focused Development Agreement (the "**Development Agreement**") dated as of \_\_\_\_\_, 2018, for reference purposes, with respect to certain real property owned by Assignor, as such property is more particularly described in the Development Agreement (the "**Project Site**"). The Development Agreement was recorded in the Official Records of the City and County of San Francisco on \_\_\_\_\_ as Document No. \_\_\_\_\_.

*[add recital to document any previous transfer of the Transferred Property, with recording information]*

B. The Development Agreement provides that SFCM (Assignor) has the right to: (i) Transfer all or a portion of the Project Site, (ii) assign all of its rights, title, interest and obligations under the Development Agreement to a Transferee with respect to the portions of the Project Site transferred to the Transferee, and (iii) upon the recordation of an approved Assignment and Assumption

Agreement, to be released from any prospective liability or obligation under the Development Agreement related to the Transferred Property as set forth in Section 12.3 of the Development Agreement.

C. Assignor intends to convey certain real property as more particularly identified and described on Exhibit A attached hereto (hereafter the "**Transferred Property**") to Assignee. The Transferred Property is subject to the Development Agreement.

D. Assignor desires to assign and Assignee desires to assume Assignor's right, title, interest, burdens and obligations under the Development Agreement with respect to and as related to the Transferred Property, as more particularly described below.

### **ASSIGNMENT AND ASSUMPTION**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Defined Terms. Initially capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Development Agreement.

2. Assignment of Development Agreement. Assignor hereby assigns to Assignee, effective as of Assignor's conveyance of the Transferred Property to Assignee, all of the rights, title, interest, burdens and obligations of Assignor under the Development Agreement with respect to the Transferred Property, including any Public Benefits that are tied to the Transferred Property. Assignor retains all the rights, title, interest, burdens and obligations under the Development Agreement with respect to all other portions of the Project Site owned by Assignor.

3. Assumption of Development Agreement. Assignee hereby assumes, effective as of Assignor's conveyance of the Transferred Property to Assignee, all of the rights, title, interest, burdens and obligations of Assignor under the Development Agreement with respect to the Transferred Property, including its associated Public Benefits, and agrees to observe and fully perform all the duties and obligations of Assignor under the Development Agreement with respect to the Transferred Property, and to be subject to all the terms and conditions thereof with respect to the Transferred Property. If the Transferred Property includes or will include the Replacement Units, Assignee agrees to comply with the terms and conditions of the Replacement Housing and Interim Relocation Plan to the extent such terms and conditions remain applicable and with the provisions of the Notice of Special Restrictions. The parties intend that, upon the execution of this Assignment and conveyance of the Transferred Property to Assignee, Assignee shall be deemed to be "SFCM" under the Development Agreement with respect to the Transferred Property.

4. Reaffirmation of Indemnifications. Assignee hereby consents to and expressly reaffirms any and all indemnifications of the City set forth in the Development Agreement, including without limitation Section 4.7 of the Development Agreement.

5. Assignee's Covenants. Assignee hereby covenants and agrees that: (a) Assignee shall not challenge the enforceability of any provision or requirement of the Development Agreement; (b) Assignee shall not sue the City in connection with any and all disputes between Assignor and Assignee arising from this Assignment or the Development Agreement, including any failure to complete all or any part of the Project by any party; and (c) Assignee shall indemnify the City and its officers, agents and employees from, and if requested, shall defend them against any and all Losses resulting directly or indirectly from any dispute between Assignor and Assignee arising from this Assignment or the Development Agreement.

6. Costa-Hawkins Rental Housing Act. *[To be included if the Transferred Property includes or will include the Replacement Units.]* Assignee agrees that the Costa-Hawkins Act does not and in no way shall limit or otherwise affect the restriction of rental charges for the Replacement Units. Assignee, on behalf of itself and all of its successors and assigns of all or any portion of the Transferred Property, agrees not to challenge and expressly waives, now and forever, any and all rights to challenge the requirements of the Development Agreement related to the applicability of the Rent Control Ordinance to the Replacement Units as set forth in the Development Agreement and the Notice of Special Restrictions under the Costa-Hawkins Act (as the Costa-Hawkins Act may be amended or supplanted from time to time). If and to the extent such general covenants and waivers are not enforceable under Law, Assignee acknowledges that the above agreement is an important element of the consideration for the Development Agreement, and Assignee should not have the benefits of the Development Agreement without the burdens of the Development Agreement. Accordingly, if Assignee challenges the application of the covenant and waiver contained in this Section 6, then such breach will be an Event of Default and the City shall have the right to terminate the Development Agreement as to the Transferred Property.

7. Application of the San Francisco Rent Ordinance and Ellis Act Waiver. *[To be included if the Transferred Property includes or will include the Replacement Units.]* Assignee agrees to maintain the Replacement Units as rent controlled under the Rent Control Ordinance, which commitment shall survive the expiration of the Development Agreement for so long as the Rent Control Ordinance, or a similar successor ordinance, remains in effect. Such commitment does not depend upon the initial occupancy of the Replacement Unit by Existing Tenants. Assignee waives any and all rights to evict any tenant of a Replacement Unit (including Existing Tenants or other tenants) under the Ellis Act (California Government Code Section 7060 et seq.) and any other laws or regulations that permit owner move-in evictions for any of the Replacement Units as to any tenant of a Replacement Unit (including Existing Tenants or other tenants) for so long as the Replacement Units are subject to the Rent Control Ordinance.

8. Binding on Successors. All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

9. Notices. The notice address for Assignee under Section 14.11 of the Development Agreement shall be:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

With copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

10. Counterparts. This Assignment may be executed in as many counterparts as may be deemed necessary and convenient, and by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same instrument.

11. Governing Law. This Assignment and the legal relations of the parties hereto shall be governed by and construed and enforced in accordance with the laws of the State of California, without regard to its principles of conflicts of law.

IN WITNESS HEREOF, the parties hereto have executed this Assignment as of the day and year first above written.

**ASSIGNOR:**

[insert signature block]

**ASSIGNEE:**

[insert signature block]

Exhibit A to Assignment and Assumption Agreement

Transferred Property

[To be inserted.]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, 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.

Name: \_\_\_\_\_  
Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, 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.

Name: \_\_\_\_\_  
Notary Public



**Exhibit G**

**Notice of Special Restrictions**

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

City and County of San Francisco

San Francisco, California 94103-2414

---

**NOTICE OF SPECIAL RESTRICTIONS**

This Notice of Special Restrictions ("**Notice**") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2018 by the San Francisco Conservatory of Music, a California non-profit public benefit corporation ("**SFCM**"), with reference to the following:

A. SFCM owns the property located at 200 and 214 Van Ness Avenue in San Francisco, California, as more particularly described in the legal description attached as Exhibit A (the "**Project Site**"). At the time SFCM acquired the Project Site, the Project Site contained a residential building with twenty-seven (27) units.

B. SFCM proposes to demolish the two existing buildings on the Project Site and create a student housing focused mixed-use project on the Project Site with approximately four hundred twenty (420) student housing beds, three (3) faculty units, one-for-one replacement of the existing twenty-seven (27) residential units with modern, contemporary, code complying units (the "**Replacement Units**"), educational and performance space, and ground floor retail / restaurant uses, all in an approximately 168,000 gross square foot building (the "**Project**"). The Project is designed to permit SFCM to continue to provide exceptional music education and strengthen San Francisco's civic center arts and cultural district by providing student housing and related facilities while insuring modern replacement housing for existing tenants and alleviating pressure on San Francisco's existing housing stock.

C. SFCM and the City and County of San Francisco ("**City**") have entered into a Development Agreement pursuant to Government Code Section 65864 et seq. and Chapter 56 of the City Administrative Code ("**Development Agreement**"). As part of its Replacement Housing and Interim Relocation Plan incorporated into the Development Agreement, SFCM will voluntarily submit the Replacement Units to the ongoing jurisdiction of the San Francisco Rent Control Ordinance.

D. On \_\_\_\_\_, 2018, the Board of Supervisors approved the Development Agreement.

E. As a condition of approving the Development Agreement the City has required, and SFCM has accepted, the execution and recording of this Notice. This Notice is being executed and recorded for the benefit of the City.

NOW, THEREFORE, THE CITY AND SFCM AGREE AND COVENANT AS FOLLOWS:

I. APPLICATION OF SAN FRANCISCO RENT ORDINANCE TO REPLACEMENT UNITS.

SFCM agrees to maintain the Replacement Units as rent controlled under Chapter 37 of the San Francisco Administrative Code, the Residential Rent Stabilization and Arbitration Ordinance ("**Rent Control Ordinance**") for so long as the Rent Control Ordinance, or a similar successor ordinance, remains in effect and to waive the provisions of the Costa-Hawkins Rental Housing Act, California Civil Code Sections 1954.50 et seq. ("**Costa-Hawkins Act**") to the extent applicable to the Replacement Units. Such commitment does not depend upon the initial occupancy of the Replacement Unit by Existing Tenants (as defined below). Notwithstanding the foregoing, SFCM shall be entitled to establish the initial rental rate for any of the Replacement Units anytime such Replacement Unit is not occupied by a tenant who resided at 200 Van Ness prior to the commencement of construction of the Project ("**Existing Tenant**"). SFCM also waives any and all rights to evict any tenant in a Replacement Unit (including Existing Tenants and other tenants) under the Ellis Act (California Government Code Section 7060 et seq.) and any other laws or regulations that permit owner move-in evictions for any of the Replacement Units for so long as the Replacement Units are subject to the Rent Control Ordinance.

SFCM agrees and acknowledges that this Notice and SFCM's agreement to subject the Replacement Units to the Rent Control Ordinance falls within the express exceptions to the Costa-Hawkins Act because the Development Agreement is a contract with a public entity in consideration for contributions and other forms of assistance specified in Chapter 4.3 (commencing with Section 65919 of Division 1 of Title 7 of the California Government Code) and the City would not be willing to enter into the Development Agreement without the understanding and agreement that the Costa-Hawkins Act provisions set forth in California Civil Code Section 1954.52(a) do not apply to the Replacement Units as a result of the exemption set forth in California Civil Code Section 1954.52(b).

II. APPLICABILITY OF RESTRICTION

The restrictions set forth in this Notice shall only be applicable to the Replacement Units and the portion of the Project Site upon which any Replacement Units are located. In the event that the Project is subdivided at any time in the future, this Notice shall be released from all portions of the Project Site and the Project that do not include Replacement Units.

III. PARTIES BOUND

So long as this Notice has not been released pursuant to the provisions of Section II, the provisions of this Notice shall bind any person or entity which acquires an interest in the Replacement Units, or to whom any interest in the Replacement Units is transferred involuntarily or by operation of law. SFCM shall include the provisions of this Notice in any and all assignment and assumption agreements and any and all recorded restrictions for any portion of the Project Site that includes the Replacement Units.

IV. GOVERNING LAW

This Notice shall be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, SFCM has executed this instrument the day and year first hereinabove written.

"SFCM"

SAN FRANCISCO CONSERVATORY OF  
MUSIC, a California non-profit public benefit  
corporation

By: \_\_\_\_\_  
David Stull  
President

[SIGNATURES MUST NOTARIZED]

**EXHIBIT A**  
**Legal Description of Project Site**

Real property in the City of San Francisco, County of San Francisco, State of California, described as follows:

**PARCEL ONE:**

BEGINNING AT THE POINT OF THE INTERSECTION OF THE EASTERLY LINE OF VAN NESS AVENUE WITH THE SOUTHERLY LINE OF IVY STREET; RUNNING THENCE ALONG SAID LINE OF VAN NESS AVENUE SOUTHERLY 59 FEET 11-1/8 INCHES; THENCE AT A RIGHT ANGLE EASTERLY 109 FEET; THENCE AT A RIGHT ANGLE NORTHERLY 59 FEET 11-1/8 INCHES TO THE SAID SOUTHERLY LINE OF IVY STREET; THENCE ALONG THE LAST MENTIONED LINE WESTERLY 109 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF WESTERN ADDITION BLOCK NO. 68.

**PARCEL TWO:**

COMMENCING AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF HAYES STREET AND THE EASTERLY LINE OF VAN NESS AVENUE; RUNNING THENCE NORTHERLY AND ALONG SAID LINE OF VAN NESS AVENUE 60 FEET, 0-7/8 INCHES; THENCE AT A RIGHT ANGLE EASTERLY 109 FEET; THENCE AT A RIGHT ANGLE SOUTHERLY 60 FEET, 0-7/8 INCHES TO THE NORTHERLY LINE OF HAYES STREET; THENCE AT A RIGHT ANGLE WESTERLY AND ALONG SAID LINE OF HAYES STREET 109 FEET TO THE POINT OF COMMENCEMENT.

BEING PART OF WESTERN ADDITION BLOCK NO. 68.

APN: Lot 012; Block 0811 (Affects Parcel One)  
Lot 010; Block 0811 (Affects Parcel Two)

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

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

Name: \_\_\_\_\_  
Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
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.

Name: \_\_\_\_\_  
Notary Public

THIS PAGE INTENTIONALLY LEFT BLANK

# **EXHIBIT 4.B:**

DEVELOPMENT AGREEMENT ORDINANCE



THIS PAGE INTENTIONALLY LEFT BLANK

[Development Agreement – San Francisco Conservatory of Music – Van Ness Avenue]

**Ordinance approving a Development Agreement between the City and County of San Francisco and San Francisco Conservatory of Music, a California non-profit public benefit corporation, for the development project at the site located at 200-214 Van Ness Avenue between Hayes Streets and the Dr. Tom Waddell Place mid-block alley with various public benefits including creation of student housing, a new performance venue in the civic center cultural area, activation of a neglected portion of Van Ness Avenue, one for one on-site replacement of 27 existing dwelling units with a specific Replacement and Interim Housing Program for existing tenants, including the clear right to return to a comparable unit and an interim relocation housing assistance, voluntary application of rent control and waiving rights under the Ellis Act; making findings under the California Environmental Quality Act, findings of conformity with the General Plan, and with the eight priority policies of Planning Code, Section 101.1(b); setting the impact fees and exactions as set forth in the Development Agreement; and confirming compliance with or waiving certain provisions of Administrative Code Chapters 14B and 56, and ratifying certain actions taken in connection therewith.**

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

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

///

1           Section 1.    Project Findings.    The Board of Supervisors makes the following  
2 findings:

3           (a)    California Government Code Section 65864 et seq. authorizes any city, county,  
4 or city and county to enter into an agreement for the development of real property within the  
5 jurisdiction of the city, county, or city and county.

6           (b)    Chapter 56 of the San Francisco Administrative Code ("Chapter 56") sets forth  
7 certain procedures for the processing and approval of development agreements in the City  
8 and County of San Francisco (the "City").

9           (c)    San Francisco Conservatory of Music ("SFCM") is a non-profit education  
10 institution which has provided internationally acclaimed music education in San Francisco for  
11 100 years. SFCM's 50 Oak Street campus was created in 2006 and included the  
12 rehabilitation and restoration of an important historic resource. Since then, San Francisco  
13 Conservatory of Music has become a critical part of the City's Civic Center area cultural  
14 district, while serving over 400 students a year, both graduate and undergraduate, most of  
15 whom receive scholarship support, and employing over 300 faculty and staff in educating  
16 students. SFCM owns lots 010 and 012 in Block 811 at 200-214 Van Ness Avenue,  
17 composed of 2 buildings; 200 Van Ness a 3-story building containing 27 existing residential  
18 units and 214 Van Ness, a 2-story building containing vacant office space ("Project Site").

19           (d)    SFCM filed an application with the City's Planning Department for approval of a  
20 development agreement relating to the Project Site (the "Development Agreement") under  
21 Chapter 56. A copy of the Development Agreement is on file with the Clerk of the Board in  
22 File No. \_\_\_\_\_.

23           (e)    SFCM proposes to demolish the two existing buildings on the Project Site and  
24 create student housing, with approximately four hundred twenty (420) student housing beds  
25 (in 113 units), three (3) faculty units, one-for-one replacement of the existing twenty-seven

(27) residential units ("Replacement Units"), under a clear tenant Replacement Housing and Interim Relocation Plan ("Replacement Housing Plan" as defined in the Development Agreement), educational and performance space, and ground floor retail / restaurant and related uses, all in an approximately 168,200 gross square foot building and as more specifically described in the Development Agreement (the "Project"). The Project is designed to permit SFCM to continue its historic contribution to exceptional music education and will strengthen San Francisco's Civic Center arts and cultural area by providing student housing, performance venues and related facilities.

(f) Concurrently with this Ordinance, the Board is taking a number of actions in furtherance of the Project, as generally described in the Development Agreement, including Exhibit D to the Development Agreement.

(g) In addition to the significant housing and cultural benefits to the City from the Project, the City has determined that as a result of the development of the Project in accordance with the Development Agreement additional clear benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies. Major additional public benefits to the City from the Project include: (1) expanding the City's supply of affordable housing by adding approximately 420 student beds and 3 faculty housing units while alleviating some pressure on the existing housing stock; (2) replacing on-site, to modern standards, the Replacement Units and providing other tenant benefits, as described in the Replacement Housing Plan; (3) voluntarily submitting the Replacement Units to the City's Rent Control Ordinance; and (4) providing 45,200 square feet of much needed educational and performance space expanding artistic and cultural resources to the Civic Center area, all as more particularly described in the Development Agreement.

///

///

1           Section 2.     CEQA Findings.

2           On \_\_\_\_\_, by Motion No. \_\_\_\_\_, the Planning Commission adopted the  
3 Mitigated Negative Declaration ("MND") for the Project published by the Planning Department  
4 on December 27, 2017, and determined that the MND was adequate, accurate and complete  
5 and reflected the independent judgment of the Planning Department pursuant to the California  
6 Environmental Quality Act (California Public Resources Code Section 21000 et seq.)  
7 ("CEQA"). A copy of Planning Commission Motion No. \_\_\_\_\_ is on file with the Clerk  
8 of the Board of Supervisors in No. \_\_\_\_\_ (the "CEQA Findings"). In accordance with  
9 the actions contemplated herein, this Board has reviewed the MND and related documents,  
10 and adopts and incorporates by reference as though fully set forth herein the CEQA Findings.

11          Section 3.     General Plan and Planning Code Section 101.1(b) Findings.

12          (a)     The Board of Supervisors finds that the Development Agreement will serve the  
13 public necessity, convenience and general welfare for the reasons set forth in Planning  
14 Commission Resolution No. \_\_\_\_\_ and incorporates those reasons herein by reference.

15          (b)     The Board of Supervisors finds that the Development Agreement is in conformity  
16 with the General Plan, as proposed to be amended and when effective, and the eight priority  
17 policies of Planning Code Section 101.1 for the reasons set forth in Planning Commission  
18 Resolution No. \_\_\_\_\_. The Board hereby adopts the findings set forth in Planning  
19 Commission Resolution No. \_\_\_\_\_ and incorporates those findings herein by reference.

20          Section 4.     Development Agreement.

21          (a)     The Board of Supervisors approves all of the terms and conditions of the  
22 Development Agreement, in substantially the form on file with the Clerk of the Board of  
23 Supervisors in File No. \_\_\_\_\_, including the Impact Fees and Exactions.

24          (b)     The Board of Supervisors approves and authorizes the execution, delivery and  
25 performance by the City of the Development Agreement as follows: (i) the Director of

1 Planning is authorized to execute and deliver the Development Agreement, and (ii) the  
2 Director of Planning and other applicable City officials are authorized to take all actions  
3 reasonably necessary or prudent to perform the City's obligations and enforce the City's rights  
4 and remedies under the Development Agreement in accordance with the terms of the  
5 Development Agreement. The Director of Planning, at his or her discretion and in  
6 consultation with the City Attorney, is authorized to enter into any additions, amendments or  
7 other modifications to the Development Agreement that the Director of Planning determines  
8 are in the best interests of the City and that do not materially increase the obligations or  
9 liabilities of the City or materially decrease the benefits to the City as provided in the  
10 Development Agreement.

11 Section 5. City Administrative Code Conformity.

12 The Development Agreement shall prevail in the event of any conflict between the  
13 Development Agreement and City Administrative Code Chapters 14B and 56, and without  
14 limiting the generality of the foregoing clause, for purposes of the Development Agreement  
15 only, the provisions of City Administrative Code Chapters 14B and 56 are waived or its  
16 provisions deemed satisfied as follows:

17 (a) Cultural and educational and housing benefits to the City from the Project  
18 provide the unique public benefits contemplated in Chapter 56. Therefore, regardless of  
19 SFCM's status as a non-profit educational entity subject to Planning Code Section 304.5, or  
20 the size of the Project site, it is hereby deemed to satisfy the provisions of Chapter 56,  
21 Section 56.3(g).

22 (b) The nature of the Project's size and non-profit status is one not contemplated by  
23 City Administrative Code Chapter 14B or Chapter 56, Section 56.7(c), and as such, those  
24 provisions are deemed to not apply.

25 ///

1 (c) The provisions of the Development Agreement regarding any amendment or  
2 termination, including those relating to "Material Change," shall apply in lieu of the provisions  
3 of Chapter 56, Section 56.15.

4 Section 6. Chapter 56 Waiver; Ratification.

5 (a) In connection with the Development Agreement, the Board of Supervisors finds  
6 that the requirements of Chapter 56, as modified hereby, have been substantially complied  
7 with and waives any procedural or other requirements of Chapter 56 if and to the extent that  
8 they have not been strictly complied with.

9 (b) All actions taken by City officials in preparing and submitting the Development  
10 Agreement to the Board of Supervisors for review and consideration are hereby ratified and  
11 confirmed, and the Board of Supervisors hereby authorizes all subsequent action to be taken  
12 by City officials consistent with this Ordinance.

13 Section 7. Effective and Operative Date.

14 This ordinance shall become effective 30 days from the date of passage. This  
15 Ordinance shall become operative only on (and no rights or duties are affected until) the later  
16 of (a) 30 days from the date of its passage, or (b) the date that Ordinance \_\_\_\_\_,  
17 Ordinance \_\_\_\_\_, and Ordinance \_\_\_\_\_ have become effective. Copies of said  
18 Ordinances are on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_.

