



# SAN FRANCISCO PLANNING DEPARTMENT

## Letter of Determination

October 2, 2017

Jenny D. Smith  
Law Offices of Dek Ketchum  
900 Veterans Boulevard, Suite 600  
Redwood City, CA 94063

**Site Address:** 800 Clement Street (aka 289-291 9<sup>th</sup> Avenue)  
**Assessor's Block/Lot:** 1424/017  
**Zoning District:** Inner Clement Neighborhood Commercial District (NCD)  
**Staff Contact:** Matt Dito, (415) 575-9164, or [matthew.dito@sfgov.org](mailto:matthew.dito@sfgov.org)  
**Record Number:** 2017-008526ZAD

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

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

Dear Ms. Smith:

This letter is in response to your request for a Letter of Determination regarding the property at 800 Clement Street (also known as 289-291 9<sup>th</sup> Avenue). This parcel is located in the Inner Clement Neighborhood Commercial District (NCD) Zoning District. The request is to clarify the status of conditions and limitations placed on the property as a result of Case No. 85.317EV and Building Permit Application No. 8311396. Specifically, the request has five inquiries regarding Notice of Special Restrictions (NSR) No. D936971 (Exhibit F of your request), which was recorded to document conditions of approval related to the aforementioned applications.

### BACKGROUND

On November 8, 1983, Building Permit Application No. 8311936 (Exhibit D of your request) was filed to construct a horizontal addition to the rear of the existing building at 800 Clement Street. The subject addition would contain 14 units of senior housing and would become known as 289-291 9<sup>th</sup> Avenue. Under then-applicable Planning Code requirements, the proposed units could only be approved as senior housing given the density limitations of the underlying zoning district. The proposal required a Variance from the rear yard and usable open space requirements of the Planning Code. On August 16, 1985, the Planning Department issued an environmental determination (Negative Declaration) under the California Environmental Quality Act (CEQA) for the subject project. On October 21, 1986, the Zoning Administrator granted the required variances (Case No. 85.317V) as outlined in the associated Variance Decision Letter (Exhibit E of your request). On January 29, 1987, NSR No. D936971 was recorded on the subject property outlining six conditions attached to the Planning Department's approval of the subject building permit application in order to allow the permit to be approved under the Planning Code. On January 30, 1987, the Planning Department approved the building permit subject to the conditions of approval, noting the environmental review determination, the variance decision and NSR No. D936971. On July 29, 1987, the subject building permit was issued, with work completed on February 22, 1989 (as noted on the Certificate of Final Completion for the project).

Of the six conditions outlined in NSR No. D936971, it is noted that Condition No. 5 states:

*“That the 14 unit senior citizen housing addition fronting on 9<sup>th</sup> Avenue shall be specifically designed for and occupied by senior citizens or physically handicapped persons, and shall be limited to such occupancy for the actual lifetime of the building by the requirements of State or Federal programs for housing for senior citizens or physically handicapped persons or otherwise by design features and by legal arrangements approved as to form by the City Attorney and satisfactory to the Department of City Planning, as required by Section 209.1(m) of the City Planning Code”*

In your request, you state that the NSR was not recorded by the property owner, but by the leaseholder (Bank of Canton) which holds a 50 year lease on the subject property. Also noted in your request is that East West Bank has assumed the lease established by Bank of Canton.

## DETERMINATION

The five inquiries, as well as my determinations for each inquiry, are as follows:

1. *Do the conditions and limitations set forth in the Notice of Special Restrictions apply to the ground, to both the original building at 800-810 Clement Street and the newly constructed improvement known as 289-291 9<sup>th</sup> Avenue, or only to the newly constructed improvement known as 289-291 9<sup>th</sup> Avenue?*

As the original building at 800 Clement and the addition at 289-291 9<sup>th</sup> Avenue are situated on the same lot, with a single parcel number, the NSR applies to both. It should be noted that the NSR contains specific conditions for each individual building and limiting the senior housing restriction to the building at 289-291 9<sup>th</sup> Avenue.

2. *Are the conditions and limitations set forth in the Notice of Special Restrictions binding on the owner of the real property who neither requested nor consented to the Notice of Special Restrictions?*

Yes. The conditions stipulated in the NSR reflect those which were contained in the Variance Decision Letter and those which were required for the Planning Department as conditions of approval for approval of Building Permit Application No. 8311396. Like the variance issued permitting construction of the improvement known as 289-291 9<sup>th</sup> Avenue, once issued, the building permit and all its conditions of approval runs with the land and binds successor owners. (See *Anza Parking Corp. v. City of Burlingame* (1987) 195 Cal.App.3d 855, 858.) Moreover, “[a] landowner cannot challenge a condition imposed upon the granting of a permit after acquiescence in the condition by either specifically agreeing to the condition or failing to challenge its validity, and accepting the benefits afforded by the permit.” [Citation.]” (*City of Berkeley v. 1080 Delaware, LLC* (2015) 234 Cal.App.4th 1144, 1150, as modified (Feb. 26, 2015); see also *Lynch v. California Coastal Commission* (2017) 3 Cal.5th 470, 478, reh'g denied (Aug. 9, 2017) [in general, permit holders are obliged to accept the burdens of a permit along with its benefits].) The approval of the project and related conditions of approval were not appealed within the timeframes allowed by law and are final and in full effect.

3. *Will the conditions and limitations set forth in the Notice of Special Restrictions survive termination of the Lease and continue to restrict use of the real property after the Lease expires on February 29, 2032?*

Yes. See Response No. 3, above. The conditions outlined in the NSR are associated with the project approved and constructed under Building Permit Application No. 8311936. The

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conditions are not related to the terms of any specific lease. As noted in the Condition No. 5, the condition related to senior housing applies for the actual lifetime of the building.

4. *Will the conditions and limitations set forth in the Notice of Special Restrictions, or any other applicable local law, prevent the owner of the real property from seeking to demolish the new constructed improvement at 289-291 9<sup>th</sup> Avenue following expiration or termination of the Lease?*

The conditions and limitations referenced in the NSR do not prevent the demolition of the building at 289-291 9<sup>th</sup> Avenue. If the property owner wishes to seek authorization for the demolition of the building, Conditional Use Authorization is required pursuant to Planning Code Section 317(c)(1), which states: "Any application for a permit that would result in the Removal of one or more Residential Units or Unauthorized Units is required to obtain Conditional Use authorization. The application for a replacement building or alteration permit shall also be subject to Conditional Use requirements."

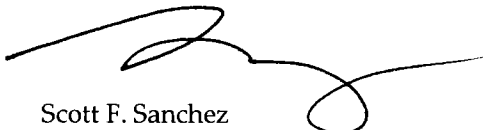
5. *Will the Zoning Administrator exercise its authority to release the real property from the conditions and restrictions contained in the Notice of Special Restrictions when the Lease expires and the ground and improvements revert to Mrs. Mohr on March 1, 2032?*

No. As indicated previously, the conditions and limitations referenced in the NSR are not tied to the terms of any specific lease, or to any particular party to that lease. Rather, they run with the land. The conditions shall be valid for the actual lifetime of the building, as approval of the subject building permit application to develop the parcel was dependent upon the use being restricted to senior housing to comply with the density limits of the Planning Code.

**Please note that a Letter of Determination is a determination regarding the classification of uses and interpretation and applicability of the provisions of the Planning Code. This Letter of Determination is not a permit to commence any work or change occupancy. Permits from appropriate Departments must be secured before work is started or occupancy is changed.**

**APPEAL:** If you believe this determination represents an error in interpretation of the Planning Code or abuse in discretion by the Zoning Administrator, an appeal may be filed with the Board of Appeals within 15 days of the date of this letter. For information regarding the appeals process, please contact the Board of Appeals located at 1650 Mission Street, Room 304, San Francisco, or call (415) 575-6880.

Sincerely,



Scott F. Sanchez  
Zoning Administrator

cc: Property Owner  
Neighborhood Groups  
Amy Chan, San Francisco Mayor's Office of Housing and Community Development  
Matt Dito, Planner

LAW OFFICES OF  
**DEK KETCHUM**

**DEK KETCHUM**  
OF COUNSEL  
**DAVID M. GOLDSTEIN**  
**JENNY D. SMITH**

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TELEPHONE (650) 368-2588  
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June 22, 2017

R # 2017-008526 ZAD

CK # 640 \$ 664. -

D. LINDSAY (NIW)

By Express Mail

Office of the Zoning Administrator  
City and County of San Francisco  
1650 Mission Street  
San Francisco, California 94103

Re: Request for Letter of Determination regarding 800-810 Clement Street;  
289-291 Ninth Avenue, San Francisco; APN #1424-017

Dear Mr. Sanchez:

This office represents Marian B. Mohr, Trustee of the Selby Mohr and Marian B. Mohr Declaration of Trust dated May 15, 1988, which is the owner of the real property described above. In 1982, Mrs. Mohr leased the property to the Bank of Canton of California under a 50-year ground lease (the "Lease"). At the end of the Lease, the real property and all improvements thereon revert to Mrs. Mohr as the lessor and owner of the ground. (Lease, paragraph 21.) The Lease was subsequently assumed by East West Bank, and the lease will expire on February 29, 2032. (A copy of the Lease is attached as Exhibit A to this Request for Letter of Determination.)