19  
20 APPROVED AS TO FORM:  
21 DENNIS J. HERRERA, City Attorney

22  
23 By:

24 Heidi J. Gewertz  
25 Deputy City Attorney

n:\spec\as2018\1800232\01247811.docx



# SAN FRANCISCO PLANNING DEPARTMENT

---

*Subject to: (Select only if applicable)*

- |  |   |
|--|---|
| <input type="checkbox"/> Affordable Housing (Sec. 415)                           | <input checked="" type="checkbox"/> First Source Hiring (Admin. Code) |
| <input checked="" type="checkbox"/> Transportation Sustainability Fee (Sec. 411) | <input checked="" type="checkbox"/> Child Care Requirement (Sec. 414) |
| <input checked="" type="checkbox"/> Jobs Housing Linkage Program (Sec. 413)      | <input checked="" type="checkbox"/> Public Art (Sec. 429)             |

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

## Planning Commission Draft Motion Downtown Project Authorization

HEARING DATE: FEBRUARY 8, 2018

*Date:* January 25, 2018  
*Case No.:* **2015-012994GPA/PCA/MAP/DNX/CUA**  
*Project Address:* **200 – 214 Van Ness Avenue Street**  
*Zoning:* C-3-G Downtown General  
96-X Height and Bulk District  
*Block/Lot:* 0342/001, 002, 004, and 014  
*Project Sponsor:* Suzanne Brown, on behalf of  
SF Conservatory of Music  
50 Oak Street  
San Francisco, CA 94102  
*Staff Contact:* Claudine Asbagh – (415) 575-9165  
[Claudine.asbagh@sfgov.org](mailto:Claudine.asbagh@sfgov.org)

ADOPTING FINDINGS RELATED TO THE APPROVAL OF A SECTION 309 DETERMINATION OF COMPLIANCE AND REQUEST FOR EXCEPTIONS FOR REAR YARD PER PLANNING CODE SECTION 134, USABLE OPEN SPACE PER SECTION 135, OBSTRUCTIONS OVER STREETS AND ALLEYS PER SECTION 136, EXPOSURE REQUIREMENTS PER SECTION 140, GROUND FLOOR HEIGHT REQUIREMENTS PER PLANNING CODE SECTION 145.1, REDUCTION OF GROUND-LEVEL WIND CURRENTS PER PLANNING CODE SECTION 148, AND OFF-STREET LOADING REQUIREMENTS PER PLANNING CODE SECTION 161 TO ALLOW A PROJECT DEMOLISH THE EXISTING THREE-STORY RESIDENTIAL BUILDING AT 200 VAN NESS AVENUE AND THE TWO STORY COMMERCIAL BUILDING AT 214 VAN NESS AVENUE AND CONSTRUCT A 12-STORY, 120-FOOT TALL, 168,200 SQUARE-FOOT MIXED-USE BUILDING FOR AN EDUCATIONAL INSTITUTION. THE PROJECT WOULD INCLUDE 113 STUDENT GROUP HOUSING UNITS (420 BEDS), 30 DWELLING UNITS (27 REPLACEMENT UNITS AND 3 NEW UNITS FOR FACULTY), APPROXIMATELY 49,600 SQUARE FEET OF EDUCATIONAL AND PERFORMANCE SPACE, 4,320 SQUARE FEET OF BROADCASTING STUDIO SPACE, AND 2,600 SQUARE FEET OF GROUND-FLOOR RESTAURANT/RETAIL SPACE, AT 200-214 VAN NESS AVENUE, ASSESSOR'S BLOCK NO. 0811, LOTS 010 AND 012 WITHIN THE C-3-G (DOWNTOWN GENERAL) DISTRICT AND THE PROPOSED 120-X HEIGHT AND BULK DISTRICT AND ADOPTING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.



## **PREAMBLE**

On September 29, 2015, Lawrence Badiner on behalf of the San Francisco Conservatory of Music ("Project Sponsor" or "SFCM") filed an application with the Planning Department ("Department") for Environmental Review, to demolish the existing three-story residential building at 200 Van Ness Avenue and the two-story commercial building at 214 Van Ness Avenue and construct a 12-story over two-level basement, approximately 120-foot tall building with up to 420 student beds in 113 group housing units, up to 30 dwelling units (including 27 replacement units), approximately 49,600 Gross Square Feet (GSF) of educational/institutional use with approximately 2,900 gsf of ground floor restaurant/retail space.

On September 28, 2016, the Project Sponsor filed an application with the Department for a Determination of Compliance with Planning Code Section 309 as modified and supplemented on November 14, 2017, with exceptions to the requirements for Rear Yard (Section 134), Open Space (Section 135), Obstructions Over Streets and Alleys (Section 136), Group Housing Exposure (Section 140), Ground (Section 145.1), Reduction of Ground-Level Wind Currents in C-3 Districts (Section 148), and Off-Street Loading (Section 161) within the C-3-G (Downtown General) District.

On September 28, 2016, the Project Sponsor also filed an application with the Department for a Conditional Use Authorization as modified and supplemented on November 14, 2017, under Planning Code Sections 124(f), 124(k), 215(b), 303 and 317, to remove and replace 27 existing dwelling units to allow additional square footage above that permitted by the base FAR limit for Student Housing as defined in Section 102 within the C-3-G (Downtown General) District and a 96-X Height and Bulk District.

On November 14, 2017, the Project Sponsor filed an application to reclassify the existing 96-X Height and Bulk District to a 120-X Height and Bulk District, amend Map 5 of the Downtown Plan of the General Plan, amend the HT02 Height Map of the Zoning Map and amend Section 260 of the Planning Code.

On December 27, 2017, the Planning Department's Environmental Review Office issued a Notice of Completion, and published a Preliminary Mitigated Negative Declaration (PMND) for the project that included a Mitigation Monitoring and Reporting program (MMRP) which is included as a Condition of Approval for the project. The comment period for the PMND expired on January 17, 2018 with no appeals. The PMND/IS. The Final Mitigated Negative Declaration (MND) was issued on January 23, 2018, and is available online at <http://tinyurl.com/sfceqadocs>. The Planning Department Planning Department Commission Secretary is the custodian of records, located in File No. 2015-012994ENV, at 1650 Mission Street, Fourth Floor, San Francisco, California

On January 10, 2018, after extensive discussions with City staff, the Project Sponsor also filed an application with the Department for a Development Agreement, under Administrative Code Article 56, which include the specified public benefits above and beyond that required by City codes, including the expanding the City's supply of student housing, replacing 27 existing units on site, assuring the interim relocation and right to return of the existing tenants, creating much needed state-of-the-art educational and performance space, providing added artistic and cultural resources, while providing development certainty to the Project Sponsor.

On January 11, 2018, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting and initiated a General Plan Amendment pursuant to Planning Code Section 340. The proposed amendment would revise Map 5 of the Downtown Area Plan

by changing the height designation of Assessor's Block 811, Lots 10 and 12 (200-214 Van Ness Avenue) from 96-X to 120-X.

On February 8, 2018, the Commission conducted a duly noticed public hearing at a regularly scheduled hearing on the Downtown Plan Project Authorization and Exception from certain provisions of the Planning Code under Section 309.

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 approves the Downtown Project Authorization and exceptions requested in Application No. 2015-012994DNX, 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 site is located across two lots that occupy the entire eastern block face of Van Ness Avenue between Hayes Street and Tom Wadell Place on Assessor's Block 0811, Lots 010 and 012. The approximate 13,076 square-foot site is currently developed with two buildings: 200 Van Ness Avenue, a 27-unit residential building, and 214 Van Ness Avenue, a currently vacant office building that was previously occupied by Lighthouse for the Blind.  
  
The site is located within the Downtown General Commercial Zoning District (C-3-G), the 96-X Height and Bulk District, and is located within the Downtown and Civic Center Plan Areas.
3. **Surrounding Properties and Neighborhood.** The project site is prominently located on Van Ness Avenue in the Downtown Civic Center neighborhood, adjacent to both the Hayes Valley and South of Market neighborhoods. The surrounding mixed-use area contains diverse building types including residential, office and educational, civic and commercial. The project site is located directly across Tom Wadell Place from the San Francisco Civic Center Historic District.
4. **Project Description.** The project would demolish the existing structures and construct a 12-story (above two basement levels), 120-foot tall, approximately 168,200 square-foot building. The new building would include 420 student beds for students of the San Francisco Conservatory of Music (SFCM), 30 dwelling units, approximately 49,600 square feet of educational and performance space, 4,320 square feet of broadcasting studio space, and 2,600 square feet of ground-floor restaurant/retail space. Of the new dwelling units, 27 would be replacement units and three would be new units for SFCM faculty.
5. **Community Outreach and Public Comment.** Community outreach has included meetings with the Project's neighbors, local businesses, community groups, individual residents at 200 Van Ness, schools, and non-profits, including the Tenderloin Neighborhood Development Corporation, Van Ness Neighborhood Corridor Association, Civic Center CBD, Hayes Valley Neighborhood

Association, SF School of the Arts, Housing Action Coalition, SPUR, Emerald Fund, San Francisco Ballet, San Francisco War Memorial, Davies Symphony Hall, and SF Jazz. The Department has received two letters of support for the proposed project.

6. **Planning Code Compliance:** The Conditional Use Authorization Findings set forth in Motion No. XXXXX, Case No. 2015-012994CUA (Conditional Use Authorization, pursuant to Planning Code Section 303) apply to this Motion, and are incorporated herein as though fully set forth. The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:

- A. **Maximum Floor Area Ratio.** Planning Code Section 124 establishes a Floor Area Ratio (FAR) of 6.0 to 1 for properties within the C-3-G Zoning District. Under Sections 123 and 128 of the Planning Code, FAR can be increased to 9.0 to 1 with the purchase of transferable development rights ("TDR"), and floor area devoted to Student Housing can be exempted under 124(k) with a Conditional Use Authorization.

*The Project Site has a lot area of approximately 13,080 square feet. Therefore, up to 78,480 square feet of Gross Floor Area ("GFA") is allowed under the basic FAR limit, and up to 117,720 of GFA is permitted with the purchase of TDR.*

*As shown in the conceptual plans for the Project, the proposal includes 153,200 square feet of GFA, resulting in an FAR of 11.7 to 1. The student housing constitutes approximately 86,000 square feet of GFA, which when excluded from FAR calculations, results in approximately 67,200 of GFA (FAR of 5.1 to 1). The Project is seeking a Conditional Use Authorization per Sections 303 and 124(k) to exempt student housing GFA from the calculation of FAR as part of the related Case No. 2015-012994CUA.*

- B. **Rear Yard Requirement.** Planning Code Section 134 requires that any building containing a dwelling unit in a Downtown Commercial District must provide a rear yard equal to 25 percent of the total lot depth at all residential levels.

*The Project does not provide a rear yard that complies with this Code requirement, and as such, requires a rear yard exception under Planning Code Section 309. A 309 exception may be granted so long as the "building location and configuration assure adequate light and air to windows within the residential units and to the usable open space provided." See Section 7, below, for Section 309 findings.*

- C. **Open Space.** Planning Code Section 135 requires that private usable open space be provided at a ratio of 36 square feet per dwelling unit or that common usable open be provided at a ratio of 48 square feet per dwelling unit. For group housing, Section 135(d)(2) requires one-third of the amount required for a dwelling unit, or 16 sf per bedroom. For purposes of these calculations, the number of bedrooms on a lot shall in no case be considered to be less than one bedroom for each two beds. Where the actual number of beds exceeds an average of two beds for each bedroom, each two beds shall be considered equivalent to one bedroom

*The Project does not provide sufficient Open Space for either the Dwellings or Student Group Housing. As such, the Project is seeking a 309 exception from the requirements of Section 135 pursuant to Section 260(b)(1)(L), as permitted by the ordinance proposed under Case No. 2015-012994PCA/MAP and as outlined in Section 7 below.*

- D. **Permitted Obstructions.** Planning Code Section 136 outlines the requirements for features, which may be permitted over street, alleys, setbacks, yards or useable open space.

*The Project proposes bays projecting over Van Ness Avenue, Hayes Street and Tom Waddell Place. As such, the Project is seeking a 309 exception from the requirements of Section 136 pursuant to Section 260(b)(1)(L), as permitted by the ordinance proposed under Case No. 2015-012994PCA/MAP and as outlined in Section 7 below.*

- E. **Privately Owned Public Open Space.** Planning Code Section 138 requires that new buildings in the C-3-G Zoning District provide public open space at a ratio of one sq. ft. per 50 gsf of all uses, except residential uses, institutional uses, and uses in a predominantly retail/personal services building.

*The Project is an institutional and residential building, and thus exempt from Section 138. The Project includes approximately 2,564 sf of ground floor retail space accessory to the institutional use, which does not require public open space under Section 138.*

- F. **Streetscape Improvements.** Planning Code Section 138.1 requires that when a new building is constructed in the C-3 District, street trees and sidewalk paving must be provided. Under Section 138.1(c), the Commission may also require the Project Sponsor to install additional sidewalk improvements such as lighting, special paving, seating and landscaping in accordance with the guidelines of the Downtown Streetscape Plan if it finds that these improvements are necessary to meet the goals and objectives of the General Plan.

*The Project proposes streetscape elements along Hayes Street, Van Ness Avenue and Dr. Tom Waddell Place as part of a streetscape plan designed by the Project's landscape architect. Features include street trees, special pavers and landscaping within a continuous trench, and a bulb out Dr. Tom Waddell Place with bike, the details of which will be refined during the Building Permit process, per the Conditions of Approval. As such, the Project is consistent with the provisions of Section 138.1.*

- G. **Exposure.** Planning Code Section 140 requires at least one room within every dwelling unit to face directly on an open area that is either (1) a public street or alley that is at least 25 feet in width, or a side yard or rear yard that meets the requirements of the Planning Code, or (2) an open area that is unobstructed and is no less than 25 feet in every horizontal dimension for the floor at which the dwelling unit in question is located and at the floor immediately above it, with an increase of five feet in every horizontal dimension at each subsequent floor.

*The proposed Project meets this requirement for all dwelling units as they front on a street or alley. Of the 113 student group housing units, 87 front on a street or alley and meet the exposure requirement. Because 26 of the student housing units do not meet exposure requirements, the Project is seeking a 309 exception from Section 140 pursuant to Section 260(b)(1)(L), as permitted by the ordinance proposed under Case No. 2015-012994PCA/MAP and as outlined in Section 7 below*

- H. **Street Frontage in Commercial Districts:** Planning Code Section 145.1 requires off-street parking at street grade on a development lot to be set back at least 25 feet on the ground floor; that no more than one-third of the width or 20 feet, whichever is less, of any given street frontage of a new structure parallel to and facing a street shall be devoted to parking and

loading ingress or egress; that space for active uses be provided within the first 25 feet of building depth on the ground floor; that non-residential uses have a minimum floor-to-floor height of 14 feet; that the floors of street-fronting interior spaces housing non-residential active uses and lobbies be as close as possible to the level of the adjacent sidewalk at the principal entrance to these spaces; and that frontages with active uses that are not residential or PDR be fenestrated with transparent windows and doorways for no less than 60 percent of the street frontage at the ground level.

*The ground floor space along Van Ness Avenue, Hayes Street, and Dr. Tom Waddell Place have “active uses” with direct access to the sidewalk within the first 25 feet of building depth and are thus compliant with this Code Section. The restaurant back-of-house functions and building services are located along Dr. Tom Waddell Place and are not considered “active uses.”*

*The building is designed so that the first two floors read as one 22-foot tall glass element built to the property line. The strong and transparent base with a restaurant, student lounge and recital hall will create an interesting pedestrian-oriented and fine-grained streetscape. The lobby and the ground floor recital space measure 22 feet from floor to ceiling and occupy 70% of the Van Ness Avenue frontage, while the recital hall occupies 29% of the Hayes Street frontage. The remaining ground floor spaces measure 11 feet from floor to ceiling height in order to accommodate institutional support spaces on the second floor.*

*The ground floor is designed with the columns either set back or on front of the glass façade and provides ample fenestration along all street frontages with 95 percent along Hayes Street, 100 percent along Van Ness Avenue, and 65 percent along Dr. Tom Waddell Place. The Project meets the transparency requirement of the Planning Code.*

*Because the building does not strictly comply with minimum floor-to-floor height and required active uses of Section 145.1, the Project is seeking a 309 exception pursuant to Section 260(b)(1)(L), as permitted by the ordinance proposed under Case No. 2015-012994PCA/MAP and as outlined in Section 7 below.*

- I. **Sunlight Access to Public Sidewalks.** Planning Code Section 146(a) establishes design requirements for buildings on specified streets in order to maintain direct sunlight on public sidewalks in downtown areas during critical use periods. Section 146(c) requires that other buildings, not located on the specific streets identified in Section 146(a), shall be shaped to reduce substantial shadow impacts on public sidewalks, if it can be done without unduly creating an unattractive design and without unduly restricting development potential.

*Section 146(a) does not apply to construction on Van Ness Avenue, Hayes Street and Dr. Tom Waddell Place, and therefore does not apply to the Project.*

*As it relates to Section 146(c), the Project would replace two- and three-story buildings with a 12-story structure. Although there would be new shadows on sidewalks and pedestrian areas adjacent to the site, the Project’s shadow effects would be limited in scope and would not increase the total amount of shading above levels that are commonly and generally accepted in urban areas. The Project proposes to increase the height from 96 feet to 120 feet and will be consistent with the height classification of the adjacent parcels that have a 120-foot height limit. As such, the Project is consistent with the provisions of Section 146(c) of the Planning Code.*

- J. **Shadows on Public Open Spaces.** Planning Code Section 147 seeks to reduce substantial shadow impacts on public plazas and other publicly accessible open spaces other than those protected under Section 295. Consistent with the dictates of good design and without unduly restricting development potential, buildings taller than 50 feet should be shaped to reduce substantial shadow impacts on open spaces subject to Section 147. In determining whether a shadow is substantial, the following factors shall be taken into account: the area shaded, the shadow's duration, and the importance of sunlight to the area in question.

*The shadow analysis determined that the Project would not cast net new shadow on Civic Center Plaza or any other open space under the jurisdiction of, or designated to be acquired by the Recreation and Park Commission. No other significant public or private open spaces – including those not protected by Section 295 – would be affected by shadows from the Project. As such, the Project is complies with the provisions of Section 147 of the Planning Code.*

- K. **Ground Level Wind.** Pursuant to Section 148, in C-3 Districts, buildings and additions to existing buildings shall be shaped, or other wind-baffling measures shall be adopted, so that the developments will not cause ground-level wind currents to exceed more than 10 percent of the time year round, between 7:00 a.m. and 6:00 p.m., the comfort level of 11 miles per hour equivalent wind speed in areas of substantial pedestrian use and seven miles per hour equivalent wind speed in public seating areas.

When preexisting ambient wind speeds exceed the comfort level, or when a proposed building or addition may cause ambient wind speeds to exceed the comfort level, the building shall be designed to reduce the ambient wind speeds to meet the requirements. An exception may be granted, in accordance with the provisions of Section 309, allowing the building or addition to add to the amount of time that the comfort level is exceeded by the least practical amount if (1) it can be shown that a building or addition cannot be shaped and other wind-baffling measures cannot be adopted to meet the foregoing requirements without creating an unattractive and ungainly building form and without unduly restricting the development potential of the building site in question, and (2) it is concluded that, because of the limited amount by which the comfort level is exceeded, the limited location in which the comfort level is exceeded, or the limited time during which the comfort level is exceeded, the addition is insubstantial. No exception shall be granted and no building or addition shall be permitted that causes equivalent wind speeds to reach or exceed the hazard level of 26 miles per hour for a single hour of the year.

*Wind tunnel tests were performed for the proposed project and the results were provided to the Department via a report dated April 11, 2017. A total of 45 test point locations along sidewalk areas in the vicinity of the Project Site were selected for the purpose of analyzing existing and proposed wind levels.*

*The existing conditions at the Project Site indicate that 35 of the 45 test locations exceeded the Planning Code's pedestrian comfort level of 11 mph (more than 10 percent of the time) and three of the 45 locations exceeded the hazard level of 26 mph (for a single hour of the year). With the Project, 12 comfort exceedances would be increased, 13 would decrease, 20 would remain unchanged, and two new exceedances are created resulting in a total of 35 comfort exceedances. There are three hazardous wind speeds existing, and that number is reduced by two with by the Project. A Section 309 exception is being*

*sought because the Project creates a net increase of two comfort exceedances for a total of 35 locations that exceed the Planning Code's comfort criterion. The Commission may grant an exception to the requirements after considering the criteria specified in Section 148. Conformance with these criteria is discussed under item #7 below.*

- L. **Parking.** Planning Code Section 151.1 does not require any off-street parking spaces be provided, but instead provides maximum parking amounts based on land use type.

*Off-street parking would not be provided for the proposed commercial or residential use.*

- M. **Loading.** Planning Code Section 152 requires certain amounts of off-street freight loading space based on the type and size of uses in a project. For a retail use up to 10,000 gsf, no off-street loading spaces are required. Residential Uses above 100,000 gsf, require one off-street freight loading space.

*The gross floor area of the Project is approximately 153,000 sf and would require one full sized loading space which the project will not provide. The Project is seeking a 309 exception to Section 152 pursuant to Section 260(b)(1)(L), as permitted by the ordinance proposed under Case No. 2015-012994PCA/MAP and as outlined in Section 7 below.*

- N. **Bicycle Parking.** Planning Code Section 155.5 requires projects provide at least one Class 1 bicycle parking spaces per dwelling unit. One Class 2 space shall be provided per 20 units. Student Group Housing Units shall provide 25 Class 1 spaces plus one space for every five beds over 100 beds and two Class 2 spaces for every 100 beds, plus 50 percent. Institutional (Post-Secondary Education) uses shall provide one Class 1 space for every 20,000 square feet of Occupied Floor Area and one Class 2 space for every 10,000 square feet of Occupied Floor Area.

*The Project requires a minimum of 166 Class 1 bicycle parking spaces (30 for the dwellings; 134 for student housing; two for Institutional Uses; and one for retail uses ) and 20 Class 2 spaces (two for the dwellings; 12 for student housing; four for Institutional Uses; and two for retail uses). The basement would accommodate approximately 166 Class 1 bicycle parking spaces, and bicycle racks on the sidewalks would accommodate 20 Class 2 spaces.*

- O. **Car Share.** Planning Code Section 166 does not require any car-sharing spaces since there is no off-street parking proposed as part of this Project.

*The project has no off-street parking and therefore does not provide car-sharing spaces, and therefore complies with Section 166 of the Planning Code.*

- P. **Use.** Per Planning Code Section 210.2, within the C-3-G Zoning District, residential and retail uses are principally permitted and hotel uses require a Conditional Use Authorization.

*The residential, institutional, and retail uses of the Project would be consistent with the permitted Downtown General uses, pursuant to Planning Code Sections 210.2. The demolition of the existing 27 units requires Conditional Use Authorization under Planning Code Section 317. The Project is seeking a Conditional Use Authorization per Sections 210.2, 303, and 317 as part of the related Case No. 2015-012994CUA.*

- Q. **Height of Rooftop Appurtenances (Section 260).** Planning Code Section 260(b) exempts certain rooftop features from height limits, so long as such features do not exceed 20 percent of the horizontal area of the roof above which they are situated. Subject to the 20 percent horizontal limit, mechanical equipment and appurtenances necessary to the operation or maintenance of the building or structure itself and elevator, stair and mechanical penthouses are permitted up to 16 feet in height.

*The property is located in a 96-X Height and Bulk District and the project seeks a reclassification from 96-X to 120-X.*

*The Project would reach a height of approximately 120 feet to the cornice of the building, with various features such as elevator/stair penthouses, mechanical structures, and wind screens extending above the 120 feet in accordance with Planning Code Section 260(b). A portion of the performance space roof and mechanical screening slopes upward to 132 feet at the corner of Van Ness and Hayes, as permitted by the ordinance proposed under Case No. 2015-012994PCA/MAP that amends Section 260(b)(1)(L).*

- R. **Shadows on Parks.** Section 295 requires any project proposing a structure exceeding a height of 40 feet to undergo a shadow analysis in order to determine if the project would result in the net addition of shadow to properties under the jurisdiction of the Recreation and Park Department.

*Following completion of the preliminary shadow fan analysis prepared by the Planning Department, a detailed shadow study was prepared for the project. The nearest public open space to the project site that would be subject to Section 295 is Civic Center Plaza, which is located 400 feet northwest of the project site. The shadow study depicts the projected shadows in the morning and afternoon for each equinox and solstice for the project. The analysis concluded that the Project would not cast new shadow on Civic Center Plaza, and would not cast shadow on any other open space under the jurisdiction of, or designated to be acquired by the Recreation and Park Commission. As such, the Project is consistent with the provisions of Section 295 of the Planning Code.*

7. **Exceptions Requested Pursuant to Planning Code Section 309.** The Planning Commission has considered the following exceptions to the Planning Code, makes the following findings and grants each exception as further described below:

- a. **Section 134: 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 the first level containing a dwelling unit, and at every subsequent level. Per Section 134(d), exceptions to the rear yard requirements may be granted provided that the building location and configuration assure adequate light and air to the residential units and the open space provided.

*While the Project does not propose a rear yard and thus does not meet the strict requirements of the Planning Code, it does ensure adequate open space and allows sufficient light and air to reach the residential units. Section 134(d) allows for an exception from the strict application of these requirements through the Section 309 review process, provided that the building location and configuration assure adequate light and air to all residential units and to the usable open space areas.*

*All 30 dwelling units face the street, providing more than adequate access to light and air and have access to the 800 sf of open space in the courtyard, and are one block from the Civic Center Plaza open*



*space. Due to the adequate air and light and open space provided by the project, it is appropriate to grant an exception from the rear yard requirements of Planning Code Section 134.*

- b. **Section 135: Open Space.** Under Planning Code Section 135, the standard residential open space requirement is 36 sf per dwelling unit if the open space is private and 48 sf per dwelling unit if it is provided through common open space. For group housing units (here, student housing), the requirement is reduced to one-third of the otherwise required open space pursuant to Section 135(d)(2), which equals 16 sf per bedroom where there are a minimum of 2 beds per room.

Section 135(g)(1) sets forth the minimum dimensions of an open space, requiring that common usable open space shall be at least 15 feet in every horizontal dimension. The Project is seeking a 309 exception from the Dwelling Unit and Student Group Housing requirements of Section 135 pursuant to Section 260(b)(1)(L), as permitted by the ordinance proposed under Case No. 2015-012994PCA/MAP.

*The Project is required to provide 1,440 square feet of common open space for 30 dwelling units, and 3,360 sf of common open space for 420 student-housing beds in 113 student-housing units. The Project includes an 800 square-foot second floor courtyard devoted to the dwelling units, however due to its dimensions, it does not count towards Usable Open Space. The Project includes a 1,937 square-foot roof terrace devoted to the student housing, 1,391 square feet less open space than strictly required.*

*While the Project does not provide the minimum amount of open space required, the project increases the amount of open space to dwelling units from that of existing conditions, and provides an adequate roof-top deck for the new student housing units. Additionally, the project is located in an area with many public open spaces and is within on block of Civic Center Plaza. Granting the limited relief requested by this exception will not be materially detrimental to the public welfare or materially injurious to nearby land or improvements.*

- c. **Section 136(c): Obstructions Over Streets and Alleys.** Planning Code Section 136 outlines the requirements for features, which may be permitted over street, alleys, setbacks, yards or useable open space.

*The Project proposes bays projecting over Van Ness Avenue, Hayes Street and Tom Waddell Place and is seeking an exception to the requirements pursuant to Section 260(b)(1)(L), as permitted by the ordinance proposed under Case No. 2015-012994PCA/MAP.*

*The Project is designed in a modern aesthetic and has a publically accessible performance space on the 11th and 12th Levels. The performance space has minimum dimensions and proportions set by concert and acoustical requirements, necessitating a broader projection than is permitted by the Planning Code. The Project's envelope is constrained by the desire to replace 27 dwelling units on site and to avoid shadowing Civic Center Plaza as well as the acoustic and design requirements of a performance spaces in the Project.*

*Code-complying bays could result in projections totaling 6,732 sf, while the projections from the proposed bays would only be approximately 2,751 sf, approximately 40 percent of the square footage of Code-complying bay windows. This reduced amount of potential bay space demonstrates that the Project Sponsor is applying for this exception to promote visual interest in the Project and not to maximize the Project's square footage.*

*For all of these reasons, it is appropriate to grant an exception from the Obstructions over Streets and Alleys requirements of Planning Code Section 136.*

- d. **Section 148: Ground-Level Wind Currents.** In C-3 Districts, buildings and additions to existing buildings shall be shaped, or other wind-baffling measures shall be adopted, so that the developments will not cause ground-level wind currents to exceed more than 10 percent of the time year round, between 7:00 a.m. and 6:00 p.m., the comfort level of 11 miles per hour equivalent wind speed in areas of substantial pedestrian use and seven miles per hour equivalent wind speed in public seating areas.

When preexisting ambient wind speeds exceed the comfort level, or when a proposed building or addition may cause ambient wind speeds to exceed the comfort level, the building shall be designed to reduce the ambient wind speeds to meet the requirements. An exception may be granted, in accordance with the provisions of Section 309, allowing the building or addition to add to the amount of time that the comfort level is exceeded by the least practical amount if (1) it can be shown that a building or addition cannot be shaped and other wind-baffling measures cannot be adopted to meet the foregoing requirements without creating an unattractive and ungainly building form and without unduly restricting the development potential of the building site in question, and (2) it is concluded that, because of the limited amount by which the comfort level is exceeded, the limited location in which the comfort level is exceeded, or the limited time during which the comfort level is exceeded, the addition is insubstantial.

Section 309(a)(2) permits exceptions from the Section 148 ground-level wind current requirements. No exception shall be granted and no building or addition shall be permitted that causes equivalent wind speeds to reach or exceed the hazard level of 26 miles per hour for a single hour of the year.

*Independent consultants analyzed ground-level wind currents in the vicinity of the Project Site. A wind tunnel analysis, the results of which are included in a technical memorandum prepared by RWDI Consulting Engineers & Scientists, was conducted using a scale model of the Project Site and its immediate vicinity.*

#### **Comfort Criterion**

*In the Existing Configuration 33 of the 45 test points currently exceed the 11 mph criterion with wind speeds ranging from 7 to 20 mph across all test points. With the Project, there are two additional comfort exceedances at grade, ranging from 12 to 17 mph, maintaining the average wind speeds of approximately 13 mph. Additionally, one exceedance above grade would be created with an average wind speed of 19 mph. The range of wind speeds with the Project would be similar to existing conditions, with wind speeds in sidewalk pedestrian areas ranging from 8 to 20 mph.*

#### **Hazard Criterion**

*The current conditions on the Project Site were found to include three hazard exceedances where winds exceeded 36 mph; (1) along the West façade of the existing building, (2) at the intersection of Hayes and Polk Street, and (3) at the intersection of Hayes Street and Van Ness Avenue (Locations 6, 13 and 33, respectively).*

*The Project is expected to improve conditions at Locations 6 and 33 with winds reducing to 27 mph and 34 mph, respectively, to below the hazard criterion. The winds at Location 13 are expected to*

*increase to 38 mph and have an additional 2 hours per year of winds speeds, which exceed the hazard criterion. However, on an area-wide basis, the proposed building is expected to provide an overall reduction to the total number of exceeding hours per year from four to three.*

*An exception is justified under the circumstances, because the changes in wind speed and frequency due to the project are slight and unlikely to be noticeable. For the existing configuration in the vicinity of the project site, wind conditions were generally low with wind speeds averaging 13 mph for all 45 measurement locations. For the existing plus project configuration, wind speeds generally remained similar with the average wind speed for all test locations being maintained at 13mph. The 11mph criterion was exceeded 20% of the time, a 1% increase from existing conditions on and around the project site. With the proposed building, wind hazards were reduced from four to three.*

*In addition, the Project cannot be shaped or other incorporate other wind baffling measures that would reduce the wind at the exceedance locations to comply with Section 148(a) without creating an unattractive building or unduly restricting the development potential of the Project Site. The wind analysis demonstrates that (a) the proposed addition will not generate adverse pedestrian level winds given the nature of the built environment surrounding the proposed development, and that (b) there is no reason to believe that modification of the design would improve the existing windy conditions that occur in the vicinity. For the reasons discussed above, an exception from the comfort criterion is appropriate and hereby granted.*

- e. **Sections 152.1: Off-street Loading Requirements.** The Project requires an exception to the freight loading requirement because the proposed building would not include Code-compliant freight loading spaces. Section 152.1 establishes off-street freight loading requirements in the C-3 Districts. Additionally, Section 155 establishes general standards for the location and arrangement of off-street loading spaces. For the proposed 92,244 square-foot addition, one loading space would be required.

Under Section 309 of the Code, a waiver or a reduction of the freight loading requirements may be granted subject to consideration of the following criteria from Code Section 161(f):

- 1) Provision of freight loading and service vehicle spaces cannot be accomplished underground because site constraints will not permit ramps, elevators, turntables and maneuvering areas with reasonable safety;

*The site has frontage on Van Ness Avenue, Hayes Street and Dr. Tom Waddell Place. Van Ness Avenue is a Transit Preferential Street and freight loading access is prohibited on this street. It would also interfere with pedestrian traffic on the sidewalk. Similarly, Hayes Street has the 21 Hayes Muni line, and is not appropriate for a freight dock or ramp. Dr. Tom Waddell Place is 35' wide. Its narrow width precludes maneuvering a full-sized truck on the site. No surface or subsurface parking is proposed, and a loading dock would be difficult to accommodate on the ground floor without constraining other uses, including the lobby, retail and performance spaces. Similarly, the substitution of two service vehicle spaces would require multiple freight loading doors, making it difficult to maintain the ground floor transparency requirements and deadening the streetscape.*

- 2) Provision of the required number of freight loading and service vehicle spaces on-site would result in the use of an unreasonable percentage of ground-floor area, and

thereby preclude more desirable use of the ground floor for retail, pedestrian circulation or open space uses;

*As discussed above, the ground floor is constrained by the lobbies for both student housing and replacement housing units, a performance space, a retail/restaurant space and back of house service uses. Freight loading spaces would eliminate these more publicly oriented uses.*

- 3) A jointly-used underground facility with access to a number of separate buildings and meeting the collective needs for freight loading and service vehicles for all uses in the buildings involved, cannot be provided;

*There are no possibilities for a jointly used freight loading facility.*

- 4) Spaces for delivery functions can be provided at the adjacent curb without adverse effect on pedestrian circulation, transit operations or general traffic circulation, and off-street space permanently reserved for service vehicles is provided either on-site or in the immediate vicinity of the building;

*The Project will reconfigure Dr. Tom Wadell Place to accommodate on-street loading spaces adjacent to the site. There is curbside metered parking on the north side of Dr. Tom Waddell Place. Six of these metered spaces on the western end of Dr. Tom Waddell Place will be removed, the cartway will be shifted north, and the south side will have a sidewalk bulbing and two on-street loading spaces. This will have no negative effect on pedestrian circulation, transit operations or general traffic circulation.*

*For all of these reasons, it is appropriate to grant, an exception from the Freight Loading requirements pursuant to Planning Code Section 161(e).*

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

## HOUSING ELEMENT

### OBJECTIVE 1:

IDENTIFY AND MAKE AVAILABLE FOR DEVELOPMENT ADEQUATE SITES TO MEET THE CITY'S HOUSING NEEDS, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING.

#### Policy 1.3

Work proactively to identify and secure opportunity sites for permanently affordable housing.

*The Project Sponsor is an educational institution that is working to meet its own student housing needs through the Project and has an accepted Abbreviated Institutional Master Plan on file with the Planning Department. By providing housing for its own students and replacing the existing dwelling units, the project meets this goal.*

#### Policy 1.8

Promote mixed use development, and include housing, particularly permanently affordable housing, in new commercial, institutional or other single use development projects.

**Policy 1.9**

Require new commercial developments and higher educational institutions to meet the housing demand they generate, particularly the need for affordable housing for lower income workers and students.

*The Project supports these Policies. The proposed Project would construct a significant amount of new student housing units within an existing urban environment that is in need of more access to housing. The Project proposes to demolish two two-to three-story and construct a mixed-use building that includes replacement housing units that are subject to the Rent Control Ordinance.*

**OBJECTIVE 2:**

RETAIN EXISTING HOUSING UNITS, AND PROMOTE SAFETY AND MAINTENANCE STANDARDS, WITHOUT JEOPARDIZING AFFORDABILITY.

**Policy 2.4**

Promote improvements and continued maintenance to existing units to ensure long term habitation and safety.

*The Project supports this Policy by replacing the existing housing units with a structure that is more sound than the existing structure.*

**OBJECTIVE 3:**

PROTECT THE AFFORDABILITY OF THE EXISTING HOUSING STOCK, ESPECIALLY RENTAL UNITS.

**Policy 3.1**

Preserve rental units, especially rent controlled units, to meet the City's affordable housing needs.

*The Project supports this policy through building replacement housing and relocating the tenants. The Project includes a Replacement Housing and Interim Housing Relocation Plan, which, among other things, provides that the existing tenants will be provided with equivalent-sized units at the same rents, and provided with similar interim housing and relocation assistance during Project construction as more specifically provided in the Development Agreement.*

**ARTS ELEMENT**

**OBJECTIVE IV-1**

ADVOCATE AND ASSIST IN PROVIDING ARTS EDUCATION PROGRAMMING AT ALL LEVELS.

**Policy IV-1.1**

Advocate for arts education opportunities for all residents of San Francisco.

*The Project satisfies POLICY IV-1.1 through providing a high-quality arts education at all levels. SFCM provides arts education opportunities for San Franciscans, as well as students and patrons from around the world. It is a nationally recognized music conservatory.*

- *SFCM provides nearly 500 performances each year, 90% of which are free and open to the public. A consistent flow of public workshops and seminars add to the offerings of SFCM's growing outreach initiatives.*
- *SFCM Community Service Program provides live music for schools, hospitals, retirement homes, and children's facilities among others.*

*The Conservatory in the Schools Program provides SFCM students with invaluable classroom training while supporting music education in San Francisco's public school system. Student mentors teach instrumental lessons, lead sectionals, coach chamber groups, and assist classroom teachers. Each year, student interns assist classroom teachers in instructing over 1,600 students at local elementary, middle, and high schools.*

#### **OBJECTIVE VI-1**

**SUPPORT THE CONTINUED DEVELOPMENT AND PRESERVATION OF ARTISTS' AND ARTS ORGANIZATIONS' SPACES.**

##### **Policy VI-1.10**

Assist artists and arts organizations in attaining ownership or long-term control of arts spaces.

*The Project supports POLICY VI-1.10 by allowing an arts organization to provide its own student housing and performance spaces in close proximity to its main building, strengthening the organization.*

##### **Policy VI-1.11**

Identify, recognize, and support existing arts clusters and, wherever possible, encourage the development of clusters of arts facilities and arts related businesses throughout the city.

*The Project supports POLICY VI-1.11 by improving and supporting the Civic Center arts cluster and the SFCM campus. The Project will promote and expand upon the existing synergy between the SF Symphony, SF Ballet, SF Jazz Center and the SF Opera. Many of the professional musicians in the music corps of these institutions teach at SFCM. Providing student housing with supportive educational facilities in proximity to the SFCM campus at 50 Oak Street will enable a more integrated and efficient education for the students. Additional performance and practice spaces will allow more flexibility for the professional performing arts groups.*

### **URBAN DESIGN ELEMENT**

#### **OBJECTIVE 3:**

**MODERATION OF MAJOR NEW DEVELOPMENT TO COMPLEMENT THE CITY PATTERN, THE RESOURCES TO BE CONSERVED, AND THE NEIGHBORHOOD ENVIRONMENT.**

##### **Policy 3.1**

Promote harmony in the visual relationships and transitions between new and older buildings.

##### **Policy 3.2**

Avoid extreme contrasts in color, shape and other characteristics which will cause new buildings to stand out in excess of their public importance.

##### **Policy 3.6**

Relate the bulk of buildings to the prevailing scale of development to avoid an overwhelming or dominating appearance in new construction.

*SFCM is a civic institution with public uses that deserves a more prominent design than a private, purely residential building but without creating extreme contrasts or being overtly expressive. The building must acknowledge the importance of its location within the Civic center cultural precinct and the inherent quality of the historic buildings as well as the more modern performance institutions. Accordingly, the public rooftop performance space is prominently signaled on the exterior as an identifying beacon on the skyline, visible by day and by night when performances are underway. The ground floor recital hall at the corner of Hayes and Van Ness is acknowledged in a subtler manner but is glassy and transparent so that the activity within is clearly signaled, similar to SF Jazz. The main body of the building, encompassing the student housing and residential units, is more restrained and reserved as described in Policy 15.1.*

## **TRANSPORTATION ELEMENT**

### **OBJECTIVE 2:**

USE THE TRANSPORTATION SYSTEM AS A MEANS FOR GUIDING DEVELOPMENT AND IMPROVING THE ENVIRONMENT.

#### **Policy 1.2:**

Use rapid transit and other transportation improvements in the city and region as the catalyst for desirable development, and coordinate new facilities with public and private development.

*The Project is located within an existing high-density urban context. The project area has a multitude of transportation options including the adjacent to multiple bus lines (47, 49 and 21), and the proposed Van Ness BRT. It is three short blocks from the Van Ness/Market Muni Metro Station, with 6 Muni Metro lines and multiple bus lines and the F-Street Car. The Project is also close to other bus lines such as the 5/5R, 9/9R and 19. The Project occupants would make good use of the existing transit services available in this area and would assist in maintaining the desirable urban characteristics and services of the area. The Project proposes no off-street parking, encouraging users of the building to seek transportation options other than private automobile use.*

## **DOWNTOWN AREA PLAN**

### **OBJECTIVE 1:**

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

#### **Policy 1.1**

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

*The Project satisfies Policy 1.1 by will bring additional housing, educational and performance space in a neighborhood that is well served by public transit on the in the Civic Center area. The Project will create substantial net benefits for the City without any undesirable consequences that cannot be mitigated.*

### **OBJECTIVE 7:**

EXPAND THE SUPPLY OF HOUSING IN AND ADJACENT TO DOWNTOWN.

#### **Policy 7.1**

Promote the inclusion of housing in downtown commercial developments.

**Policy 7.2**

Facilitate conversion of underused industrial and commercial areas to residential use.

*The Project supports Policies 7.1 and 7.2 by constructing a twelve-story, residential and student housing building, with educational facilities, thereby increasing the City's limited supply of housing by replacing existing housing on-site in-kind and adding 420 student beds and relieving pressure of the City's housing stock. The existing site is underused, being occupied by low scale commercial and residential buildings.*

9. **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 complies 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 existing buildings do not have a retail presence. The Project includes a 2,900 sf restaurant and a student cafe/lounge of 1,610 square feet, which will enhance resident employment. The increased employment on site and visitors attracted to the area will support existing retail ownership and employment. Thus, the Project will enhance retail employment in the area.*

- 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 27 units at 200 Van Ness Avenue will be replaced on-site in a modern building and current tenants will be offered the opportunity to return to the site. The expansion of the Conservatory of Music will add to the cultural diversity of the Civic Center neighborhood. Thus, the Project will enhance existing housing and neighborhood character.*

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

*The existing 27 units at 200 Van Ness Avenue will be replaced onsite in a modern building and current tenants will be offered the opportunity to return to the site. The creation of 420 student beds will relieve pressure on the City's affordable housing stock, as the students will vacate existing, likely affordable, dwelling units. Thus, the Project will enhance the City's supply of affordable housing.*

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

*There would be very little commuter traffic caused by school employees or the students. The students and employees would primarily come to the Project during off-peak hours. The creation of 420 student beds in close proximity to the Conservatory's main building at 50 Oak Street will mean that the students will walk between classes and their housing rather using private vehicles or Muni. The Project does not include any parking, thus reducing or eliminating vehicular conflicts with Muni, streets or pedestrians. Thus, there would be no negative effect upon Muni, streets or neighborhood parking.*

- 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 does not propose any office development.*



- 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.*

- G. That landmarks and historic buildings be preserved.

*There are no landmarks or historic structures on the site.*

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

*The project will cast no shadows on Civic Center Plaza, the only Rec/Park property or substantial open space in the area. The top of the Project will be visible from Civic Center Plaza, but will not obstruct any vistas. Thus, parks and open space will be protected from shadow.*

*No other significant public or private open spaces – including those not protected by Section 295 – would be affected by shadows created by the Project and therefore the project complies with Section 147.*

10. 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.
11. The Commission hereby finds that approval of the Downtown Project Authorization and Request for Exceptions would promote the health, safety and welfare of the City.

**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 Downtown Project Authorization Application No. 2015-012994DNX**, subject to the following conditions attached hereto as “EXHIBIT A” in general conformance with plans on file, dated January 24, 2018, and stamped “EXHIBIT B” attached to Case No. 2015-012994DNX, which is incorporated herein by reference as though fully set forth.

The Planning Commission hereby adopts the MMRP attached hereto as Exhibit C and incorporated herein as part of this Motion by this reference thereto. All required mitigation measures contained in the MMRP are included as conditions of approval.

**APPEAL AND EFFECTIVE DATE OF MOTION:** Any aggrieved person may appeal this Section 309 Determination of Compliance and Request for Exceptions to the Board of Appeals within fifteen (15) days after the date of this Motion. The effective date of this Motion shall be the date of this Motion if not appealed OR the date of the decision of the Board of Appeals if appealed to the Board of Appeals. For further information, please contact the Board of Appeals in person at 1650 Mission Street, Room 304, San Francisco, CA 94103, or call (415) 575-6880.

**Protest of Fee or Exaction:** You may protest any fee or exaction subject to Government Code Section 66000 that is imposed as a condition of approval by following the procedures set forth in Government Code Section 66020. The protest must satisfy the requirements of Government Code Section 66020(a) and must be filed within 90 days of the date of the first approval or conditional approval of the development referencing the challenged fee or exaction. For purposes of Government Code Section 66020, the date of imposition of the fee shall be the date of the earliest discretionary approval by the City of the subject development.