At the time of the original lease, the Bank of Canton had settled litigation that temporarily blocked construction of its new high-rise headquarters at 555 Montgomery Street, San Francisco, by agreeing, among other things, to provide 21 units of residential housing to replace residential hotel units that would be removed from the Chinatown housing market by the construction of the 555 Montgomery Street high-rise. (Copies of the July 7, 1982 Agreement and the 1987 amended Agreement are attached as Exhibits B and C to this Request for Letter of Determination.)

On approximately November 8, 1983, the Bank of Canton, through its architects Hardin & Choy, applied for a building permit to construct a four story building on the existing open space of Mrs. Mohr's property. The proposal included 21 residential units, ground floor parking, and community bath and kitchens on each floor. Mrs. Mohr was not involved in the permit application process, and was not

named by the applicant as an interested party. (See, Permit Application dated November 8, 1983, attached to this Request as Exhibit D.)

A preliminary Negative Declaration was published on August 16, 1985. A public hearing was scheduled and held on August 28, 1985 at which issues related to the size of the proposed project, the adequacy of toilet and recreational facilities, and the variance required to allow the new construction to reduce the amount of open space on the parcel below the applicable 25% open space requirement. (See, Notice of Hearing in Planning Department File 35.317EV.)

On October 21, 1986, the Planning Department issued its Variance Decision in Case No. 35.317EV, approving the variance on certain conditions, including that the illegal commercial use on the second floor of the existing Clement Street building be reverted to two residential units. The Variance decision approved the construction of a three-story 14-unit senior citizen housing in general conformity with the revised plans filed by the applicant on July 1, 1986. The revised plans provided for individual toilet facilities in each unit, reduced the total building height to two stories over a garage with an additional recreational penthouse. The Planning Department found special circumstances justifying the variance in the need to partially replace units removed from the City's housing stock by the construction of the Bank of Canton project at 555 Montgomery Street which had been approved on July 15, 1982, the fact that a sublease to the Chinese Community Housing Corporation would guarantee low rents to tenants for at least 30 years, and that the existing site was one of the few sites in the City available for low-income senior citizens with easy access to transit, local commercial and the Chinese community. (A copy of Variance Decision in Case No. 35.317EV is attached hereto as Exhibit E.)

On January 22, 1987, the City issued a notice to Hardin & Choy that the building permit submissions were incomplete, and that one of the outstanding items was to complete a notice of special restrictions. On January 29, 1987, the Bank of Canton of California signed an application and agreement for a Notice of Special Restrictions under the San Francisco Planning Code, which was recorded by the Department of City Planning as Document number D936971. (A copy of the recorded Notice of Special Restriction is attached to this Request as Exhibit F.) The building permit was issued, a Certificate of Final Completion was posted on February 22, 1989, and a Certificate of Occupancy was subsequently issued.

The Notice of Special Restrictions imposed conditions on the issuance of the Building Permit Application No. 8311396, including: Condition 1, requiring that the illegal upper floor commercial use in the existing building be reverted to two residential dwelling units; and Condition 5, providing:

That the 14 unit senior citizen housing addition fronting on 9<sup>th</sup> Avenue shall be specifically designed for and occupied by senior citizens or physically handicapped persons, and shall be limited to such occupancy for the actual lifetime of the building by the requirements of State or Federal programs for housing for senior citizens or physically handicapped persons or otherwise by design features and by legal arrangements approved as to form by the City Attorney and satisfactory to the Department of City Planning, as required by Section 209.1(m) of the City Planning Code. . . .

In its final paragraph, the Notice of Special Restrictions provides that use of the property contrary to the special restrictions “shall constitute a violation of the City Planning Code” and that “no release, modification or elimination of these restrictions shall be valid unless notice thereof is recorded on the Land Records by the Zoning Administrator of the City and County of San Francisco. . . .”

Special Restriction number 5, quoted above, is ambiguous in that the language appears to apply only to the newly constructed building and only for the lifetime of that building. In addition, subsequent changes in local law have created additional restrictions on the ability of property owners to remove residential housing units from the market. The recording of the Notice of Special Restriction creates a cloud on Mrs. Mohr’s title, and will cause economic damage to Mrs. Mohr if the restrictions remain in place at the end of the lease because they will adversely affect her ability to change the use of the real property in the future.

Mrs. Mohr, as the property owner, was never notified of and did not agree to the Notice of Special Restrictions or the conditions imposed by it. She did not authorize the lessee to impose the Notice of Special Restrictions. In fact, paragraphs 9 and 21 of the Lease expressly prohibits the lessee from encumbering or suffering an encumbrance against the property.

We have examined planning file number 85.317 EV which contains no indication that Mrs. Mohr was in any way involved in the planning and permit process, other than being given notice of the initial planning hearing along with all other property owners in the relevant area. (See, August 6, 1985 Declaration of Mailing of Notice of Public Hearing, in the Planning Department file.)

The planning file also contains a copy of City Planning Commission Resolution No. 9456, related to Application No. 82.9D for Discretionary Review of Building Permit Application No. 8106361 for the high-rise office building at 555 Montgomery Street. This resolution recommended approving the 555 Montgomery Street project subject to mitigation measures, including a specific requirement that the Bank of Canton “replace the 22 vacant residential units” that would be demolished, and that the replacement units will be made available “for at least a 30 year period and made available at rental levels that are affordable to low-income persons.” (Resolution No. 9456, Exhibit G to this Request, at p. Seven.)

Mrs. Mohr initiated litigation in May 2016 with the current lessee over its failure to properly maintain the building in good condition and repair. (*Mohr v. East West Bank*, San Francisco Superior Court No. CGC-16-552056.) In preparing the lawsuit, Mrs. Mohr first learned of the Notice of Special Restriction recorded by the original lessee in 1987, and has included a claim related to the unauthorized restriction of her property in the lawsuit. The lawsuit is set for trial on August 21, 2017.

Mrs. Mohr now seeks a Letter of Determination from the Zoning Administrator on the following questions:

1. Do the conditions and limitations set forth in the Notice of Special Restrictions apply to the ground, to both the original building at 800-810 Clement Street and the newly constructed improvement known as 289-291 Ninth Avenue, or only to the newly constructed improvement known as 289-291 Ninth Avenue?
2. Are the conditions and limitations set forth in the Notice of Special Restrictions binding on the owner of the real property who neither requested or consented to the Notice of Special Restrictions?

Office of the Zoning Administrator

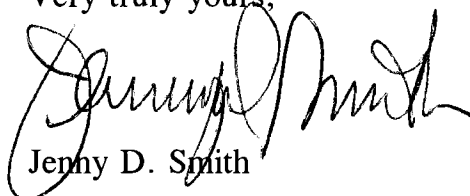
June 22, 2017

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3. Will the conditions and limitations set forth in the Notice of Special Restrictions survive termination of the Lease and continue to restrict use of the real property after the Lease expires on February 29, 2032?
4. Will the conditions and limitations set forth in the Notice of Special Restriction, or any other applicable local law, prevent the owner of the real property from seeking to demolish the newly constructed improvement at 289-291 Ninth Avenue following expiration or termination of the Lease?
5. Will the Zoning Administrator exercise its authority to release the real property from the conditions and restrictions contained in the Notice of Special Restrictions when the Lease expires and the ground and improvements revert to Mrs. Mohr on February 28, 2032, or any earlier termination of the Lease?

If I can provide any additional information, please contact me at 650-368-2588, or by email at [jdsmithjd@comcast.net](mailto:jdsmithjd@comcast.net).

Very truly yours,



Jenny D. Smith

JDS:sj

Enclosures (6):

- A. Lease dated February 2, 1982
- B. Agreement, July 7, 1982
- C. Agreement, 1987
- D. Application for Building Permit for 289 Ninth Avenue
- E. Variance Decision, Case No. 35.317EV
- F. Notice of Special Restrictions.
- G. Planning Commission Resolution No. 9456



**EXHIBIT A**

Original - 2nd original in Selby Mohr's Safe Deposit Box

copy  
F  
S

LEASE AGREEMENT

THIS LEASE, made this 12<sup>th</sup> day of February, 1982,  
by and between

e-mail  
- RAS  
- LRA

MARIAN B. MOHR,

Lessor, and

BANK OF CANTON OF CALIFORNIA, a California corporation,  
Lessee, (hereinafter referred to as the BANK OF CANTON)

WITNESSETH:

1. Use and Premises

That Lessor hereby leases to Lessee, and Lessee hereby hires from Lessor, for any commercial and/or residential use permitted by law those certain premises designated as 800-810 Clement St., and 291 9th Ave, San Francisco, California, more particularly described in Exhibit A attached hereto and shown on plot plan attached as Exhibit B.

Said letting and hiring are upon the following terms and conditions:

2. Term

The term of this lease shall be for the period commencing on the 1st day of March 1982, and ending on the 29th day of February 2032.

3. Rental

A. Subject to adjustments for increases in the cost of living and fair market rents as hereinafter provided, Lessee shall pay Lessor for each lease year, as hereinafter defined, during the lease term, rent at the rate of \$6,000.00 per month payable in advance on the first day of the month beginning March 1, 1982.