If the City has not previously given Notice of an earlier discretionary approval of the project, the Planning Commission’s adoption of this Motion constitutes conditional approval of the development and the City hereby gives **NOTICE** that the 90-day protest period under Government Code Section 66020 has begun. If the City has already given Notice that the 90-day approval period has begun for the subject development, then this document does not re-commence the 90-day approval period.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on February 8, 2018.

Jonas P. Ionin  
Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED: February 8, 2018

## **EXHIBIT A**

### **AUTHORIZATION**

This authorization is for a **Downtown Project Authorization and Request for Exceptions** related to the construction of a 12-story, 120-foot tall, 168,200 square-foot mixed-use building for an educational institution. The project would include 113 student group housing units (420 beds), 30 dwelling units (27 replacement units and 3 new units for faculty), approximately 49,600 square feet of educational and performance space, 4,320 square feet of broadcasting studio space, and 2,600 square feet of ground-floor restaurant/retail space at 200 Van Ness Avenue (Block 0811, and Lots 010 and 012), pursuant to **Planning Code Section 309 and 148, 134, 135, 136, 140, 145.1, 148, and 161** within the C-3-G Zoning District and the 96-X Height and Bulk district; in general conformance with plans, dated **January 24, 2018**, and stamped “EXHIBIT B” included in the docket for Case No. **2015-012994DNX** and subject to conditions of approval reviewed and approved by the Commission on **February 8, 2018** under Motion No. XXXX. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

### **COMPLIANCE WITH OTHER REQUIREMENTS**

The Conditional Use Authorization Findings set forth in Motion No. XXXXX, Case No. 2015-012994CUA (Conditional Use Authorization, pursuant to planning code section 303) apply to this motion, and are incorporated herein as though fully set forth.

### **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 8, 2018** under Motion No. XXXX.

### **PRINTING OF CONDITIONS OF APPROVAL ON PLANS**

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. XXXX 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 Downtown Project 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 Downtown Project Authorization.

## Conditions of Approval, Compliance, Monitoring, and Reporting

### PERFORMANCE

1. **Validity.** The authorization and right vested by virtue of this action is valid for three (3) years from the effective date of the Motion. The Department of Building Inspection shall have issued a Building Permit or Site Permit to construct the Project and/or commence the approved use within this three-year period.  
*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*
2. **Expiration and Renewal.** Should a Building or Site Permit be sought after the three (3) year period has lapsed, the Project Sponsor must seek a renewal of this Authorization by filing an application for an amendment to the original Authorization or a new application for Authorization. Should the Project Sponsor decline to so file, and decline to withdraw the permit application, the Commission shall conduct a public hearing in order to consider the revocation of the Authorization. Should the Commission not revoke the Authorization following the closure of the public hearing, the Commission shall determine the extension of time for the continued validity of the Authorization.  
*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*
3. **Diligent pursuit.** Once a Site or Building Permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. Failure to do so shall be grounds for the Commission to consider revoking the approval if more than three (3) years have passed since this Authorization was approved.  
*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*
4. **Extension.** All time limits in the preceding three paragraphs may be extended at the discretion of the Zoning Administrator where implementation of the Project is delayed by a public agency, an appeal or a legal challenge and only by the length of time for which such public agency, appeal or challenge has caused delay.  
*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*
5. **Conformity with Current Law.** No application for Building Permit, Site Permit, or other entitlement shall be approved unless it complies with all applicable provisions of City Codes in effect at the time of such approval.  
*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*
6. **Additional Project Authorization.** The Conditions of Approval set forth in Exhibit A of Motion No. 19500, Case No. 2015-012994CUA (Conditional Use Authorization) apply to this approval, and are incorporated herein as though fully set forth, except as modified herein. 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.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

7. **Improvement and Mitigation Measures.** Improvement and Mitigation measures described in the MMRP attached as **Exhibit C** are necessary to avoid potential significant impacts of the Project and have been agreed to by the Project Sponsor. Their implementation is a condition of Project approval. *For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

## DESIGN – COMPLIANCE AT PLAN STAGE

8. **Final Materials.** The Project Sponsor shall continue to work with Planning Department on the building design. Final materials, glazing, color, texture, landscaping (including roof deck 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](http://www.sf-planning.org)*
9. **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](http://www.sf-planning.org)*
10. **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](http://www.sf-planning.org)*
11. **Streetscape Elements.** 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 required Streetscape features so that it generally meets the standards of the Better Streets and Downtown Plans, as well as all applicable City standards. This includes, but is not limited to the use of the standard downtown paving pattern (dark grey concrete silicate carbonate, 3' scoring), and pedestrian-oriented street lighting. The Project Sponsor shall complete final design of all required street improvements, including procurement of relevant City permits, prior to issuance of the 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](http://www.sf-planning.org)*

- 12. Lighting Plan.** The Project Sponsor shall submit an exterior lighting plan to the Planning Department prior to Planning Department approval of the site permit application.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

- 13. 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 compliment, 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](http://www.sf-planning.org)*

- 14. 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:

- a. 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;
- b. On-site, in a driveway, underground;
- c. On-site, above ground, screened from view, other than a ground floor façade facing a public right-of-way;
- d. 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;
- e. Public right-of-way, underground; and based on Better Streets Plan guidelines;
- f. Public right-of-way, above ground, screened from view; and based on Better Streets Plan guidelines;
- g. 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>*

- 15. 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](http://www.sfdph.org)*

- 16. 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](http://www.sfmta.org)*

## **PARKING AND TRAFFIC**

- 17. Bicycle Parking.** Pursuant to Planning Code Sections 155.2, the project shall provide 166 Class 1 bicycle parking spaces (30 for the dwellings; 134 for student housing; two for Institutional Uses; and one for retail uses ) and 20 Class 2 spaces (two for the dwellings; 12 for student housing; four for Institutional Uses; and two for retail uses).  
*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*
- 18. 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](http://www.sf-planning.org)*
- 19. Transportation Demand Management (TDM) Program.** Pursuant to Planning Code Section 169, the Project shall finalize a TDM Plan prior to the issuance of the first Building Permit or Site Permit to construct the project and/or commence the approved uses. The Property Owner, and all successors, shall ensure ongoing compliance with the TDM Program for the life of the Project, which may include providing a TDM Coordinator, providing access to City staff for site inspections, submitting appropriate documentation, paying application fees associated with required monitoring and reporting, and other actions.

Prior to the issuance of the first Building Permit or Site Permit, 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 to document compliance with the TDM Program. This Notice shall provide the finalized TDM Plan for the Project, including the relevant details associated with each TDM measure included in the Plan, as well as associated monitoring, reporting, and compliance requirements.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

## **PROVISIONS**

- 20. Anti-Discriminatory Housing.** The Project shall adhere to the requirements of the Anti-Discriminatory Housing policy, pursuant to Administrative Code Section 1.61.  
*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*
- 21. Number of Replacement Units.** The Project will replace the 27 existing units at the Project Site, as more fully detailed in the Development Agreement.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

- 22. Unit Location.** The replacement units shall be designated on a reduced set of plans recorded as a Notice of Special Restrictions on the property prior to the issuance of the first construction permit.  
*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*
- 23. 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](http://www.onestopSF.org)*
- 24. Transportation Sustainability Fee.** Pursuant to Planning Code Section 411A, the Project Sponsor shall pay the Transportation Sustainability Fee (TSF) based on drawings submitted with the Building Permit Application if applicable. The fee shall be paid prior to the issuance of the first construction document.  
*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*
- 25. Child Care Fee - Residential.** The Project is subject to the Residential Child Care Fee, as applicable, pursuant to Planning Code Section 414A.  
*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*
- 26. Art.** The Project is subject to the Public Art Fee, as applicable, pursuant to Planning Code Section 429.  
*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*
- 27. Art Plaques.** Pursuant to Planning Code Section 429(b), the Project Sponsor shall provide a plaque or cornerstone identifying the architect, the artwork creator and the Project completion date in a publicly conspicuous location on the Project Site. The design and content of the plaque shall be approved by Department staff prior to its installation.  
*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*
- 28. Art.** Pursuant to Planning Code Section 429, the Project Sponsor and the Project artist shall consult with the Planning Department during design development regarding the height, size, and final type of the art. The final art concept shall be submitted for review for consistency with this Motion by, and shall be satisfactory to, the Director of the Planning Department in consultation with the Commission. The Project Sponsor and the Director shall report to the Commission on the progress of the development and design of the art concept prior to the submittal of the first building or site permit application



*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

29. **Art.** Pursuant to Planning Code Section 429, prior to issuance of any certificate of occupancy, the Project Sponsor shall install the public art generally as described in this Motion and make it available to the public. If the Zoning Administrator concludes that it is not feasible to install the work(s) of art within the time herein specified and the Project Sponsor provides adequate assurances that such works will be installed in a timely manner, the Zoning Administrator may extend the time for installation for a period of not more than twelve (12) months.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

30. **Art - Residential Projects.** Pursuant to Planning Code Section 429 as applicable, the Project Sponsor must provide on-site artwork, pay into the Public Artworks Fund, or fulfill the requirement with any combination of on-site artwork or fee payment as long as it equals one percent of the hard construction costs for the Project as determined by the Director of the Department of Building Inspection. The Project Sponsor shall provide to the Director necessary information to make the determination of construction cost hereunder. Payment into the Public Artworks Fund is due prior to issuance of the first construction document.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

## MONITORING - AFTER ENTITLEMENT

31. **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](http://www.sf-planning.org)*

32. **Monitoring.** The Project requires monitoring of the conditions of approval in this Motion. The Project Sponsor or the subsequent responsible parties for the Project shall pay fees as established under Planning Code Section 351(e) (1) and work with the Planning Department for information about compliance.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

33. **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](http://www.sf-planning.org)*

- 34. Student Housing & MOH Monitoring.** Per Planning Code Section 415, the Project is required to provide information to the Mayor's Office of Housing (MOH) as follows:

The Mayor's Office of Housing (MOH) is authorized to monitor this program. MOH shall develop a monitoring form and annual monitoring fee to be paid by the owner of the real property or the Post-Secondary Educational Institution or Religious Institutions, as defined in Section 102 of this Code. The owner of the real property and each Post-Secondary Educational Institution or Institutions shall agree to submit annual documentation to the Mayor's Office of Housing (MOH) and the Planning Department, on or before December 31 of each year, that addresses the following:

- i. Evidence that the Post-Secondary Educational Institution continues to own or otherwise control the Student Housing project under a master lease or other contractual agreement with at least a 5 year term, including a certificate from the owner of the real property and the Post-Secondary Educational Institution attaching a true and complete copy of the master lease or other contractual agreement (financial information may be redacted) and certifying that the lease or contract has not otherwise been amended or terminated; and
- ii. Evidence, on an average annualized basis, of the percentage of students in good standing enrolled at least half time or more in the post-secondary Educational Institution or Institutions who are occupying the beds or accessory living space in the Student Housing project; and
- iii. The owner of the real property records a Notice of Special Restrictions (NSR) against fee title to the real property on which the Student Housing is located that states the following:
  - The Post-Secondary Educational Institution, or the owner of the real property on its behalf, must file a statement with the Department if it intends to terminate the Student Housing project at least 60 days before it terminates such use ("statement of termination");
  - The Student Housing project becomes subject to the Inclusionary Housing Ordinance requirements applicable to Housing Projects other than Qualified Housing Projects if (1) a Post-Secondary Educational Institution files a statement of termination with the Department and another post-secondary Educational Institution or Institutions have not been substituted or obligated to meet the requirements of this section; or (2) the owner of the real property or the post-secondary Educational Institution fails to file a statement of termination and fails to meet the requirements for a Student Housing project, then within not more than one year of a Notice Of Violation issued by the Planning Department;
  - If units in a Student Housing project become subject to the Inclusionary Housing Ordinance then the owner of those units shall (1) pay the Affordable Housing Fee plus interest from the date the project received its first construction document for the project if there is no evidence the Project ever qualified as Student Housing or, if Student Housing was provided and occupied, then the Affordable Housing Fee with no interest is due on the date the units were no longer occupied by qualifying households and interest would accrue from that date if the fee is not paid; or (2) provide the required number of on-site affordable units required at time of original project approval and that those units shall be subject to all of the requirements of this Program. In this event, the owner of the real property shall record a new NSR providing that the designated units must comply with all of the requirements of this Program.

- The Post-Secondary Educational Institution is required to report annually as required in Subsection (C) above;
- The City may commence legal action against the owner and/or Post-Secondary Educational Institution to enforce the NSR and the terms of Article IV of the Planning Code and Planning Code Section 415et seq. if it determines that the project no longer meets the requirements for a Student Housing project; and
- The Student Housing project may be inspected by any City employee to determine its status as a Student Housing project and its compliance with this Section at any time upon at least 24 hours' prior notice to the owner of the real property or to the master lessee.

## OPERATION

- 35. 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>*

- 36. 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 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](http://www.sf-planning.org)*

- 37. 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>*

- 38. 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](http://www.sfdph.org)*

*For information about compliance with the construction noise, contact the Department of Building Inspection, 415-558-6570, [www.sfdbi.org](http://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](http://www.sf-police.org)*

39. **Lighting.** All Project lighting shall be directed onto the Project site and immediately surrounding sidewalk area only, and designed and managed so as not to be a nuisance to adjacent residents. Nighttime lighting shall be the minimum necessary to ensure safety, but shall in no case be directed so as to constitute a nuisance to any surrounding property.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