B. Subject to adjustment of rents to fair market value as hereinafter provided, said monthly rent shall be increased, but in no event decreased, every three years on March 1, beginning March 1, 1985, for any increase in the cost of living as follows:

On March 1, 1985 said new rental shall be computed by multiplying the monthly rent on March 1, 1982 by a fraction, the numerator of which is the price index published by the Department

of Labor for the period preceding and nearest the adjustment date and the denominator of which is the price index for the period preceding and nearest the commencement date of the lease (as presently published, the period in each instance would be the month of February). On March 1, 1988 and on March 1st of each succeeding three year period thereafter, the monthly rent shall be similarly adjusted using the following figures for the base rent, numerator and denominator. The monthly rent shall be the monthly rent paid after the last adjustment. The numerator shall be the price index for the period preceding and nearest the adjustment date and the denominator shall be the price index for the period preceding and nearest the adjustment date when the monthly rent was last adjusted either for an increase in the price index or fair market rent. The new rental so derived shall be used until the rental is again adjusted pursuant to terms of this lease. Until there is an adjustment, the denominator shall remain the price index for the period preceding and nearest March 1, 1982, the commencement date of the lease. The said price index shall be the Consumer Price Index for All Urban Consumers (Revised Series), San Francisco, Oakland, California (1967=100) published by the U. S. Department of Labor, Bureau of Labor Statistics. If at any pertinent time the said Department of Labor shall not be maintaining such tables specifically, a Price Index shall be substituted except that if at any pertinent time a base period different from the base period in use at the date of occupancy shall be used in the computation of such tables, adjustment shall be made to relate the index to the base period in use in February, 1982. If the parties should not agree as to the Index to be substituted, such substituted Index shall be selected by three arbitrators as provided in paragraph 33. No adjustments shall be made for decreases in the cost of living.

Adjustment date is defined as March 1st of any year in which rent is to be adjusted pursuant to this lease.

C. Every six years beginning March 1, 1988, said monthly rental shall be adjusted to fair market rental if said fair market rental is greater than the adjusted monthly rental as adjusted for increases in the cost of living index. For purposes of this section, fair market rental is defined as that rental then being paid for 2,762 square feet of retail commercial space (whether the leased premises are being used for that purpose or not) for comparable properties located on Clement St. between Arguello Blvd. and 12th Ave, San Francisco, California. If the parties have not reached agreement as to such fair market rental prior to the adjustment date then either party may at anytime thereafter request arbitration as set forth in paragraph 33.

D. For the purpose of this lease, "lease year" is a period during the lease term commencing on March 1st in each year and

ending at midnight of the last day of February next succeeding.

4. Payment of Rental

Lessee agrees to pay the rental herein reserved at the time hereinabove set forth, without deduction offset, in lawful money of the United States of America, to the Lessor's agent, DeWolf Realty Co., at 4330 California Street, San Francisco, CA 94118, or to such other person and/or at such other place as Lessor may from time to time designate in writing.

5. Possession

Lessee shall be given possession at the commencement date of this lease, said possession to be subject to the prior possession of tenants then occupying the premises.

6. Taxes and Assessments

In addition to rentals hereinabove provided, Lessee agrees to pay all real estate taxes and assessments levied against the land and building and all other improvements located on or included in the demised premises during the term of this lease and all taxes levied or assessed in lieu of or substitution for or supplemental to existing or additional real estate taxes and assessments. Said taxes shall be paid by Lessee directly to the levying authority and Lessee shall provide Lessor with a copy of the receipted tax form. Lessor shall cooperate with Lessee in endeavoring to cause all tax and assessment bills to be sent directly to Lessee, but in the event the tax collector will not so agree, then Lessor will promptly tender same to Lessee upon receipt of any such bills.

Lessee agrees to pay all personal property taxes assessed against the property during its occupancy of the demised premises directly to the levying authority.

If, by law, any tax and/or assessment may at the option of the taxpayer be paid in installments, Lessee may exercise the option to pay the same installments as they may become due during the term of this Lease.

Any tax and/or assessment which has been converted into installment payments at the option of Lessee or which has not been so converted, but can be related to a fiscal period, a part of which period is included within the term of this Lease and a part of which is included in a period of time after the expiration of the term of this lease, shall be adjusted between Lessee and Lessor as of the expiration of the term of this Lease.

Lessee shall have the right, at its own cost and expense, and in its own name or in the name of Lessor, to seek to have reviewed, reduced, equalized or abated any taxes or assessments, hereinabove mentioned, by legal proceedings or in such manner as it deems advisable, and Lessor agrees that Lessor will not pay any such taxes or assessments if notified by Lessee in writing to the effect that Lessee so desires to protest, contest or seek to have reviewed, reduced, equalized or abated any such taxes or assessments during such time as Lessee is so contesting, or protesting the same or seeking to have the same reviewed, reduced, equalized or abated; provided, however, that Lessee shall upon request furnish to Lessor a bond, in form satisfactory to Lessor in an amount equal to the taxes or assessments so contested, together with the estimated amount of interest thereon for two years and, of any penalties thereon, which bond shall guarantee to Lessor the payment thereof with interest and penalties thereon, and provided further, that if at any time payment of the whole or any part thereof shall become necessary in order to prevent the termination by sale or otherwise of the right of redemption of the demised premises, or to prevent eviction of the Lessor or the Lessee because of nonpayment thereof, then Lessee shall pay the same in time to prevent such termination of the right of redemption or such eviction. Lessor agrees to join with Lessee and to execute any and all documents, applications, petitions, instruments or complaints necessary for any such protest, contest, review or other proceedings desired by Lessee; provided, however, that any such protest, contest or other proceedings shall be carried on by Lessee at its sole cost and expense, and that upon final determination of any such contest, review or proceedings, Lessee shall pay the taxes or assessments as they are so finally determined and all penalties, interests, costs and expenses which may thereupon be due or have resulted therefrom. Taxes at the beginning and at the end of the term of this Lease shall be prorated.

#### 7. Utilities

Lessee agrees to pay all charges and/or assessments for gas, electricity, water, sewerage and telephone service or other service which may be used in said demised premises.

#### 8. Insurance

Lessee shall, at its sole cost and expense, cause to be placed in effect immediately upon commencement of the term of this Lease, and shall maintain in full force and effect during said term the following insurance in companies satisfactory to the Lessor and in the joint names of Lessor and Lessee as assureds:

a. Comprehensive public liability insurance including if applicable, but not limited thereto, so called "Dram Shop" liability,

boiler and machinery and any other similar insurance not ordinarily covering the demised premises in an amount normally carried by the Bank of Canton, but in any event not less than \$5,000,000 combined single limit bodily injury and property damage for injury and/or death to any number of persons in any one accident. Provided Lessor gives Lessee written notice, the policy limits of said public liability insurance shall be reviewed and adjusted every three years beginning March 1, 1985. If the parties cannot agree as to the proper amount by the date for the adjustment, the matter shall be referred to arbitration as per paragraph 33. In no event shall said coverage be less than \$5,000,000.

b. Fire and casualty insurance special building form (all risk) full replacement value covering all present buildings and improvements on the demised premises or replacements thereof.

Failure of the Lessee to take out or maintain any of the insurance policies hereinabove described or to pay the premiums thereon when due shall carry with it the same consequences as failure to pay any installment of rent.

Lessee shall deliver to Lessor a duplicate original of each policy, or in lieu thereof, a certificate issued by the carrier. Each such policy or certificate shall provide that the same shall not be cancelled without at least thirty (30) days' prior written notice to Lessor.

Lessee, as a material part of the consideration to be rendered to Lessor, hereby waives all claims against Lessor for injury to any person or for damages to goods, wares, and merchandise in, upon or about said premises from any cause arising at any time, and Lessee will hold Lessor harmless from any damage or injury to any person or to the goods, wares and merchandise of any person arising from the use of the leased premises by or under Lessee or from the failure of Lessee to maintain the leased premises in the manner herein required.

#### 9. Maintenance and Repair

From and after commencement of the term of this Lease, Lessee shall, at its sole expense, maintain the leased premises and the improvements, existing or built by Lessee pursuant to its right to make alterations, (offsite and onsite including, but not limited to, offsite sewer and utility lines) in good condition. Lessee shall maintain the whole of said leased premises in a clean and sanitary condition, in accordance with all applicable state, city and county health and sanitation laws and ordinances and as directed by the proper public officials during the term of this Lease. Lessor shall not be called upon to make any improvements or repairs in or upon the leased premises during the term of Lease, it being the

intention that this Lease shall be what is commonly referred to as a "triple net lease", Lessee being responsible for all expenses of every kind and nature, including capital improvements as well as operating expenses. During the term of this lease, Lessor shall have absolutely no obligation to make any expenditure in connection with said property. At the end of the term, Lessee shall surrender the premises to the Lessor in a good state of repair and maintenance. Lessee shall not defer needed and necessary items of maintenance and repair in the final months of the Lease, but shall perform same to and including the last day of the term of the lease to the end that Lessor, when possession is returned to Lessor, will not have to perform repairs and maintenance that should have been taken care of by the Lessee under its duty to maintain and make repairs to the leased premises to keep them in good condition.

Lessee covenants and agrees to pay promptly when due all claims for work and materials furnished in connection with its maintenance of said improvements, and shall not permit or suffer any liens or encumbrances to attach to the leased premises, and shall indemnify Lessor against loss therefrom.

10. Damage or Destruction

(a) In the event that any of the current improvements or replacements on the leased premises are damaged, destroyed or lost, Lessee shall forthwith repair, restore and reconstruct said damaged or destroyed improvements or replacements, so that upon completion thereof, said improvements or replacements will be substantially the same as before the occurrence of said damage or destruction. If the damage or destruction is caused by a casualty covered by insurance, the proceeds of the insurance provided in paragraph 8 shall be used and paid to Lessee for such repair or reconstruction and both parties shall execute such documents as may be necessary to effect such payment. Rental payments shall continue while the premises are being restored for resumption of business operations.