THIS PAGE INTENTIONALLY LEFT BLANK

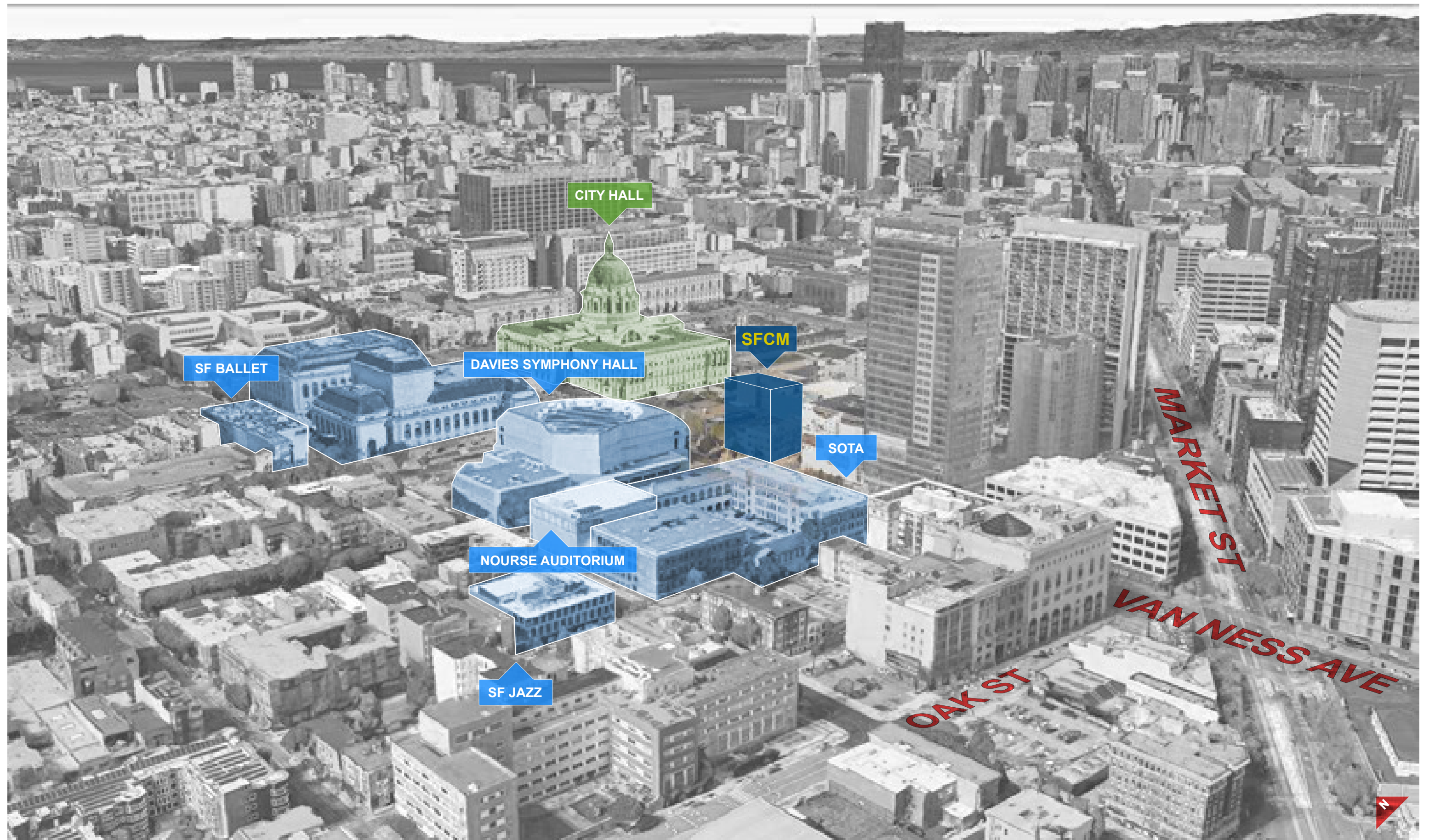
# **EXHIBIT 5.B:**

PROJECT PLANS AND RENDERINGS

# SAN FRANCISCO CONSERVATORY OF MUSIC

UPDATED PLANNING DRAWINGS

JANUARY 23, 2018

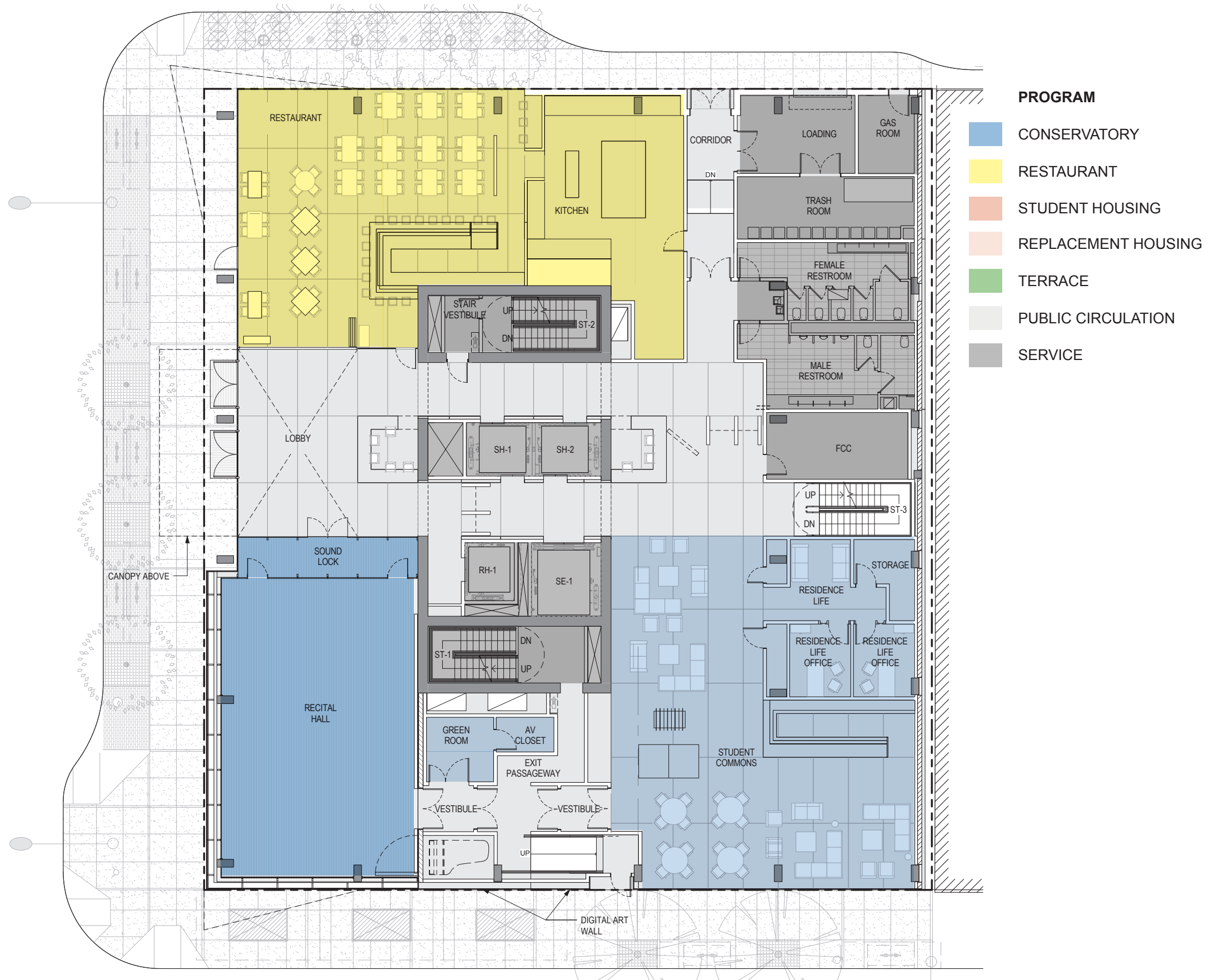


















VIEW OF STUDENT CENTER ON HAYES STREET

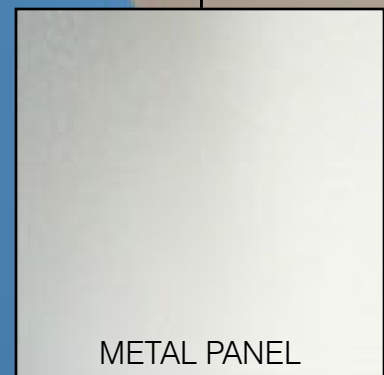












METAL PANEL



BACK PAINTED GLASS



IGU



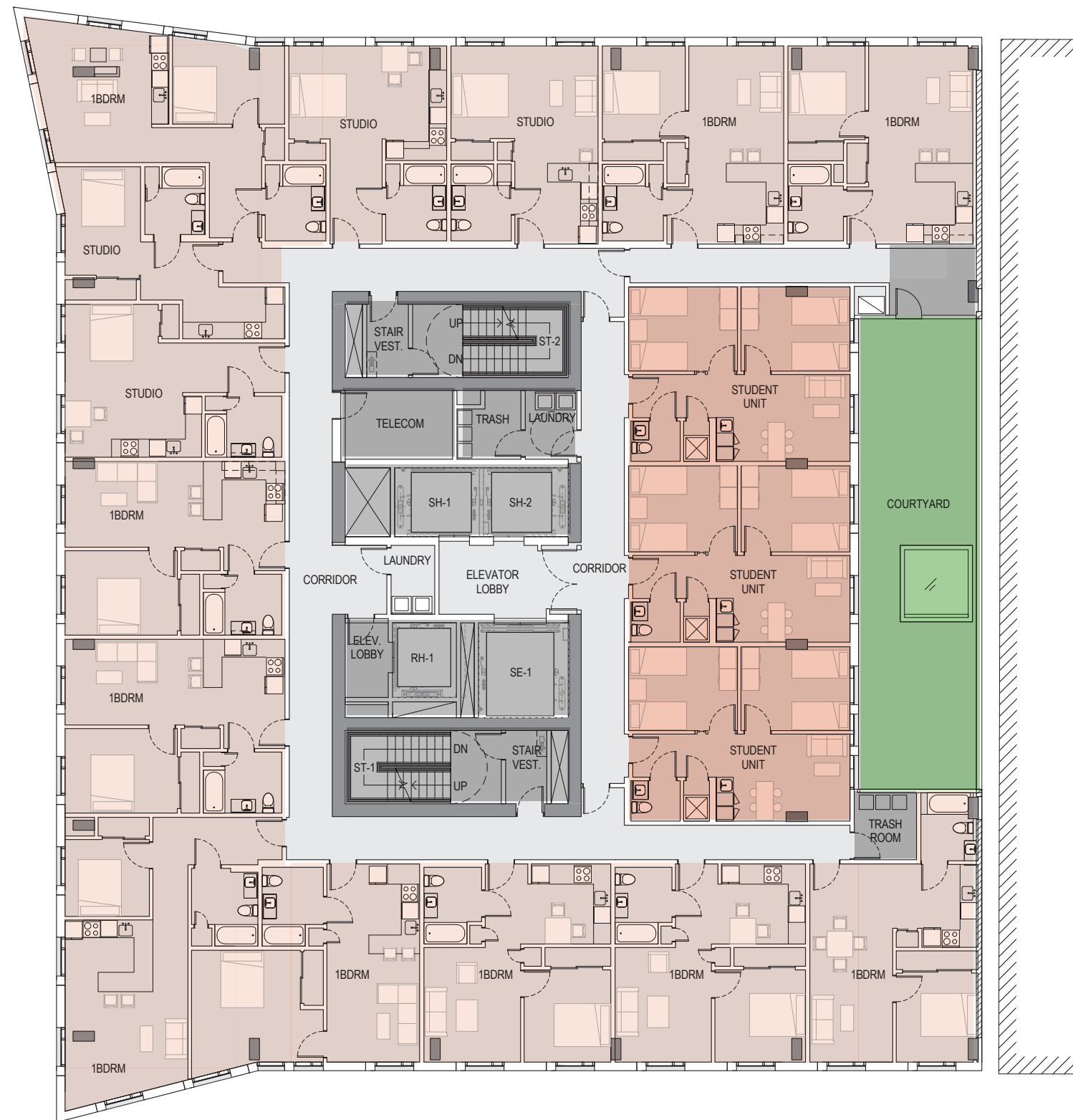
TRANSLUCENT IGU



HORIZONTAL FRITTED  
IGU





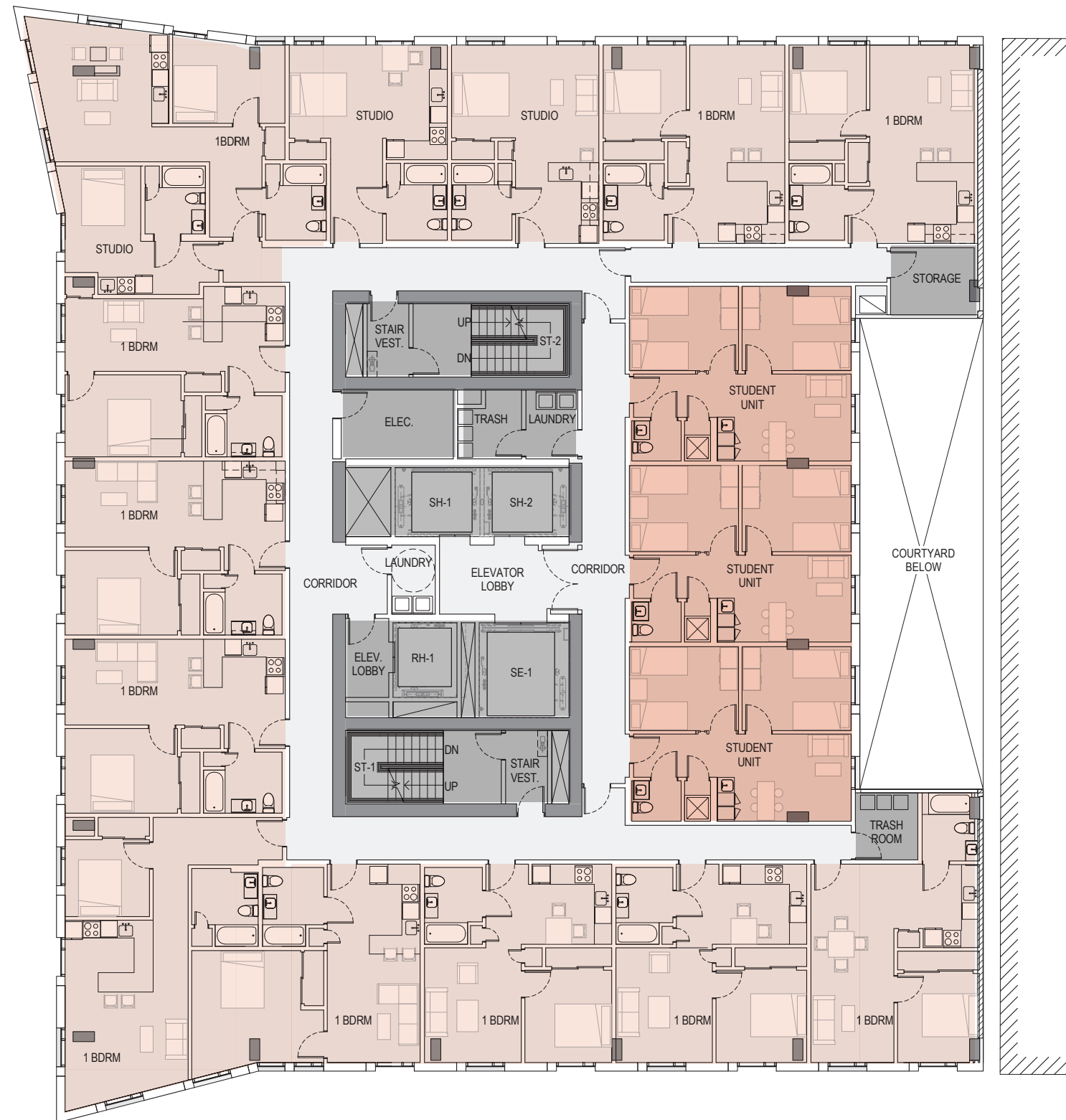


# PROGRAM

- CONSERVATORY
- RESTAURANT
- STUDENT HOUSING
- REPLACEMENT HOUSING
- TERRACE
- PUBLIC CIRCULATION
- SERVICE







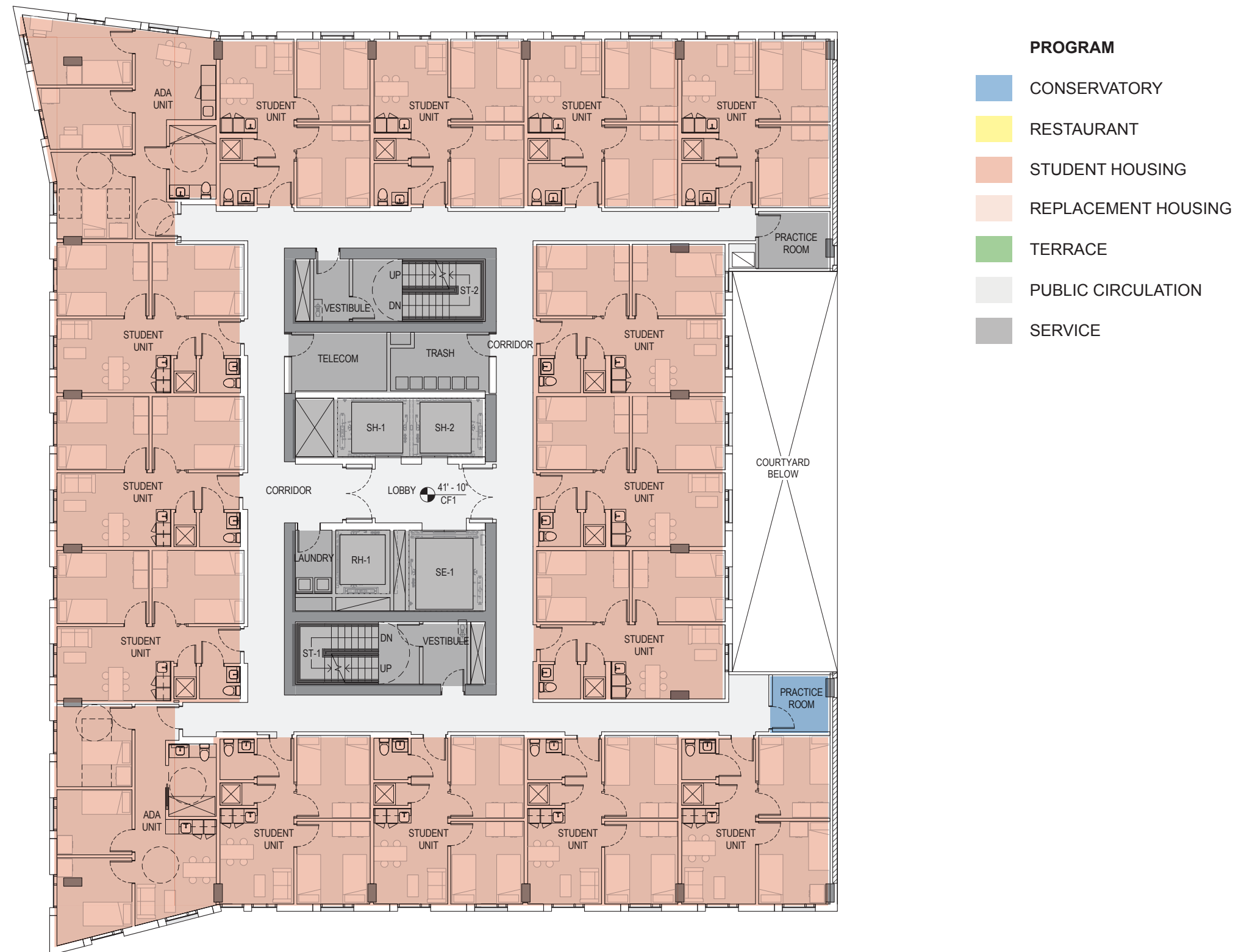
- PROGRAM**
- CONSERVATORY
  - RESTAURANT
  - STUDENT HOUSING
  - REPLACEMENT HOUSING
  - TERRACE
  - PUBLIC CIRCULATION
  - SERVICE

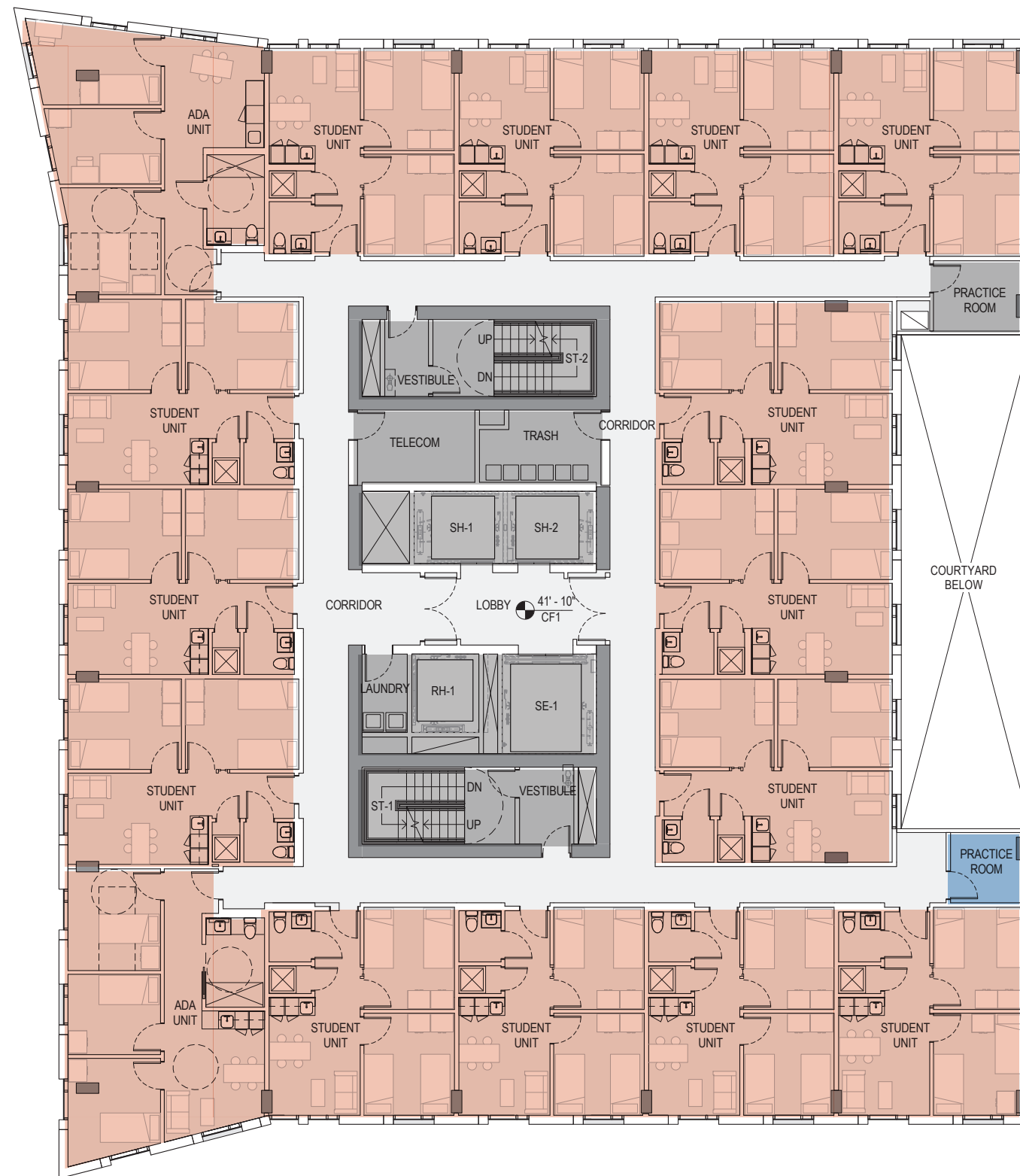






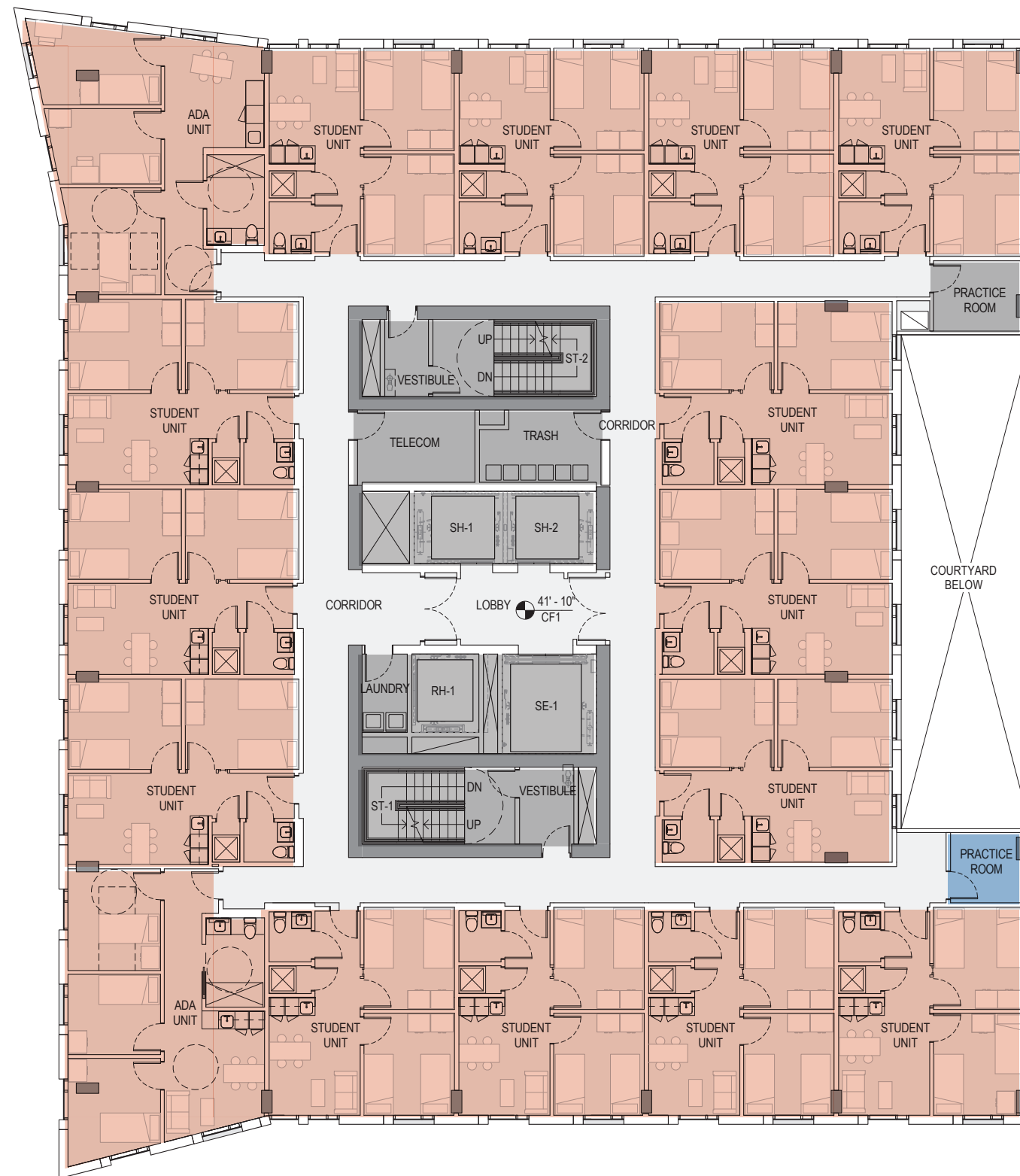






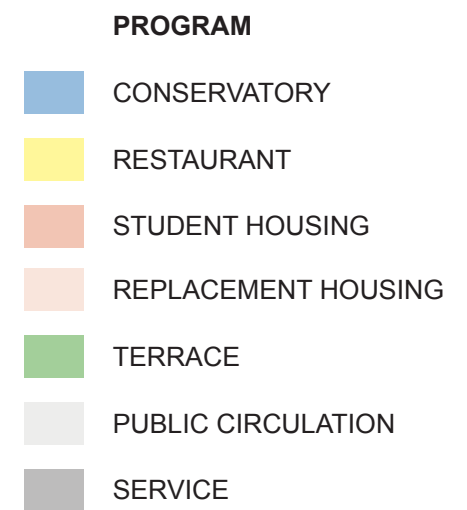
- PROGRAM**
- CONSERVATORY
  - RESTAURANT
  - STUDENT HOUSING
  - REPLACEMENT HOUSING
  - TERRACE
  - PUBLIC CIRCULATION
  - SERVICE

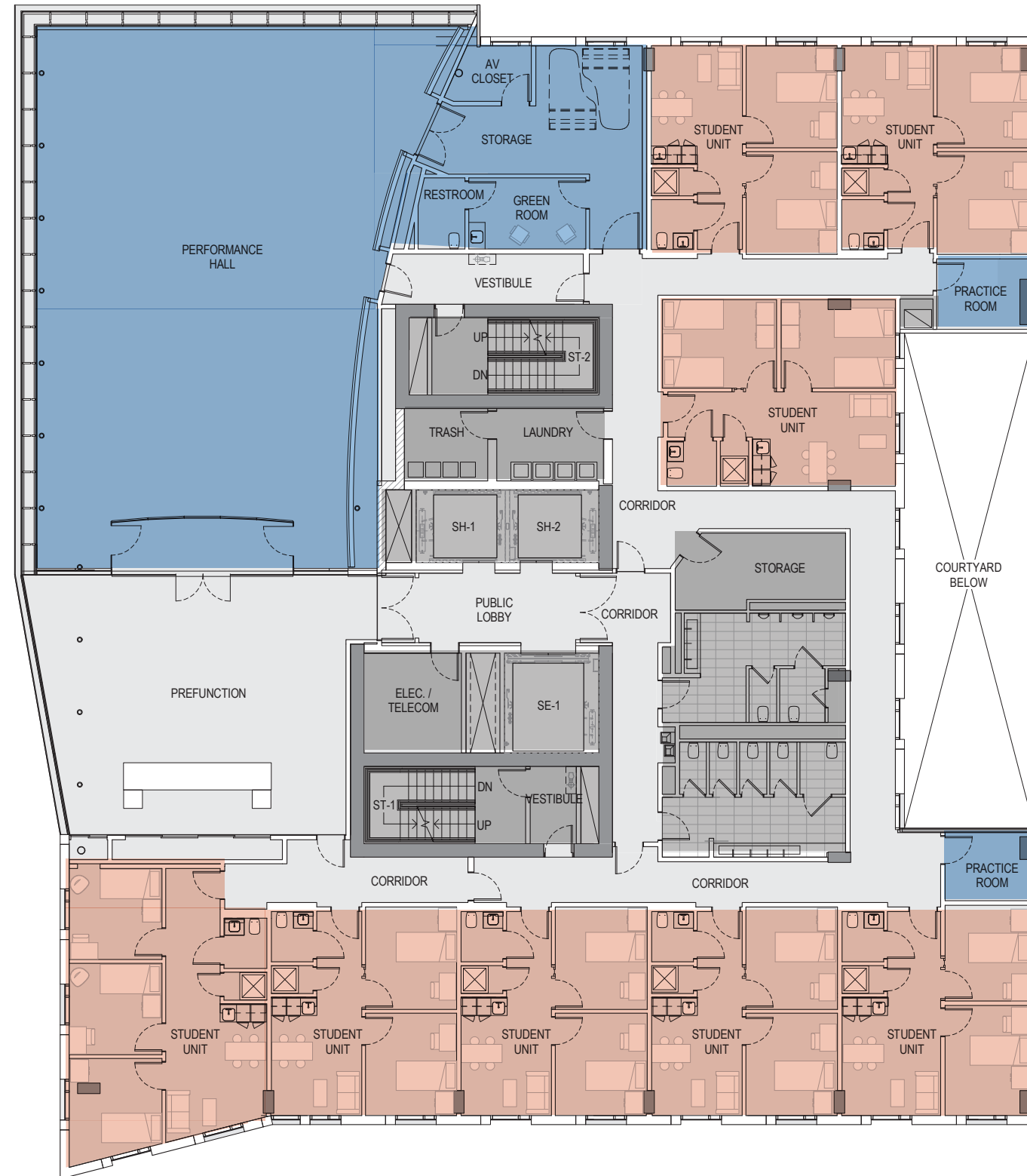
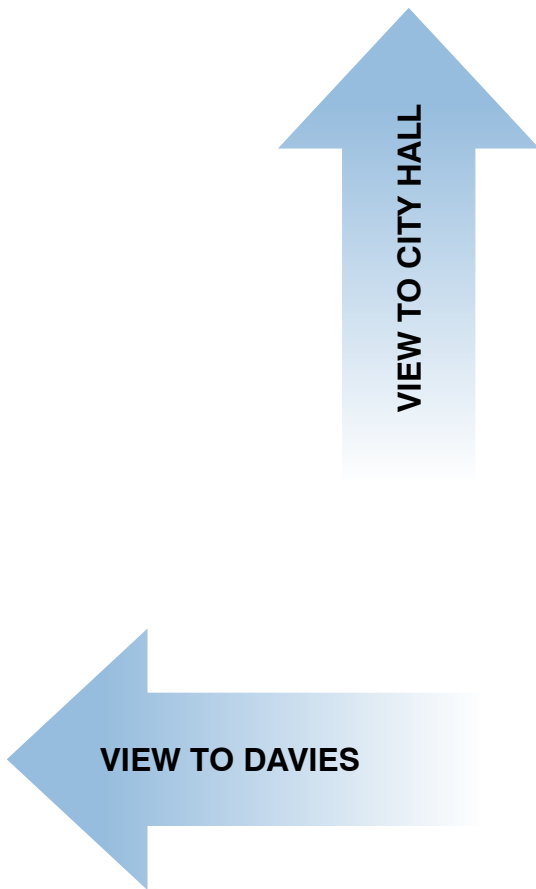