(b) All expenses of repairing, restoring and reconstructing damaged or destroyed property shall be paid solely by Lessee.

(c) In the event that destruction occurs during the last three years of the term of this Lease and the destruction amounts to more than one-third of the value of the improvements, then either party by written notice given to the other within fifteen (15) days after the destruction occurs may elect to terminate this Lease forthwith.

(d) In the event that the Lease is terminated under provisions of said paragraph (c) the entire proceeds of the fire, extended coverage and special form (or equivalent) insurance, shall belong to Lessor. Both parties shall execute such documents as the insurance company may require.

## 11. Condemnation

(a) The term "condemnation" as used in this Lease shall mean the exercise of the power of eminent domain by any person, entity, body, agency or authority, or private purchase in lieu of eminent domain, and the date of condemnation shall mean the day on which the actual physical taking of possession pursuant to the exercise of said power of eminent domain, or private purchase in lieu thereof, occurs, or the date of settlement or compromise of the claims of the parties thereto during the pendency of the exercise of said power, whichever first occurs, and property is deemed "condemned" on said date.

(b) In the event the entire leased premises are taken, or so much thereof are taken that there is less than 2,762 square feet of gross building area left, then, in either event, this Lease shall terminate on the date of condemnation.

(c) In the event only a part of the leased premises is so taken and the remaining part thereof in Lessee's opinion, remains reasonably suitable for Lessee's continued occupancy and conduct of its business thereof, this Lease shall, as to the part so taken, terminate on the date of condemnation, and the monthly rent shall thereupon be equitably reduced. In the event that the parties cannot agree upon the amount of reduction of the monthly rent, the matter shall be submitted to arbitration according to paragraph 33. In the event that the taking involves a portion of the improvements on the leased premises so that repair or reconstruction to the remaining improvements is necessary to permit continued occupancy, then if Lessee has determined pursuant to this subparagraph (c) that the remaining premises are suitable for the continued occupancy, Lessee shall promptly, under direction of Lessor, cause the necessary repairs or reconstruction to be made and paid for out of the condemnation award.

(d) All compensation awarded or paid upon a total or partial taking of the leasehold and improvements, attributable to Lessor's interest in the property, shall belong to the Lessor.

(e) Sale of all or part of the leased premises to a purchaser with the power of eminent domain in the face of a threat or probability of the exercise of the power shall be treated, for the purposes of this section, as a taking by condemnation.

(f) Each party agrees to execute and deliver to the other all instruments that may be required to effectuate the provisions of this paragraph.

## 12. Default

In the event of any default under this Lease by Lessee, and such default, if it be in the payment of money, continues uncured for a period of three (3) days after written notice thereof from Lessor, or if it be a default in any of the other provisions



of this Lease, such default continues uncured for a period of thirty (30) days after written notice thereof from Lessor (provided, however, that if the nature of the default specified in said notice is incapable of being cured within thirty (30) days, then Lessee shall not be deemed to be in default hereunder for failure to cure the same within thirty (30) days or thereafter unless Lessee fails to proceed forthwith and thereafter use due diligence to cure the default specified), then, besides any other rights and remedies of Lessor at law or equity, Lessor shall have the right either to terminate Lessee's right to possession of the demised premises and thereby terminate this Lease or to have this Lease continue in full force and effect with Lessee at all times having the right to possession of the demised premises. Should Lessor elect to terminate Lessee's right to possession of the demised premises and terminate this Lease, then Lessor shall have the immediate right of entry and may remove all persons and property from the premises. Such property so removed may be stored in a public warehouse or elsewhere at the cost and for the account of Lessee. Upon such termination, in addition to any other rights and remedies (including rights and remedies under subparagraphs (1), (2) and (4) of subdivision (a) of Section 1951.2 of the California Civil Code), Lessor shall be entitled to recover from Lessee the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided. The worth at the time of award of the amount referred to in this paragraph shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one percent (1%).

Any proof by Lessee under subparagraphs (2) or (3) of subdivision (a) of Section 1951.2 of the California Civil Code of the amount of rental loss that could be reasonably avoided, shall be made by arbitration as set forth in paragraph 33.

As used herein, the term "time of award" shall mean either the date upon which Lessee pays to Lessor the amount recoverable by Lessor as hereinabove set forth or the date of entry of any determination, order or judgment of any court or other legally constituted body, or of any arbitrators determining the amount recoverable, whichever first occurs.

Should Lessor, following any breach or default of this Lease by Lessee, elect to keep this Lease in full force and effect, with Lessee retaining the right to possession of the demised premises (notwithstanding the fact that Lessee may have abandoned the demised premises), then besides all other rights and remedies Lessor may

have at law or equity, Lessor shall have the right to enforce all of Lessor's rights and remedies under this Lease, including, but not limited to, Lessor's right to recover the rent as it becomes due under this Lease. Notwithstanding any such election to have this Lease remain in full force and effect, Lessor may at any time thereafter elect to terminate Lessee's right to possession of said demised premises and thereby terminate this Lease for any previous breach or default which remains uncured, or for any subsequent breach or default.

Nothing herein shall prevent Lessor from pursuing any and all other remedies it may have upon Lessee's default including, but not limited to, its statutory unlawful detainer remedy.

#### 13. Attorney's Fees

In the event of the bringing of any action by either party hereto as against the other hereon or hereunder or by reason of the breach of any covenant or condition on the part of the other party or arising out of this Lease, then and in that event the party in whose favor final judgment shall be entered shall be entitled to have and recover of and from the other reasonable attorneys' fees which shall be fixed by the Court.

In addition, Lessee shall reimburse Lessor for any reasonable attorneys' fees or costs incurred, whether or not suit be instituted, in connection with any request by Lessee except a request for arbitration.

Should Lessor become a party defendant to any litigation concerning this Lease or any part of the demised premises by reason of any act or omission of the Lessee and not because of any act or omission of Lessor, then Lessee shall hold Lessor harmless from all liability by reason thereof and shall pay to Lessor all reasonable attorneys' fees and costs incurred by Lessor in such litigation.

Should Lessee become a party defendant to any litigation concerning this Lease or any part of the demised premises by reason of any act or omission of the Lessor and not because of any act or omission of Lessee, then Lessor shall hold Lessee harmless from all liability by reason thereof and shall pay to Lessee all reasonable attorneys' fees and costs incurred by Lessee in such litigation.

#### 14. Security

As security for the faithful performance of each and every covenant and obligation on the part of the Lessee to be performed,

Lessee shall deposit with the Lessor the sum of \$50,000.00 in cash not later than the commencement date of the Lease. Provided Lessee shall have faithfully performed all of its covenants and obligations under the Lease, said deposit shall be returned to Lessee, without interest, in annual installments of \$6,000 on March 1st of 1983, 1984, 1985, 1986, 1987, and 1988; one installment of \$2,000 on March 1, 1989 and the balance of \$12,000 at the end of the lease term.

15. Notice and Demands

Any notices or demands which shall be required or permitted by law or any provision of this Lease shall be in writing. If the same is to be served upon Lessor, it shall be deposited in the United States mail, registered or certified, postage prepaid, addressed to Lessor c/o DeWolf Realty Co. at 4330 California Street, San Francisco, California 94118. If the same is to be served upon the Lessee, it shall be deposited in the United States mail, registered or certified, postage prepaid, addressed to Lessee at 555 Montgomery Street, San Francisco, California 94111. Each party may from time to time change the place for the address for such service by mail upon said party to any other address by written notice to the other, which said notice shall be given in the manner prescribed herein for the service of notices or demands.

16. Assignment and Subleasing

Lessee may not without the consent of the Lessor assign this Lease, which consent of Lessor shall not be unreasonably withheld. It shall not be unreasonable for Lessor to refuse such consent if the proposed assignee does not have a net worth of \$10,000,000 and real estate experience comparable to that of Lessee. Lessee may sublet to tenants portions of the leased premises up to the whole thereof without the consent of Lessor. The Bank of Canton shall remain principal obligor to the Lessor for full performance of all the terms, conditions, and covenants of this Lease by which Lessee herein is bound; and, the acceptance of an assignment of the premises by any firm, person or corporation shall be construed as a promise on the part of such assignee to be bound by and perform all of the terms, conditions and covenants by which Lessee herein is bound. No such assignment shall be construed to constitute a novation. Consent to one assignment shall not be deemed a waiver by the Lessor of Lessee's duty to obtain its consent for further or additional assignments. Lessee agrees to pay on demand reasonable attorneys fees incurred by Lessor as a result of Lessee's request for a consent to assignment of lease.

17. Relationship of the Parties

The relationship of the parties hereto is that of Lessor and Lessee, and it is expressly understood and agreed that Lessor does

not in any way nor for any purpose become a partner of Lessee or a joint venturer with Lessee in the conduct of Lessee's business or otherwise, and that the provisions of any agreement between Lessor and Lessee, relating to rent, are made solely for the purpose of providing a method whereby the rental payments are to be measured and ascertained.

18. Quitclaim

Where requested by the Lessor, at the expiration or earlier termination of this Lease, Lessee shall execute, acknowledge and deliver to Lessor, within five (5) days after written request from Lessor to Lessee, any quitclaim deed or other document required by any reputable title company to remove the cloud of this Lease from the real property subject to this Lease.