- PROGRAM**
- CONSERVATORY
  - RESTAURANT
  - STUDENT HOUSING
  - REPLACEMENT HOUSING
  - TERRACE
  - PUBLIC CIRCULATION
  - SERVICE

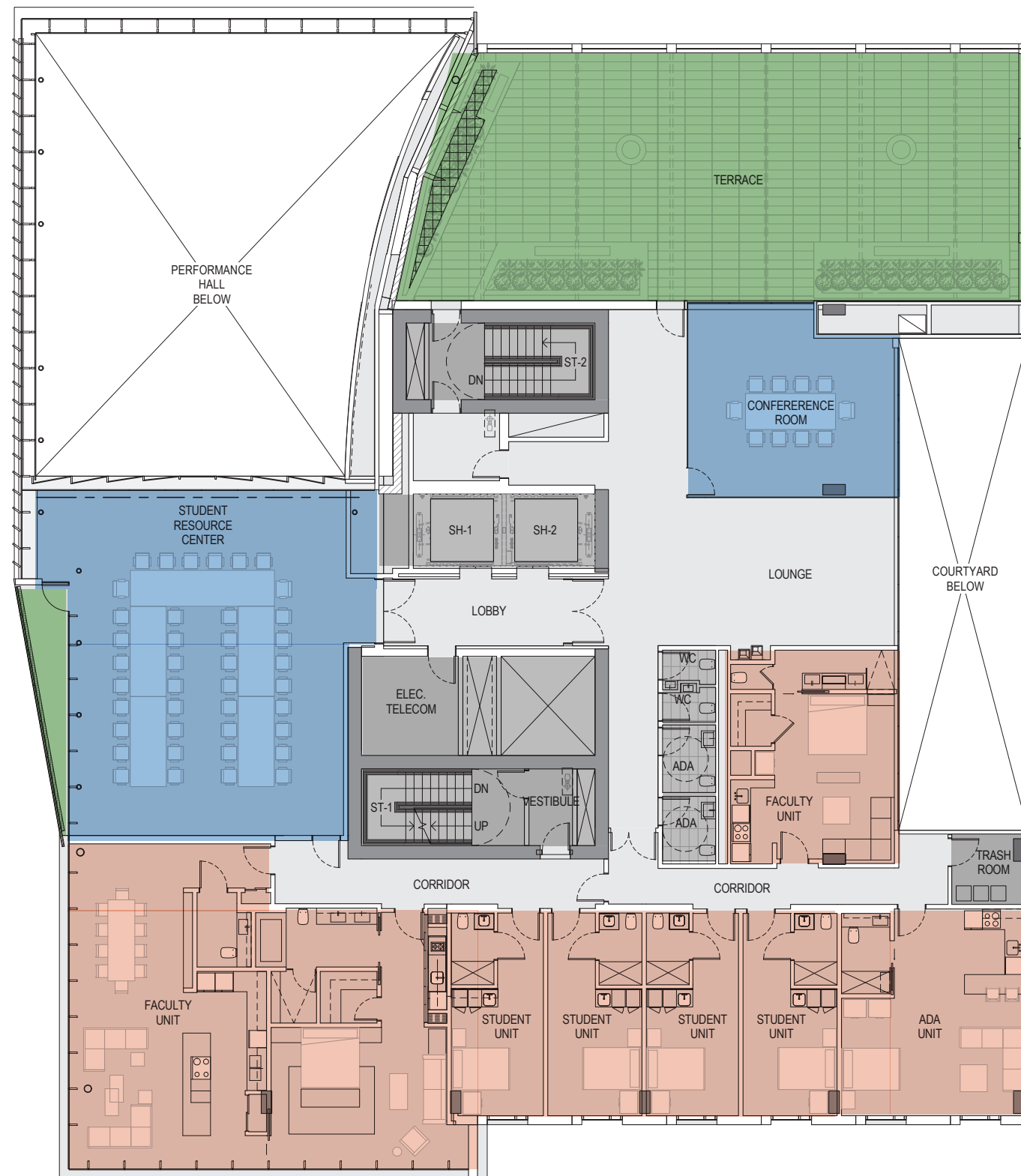






- PROGRAM**
- CONSERVATORY
  - RESTAURANT
  - STUDENT HOUSING
  - REPLACEMENT HOUSING
  - TERRACE
  - PUBLIC CIRCULATION
  - SERVICE





**PROGRAM**

- CONSERVATORY
- RESTAURANT
- STUDENT HOUSING
- REPLACEMENT HOUSING
- TERRACE
- PUBLIC CIRCULATION
- SERVICE









# **EXHIBIT 5.C:**

MITIGATION MONITORING AND REPORTING PROGRAM

THIS PAGE INTENTIONALLY LEFT BLANK

## MITIGATION MONITORING AND REPORTING PROGRAM

Adopted Mitigation Measures	Responsibility for Implementation	Mitigation Schedule	Monitoring/Reporting Responsibility	Status/Date Completed
<b><i>Mitigation Measure M-CR-2 – Archeological Testing</i></b>				
<p>Based on a reasonable presumption that archeological resources may be present within the project site, the following measures shall be undertaken to avoid any potentially significant adverse effect from the proposed project on buried or submerged historical resources.</p> <p>The project sponsor shall retain the services of an archaeological consultant from the rotational San Francisco Environmental Planning Department Qualified Archaeological Consultants List maintained by the planning department archaeologist. The project sponsor shall contact the department archeologist to obtain the names and contact information for the next three archeological consultants on the list. The archeological consultant shall undertake an archeological testing program as specified herein. In addition, the consultant shall be available to conduct an archeological monitoring and/or data recovery program if required pursuant to this measure.</p> <p>The archeological consultant's work shall be conducted in accordance with this measure at the direction of the Environmental Review Officer (ERO).</p> <p>All plans and reports prepared by the consultant as specified herein shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO.</p> <p>Archeological monitoring and/or data recovery programs required by this measure could suspend construction of the project for up to a maximum of four weeks. At the direction of the ERO, the suspension of construction can be extended beyond four weeks only if such a suspension is the only feasible means to reduce to a less-than-significant level potential effects on a significant archeological</p>	The Project Sponsor	Prior to issuance of site permits.	Project Sponsor shall retain archaeological consultant to undertake archaeological measures detailed below in consultation with ERO.	Complete when Project Sponsor retains qualified archaeological consultant.

## MITIGATION MONITORING AND REPORTING PROGRAM

Adopted Mitigation Measures	Responsibility for Implementation	Mitigation Schedule	Monitoring/Reporting Responsibility	Status/Date Completed
resource as defined in CEQA Guidelines sections 15064.5 (a) and (c).				
<i>Consultation with Descendant Communities:</i> On discovery of an archeological site <sup>1</sup> associated with descendant Native Americans, the Overseas Chinese, or other potentially interested descendant group an appropriate representative <sup>2</sup> of the descendant group and the ERO shall be contacted. The representative of the descendant group shall be given the opportunity to monitor archeological field investigations of the site and to offer recommendations to the ERO regarding appropriate archeological treatment of the site, of recovered data from the site, and, if applicable, any interpretative treatment of the associated archeological site. A copy of the Final Archaeological Resources Report shall be provided to the representative of the descendant group.	Project sponsor/ archeological consultant at the direction of the ERO	During ground-disturbing activities	Project sponsors/archeological consultant shall contact the ERO upon discovery of an archeological site associated with descendant Native Americans or the Overseas Chinese.	Considered complete upon submittal of Final Archaeological Resources Report (discussed below).
<i>Archeological Testing Program.</i> The archeological consultant shall prepare and submit to the ERO for review and approval an archeological testing plan (ATP). The archeological testing program shall be conducted in accordance with the approved testing plan. The testing plan shall identify the property types of the expected archeological resource(s) that potentially could be adversely affected by the proposed project, the testing method to be used, and the locations recommended for testing. The purpose of the archeological testing program will be to determine to the extent possible the presence or absence of archeological resources and to identify and to evaluate whether any archeological resource encountered on the site constitutes an historical resource under CEQA.	Project sponsor/ archeological consultant at the direction of the Environmental Review Officer (ERO).	Prior to issuance of site permits	Project sponsor to retain a qualified archeological consultant who shall report to the ERO.  Qualified archeological consultant will scope archeological testing program	Date Archeological consultant retained: <hr/> Date Archeological consultant received approval for archeological testing program

<sup>1</sup> By the term "archeological site" is intended here to minimally include any archeological deposit, feature, burial, or evidence of burial.

<sup>2</sup> An "appropriate representative" of the descendant group is here defined to mean, in the case of Native Americans, any individual listed in the current Native American Contact List for the City and County of San Francisco maintained by the California Native American Heritage Commission and in the case of the Overseas Chinese, the Chinese Historical Society of America. An appropriate representative of other descendant groups should be determined in consultation with the Department archeologist.

## MITIGATION MONITORING AND REPORTING PROGRAM

Adopted Mitigation Measures	Responsibility for Implementation	Mitigation Schedule	Monitoring/Reporting Responsibility	Status/Date Completed
			with ERO.	scope: _____
<p>At the completion of the archeological testing program, the archeological consultant shall submit a written report of the findings to the ERO. If based on the archeological testing program the archeological consultant finds that significant archeological resources may be present, the ERO in consultation with the archeological consultant shall determine if additional measures are warranted. Additional measures that may be undertaken include additional archeological testing, archeological monitoring, and/or an archeological data recovery program. No archeological data recovery shall be undertaken without the prior approval of the ERO or the planning department archeologist. If the ERO determines that a significant archeological resource is present and that the resource could be adversely affected by the proposed project, at the discretion of the project sponsor either:</p> <p>A) The proposed project shall be re-designed so as to avoid any adverse effect on the significant archeological resource; or</p> <p>B) A data recovery program shall be implemented, unless the ERO determines that the archeological resource is of greater interpretive than research significance and that interpretive use of the resource is feasible.</p>	Project sponsor/ archeological consultant at the direction of the ERO.	After completion of the Archeological Testing Program.	Archeological consultant shall submit report of the findings of the ATP to the ERO.	<p>Date archeological findings report submitted to the ERO: _____</p> <p>ERO determination of significant archeological resource present? Y    N</p> <p>Would resource be adversely affected? Y    N</p> <p>Additional mitigation to be undertaken by project sponsor? Y    N</p>

## MITIGATION MONITORING AND REPORTING PROGRAM

Adopted Mitigation Measures	Responsibility for Implementation	Mitigation Schedule	Monitoring/Reporting Responsibility	Status/Date Completed
<p><i>Archeological Monitoring Program.</i> If the ERO in consultation with the archeological consultant determines that an archeological monitoring program shall be implemented the archeological monitoring program shall minimally include the following provisions:</p> <p>The archeological consultant, project sponsor, and ERO shall meet and consult on the scope of the monitoring program reasonably prior to any project-related soils disturbing activities commencing. The ERO in consultation with the archeological consultant shall determine what project activities shall be archeologically monitored. In most cases, any soils- disturbing activities, such as demolition, foundation removal, excavation, grading, utilities installation, foundation work, driving of piles (foundation, shoring, etc.), site remediation, etc., shall require archeological monitoring because of the risk these activities pose to potential archaeological resources and to their depositional context.</p> <p>The archeological consultant shall advise all project contractors to be on the alert for evidence of the presence of the expected resource(s), of how to identify the evidence of the expected resource(s), and of the appropriate protocol in the event of apparent discovery of an archeological resource.</p> <p>The archeological monitor(s) shall be present on the project site according to a schedule agreed upon by the archeological consultant and the ERO until the ERO has, in consultation with project archeological consultant, determined that project construction activities could have no effects on significant archeological deposits.</p> <p>The archeological monitor shall record and be authorized to collect soil samples and artifactual/ecofactual material as warranted for analysis.</p> <p>If an intact archeological deposit is encountered, all soils-disturbing</p>	Project sponsor/ archeological consultant/ archeological monitor/ contractor(s), at the direction of the ERO.	ERO & archeological consultant shall meet prior to commencement of soil-disturbing activity. If the ERO determines that an Archeological Monitoring Program is necessary, monitor throughout all soil- disturbing activities.	Project sponsor/ archeological consultant/ archeological monitor/ contractor(s) shall implement the AMP, if required by the ERO.	<p>AMP required? Y N Date: _____</p> <p>_____</p> <p>Date AMP submitted to the ERO: _____</p> <p>_____</p> <p>Date AMP approved by the ERO: _____</p> <p>_____</p> <p>Date AMP implementation complete: _____</p> <p>_____</p> <p>Date written report regarding findings of the AMP received: _____</p> <p>_____</p>

## MITIGATION MONITORING AND REPORTING PROGRAM

Adopted Mitigation Measures	Responsibility for Implementation	Mitigation Schedule	Monitoring/Reporting Responsibility	Status/Date Completed
activities in the vicinity of the deposit shall cease. The archeological monitor shall be empowered to temporarily redirect demolition/excavation/pile driving/construction activities and equipment until the deposit is evaluated. If in the case of pile driving or deep foundation activities (foundation, shoring, etc.), the archeological monitor has cause to believe that the pile driving or deep foundation activities may affect an archeological resource, the pile driving or deep foundation activities shall be terminated until an appropriate evaluation of the resource has been made in consultation with the ERO. The archeological consultant shall immediately notify the ERO of the encountered archeological deposit. The archeological consultant shall make a reasonable effort to assess the identity, integrity, and significance of the encountered archeological deposit, and present the findings of this assessment to the ERO.				
Whether or not significant archeological resources are encountered, the archeological consultant shall submit a written report of the findings of the monitoring program to the ERO.	The Project Sponsor and archaeological consultant	Prior to issuance of site permits.	Consultation with ERO on scope of AMP	After consultation with and approval by ERO of AMP
<i>Archeological Data Recovery Program.</i> The archeological data recovery program shall be conducted in accord with an archeological data recovery plan. The archeological consultant, project sponsor, and ERO shall meet and consult on the scope of the data recovery program prior to preparation of a draft data recovery plan. The archeological consultant shall submit a draft data recovery plan to the ERO. The data recovery plan shall identify how the proposed data recovery program will preserve the significant information the archeological resource is expected to contain. That is, the data recovery plan will identify what scientific/historical research questions are applicable to the expected resource, what data classes	Archeological consultant at the direction of the ERO	If there is a determination that an ADRP program is required	Project sponsor/ archeological consultant/ archeological monitor/ contractor(s) shall prepare an ADRP if required by the ERO.	ADRP required? Y   N Date: _____  Date of scoping meeting for ADRP: _____

## MITIGATION MONITORING AND REPORTING PROGRAM

Adopted Mitigation Measures	Responsibility for Implementation	Mitigation Schedule	Monitoring/ Reporting Responsibility	Status/Date Completed
<p>the resource is expected to possess, and how the expected data classes would address the applicable research questions. Data recovery, in general, should be limited to the portions of the historical property that could be adversely affected by the proposed project. Destructive data recovery methods shall not be applied to portions of the archeological resources if nondestructive methods are practical.</p> <p>The scope of the archeological data recovery program shall include the following elements:</p> <p>Field methods and procedures: descriptions of proposed field strategies, procedures, and operations;</p> <p>Cataloguing and laboratory analysis: description of selected cataloguing system and artifact analysis procedures.</p> <p>Discard and deaccession policy: description of and rationale for field and post-field discard and deaccession policies.</p> <p>Interpretive program: consideration of an on-site/off-site public interpretive program during the course of the archeological data recovery program.</p> <p>Security measures: recommended security measures to protect the archeological resource from vandalism, looting, and non-intentionally damaging activities.</p> <p>Final report: description of proposed report format and distribution of results.</p> <p>Curation: description of the procedures and recommendations for the curation of any recovered data having potential research value, identification of appropriate curation facilities, and a summary of the accession policies of the curation facilities.</p>				<p>Date Draft ARDP submitted to the ERO: _____</p> <p>_____</p> <p>Date ARDP approved by the ERO: _____</p> <p>_____</p> <p>Date ARDP implementation complete: _____</p> <p>_____</p>



# MITIGATION MONITORING AND REPORTING PROGRAM

Adopted Mitigation Measures	Responsibility for Implementation	Mitigation Schedule	Monitoring/Reporting Responsibility	Status/Date Completed
<p><i>Human Remains, Associated or Unassociated Funerary Objects.</i> The treatment of human remains and of associated or unassociated funerary objects discovered during any soils disturbing activity shall comply with applicable state and federal laws, including immediate notification of the Coroner of the City and County of San Francisco and in the event of the coroner's determination that the human remains are Native American remains, notification of the California State Native American Heritage Commission, who shall appoint a Most Likely Descendant (California Public Resources Code section 5097.98). The ERO shall also be immediately notified upon discovery of human remains. The archeological consultant, project sponsor, ERO, and most likely descendant shall have up to but not beyond six days after the discovery to make all reasonable efforts to develop an agreement for the treatment of human remains and associated or unassociated funerary objects with appropriate dignity (CEQA Guidelines section 15064.5(d)). The agreement should take into consideration the appropriate excavation, removal, recordation, analysis, curation, possession, and final disposition of the human remains and associated or unassociated funerary objects. Nothing in existing state regulations or in this mitigation measure compels the project sponsor and the ERO to accept recommendations of a most likely descendant. The archeological consultant shall retain possession of any Native American human remains and associated or unassociated burial objects until completion of any scientific analyses of the human remains or objects as specified in the treatment agreement if such as agreement has been made or, otherwise, as determined by the archeological consultant and the ERO. If no agreement is reached, state regulations shall be followed including the reinternment of the human remains and associated burial objects with appropriate dignity on the property in a location</p>	Project sponsor / archeological consultant in consultation with the San Francisco Coroner, NAHC, and MDL.	In the event human remains and/or funerary objects are found.	Project sponsor/ archeological consultant to monitor (throughout all soil disturbing activities) for human remains and associated or unassociated funerary objects and, if found, contact the San Francisco Coroner/ NAHC/ MDL	<p>Human remains and associated or unassociated funerary objects found? Y N Date:_____</p> <p>Persons contacted: Date:_____</p> <p>Persons contacted: Date:_____</p> <p>Persons contacted: Date:_____</p> <p>Persons contacted: Date:_____</p>

## MITIGATION MONITORING AND REPORTING PROGRAM

Adopted Mitigation Measures	Responsibility for Implementation	Mitigation Schedule	Monitoring/Reporting Responsibility	Status/Date Completed
not subject to further subsurface disturbance.				
<p><i>Final Archeological Resources Report.</i> The archeological consultant shall submit a Draft Final Archeological Resources Report to the ERO that evaluates the historical significance of any discovered archeological resource and describes the archeological and historical research methods employed in the archeological testing/monitoring/data recovery program(s) undertaken. Information that may put at risk any archeological resource shall be provided in a separate removable insert within the final report.</p> <p>Once approved by the ERO, copies of the final report shall be distributed as follows: California Archaeological Site Survey Northwest Information Center shall receive one (1) copy and the ERO shall receive a copy of the transmittal of the final report to the information center. The Environmental Planning division of the Planning Department shall receive one bound, one unbound and one unlocked, searchable PDF copy on CD of the final report along with copies of any formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the National Register of Historic Places/California Register of Historical Resources. In instances of high public interest in or the high interpretive value of the resource, the ERO may require a different final report content, format, and distribution than that presented above.</p>	Project sponsor/ archeological consultant at the direction of the ERO.	After completion of the archeological data recovery, inventorying, analysis and interpretation.	Project sponsor/ archeological consultant	Following completion of soil disturbing activities. Considered complete upon distribution of final FARR.
<b>Mitigation Measure M-CR-3 – Inadvertent Discovery of Human Remains</b>				
The treatment of human remains and of associated or unassociated funerary objects discovered during any soils disturbing activity shall comply with applicable state and federal laws. This shall include immediate notification of the Coroner of the City and County of San Francisco and the ERO, and in the event of the	Project sponsor / archeological consultant in consultation with the San Francisco	In the event human remains and/or funerary objects are found.	Project sponsor/ archeological consultant to monitor (throughout all soil	Human remains and associated or unassociated funerary objects found?