19. Short Form Lease

This Lease shall not be recorded, but Lessor and Lessee are concurrently herewith executing a short-form lease which Lessor and Lessee agree shall be in the form and executed in a manner sufficient to enable it to be recorded in the governmental office in which there would be recorded a deed covering the leased premises in accordance with the law of the jurisdiction in which the leased premises are located.

20. Insolvency

A prime motive and principal consideration for execution of this lease by Lessor was that the Lessee is a substantial financial institution and very knowledgeable in real estate development, financing and leasing, and Lessor shall be under no duty to accept performance of this lease, or any portion of this lease, from any person, including an assignee or trustee in bankruptcy, other than Lessee. Lessee agrees that neither this lease nor any interest herein shall be assignable or transferable by operation of law, save in the event of devolution upon the death of the Lessee if an individual, and it is hereby mutually agreed, covenanted and understood by and between the parties hereto that in the event any proceeding under the Bankruptcy Act or any amendments thereto be commenced by or against the Lessee (or should there be more than one, then any Lessee) because of the insolvency of the Lessee or in the event the Lessee (or should there be more than one, then any Lessee) be adjudged insolvent or makes an assignment for the benefit of its creditors, or if a writ of attachment or execution be levied on the leasehold estate created hereby and be not released or satisfied within ten (10) days thereafter, or if a receiver be appointed in any proceeding or action to which the Lessee is a party, with authority to take possession or control of the demised premises or the business conducted therein by Lessee, this lease at the option of the Lessor shall immediately end and terminate and shall in no wise be treated as an asset of the Lessee after the exercise of the aforesaid option; and the Lessor shall have the right, after the exercise of said option, to forthwith re-enter and repossess itself of said premises as of its original estate.

## 21. Alterations or Improvements

Lessee, at Lessee's sole expense, shall be entitled to alter, add to, or demolish and rebuild the existing improvements provided that the resulting replacement improvements shall be of equal or greater value than before and have at least six thousand (6,000) square feet of gross floor area; provided however, that during the last three years of the term Lessee shall make no major improvements or alterations without first obtaining the written consent of the Lessor. Such leasehold improvements shall become part of the realty and belong to the Lessor at the termination of this lease.

In the event Lessee decides to demolish all or a portion of the present improvements, before beginning such demolition, Lessee shall provide Lessor with a bond or other security device acceptable to the Lessor guaranteeing the completion of the reconstruction of the improvements free and clear of liens and encumbrances.

Lessee agrees that it will not permit any mechanics', materialmen's or other liens to stand against the leased premises for work and materials furnished and in connection with such alterations, remodeling, additions or new construction. Prior to commencing any such work, Lessee shall give Lessor sufficient notice to allow Lessor to post a notice of nonresponsibility as contemplated by any provision of applicable State law regarding construction or repair work performed by or on behalf of Lessee and for such purposes Lessor shall have access to the leased premises.

## 22. Liability to Third Persons

(a) Except with respect to activities for which the Lessor is responsible, if any, the Lessee shall pay as due all claims for work done on and for services rendered or material furnished the leased premises and shall keep the premises free from any liens. If Lessee fails to pay any such claims or to discharge any liens, Lessor may do so and collect the cost as additional rent. Any amount so added shall bear interest at the maximum rate permissible under the law from the date expended by Lessor and shall be payable on demand. Such action by Lessor shall not constitute a waiver of any right or remedy which Lessor may have on account of Lessee's default.

(b) Lessee may withhold payment of any claim in connection with the good faith dispute over the obligation to pay, so long as Lessor's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Lessee shall, within ten (10) days after knowledge of the filing, secure the discharge of the lien or deposit with Lessor cash or sufficient corporate surety bond or other surety satisfactory to Lessor in an amount sufficient to discharge the lien plus any costs, attorneys' fees and other charges that could accrue as a result of a foreclosure or sale under the lien.

(c) Lessee shall indemnify and defend Lessor from any claim, loss or liability arising out of or related to any activity of Lessee on the leased premises or any condition of the leased premises in the possession and under the control of the Lessee including any such claim, loss or liability which may be contributed to in whole or in part by Lessor's own negligence.

23. Service Charge for Late Payments

Lessee acknowledges the fact that the failure of a Lessee to make payment to a Lessor creates problems for the Lessor both as to the additional clerical work and as to damage to its credits standing created by resultant delays in the Lessor's meeting its obligations. Lessee further acknowledges that the damages so sustained by a Lessor are difficult to assess. Lessee therefore agrees that should it fail to make any payment required to be made under this lease within ten (10) days after the due date, it shall pay a service charge of 3% of the amount due hereunder. Nothing herein shall prevent Lessor from pursuing any and all other remedies it may have upon Lessee's default as set forth in paragraph 12.

24. Corporate Authority

The Bank of Canton shall deliver to the Lessee<sup>ck</sup> on execution of this lease a certified copy of a resolution of its board of directors authorizing the execution of this lease and naming the officers that are authorized to execute this lease on behalf of the corporation. MOM  
LCS

25. Other Payments To Be Construed as Additional Rent

Failure of Lessee to pay taxes, insurance premiums, or any other obligations of the Lessee under the terms of this lease which can be satisfied by the payment of money by the Lessee shall carry the same consequences as failure to pay an installment of rent.

26. Number and Gender

Whenever the singular number is used in this Lease and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and the word "person" shall include the corporation, firm or association.

27. Headings and Titles

The marginal headings or titles to the paragraphs of this Lease are not part of this Lease and shall have no effect upon the construction or interpretation of any part of this Lease, but are intended for the convenience of the parties only.

28. Waiver

The waiver by either party hereto of any breach of any term, covenant or condition of this Lease to be performed by the other, shall not be deemed to be a waiver of any subsequent breach thereof.

29. Successors

The terms, covenants and conditions herein contained shall inure to the benefit of the heirs, administrators, executors, successors and assigns of each of the parties hereto.

30. Conditions

It is agreed between the parties hereto that all the agreements herein contained on the part of the Lessee, whether technically covenants or conditions, shall be deemed to be conditions at the option of the Lessor, conferring upon the Lessor, in the event of breach of any of said agreements, the right to terminate this lease.

31. Lessor and Lessee

The words "Lessor" and "Lessee" as used herein shall include the plural as well as the singular, and the neuter shall include the masculine and feminine genders, and if there be more than one lessee, the obligations hereunder imposed upon the Lessee shall be joint and several.

32. Rent Payable in U. S. Money

Rent and all other sums payable under this lease must be paid in lawful money of the United States of America.

33. Arbitration

In the event the parties cannot mutually agree, and the lease provides for arbitration, the controversy shall be determined by three arbitrators to be appointed for that purpose as follows:

(a) Within five (5) days after notice by either party to the other requesting arbitration, one arbitrator shall be appointed by each party. Notice of such appointment, when made, shall be given by each party to the other.

(b) The two arbitrators shall forthwith choose a third arbitrator to act with them. If they fail to select a third arbitrator within ten (10) days of their appointment, upon application of either party the third arbitrator shall be promptly appointed by the then presiding judge of the Superior Court of the State of California

in and for the City and County of San Francisco, acting in his individual and not official capacity. The party making such application to such judge shall give the other party to this lease five (5) day's notice of his application.

(c) The arbitrators shall proceed with due dispatch. The decision of any two of the three arbitrators shall be binding, final and conclusive on the parties to this lease. Such decision shall be in writing and delivered to the parties, and shall be in such form that a judgment may be entered on the decision in the Superior Court of the State of California in and for the City and County of San Francisco.

(d) If either party fails to appoint an arbitrator as provided by this paragraph, the decision of the single arbitrator appointed shall be binding, final and conclusive on the parties to this lease. Such decision shall be in writing and delivered to the parties, and shall be in such form that a judgment may be entered on the decision in the Superior Court of the State of California in and for the City and County of San Francisco.

(e) In reaching their decision, the arbitrators shall use such definitions as are set forth in this lease.

(f) Only persons knowledgeable and experienced in the matters in controversy shall be selected as arbitrators, e.g., only MAI appraisers or qualified real estate brokers engaged in the business of commercial leasing for at least five years shall be selected to determine fair market rental.

(g) The expense of any such arbitration shall be borne as the arbitrators direct.

#### 34. Rent Control

The rental and other terms of this lease are the result of extensive negotiations between the parties, both of whom have legal and professional real estate advice, and represent what both parties have agreed are fair and reasonable for similar properties in the area. In the event any governmental body or agency should enact any regulation, ordinance or law which would reduce the rental herein provided and the Lessee seeks to avail itself of the benefits of such regulation, ordinance or law, then the Lessor may upon thirty (30) days written notice to Lessee terminate this lease and take possession of the premises for Lessor's use or such other use as Lessor may wish to make of the property.

#### 35. As Is Condition

The present improvements are at least 75 years old and Lessee recognizes that there may be defects and deficiencies therein. Lessee has had the building inspected and shall take the premises in their present "as is" condition and with the present tenants in possession.



Lessor warrants that all of the tenants are on a month to month rental basis except for the tenant doing business as Hamburger Haven located at 800 Clement Street, San Francisco, whose lease expires on June 14, 1982 without option to renew. No leases or extensions will be entered into prior to the execution of this Lease. Lessor warrants that she has not received written notice of any present building code violations.