# MITIGATION MONITORING AND REPORTING PROGRAM

Adopted Mitigation Measures	Responsibility for Implementation	Mitigation Schedule	Monitoring/Reporting Responsibility	Status/Date Completed
coroner's determination that the human remains are Native American remains, notification of the California State Native American Heritage Commission (NAHC) who shall appoint a Most Likely Descendant (Public Resources Code Section 5097.98). The archeological consultant, project sponsor, ERO, and most likely descendant shall have up to but not beyond six days of discovery to make all reasonable efforts to develop an agreement for the treatment of human remains and associated or unassociated funerary objects with appropriate dignity (CEQA Guidelines section 15064.5(d)). The agreement should take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, curation, and final disposition of the human remains and associated or unassociated funerary objects. Nothing in existing state regulations or in this mitigation measure compels the project sponsor and the ERO to accept recommendations of an MLD. The archeological consultant shall retain possession of any Native American human remains and associated or unassociated burial objects until completion of any scientific analyses of the human remains or objects as specified in the treatment agreement if such as agreement has been made or, otherwise, as determined by the archeological consultant and the ERO.	Coroner, NAHC, and MDL.		disturbing activities) for human remains and associated or unassociated funerary objects and, if found, contact the San Francisco Coroner/ NAHC/ MDL	Y N Date:_____  Persons contacted: Date:_____  Persons contacted: Date:_____  Persons contacted: Date:_____  Persons contacted: Date:_____
<b>Mitigation Measure M-CR-4 – Tribal Cultural Resources Interpretive Program</b>				
If the ERO determines that a significant archeological resource is present, and if in consultation with the affiliated Native American tribal representatives, the ERO determines that the resource constitutes a tribal cultural resource and that the resource could be adversely affected by the proposed project, the proposed project	Project sponsor, archaeological consultant, and ERO, in consultation with	If significant archeological resources are present, during implementation of	Project sponsor, archaeological consultant, and ERO, in consultation with	Considered complete upon project redesign, completion of ARPP, or

## MITIGATION MONITORING AND REPORTING PROGRAM

Adopted Mitigation Measures	Responsibility for Implementation	Mitigation Schedule	Monitoring/Reporting Responsibility	Status/Date Completed
<p>shall be redesigned so as to avoid any adverse effect on the significant tribal cultural resource, if feasible.</p> <p>If the Environmental Review Officer (ERO), in consultation with the affiliated Native American tribal representatives and the project sponsor, determines that preservation-in-place of the tribal cultural resources is not a sufficient or feasible option, the project sponsor shall implement an interpretive program of the tribal cultural resource in consultation with affiliated tribal representatives. An interpretive plan produced in consultation with the ERO and affiliated tribal representatives, at a minimum, and approved by the ERO would be required to guide the interpretive program. The plan shall identify, as appropriate, proposed locations for installations or displays, the proposed content and materials of those displays or installation, the producers or artists of the displays or installation, and a long-term maintenance program. The interpretive program may include artist installations, preferably by local Native American artists, oral histories with local Native Americans, artifacts displays and interpretation, and educational panels or other informational displays.</p>	the affiliated Native American tribal representatives.	the project.	the affiliated Native American tribal representatives shall implement the project redesign, completion of archeological resource preservation plan, or interpretive program of the TCR, if required.	interpretive program of the TCR, if required.
<b>Mitigation Measure M-AQ-2: Construction Emissions Minimization</b>				
The project sponsor or the project sponsor's Contractor shall comply with the following	Project sponsor	Plan development to occur prior to issuance of a demolition, grading, or building permit.  Monitoring to occur during	Planning Department of review and approve the construction emissions minimization plan.  Project sponsor to	As specified in plan
A. <i>Engine Requirements.</i>				
1. All off-road equipment greater than 25 hp and operating for more than 20 total hours over the entire duration of construction activities shall have engines that meet or exceed either U.S. Environmental Protection Agency (USEPA) or California Air Resources Board (ARB) Tier 2				

## MITIGATION MONITORING AND REPORTING PROGRAM

Adopted Mitigation Measures	Responsibility for Implementation	Mitigation Schedule	Monitoring/ Reporting Responsibility	Status/Date Completed
off-road emission standards, and have been retrofitted with an ARB Level 3 Verified Diesel Emissions Control Strategy. Equipment with engines meeting Tier 4 Interim or Tier 4 Final off-road emission standards automatically meet this requirement.		construction.	submit quarterly reports to Planning Department during construction, and final report six (6) months after construction.	
<ol style="list-style-type: none"> <li>2. Where access to alternative sources of power are available, portable diesel engines shall be prohibited.</li> <li>3. Diesel engines, whether for off-road or on-road equipment, shall not be left idling for more than two minutes, at any location, except as provided in exceptions to the applicable state regulations regarding idling for off-road and on-road equipment (e.g., traffic conditions, safe operating conditions). The Contractor shall post legible and visible signs in English, Spanish, and Chinese, in designated queuing areas and at the construction site to remind operators of the two minute idling limit.</li> </ol>				
<ol style="list-style-type: none"> <li>4. The Contractor shall instruct construction workers and equipment operators on the maintenance and tuning of construction equipment, and require that such workers and operators properly maintain and tune equipment in accordance with manufacturer specifications.</li> </ol>				
<p>B. <i>Waivers.</i></p> <ol style="list-style-type: none"> <li>1. The Planning Department's Environmental Review Officer or designee (ERO) may waive the alternative source of power requirement of Subsection (A)(2) if an alternative source of power is limited or infeasible at the project site. If the ERO grants the waiver, the Contractor must submit documentation that the equipment used for onsite power generation meets</li> </ol>				

## MITIGATION MONITORING AND REPORTING PROGRAM

Adopted Mitigation Measures	Responsibility for Implementation	Mitigation Schedule	Monitoring/Reporting Responsibility	Status/Date Completed												
<p>the requirements of Subsection (A)(1).</p> <p>2. The ERO may waive the equipment requirements of Subsection (A)(1) if: a particular piece of off-road equipment with an ARB Level 3 VDECS is technically not feasible; the equipment would not produce desired emissions reduction due to expected operating modes; installation of the equipment would create a safety hazard or impaired visibility for the operator; or, there is a compelling emergency need to use off-road equipment that is not retrofitted with an ARB Level 3 VDECS. If the ERO grants the waiver, the Contractor must use the next cleanest piece of off-road equipment, according to Table below.</p> <p><b>Table – Off-Road Equipment Compliance Step-down Schedule</b></p> <table><tr><th>Compliance Alternative</th><th>Engine Emission Standard</th><th>Emissions Control</th></tr><tr><td>1</td><td>Tier 2</td><td>ARB Level 2 VDECS</td></tr><tr><td>2</td><td>Tier 2</td><td>ARB Level 1 VDECS</td></tr><tr><td>3</td><td>Tier 2</td><td>Alternative Fuel*</td></tr></table> <p>How to use the table: If the ERO determines that the equipment requirements cannot be met, then the project sponsor would need to meet Compliance Alternative 1. If the ERO determines that the Contractor cannot supply off-road equipment meeting Compliance Alternative 1, then the Contractor must meet Compliance Alternative 2. If the ERO determines that the Contractor cannot supply off-road equipment meeting Compliance Alternative 2, then the Contractor must meet Compliance Alternative 3.</p>	Compliance Alternative	Engine Emission Standard	Emissions Control	1	Tier 2	ARB Level 2 VDECS	2	Tier 2	ARB Level 1 VDECS	3	Tier 2	Alternative Fuel*				
Compliance Alternative	Engine Emission Standard	Emissions Control														
1	Tier 2	ARB Level 2 VDECS														
2	Tier 2	ARB Level 1 VDECS														
3	Tier 2	Alternative Fuel*														

## MITIGATION MONITORING AND REPORTING PROGRAM

Adopted Mitigation Measures	Responsibility for Implementation	Mitigation Schedule	Monitoring/ Reporting Responsibility	Status/Date Completed
** Alternative fuels are not a VDECS.				
<p>C. <i>Construction Emissions Minimization Plan.</i> Before starting on-site construction activities, the Contractor shall submit a Construction Emissions Minimization Plan (Plan) to the ERO for review and approval. The Plan shall state, in reasonable detail, how the Contractor will meet the requirements of Section A.</p> <p>1. The Plan shall include estimates of the construction timeline by phase, with a description of each piece of off-road equipment required for every construction phase. The description may include, but is not limited to: equipment type, equipment manufacturer, equipment identification number, engine model year, engine certification (Tier rating), horsepower, engine serial number, and expected fuel usage and hours of operation. For VDECS installed, the description may include: technology type, serial number, make, model, manufacturer, ARB verification number level, and installation date and hour meter reading on installation date. For off-road equipment using alternative fuels, the description shall also specify the type of alternative fuel being used.</p> <p>2. The project sponsor shall ensure that all applicable requirements of the Plan have been incorporated into the contract specifications. The Plan shall include a certification statement that the Contractor agrees to comply fully with the Plan.</p> <p>3. The Contractor shall make the Plan available to the public</p>				

## MITIGATION MONITORING AND REPORTING PROGRAM

Adopted Mitigation Measures	Responsibility for Implementation	Mitigation Schedule	Monitoring/Reporting Responsibility	Status/Date Completed
for review on-site during working hours. The Contractor shall post at the construction site a legible and visible sign summarizing the Plan. The sign shall also state that the public may ask to inspect the Plan for the project at any time during working hours and shall explain how to request to inspect the Plan. The Contractor shall post at least one copy of the sign in a visible location on each side of the construction site facing a public right-of-way.				
D. <i>Monitoring.</i> After start of Construction Activities, the Contractor shall submit quarterly reports to the ERO documenting compliance with the Plan. After completion of construction activities and prior to receiving a final certificate of occupancy, the project sponsor shall submit to the ERO a final report summarizing construction activities, including the start and end dates and duration of each construction phase, and the specific information required in the Plan.				
<b><i>Mitigation Measures M-AQ-4: Best Available Control Technology for Diesel Generators</i></b>				
The project sponsor shall ensure that the backup diesel generator meets or exceeds one of the following emission standards for particulate matter: (1) Tier 4 certified engine, or (2) Tier 2 or Tier 3 certified engine that is equipped with a California Air Resources Board (ARB) Level 3 Verified Diesel Emissions Control Strategy (VDECS). A non-verified diesel emission control strategy may be used if the filter has the same particulate matter reduction as the identical ARB verified model and if the Bay Area Air Quality Management District (BAAQMD) approves of its use. The project sponsor shall submit documentation of compliance with the BAAQMD New Source Review permitting process (Regulation 2, Rule 2, and Regulation 2, Rule 5) and the emission standard	Project sponsor	Prior to issuance of a permit for a backup diesel generator from any City agency	Project sponsor to submit and Planning Department to review and approve documentation of compliance.	Compliance documentation approved: Date_____



## MITIGATION MONITORING AND REPORTING PROGRAM

Adopted Mitigation Measures	Responsibility for Implementation	Mitigation Schedule	Monitoring/Reporting Responsibility	Status/Date Completed
requirement of this mitigation measure to the Planning Department for review and approval prior to issuance of a permit for a backup diesel generator from any City agency.				
<b><i>Improvement Measure I-TR-1: Residential Move-in and Move-out Plan</i></b>				
<p>The project sponsor should develop and implement a Residential Move-in and Move-out Plan that would be distributed to students prior to the "Student Move-in Day," and to new tenants of the replacement housing units as part of their move-in packet. The Plan should include, but not be limited to the following:</p> <ul style="list-style-type: none"> <li>• Move-in and move-out activities for both replacement housing and student housing that are conducted by auto or truck should be scheduled with building management.</li> <li>• To the extent possible, move-in and move-out activities by auto or truck should be scheduled for weekends, or late evenings to avoid conflicts with adjacent street traffic.</li> <li>• If necessary, building management should request a reserved curbside permit from the SFMTA in advance of move-in or move-out activities by auto or truck.</li> <li>• Student move-in arrivals should be staggered, and student volunteers and staff should be available to assist students transport their belongings between the vehicle and the building.</li> </ul> <p>The Residential Move-in and Move-out Plan should be reviewed and updated annually by the San Francisco Conservatory of Music, with assistance from the San Francisco Police Department the SFMTA, to ensure that the process occurs with minimal effect on the adjacent sidewalks and travel lanes.</p>	Project sponsor	<p>Distribute plan to students and tenants prior to move-in day/as part of move-in packet.</p> <p>Update plan annually in consultation with SFPD and SFMTA</p>	Project sponsor should develop and implement the Residential Move-in and Move-out Plan as specified and distribute to students and tenants.	<p>Move-in plan completed</p> <p>Date: _____</p>

## MITIGATION MONITORING AND REPORTING PROGRAM

Adopted Mitigation Measures	Responsibility for Implementation	Mitigation Schedule	Monitoring/Reporting Responsibility	Status/Date Completed
<b><i>Improvement Measure I-TR-2: Construction Management Plan and Public Updates</i></b>				
<p>The project sponsor or the project sponsor's contractor should comply with the following:</p> <ul style="list-style-type: none"> <li><i>Construction Management Plan</i>—The project sponsor should develop and, upon review and approval by the SFMTA and Public Works, implement a Construction Management Plan, addressing transportation-related circulation, access, staging and hours of delivery. The Construction Management Plan would disseminate appropriate information to contractors and affected agencies with respect to coordinating construction activities to minimize overall disruption and ensure that overall circulation in the project area is maintained to the extent possible, with particular focus on ensuring transit, pedestrian, and bicycle connectivity. The Construction Management Plan would supplement and expand, rather than modify or supersede, and manual, regulations, or provisions set forth by the SFMTA, Public Works, or other City departments and agencies, and the California Department of Transportation. Management practices could include: best practices for accommodating pedestrians and bicyclists, identifying routes for construction trucks to utilize, minimizing deliveries and travel lane closures during the AM (7:30 to 9:00 AM) and PM (4:30 to 6:00 PM) peak periods along South Van Ness Avenue and Mission Street (Monday through Friday).</li> <li><i>Carpool, Bicycle, Walk, and Transit Access for Construction Workers</i>—To minimize parking demand and vehicle trips associated with construction workers, the construction contractor should include as part of the Construction Management Plan methods to encourage carpooling, bicycle,</li> </ul>	Project sponsor or project contractor	Prior to issuance of any site permits	<p>Develop Construction Management Plan and Construction Worker Parking Plan and submit to and, SFMTA and Public Works, for review and approval.</p> <p>Implement approved Construction Management Plan, including Construction Worker Parking Plan throughout construction</p>	<p>Plan approved: Date: _____</p>

## MITIGATION MONITORING AND REPORTING PROGRAM

Adopted Mitigation Measures	Responsibility for Implementation	Mitigation Schedule	Monitoring/Reporting Responsibility	Status/Date Completed
<p>walk and transit access to the project site by construction workers, such as providing secure bicycle parking spaces, participating in free-to-employee and employer ride matching program from <a href="http://www.511.org">www.511.org</a>, participating in emergency ride home program through the City of San Francisco (<a href="http://www.sferh.org">www.sferh.org</a>), and providing transit information to construction workers.</p> <ul style="list-style-type: none"> <li><i>Construction Worker Parking Plan</i>—As part of the Construction Management Plan that would be developed by the construction contractor, the location of construction worker parking could be identified as well as the person(s) responsible for monitoring the implementation of the proposed parking plan. The use of on-street parking to accommodate construction worker parking should be discouraged. The project sponsor should provide on-site parking once the below grade parking garage is usable.</li> </ul>				
<ul style="list-style-type: none"> <li><i>Project Construction Updates for Adjacent Businesses and Residents</i>—To minimize construction impacts on access to nearby residences and businesses, the project sponsor should provide nearby residences and adjacent businesses with regularly-updated information regarding project construction, including construction activities, peak construction vehicle activities (e.g., concrete pours), travel lane closures, and parking lane and sidewalk closures. A regular email notice should be distributed by the project sponsor that would provide current construction information of interest to neighbors, as well as contact information for specific construction inquiries or concerns.</li> </ul>	Project sponsor	Prior to the beginning of construction, monthly throughout construction, and prior to start of periods of more intensive or unusual site activity, as detailed	Sponsor to distribute email notice nearby residences and adjacent businesses with updates regarding project construction activities; copy planning to document compliance	Monthly notices received Dates: _____

THIS PAGE INTENTIONALLY LEFT BLANK



# SAN FRANCISCO PLANNING DEPARTMENT

---

*Subject to: (Select only if applicable)*

- |  |   |
|--|---|
| <input type="checkbox"/> Affordable Housing (Sec. 415)                           | <input checked="" type="checkbox"/> First Source Hiring (Admin. Code) |
| <input checked="" type="checkbox"/> Transportation Sustainability Fee (Sec. 411) | <input checked="" type="checkbox"/> Child Care Requirement (Sec. 414) |
| <input type="checkbox"/> Jobs Housing Linkage Program (Sec. 413)                 | <input checked="" type="checkbox"/> Public Art (Sec. 429)             |

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

## Planning Commission Draft Motion

HEARING DATE: FEBRUARY 8, 2018

*Date:* January 25, 2018  
*Case No.:* **2015-012994GPA/PCA/ MAP/DNX/CUA**  
*Project Address:* **200 – 214 Van Ness Avenue Street**  
*Zoning:* C-3-G Downtown General  
96-X Height and Bulk District  
*Block/Lot:* 0342/001, 002, 004, and 014  
*Project Sponsor:* Suzanne Brown, on behalf of  
SF Conservatory of Music  
50 Oak Street  
San Francisco, CA 94102  
*Staff Contact:* Claudine Asbagh – (415) 575-9165  
[Claudine.asbagh@sfgov.org](mailto:Claudine.asbagh@sfgov.org)

ADOPTING FINDINGS RELATED TO THE APPROVAL OF A SECTION 309 DETERMINATION OF COMPLIANCE AND REQUEST FOR EXCEPTIONS FOR REAR YARD PER PLANNING CODE SECTION 134, USABLE OPEN SPACE PER SECTION 135, OBSTRUCTIONS OVER STREETS AND ALLEYS PER SECTION 136, EXPOSURE REQUIREMENTS PER SECTION 140, GROUND FLOOR HEIGHT REQUIREMENTS PER PLANNING CODE SECTION 145.1, REDUCTION OF GROUND-LEVEL WIND CURRENTS PER PLANNING CODE SECTION 148, AND OFF-STREET LOADING REQUIREMENTS PER PLANNING CODE SECTION 161 TO ALLOW A PROJECT DEMOLISH THE EXISTING THREE-STORY RESIDENTIAL BUILDING AT 200 VAN NESS AVENUE AND THE TWO STORY COMMERCIAL BUILDING AT 214 VAN NESS AVENUE AND CONSTRUCT A 12-STORY, 120-FOOT TALL, 168,200 SQUARE-FOOT MIXED-USE BUILDING FOR AN EDUCATIONAL INSTITUTION. THE PROJECT WOULD INCLUDE 113 STUDENT GROUP HOUSING UNITS (420 BEDS), 30 DWELLING UNITS (27 REPLACEMENT UNITS AND 3 NEW UNITS FOR FACULTY), APPROXIMATELY 49,600 SQUARE FEET OF EDUCATIONAL AND PERFORMANCE SPACE, 4,320 SQUARE FEET OF BROADCASTING STUDIO SPACE, AND 2,600 SQUARE FEET OF GROUND-FLOOR RESTAURANT/RETAIL SPACE, AT 200-214 VAN NESS AVENUE, ASSESSOR'S BLOCK NO. 0811, LOTS 010 AND 012 WITHIN THE C-3-G (DOWNTOWN GENERAL) DISTRICT AND THE PROPOSED 120-X HEIGHT AND BULK DISTRICT AND ADOPTING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

## **PREAMBLE**

On September 29, 2015, Lawrence Badiner on behalf of the San Francisco Conservatory of Music ("Project Sponsor" or "SFCM") filed an application with the Planning Department ("Department") for Environmental Review, to demolish the existing three-story residential building at 200 Van Ness Avenue and the two-story commercial building at 214 Van Ness Avenue and construct a 12-story over two-level basement, approximately 120-foot tall building with up to 420 student beds in 113 group housing units, up to 30 dwelling units (including 27 replacement units), approximately 49,600 Gross Square Feet (GSF) of educational/institutional use with approximately 2,900 gsf of ground floor restaurant/retail space.

On September 28, 2016, the Project Sponsor filed an application with the Department for a Determination of Compliance with Planning Code Section 309 as modified and supplemented on November 14, 2017, with exceptions to the requirements for Rear Yard (Section 134), Open Space (Section 135), Obstructions Over Streets and Alleys (Section 136), Group Housing Exposure (Section 140), Ground (Section 145.1), Reduction of Ground-Level Wind Currents in C-3 Districts (Section 148), and Off-Street Loading (Section 161) within the C-3-G (Downtown General) District.

On September 28, 2016, the Project Sponsor also filed an application with the Department for a Conditional Use Authorization as modified and supplemented on November 14, 2017, under Planning Code Sections 124(f), 124(k), 215(b), 303 and 317, to remove and replace 27 existing dwelling units to allow additional square footage above that permitted by the base FAR limit for Student Housing as defined in Section 102 within the C-3-G (Downtown General) District and a 96-X Height and Bulk District.

On November 14, 2017, the Project Sponsor filed an application to reclassify the existing 96-X Height and Bulk District to a 120-X Height and Bulk District, amend Map 5 of the Downtown Plan of the General Plan, amend the HT02 Height Map of the Zoning Map and amend Section 260 of the Planning Code.

On December 27, 2017, the Planning Department's Environmental Review Office issued a Notice of Completion, and published a Preliminary Mitigated Negative Declaration (PMND) for the project that included a Mitigation Monitoring and Reporting program (MMRP) which is included as a Condition of Approval for the project. The comment period for the PMND expired on January 17, 2018 with no appeals. The PMND/IS. The Final Mitigated Negative Declaration (MND) was issued on January 23, 2018, and is available online at <http://tinyurl.com/sfceqadocs>. The Planning Department Planning Department Commission Secretary is the custodian of records, located in File No. 2015-012994ENV, at 1650 Mission Street, Fourth Floor, San Francisco, California

On January 10, 2018, after extensive discussions with City staff, the Project Sponsor also filed an application with the Department for a Development Agreement, under Administrative Code Article 56, which include the specified public benefits above and beyond that required by City codes, including the expanding the City's supply of student housing, replacing 27 existing units on site, assuring the interim relocation and right to return of the existing tenants, creating much needed state-of-the-art educational and performance space, providing added artistic and cultural resources, while providing development certainty to the Project Sponsor.

On January 11, 2018, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting and initiated a General Plan Amendment pursuant to Planning Code Section 340. The proposed amendment would revise Map 5 of the Downtown

Area Plan by changing the height designation of Assessor's Block 811, Lots 10 and 12 (200-214 Van Ness Avenue) from 96-X to 120-X.

On February 8, 2018, the Commission conducted a duly noticed public hearing at a regularly scheduled hearing on the Downtown Plan Project Authorization and Exception from certain provisions of the Planning Code under Section 309.

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 approves the Downtown Project Authorization and exceptions requested in Application No. 2015-012994CUA, 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 site is located across two lots that occupy the entire eastern block face of Van Ness Avenue between Hayes Street and Tom Wadell Place on Assessor's Block 0811, Lots 010 and 012. The approximate 13,076 square-foot site is currently developed with two buildings: 200 Van Ness Avenue, a 27-unit residential building, and 214 Van Ness Avenue, a currently vacant office building that was previously occupied by Lighthouse for the Blind.  
  