36. Remedies Cumulative

All remedies herein conferred upon the Lessor shall be deemed cumulative and no one exclusive of the other or of any other remedy conferred by law.

37. Waiver of Subrogation

Each of the parties hereto does hereby waive its entire right of recovery against the other for any damages caused by an occurrence insured against by such party, and the rights of any insurance carrier to be subrogated to the rights of the insured under the applicable policy.

38. Entire Agreement

This Lease contains the entire agreement of the parties hereto with respect to the matters covered hereby, and no other agreement, statement or promise by any party hereto, or any employee, officer or agent of any party hereto, which is not contained herein, shall be binding or valid.

39. Lessee's Right of First Refusal

If Lessor determines to sell the premises, Lessor shall notify Lessee by registered or certified mail of the terms on which Lessor will be willing to sell.

If Lessee, with thirty (30) days after receipt of Lessor's notice, indicates in writing its agreement to purchase the premises or a part of the premises on the terms stated in Lessor's notice, Lessor shall sell and convey the premises or a part of the premises to Lessee on the terms stated in the notice. If Lessee does not indicate its agreement within thirty (30) days, Lessor thereafter shall have the right to sell and convey the premises or a part of the premises to a third party on the same terms stated in the notice. If Lessor has not entered into an enforceable contract to sell and convey the premises or a part of the premises within one hundred and eighty (180) days, any further transaction shall be deemed a new determination by Lessor to sell and convey the premises or a part of the premises and the provisions of this paragraph shall be applicable.

If Lessee purchases all of the premises, this Lease shall terminate on the date title vests in Lessee, and Lessor shall remit to Lessee all prepaid and unearned rent. If Lessee purchases a part of the premises, this lease as to the part purchased shall terminate on the date title vests in Lessee, and the minimum monthly rent shall be reduced in the same ratio that the value of the premises before the purchase bears to the value of the premises covered by the lease immediately after the purchase.

40. Professional Advice

During negotiations prior to the execution of this lease, both parties have sought and received legal and professional real estate advice of their own choosing and neither is entering into this lease in reliance upon any express or implied representation made by the other.

41. Estoppel Certificates

Each party, within ten days after written notice from the other party, shall execute and deliver to the other party, in recordable form, a certificate stating that this lease is unmodified and in full force and effect, or in full force and effect as modified, and stating the modifications. The certificate also shall state the amount of the present monthly rent, the dates to which the rent has been paid in advance, and the amount of any security deposit or prepaid rent.

42. Surrender

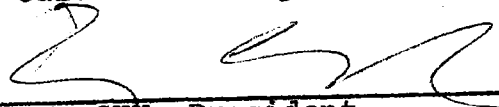
No act or conduct of the Lessor, whether consisting of the acceptance of the keys to the demised premises, or otherwise, shall be deemed to be or constitute an acceptance of the surrender of the demised premises by the Lessee prior to the expiration of the term hereof, and such acceptance by the Lessor of surrender by the Lessee shall only flow from and must be evidenced by a written acknowledgment of acceptance of surrender signed by the Lessor.

43. Time

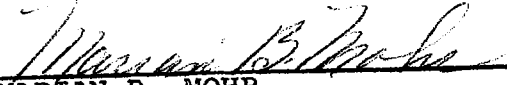
Time is of the essence of this lease and each and all of its provisions.

IN WITNESS WHEREOF, the parties hereto have executed this  
Lease the day and year first above written.

BANK OF CANTON OF CALIFORNIA,  
a California corporation,

  
\_\_\_\_\_  
L. C. SHU, President

LESSEE

  
\_\_\_\_\_  
MARIAN B. MOHR

LESSOR

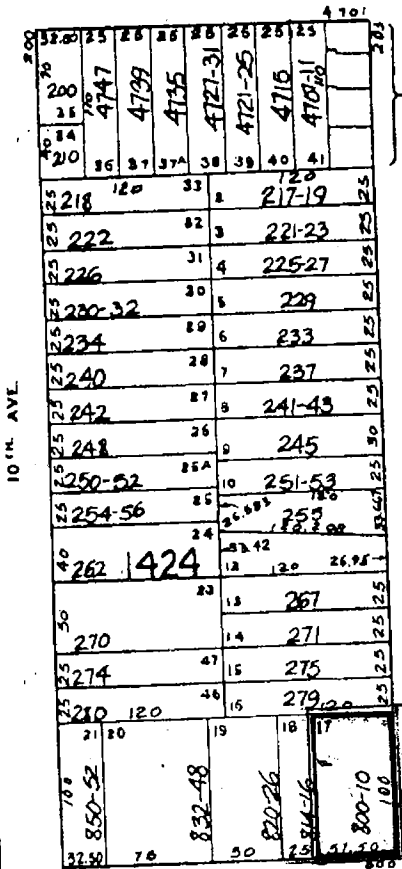
DESCRIPTION OF REAL PROPERTY

That certain real property situate in the City and County of San Francisco, State of California, described as follows:

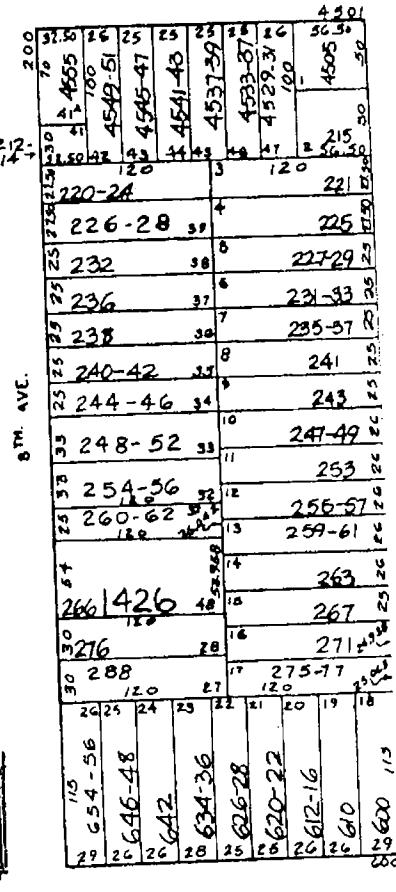
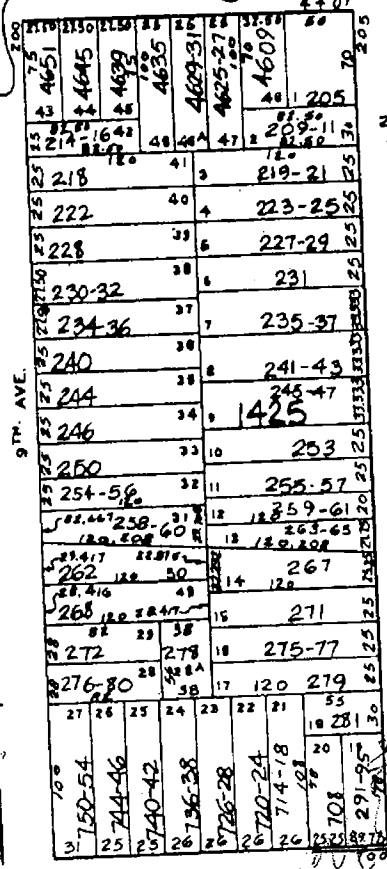
Commencing at a point at the intersection of the Northerly line of Clement Street with the westerly line of Ninth Avenue, running thence northerly along the westerly line of Ninth Avenue 100 feet; thence at a right angle westerly 57 feet 6 inches; thence at a right angle southerly 100 feet to the northerly line of Clement Street; thence at a right angle easterly along said line of Clement Street 57 feet 6 inches to the point of commencement.

Said real property is commonly designated as 800-810 Clement Street and 291 9th Avenue, San Francisco, California.

CALIFORNIA

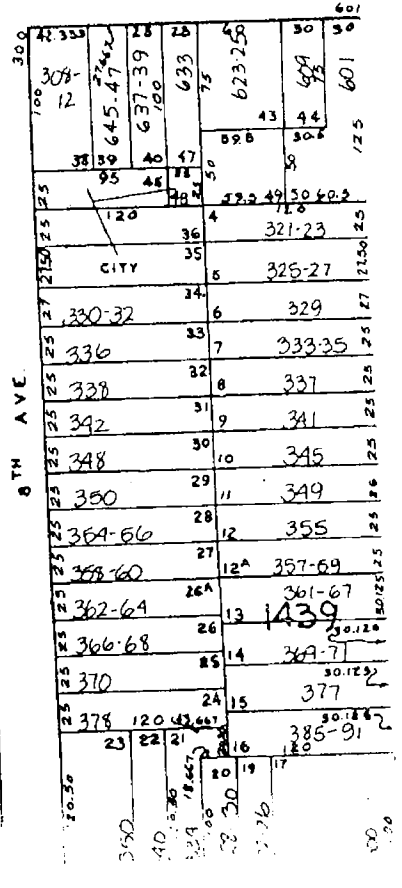
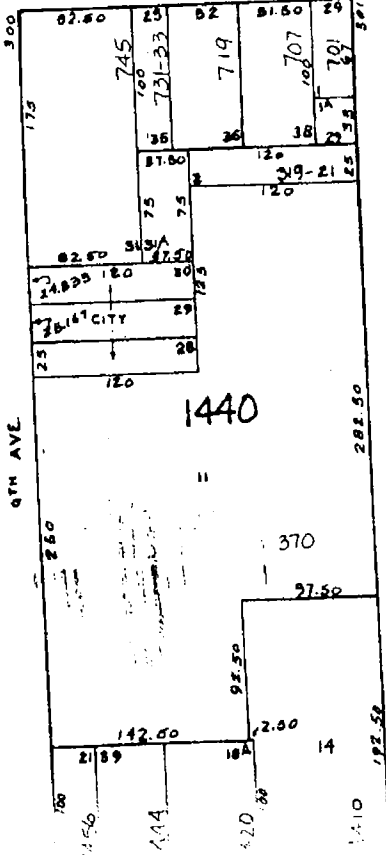
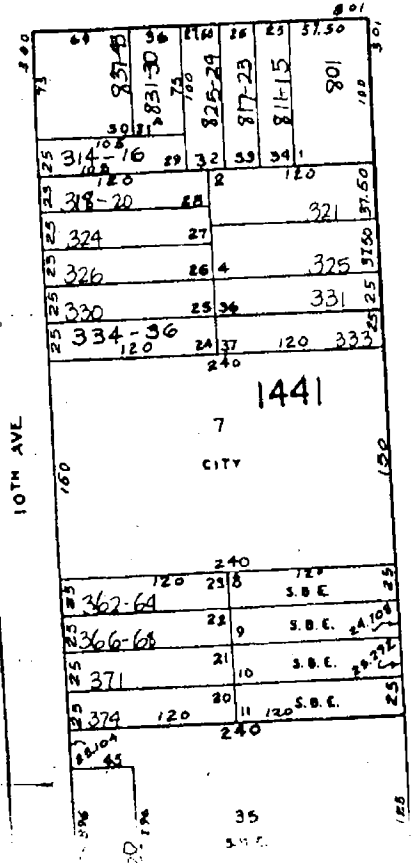


SEE ENLARGEMENT (A)



17

CLEMENT



B

RESOLUTION

At a meeting of the Board of Directors of Bank of Canton of California at 555 Montgomery Street, San Francisco, California, duly convened at its offices on the 26th of January, 1982, the following resolution was presented and adopted:

WHEREAS, Bank of Canton of California is desirous of acquiring through outright purchase or long term lease of real property known as 800-810 Clement Street and 291-Ninth Avenue in San Francisco,

WHEREAS, Bank of Canton of California has plans for the establishment of a Richmond District branch bank and at the same time for the replacement of a residential hotel to meet one of the requirements for construction of a highrise bank building.

BE IT RESOLVED: THAT Mr. L. C. Shu, President, is hereby authorized and empowered for and in the name and on behalf of Bank of Canton of California to prepare and execute a 50 year lease on the property situated at 800-810 Clement Street and 291-Ninth Avenue according to terms and conditions acceptable by this Board.

\* \* \* \* \*

SECRETARY'S CERTIFICATE

I, the undersigned, Secretary of Bank of Canton of California, hereby certify that I am the Secretary of said bank above-named and that the foregoing is a full, true, and correct copy of a resolution duly adopted by the Board of Directors of said bank at a meeting of said Bank held on the day and at the place therein specified, at which a majority of the members were present and voted, and I further certify that said resolution is entered in the minutes.

In Witness Whereof, I hereunto set my hand and the Corporate Seal of said Corporation this 9th day of February, 1982.



F. M. Lim, Secretary of  
Bank of Canton of California  
San Francisco, California

**EXHIBIT B**

July , , 1982

(II)

AGREEMENT

Plaintiffs, MAN WAI YU, et al., by and through their attorneys of record, EDWIN M. LEE and LAWRENCE C. YEE, and Defendant BANK OF CANTON OF CALIFORNIA, and in San Francisco Superior Court Action No. 783-132 named as Defendant BANK OF CANTON, hereinafter referred to as the "BANK", by and through their attorney, GORDON J. LAU, hereby agree and stipulate that the above-entitled action be dismissed with prejudice against Defendant BANK pursuant to the following terms and conditions:

A. REPLACEMENT OF RESIDENTIAL UNITS

1. Bank is developing an office building project, the site of which is the corner of Clay and Montgomery Streets, San Francisco, California, which Project will involve the demolition of twenty-two (22) residential units at 621 Clay Street, San Francisco, California.

2. Bank has secured a fifty (50) year lease on the property commonly known as 800-810 Clement Street and 291-293 Ninth Avenue, San Francisco, California (hereinafter referred to as "said property").

3. Bank agrees to build a structure on said property which shall contain at least twenty-one (21) residential units which will be at least comparable to the units planned for demolition at 621 Clay Street. Preliminary plans for the replacement housing have been received by Plaintiffs prior to execution of this Agreement. In the event that Bank is unable to construct said replacement residential



structure in accordance with the aforesaid preliminary plans, and Bank amends said preliminary plans, Bank shall consult with and obtain the approval of Plaintiffs for any such proposed amendments to the preliminary plans, such approval not to be unreasonably withheld.

4. Bank shall pay to the Chinese Community Housing Corporation, (hereinafter referred to as Corporation or CCHC) forty percent (40%) of the cost of construction of one (1) unit comparable to the residential units to be demolished at 621 Clay Street plus the pro rata site-acquisition costs. This payment shall not exceed the sum of Forty Thousand Dollars (\$40,000), which sum shall include any appraisal costs.

CCHC shall apply the payment toward the construction and/or the rehabilitation of residential units of a structure located within the Chinatown/North Beach area of San Francisco, California. This structure is to be owned or leased on a long-term basis (at least twenty-five (25) years) by CCHC, whose purpose is to preserve and maintain the structure and residential units within said structure for low-income residents of the Chinatown/North Beach neighborhood. This payment is made by the Bank in lieu of constructing or rehabilitating one (1) residential unit to replace the twenty-second (22nd) residential unit planned for demolition at 621 Clay Street, San Francisco, California. The payment is made to the CCHC for the above purposes in recognition of the substantial housing needs in the Chinatown/North Beach neighborhood.

5. The Bank shall sublet the replacement housing and said property to a nonprofit corporation, the CHINESE COMMUNITY HOUSING CORPORATION, for the term of not less than thirty (30) years, provided that the residential units be let by the Corporation to low-income senior citizens, with the exception that among the initial tenants may be any former tenants of the Claymont Hotel (621 Clay Street) who were displaced at the time of vacation of the units at the Claymont Hotel, at a low monthly rate during the term of the Sublease, as more fully discussed in Paragraphs 7 and 9.

6. If the property is subsequently acquired and owned by the Bank, Corporation shall have the option to purchase the replacement residential structure and property during the thirty (30) year term of the Sublease. A copy of the Sublease is attached hereto as Exhibit "A" and is incorporated by reference in this Agreement.

7. Provided that CCHC sends the Bank an agreement in writing, which meets with the Bank's approval, that CCHC upon the purchase of the replacement residential structure or an assignment of the Sublease by CCHC will agree that annual rent increases for each residential unit will be limited to a maximum of seven percent (7%) of the base rent for a period of not less than thirty (30) years, the initial base rent will be One Hundred Dollars (\$100) per month for units occupied by one person and One Hundred Twenty-Five Dollars (\$125) per month for units occupied by two persons. Annual rent increases for each residential unit will be limited to a maximum of seven percent (7%) of the base rent for a period of not less than thirty (30) years.

8. Provided that CCHC provides the Bank with a written agreement, in a form acceptable to the Bank, wherein CCHC upon a purchase of the replacement residential structure or an assignment of its Sublease agrees that CCHC or its successor in interest shall pay all gas and electric bills for the residential structure and the residential units therein for the balance of the term of thirty (30) years and that all utility charges shall not be a part of the base rent for purposes of annual rental increases, the Bank agrees to pay all gas and electric bills for the residential structure and the residential units therein for a term of thirty (30) years. All utility charges to said replacement residential structure and the units therein are not a part of the base rent for purposes of annual rental increases provided herein before in Paragraph 7.

9. Bank agrees that the initial tenants shall be selected on the following priority:

a. Any former tenants of the Claymont Hotel vacated and/or were displaced between the time period of May 1, 1980 and September 30, 1980, inclusive.

b. Low-income seniors residing in the Chinatown/North Beach area of San Francisco.

c. Low-income seniors residing in the Richmond area of San Francisco.

10. The replacement residential structure shall be designed with special attention given to the needs and the convenience of senior citizens. The replacement residential structure shall include, but not be limited to, the following amenities:

- a. Elevator.
- b. Emergency accident buzz system for each unit and the common area.
- c. Each unit shall be furnished with a wash basin, closet, refrigerator, bed, table, chair and dresser.
- d. Common areas of the structure shall be furnished with dining tables and chairs.
- e. Common facilities on each floor shall be furnished with, but not limited to, multiple cooking stations.
- f. A laundry room with at least, but not limited to, washer and dryer.
- g. A deck roof area for senior tenants' recreation.

11. The replacement residential structure shall be constructed and ready for occupancy within eighteen (18) months from the date of the execution of this Agreement unless there are unpreventable delays caused by third parties other than the Bank. The Bank shall not directly or indirectly cause any delay.

12. Bank agrees to contribute up to Five Thousand Dollars (\$5,000) as a one-for-one matching contribution toward the purchase of a vehicle for the use of the low-income residents who will reside at the residential structure, to be paid when the Certificate of Occupancy is obtained and the one-for-one matching contribution from a third party or parties is obtained. Bank, after making its matching contribution, will not be liable or responsible for the vehicle and its passengers.