The site is located within the Downtown General Commercial Zoning District (C-3-G), the 96-X Height and Bulk District, and is located within the Downtown and Civic Center Plan Areas.
3. **Surrounding Properties and Neighborhood.** The project site is prominently located on Van Ness Avenue in the Downtown Civic Center neighborhood, adjacent to both the Hayes Valley and South of Market neighborhoods. The surrounding mixed-use area contains diverse building types including residential, office and educational, civic and commercial. The project site is located directly across Tom Wadell Place from the San Francisco Civic Center Historic District.
4. **Project Description.** The project would demolish the existing structures and construct a 12-story (above two basement levels), 120-foot tall, approximately 168,200 square-foot building. The new building would include 420 student beds for students of the San Francisco Conservatory of Music (SFCM), 30 dwelling units, approximately 49,600 square feet of educational and performance space, 4,320 square feet of broadcasting studio space, and 2,600 square feet of ground-floor restaurant/retail space. Of the new dwelling units, 27 would be replacement units and three would be new units for SFCM faculty.
5. **Community Outreach and Public Comment.** Community outreach has included meetings with the Project's neighbors, local businesses, community groups, individual residents at 200 Van Ness, schools, and non-profits, including the Tenderloin Neighborhood Development Corporation, Van Ness Neighborhood Corridor Association, Civic Center CBD, Hayes Valley Neighborhood

Association, SF School of the Arts, Housing Action Coalition, SPUR, Emerald Fund, San Francisco Ballet, San Francisco War Memorial, Davies Symphony Hall, and SF Jazz. The Department has received two letters of support for the proposed project.

6. **Planning Code Compliance:** The Planning Code Compliance Findings set forth in Motion No. XXXXX, Case No. 2015-012994DNX (Downtown Project Authorization, pursuant to Planning Code Section 309) apply to this Motion, and are incorporated herein as though fully set forth.
7. **Planning Code Section 124(k):** For buildings in C-3-G and C-3-S Districts that are not designated as Significant or Contributory pursuant to [Article 11](#) of this Code, additional square footage above that permitted by the base floor area ratio limits set forth above may be approved for construction of a project, or portion thereof, that constitutes a Student Housing project, as defined in Section [102](#) of this Code. Such approval shall be subject to the conditional use procedures and criteria in Section [303](#) of this Code.

*The Project Site has a lot area of approximately 13,080 square feet. Therefore, up to 78,480 square feet of Gross Floor Area ("GFA") is allowed under the basic FAR limit, and up to 117,720 of GFA is permitted with the purchase of TDR. As shown in the conceptual plans for the Project, the proposal includes 153,200 square feet of GFA, resulting in an FAR of 11.7 to 1. The student housing constitutes approximately 86,000 square feet of GFA, which when excluded from FAR calculations, results in approximately 67,200 of GFA (FAR of 5.1 to 1). The Project is seeking a Conditional Use Authorization.*

*Code Section 124(k) provides no specific standards for granting the exemption from the FAR for the student housing, other than the general Conditional Use Criteria in Section 303 (addressed below).*

*The intent of Section 124(k) is to encourage the provision of needed student housing, promoting higher education in San Francisco by making it more affordable for students who attend San Francisco educational institutions and to decrease the occupancy by students of the general housing stock, thereby freeing up affordable housing. Students, by their demographics, tend to occupy either small and low-priced units as individuals or affordable family-sized units as groups. Both of these unit types are in heavy demand.*

*In the event the project no longer qualifies as student housing as defined by the Planning Code, the Zoning Administrator may allow the conversion of the student housing to any permitted residential use in the C-3-G Zoning District upon determination that the converted student housing has complied with any applicable Inclusionary Affordable Housing Requirements at the date of proposed conversion, as outlined in Planning Code Section 415.3 and that all other Planning Code requirements applicable to that residential use have been met or modified through appropriate procedures.*

8. **Planning Code Section 303** 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 Project will replace 27 dwelling units currently on-site on a one-for-one basis, add three new dwelling units, create 113 student housing units with 420 student beds, , and create a significant*



*cultural building with teaching and performance spaces in the Civic Center District. The site is located in an area that is well served by public transit and it's anticipated that students and residents of the building will be able to use multiple modes of transportation to get to and from the site. The active retail and performance uses at the ground floor as well as the public realm improvements will create a vibrant focal point for the area, activating the streetscape and creating visual interest for pedestrians.*

*The existing development in the area surrounding the Project Site is varied in scale and intensity. Similar or larger contemporary high-density, mid- and high-rise residential buildings exist, are currently under construction or are under review near the project. While the Project requests a height increase from a 96-X to 120-X Height and Bulk District, the Project will integrate well in a surrounding built context and will be similar in height to other buildings in the immediate vicinity.*

- 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 Project site is a rectangular parcel of 13,080 sf bordered on three sides by public streets and is adequately sized to accommodate the Project. The building footprint will occupy the entire site and will match the development pattern of the immediately surrounding built environment that features office, residential and civic buildings with full lot coverage. The Project will hold the Van Ness Avenue streetwall and support the surrounding built context that is characterized by a mix of low and high-rise construction and construction types. The Project will also be referential to the adjacent Civic Center Historic District in terms of composition and massing.*

- 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 site is well served by public transit and does not propose any parking. The site is within a ¼ mile of 15 MUNI bus lines (14, 14R, 19, 21, 47, 49, 5, 5R, 6, 7, 7R, 7X, 83X, 9, 9R), adjacent to the new Van Ness Bus Rapid Transit (BRT), and three blocks from the Van Ness Muni Metro station that serves MUNI metro lines and the F Street Car. The Project poses to convert metered street parking on Tom Waddell Place to off-street loading.*

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

*The Project is residential and educational in nature, and should not introduce operational noises or odors that are detrimental, excessive, or atypical for the area. While there is a small restaurant, it will be vented according to the Building Code and will not produce noxious odors. While some temporary increase in noise can be expected during construction, this noise is limited in duration and will be regulated by the San Francisco Noise Ordinance, which prohibits excessive noise levels from construction activity and limits the permitted hours of work. The building will not utilize mirrored glass or other highly reflective materials; therefore, as noted in the FMND, the Project is not expected to cause offensive amounts of glare. All window glazing will comply with the Planning Code and relevant design guidelines to eliminate or reduce glare.*

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

*The Project provides usable open space in the form of a common terrace for the students and a courtyard area for the dwelling units. The Project would include street trees and other standard streetscape improvements along Hayes Street and improve Van Ness Avenue in conformity with the proposed Van Ness BRT improvements. Street-level mechanical elements would be screened from view and service areas would be provided within the building. The detailed lighting and signage plans would be subject to approval by the Planning Department.*

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

*The Project will generally comply with the provisions of the Planning Code, with amendments to the Planning Code and General Plan identified and addressed in the Legislative Amendment application, Case No. 2015-012994PCA/MAP. As amended, the Project will be consistent with the General Plan, including the Downtown Area Plan, and particularly plans and policies related to locating density near transportation, creating new housing, including affordable/supportive housing, creating new pedestrian connections to and through the neighborhood, and implementing streetscape improvements.*

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

*The development of an institutional and residential building that replaces 27 existing units on-site is in conformity with the purposes of the C-3-G District, in that the district characterized by "...a variety of uses: Retail, offices, hotels, entertainment, clubs and institutions, and high-density residential...Many of these uses have a Citywide or regional function, although the intensity of development is lower here than in the downtown core area. As in the case of other downtown districts, no off-street parking is required for individual commercial buildings. In the vicinity of Market Street, the configuration of this District reflects easy accessibility by rapid transit."*

*The Project's educational, student housing and residential uses are reflective of the district's uses and purpose. The replacement of the existing housing on-site reflects the importance of the district's reservoir of low-cost and affordable housing. The Project density reflects its location close to Market Street transit.*

- 9. **Planning Code Section 317.** Planning Code Section 317(g) states that the Planning Commission shall use the following criteria when considering the removal of certain residential units, in lieu of the Section 303 criteria, in the Downtown C-3 Districts:

- 1) When considering whether to grant Conditional Use authorization for the loss or Removal of Residential or Unauthorized Unit(s) in the C-3 districts, in lieu of the criteria set forth in Planning Code Section 303, consideration shall be given to the adverse impact on the public health, safety, and general welfare of the loss of housing stock in the district and to any unreasonable hardship to the applicant if the permit is denied;

*The Project will replace the existing 27 units on-site (six studios and 21 one-bedroom units) with improved units and add three new faculty dwelling units. The existing units have no open space and nine of the dwelling units do not comply with exposure and egress requirements in that they face an internal lightwell. The 27 replacement dwelling units will have access to open space and comply with the dwelling unit exposure requirements because they will all face onto a street.*

*The Project's primary purpose is to add 420 student beds, thus reducing the pressure on existing affordable housing in the city. The sponsor will provide the tenants of the existing units with a robust program for interim housing and relocation assistance during construction. In addition, the tenants will have the right to return to a similar, upgraded rental unit at the same rent within the new building as set forth in the Development Agreement Replacement and Interim Housing Program ("RIHP") concurrently being considered by the Commission. As such, there will be no adverse impact upon the public health, safety, and general welfare due to loss in housing stock since (1) the existing units will be replaced one-for-one with new units, (2) the project constructs three new dwelling units for SFCM faculty, and (3) 420 student beds will be created. The denial of the demolition of the existing units would present an unreasonable hardship in that SFCM would not be able to construct student housing for its own students even though are proposing to reconstruct the existing units.*

- 2) Planning Code Section 317(g)(5) sets forth additional criteria for the Commission to consider in the review of applications for Residential Demolition;

- A) whether the property is free of a history of serious, continuing Code violations

*There are no current Code violations on the site. When SFCM purchased the building in late 2014, Code violations did exist. The SFCM has diligently and successfully addressed prior Code violations.*

- B) whether the housing has been maintained in a decent, safe, and sanitary condition

*SFCM works closely with the tenants and property management company to ensure that the existing building is maintained properly. Recent maintenance projects include installation of a new security camera system, improved lighting in the common areas, painting, and installation of glass windows in the interior doors. The common areas of the building are also cleaned five days a week and have on-site security staff. SFCM has recently hired a new management company and a new security company to assure decent, safe and sanitary conditions.*

- C) whether the property is an "historical resource" under CEQA

*As set forth in the FMND, 200 Van Ness Avenue is not a historical resource.*

- D) whether the removal of the resource will have a substantial adverse impact under CEQA

*As mentioned above, there is no resource located at the site.*

- E) whether the project converts rental housing to other forms of tenure or occupancy

*The existing 27 units are rental and the Project Sponsor intends to continue to rent the 27 replacement units, so there will be no change in the form of tenancy. Tenants residing in the building at the time construction commences will be offered the opportunity to return to an equivalent-sized unit as set forth in the RHIP*

- F) whether the project removes rental units subject to the Residential Rent Stabilization and Arbitration Ordinance or affordable housing

*The existing rental units are subject to the Residential Rent Stabilization and Arbitration Ordinance. The Development Agreement RHIP voluntarily imposes Residential Rent Stabilization and Arbitration Ordinance on the replacement units.*

- G) whether the project conserves existing housing to preserve cultural and economic neighborhood diversity

*The Project conserves existing housing by replacing the existing units on-site. While maintained in good condition and upgraded since the Project Sponsor purchased the building, the structure was constructed in the early 20<sup>th</sup> Century and does not meet current Code standards. The replacement housing will be Code-compliant, in accordance with the Project's approvals. The creation of 420 student beds will conserve and increase the City's existing housing stock by encouraging students to live in Project Sponsor-supplied housing. In doing so, existing housing currently leased by individual students would return to the general rental market.*

- H) whether the project conserves neighborhood character to preserve neighborhood cultural and economic diversity

*The Project will conserve the Civic Center neighborhood character and increase cultural diversity by locating SFCM students in the Civic Center area, providing educational and performing arts spaces for the students, and providing free and low cost cultural activities to the general public. The new building will be modern and of its time, but conforms to the mixed civic, housing and office neighborhood character.*

- I) whether the project protects the relative affordability of existing housing

*The Project protects the relative affordability of the existing housing. The existing tenants will be permitted to return to the new units at existing rents and all the new units will be subject to the Rent Control Ordinance, as detailed in the Development Agreement RHIP.*

- J) whether the project increases the number of permanently affordable units as governed by Section 415

*The Project will replace the existing units on-site as rental units subject to the Rent Ordinance, so although not subject to Section 415, the project protects the existing affordable units.*

- K) whether the project locates in-fill housing on appropriate sites in established neighborhoods

*The area is a burgeoning residential and commercial neighborhood located close to Hayes Valley. The project is an infill development located at an appropriate site for replacement and student housing.*

- L) whether the project increases the number of family-sized units on-site

*The Project will replace the existing housing in-kind on a one-for-one basis. None of the existing units are family-sized, but are a mix of six studios and 21 one-bedroom units.*

- M) whether the project creates new supportive housing

*The Project will create replacement housing, but will not provide social services on-site.*

- N) whether the project is of superb architectural and urban design, meeting all relevant design guidelines, to enhance existing neighborhood character

*Careful consideration has been given to ensure the proposed building fits into the heart of the Civic Center. That goal has been met through the project's massing and height as well as architectural treatment of the proposed structure. In addition, the façade has been designed to maximize occupant comfort as well as defer to and compliment the surrounding monumental buildings.*

- O) whether the project increases the number of on-site Dwelling Units

*The Project will increase the number of on-site dwelling units by three, and construct 113 new student group housing units. It will also free up a substantial number of dwelling units in the general housing stock as students migrate to the new student housing.*

- P) whether the project increases the number of on-site bedrooms

*The Project will increase the number of student bedrooms in the City by 238 bedrooms, which are included in 113 student units in the Project. The Project will also replace the existing dwelling studios and one-bedroom units one-for-one and will add two studios and one one-bedroom unit for faculty.*

- Q) whether or not the replacement project would maximize density on the subject lot; and

*The Project will provide a dense mixed-use project with a total FAR of 11.7 to 1, including the exempted student housing FAR as requested in this application, thus maximizing density on the site.*

- R) if replacing a building not subject to the Residential Rent Stabilization and Arbitration Ordinance, whether the new project replaces all of the existing units with new Dwelling Units of a similar size and with the same number of bedrooms

*The existing units are subject to the Residential Rent Stabilization and Arbitration Ordinance. The existing units will be replaced with new dwelling units having similar numbers of bedrooms and square footages. The existing building consists of 6 studios (382 sf avg.) and 21 one-bedroom units (543 sf avg.) The new building will have 6 studios (398 sf avg.) and 21 one-bedroom units (588 sf avg.) as replacement units. The Project Development Agreement RHIP specifically provides that the replacement units are subject to the Residential Rent Stabilization and Arbitration Ordinance.*

10. **General Plan Compliance.** The Planning Code Compliance Findings set forth in Motion No. XXXXX, Case No. 2015-012994DNX (Downtown Project Authorization, pursuant to Planning Code Section 309) apply to this Motion, and are incorporated herein as though fully set forth.
11. **Planning Code Section 101.1(b)** The Planning Code Priority Policy Findings set forth in Motion No. XXXXX, Case No. 2015-012994DNX (Downtown Project Authorization, pursuant to Planning Code Section 309) apply to this Motion, and are incorporated herein as though fully set forth.
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.

**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. 2015-012994CUA** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated January 24, 2018, and stamped "EXHIBIT B" included in the docket for **Case No. 2015-012994DNX**, 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. XXXXX. 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.

**Protest of Fee or Exaction:** You may protest any fee or exaction subject to Government Code Section 66000 that is imposed as a condition of approval by following the procedures set forth in Government Code Section 66020. The protest must satisfy the requirements of Government Code Section 66020(a) and must be filed within 90 days of the date of the first approval or conditional approval of the development referencing the challenged fee or exaction. For purposes of Government Code Section 66020, the date of imposition of the fee shall be the date of the earliest discretionary approval by the City of the subject development.

If the City has not previously given Notice of an earlier discretionary approval of the project, the Planning Commission's adoption of this Motion, Resolution, Discretionary Review Action or the Zoning Administrator's Variance Decision Letter constitutes the approval or conditional approval of the development and the City hereby gives **NOTICE** that the 90-day protest period under Government Code Section 66020 has begun. If the City has already given Notice that the 90-day approval period has begun for the subject development, then this document does not re-commence the 90-day approval period.

I hereby certify that the Planning Commission **ADOPTED** the foregoing Motion on February 8, 2018.

Jonas P. Ionin  
Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED: February 8, 2018

## **EXHIBIT A**

### **AUTHORIZATION**

This authorization is for a **Downtown Project Authorization and Request for Exceptions** related to the construction of a 12-story, 120-foot tall, 168,200 square-foot mixed-use building for an educational institution. The project would include 113 student group housing units (420 beds), 30 dwelling units (27 replacement units and 3 new units for faculty), approximately 49,600 square feet of educational and performance space, 4,320 square feet of broadcasting studio space, and 2,600 square feet of ground-floor restaurant/retail space at 200 Van Ness Avenue (Block 0811, and Lots 010 and 012), pursuant to **Planning Code Section 309 and 148, 134, 135, 136, 140, 145.1, 148, and 161** within the C-3-G Zoning District and the 96-X Height and Bulk district; in general conformance with plans, dated **January 24, 2018**, and stamped "EXHIBIT B" included in the docket for **Case No. 2015-012994DNX** and subject to conditions of approval reviewed and approved by the Commission on **February 8, 2018** under Motion No. XXXX. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

### **COMPLIANCE WITH OTHER REQUIREMENTS**

The Planning Code Compliance Findings set forth in Motion No. XXXXX, Case No. 2015-012994DNX (Downtown Project Authorization, pursuant to Planning Code Section 309) apply to this Motion, and are incorporated herein as though fully set forth.

### **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 8, 2018 under Motion No. XXXXXX.

### **PRINTING OF CONDITIONS OF APPROVAL ON PLANS**

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. XXXXXX 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.** The authorization and right vested by virtue of this action is valid for three (3) years from the effective date of the Motion. The Department of Building Inspection shall have issued a Building Permit or Site Permit to construct the project and/or commence the approved use within this three-year period.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

2. **Expiration and Renewal.** Should a Building or Site Permit be sought after the three (3) year period has lapsed, the project sponsor must seek a renewal of this Authorization by filing an application for an amendment to the original Authorization or a new application for Authorization. Should the project sponsor decline to so file, and decline to withdraw the permit application, the Commission shall conduct a public hearing in order to consider the revocation of the Authorization. Should the Commission not revoke the Authorization following the closure of the public hearing, the Commission shall determine the extension of time for the continued validity of the Authorization.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

3. **Diligent pursuit.** Once a site or Building Permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. Failure to do so shall be grounds for the Commission to consider revoking the approval if more than three (3) years have passed since this Authorization was approved.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

4. **Extension.** All time limits in the preceding three paragraphs may be extended at the discretion of the Zoning Administrator where implementation of the project is delayed by a public agency, an appeal or a legal challenge and only by the length of time for which such public agency, appeal or challenge has caused delay.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

5. **Conformity with Current Law.** No application for Building Permit, Site Permit, or other entitlement shall be approved unless it complies with all applicable provisions of City Codes in effect at the time of such approval.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

6. **Additional Project Authorization.** Additional Project Authorization. The Conditions of Approval set forth in Exhibit A of Motion No. XXXXX, Case No. 2015-012994DNX (Downtown Project Authorization under Planning Code Section 309) apply to this approval, and are incorporated herein as though fully set forth, except as modified herein. 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.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org).*

7. **Student Housing Exemption from Affordable Housing.** Pursuant to Planning Code Section 415.3(c)(5)(B), an institutional master plan (IMP) pursuant to Section 304.5 must be on file with the Planning Department prior to the issuance of any building permit in connection with the creation of the Student Housing project, in order for the Student Housing portion of the Project to be exempt from the requirements of Planning Code Section 415.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org).*

8. **Conversion from Student Housing to Non-Student Residential Use.** If a residential Project no longer qualifies as Student Housing as defined in Planning Code Section 102.36, the Zoning Administrator may allow the conversion of the Student Housing to any permitted residential use in the C-3-S Zoning District upon determination that the converted Student Housing has complied with any applicable Inclusionary Affordable Housing Requirements at the date of proposed conversion, as outlined in Planning Code Section 415.3(c)(5)(C)(iii), and that all other Planning Code requirements applicable to that residential use have been met or modified through appropriate procedures.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org).*



August 24, 2017

San Francisco Planning Commission  
1650 Mission Street, Suite 400  
San Francisco, CA 94103

**RE: Conservatory of Music**

Dear Planning Commissioners:

The Civic Center Community Benefit District (CCCBD) has been informed of a proposed development at 200-214 Van Ness by developer Conservatory of Music. This parcel is located within CCCBD District boundaries and the developer made a presentation to our Board of Directors.

The aspects of this development that directly support the mission of the CCCBD and serve to enhance neighborhood cleaning, safety, beautification and activation efforts include their plans to implement:

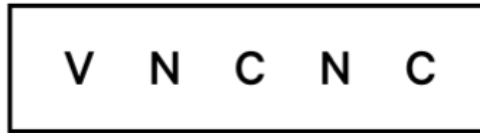
- New well-lit sidewalks and street trees with proper grates, supports and ongoing landscape maintenance
- Brand new building with well-lit, 2-story high transparent facades on three sides
- New active ground-floor retail and performance spaces along Van Ness, Hayes St and Tom Wadell Place
- Onsite facilities management staff maintaining building facades and ensuring student safety
- Exterior security cameras on sidewalks and in the public open spaces

In addition, the project will increase foot traffic to the area due to its 117 units that will house approximately 400 Conservatory students, as well as 3 faculty units, contributing to the vibrancy of Van Ness corridor.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Tracy Everwine', written over a horizontal line.

Tracy Everwine  
Executive Director



VAN NESS CORRIDOR NEIGHBORHOODS COUNCIL

*Cathedral Hill Neighbors Association \* Golden Gate Valley Neighborhood Association \* Hayes Valley Neighborhood Association \* Lower Polk Neighbors\* Middle Polk Neighborhood Association \* Pacific Heights Residents Association \* Russian Hill Community Association\* Russian Hill Neighbors\* Western SoMa Voice*

*re: 200-214 Van Ness Avenue  
case # 2015-012994GPA/MAP/PCA/DNX/CUA*

*Dear Commissioners and Director Rahaim,*

*The Van Ness Corridor Neighborhood Council is very pleased to add our enthusiastic support for this project to your considerations. We have reviewed the project and believe there are many important elements to it. The design and massing are very good. The architectural character will enhance the Corridor. The importance of the Conservatory providing significant new housing stock to serve their students in easily walkable proximity to the campus is a very compelling example we would be happy to see other schools adopt. The strong outreach to the residents of the current building and provisions to keep them affordably housed during construction and long term on site is also clearly the right thing to do. That this site will provide so much needed housing without adding to the traffic congestion of the Hub due to the zero parking design is further evidence of supporting the overall benefit of the community. For all these reasons, we strongly support the needed approvals be made so this highly desirable project can proceed smoothly.*

*Thank you,  
Jim Warshell  
Co-Chair VNCNC*