13. Bank recognizes and agrees with the Plaintiffs that a board-and-care home facility is of the utmost necessity to the low-income senior residents of the Chinatown/North Beach community, and hereby further agrees to cooperate with low-income seniors and those who work with low-income seniors to establish such a facility in the Chinatown/North Beach community.

14. Bank agrees to pay Plaintiffs' attorneys' fees and costs of suit incurred in this action in the total sum of Nine Thousand Two Hundred Twenty-Seven Dollars (\$9,227). Bank will pay one-half (1/2) (Four Thousand Six Hundred Thirteen Dollars and Fifty Cents (\$4,613.50)) upon the execution of this Agreement by all parties and one-half (1/2) (Four Thousand Six Hundred Thirteen Dollars and Fifty Cents (\$4,613.50)) upon the filing of the Dismissal With Prejudice in this action.

B. DISMISSAL

1. Plaintiffs agree to dismiss the above-entitled action with prejudice against Defendant BANK, upon the procurement of all necessary permits for the construction and occupancy of the replacement residential structure, through all of the relevant Departments of the City and County of San Francisco, California.

1. BANK agrees to pursue the procurement of all said permits in good faith and with due diligence.

3. In the event that Defendant BANK is unable to procure all of the necessary permits for the construction

and occupancy of the replacement residential structure, containing twenty-one (21) residential units, or should the replacement housing not be constructed for whatever reason:

a. Defendant BANK shall promptly notify Plaintiffs in writing through Plaintiffs' attorneys of its inability to construct the replacement housing in accordance with the preliminary plans submitted to Plaintiffs.

b. The time limits under the California State Code of Civil Procedure, Sections 581a, Subdivision (a) and Subdivision (c); Section 583 (a) and (b) are expressly tolled and extended for the period commencing from the signing of this Agreement until the date that BANK provides the notice set forth in Subparagraph "a" of this provision.

c. BANK and Plaintiffs will renegotiate in good faith regarding the location and construction or rehabilitation of another residential structure or structures as a replacement for the units proposed to be demolished at 621 Clay Street, San Francisco, California. If reasonably possible, the priority in location for such replacement structure(s) and units will be in the San Francisco Chinatown/North Beach or Richmond neighborhood.

4. Upon the execution of this Agreement, Plaintiffs agree to execute a Dismissal With Prejudice, said Dismissal With Prejudice not to be filed until Bank has procured all of the necessary Permits for the construction and occupancy of the replacement residential structure, through all of the relevant Departments of the City and County of San Francisco, California. EDWIN M. LEE, Esq. one of Plaintiffs' attorneys,

shall have physical possession of the original executed Dismissal With Prejudice and shall file the Dismissal With Prejudice when all of the necessary Permits are procured. Plaintiffs shall provide Bank with a photocopy of the executed Dismissal With Prejudice upon the execution of this Agreement.

5. This stipulation is a negotiated settlement of all claims made by Plaintiffs against Defendant BANK, freely entered into by the parties, is negotiated between the parties and their respective attorneys in good faith, is not an admission either of liability on the part of any of the parties, or that any claims or action is brought without merit by any of the parties, and in no way reflects any admission of liability of any party who has executed this stipulation.

The parties agree that neither Plaintiffs nor the Bank shall publish the contents of this Agreement to any member of the media or authorize any party to publish the contents of this Agreement to any media person without the permission of the other party. In the spirit of this negotiated settlement, as previously mentioned, the publishing party shall indicate that this Agreement was negotiated between the parties in good faith, is not an admission either of liability on the part of any of the parties, or that any claims or action is brought without merit by any of the parties, and in no way reflects any admission of liability of any party who has executed this Agreement.

In the spirit of this negotiated settlement, within the above parameters, and if it meets with the prior approval of the parties, the parties may issue a joint written statement to the relevant print media giving a true and accurate account of the negotiations and the negotiated settlement.

6. Plaintiffs agree that this stipulation shall serve as a release against the Bank and its agents and that upon the Bank's compliance with all of the terms and conditions of this stipulation, that it shall serve as a full and final release of any claims by Plaintiffs against the Bank.

Executed at San Francisco, California, on July

\_\_\_\_\_, 1982.

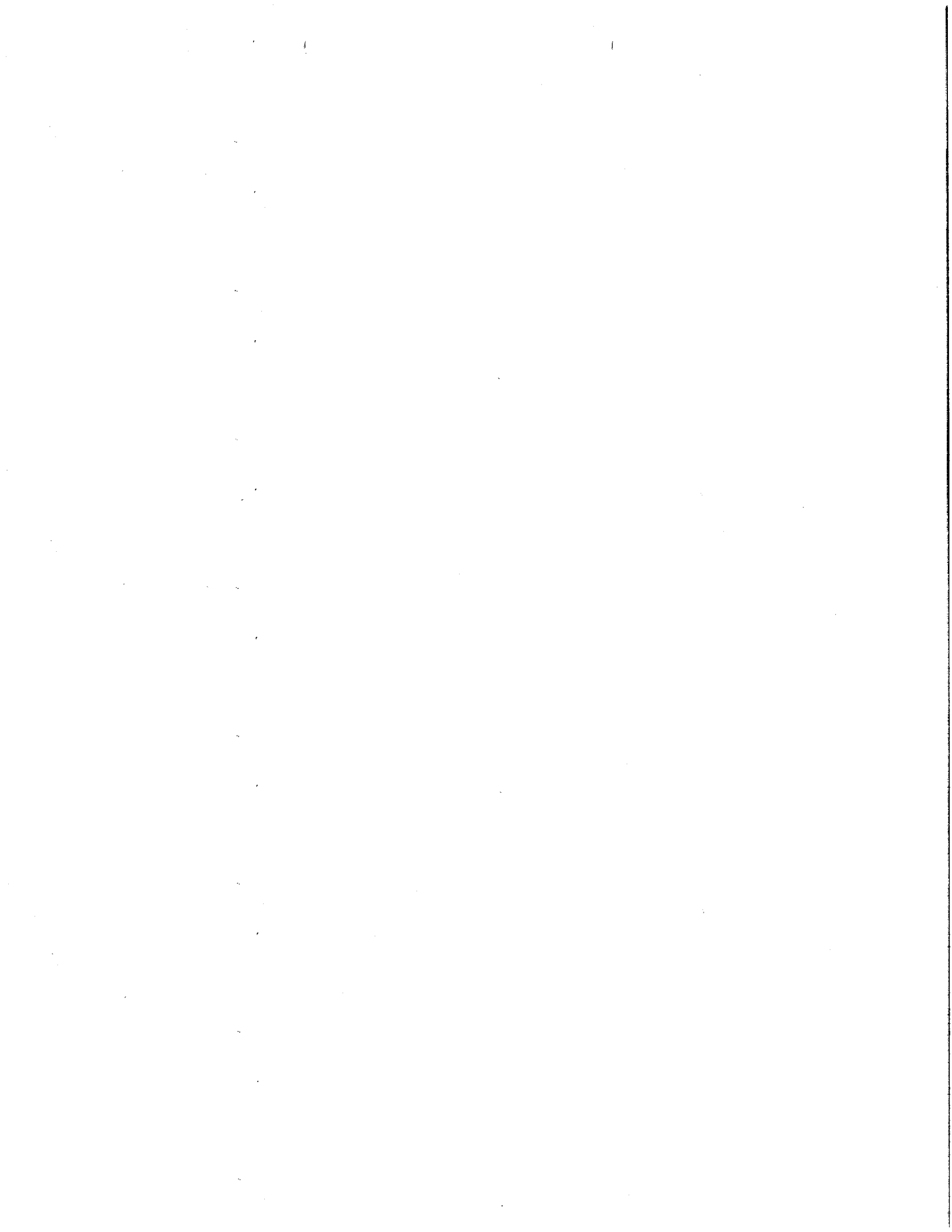
\_\_\_\_\_  
F. M. LIM, on behalf of  
BANK OF CANTON OF CALIFORNIA

\_\_\_\_\_  
GORDON J. LAU, Attorney for  
BANK OF CANTON OF CALIFORNIA

\_\_\_\_\_  
EDWIN M. LEE  
Attorney for Plaintiffs

\_\_\_\_\_  
LAWRENCE C. YEE  
Attorney for Plaintiffs





**EXHIBIT C**

AGREEMENT

This Agreement is made by and between BANK OF CANTON OF CALIFORNIA, hereinafter referred to as "BANK", BANK OF CANTON OF CALIFORNIA BUILDING CORPORATION, hereinafter referred to as "BUILDING CORPORATION", PLAINTIFFS MAN WAI YU, ET AL. in San Francisco Superior Court Action 783-132, hereinafter referred to as "PLAINTIFFS".

RECITALS

1. BUILDING CORPORATION filed a permit application to build twenty-one (21) units at 291-293 Ninth Avenue, San Francisco, California, hereinafter referred to as "Ninth and Clement".

2. BUILDING CORPORATION has been notified by the Zoning Administrator and the Department of City Planning that the City will allow only fourteen (14) residential units at Ninth and Clement.

3. The Agreement executed by the parties on July 14, 1982, provided that BANK would build twenty-one (21) residential units at Ninth and Clement as a mitigation measure to compensate for the demolition of twenty-two (22) residential units at 621 Clay Street, San Francisco, California, which would be demolished. The aforesaid Agreement was amended by an Agreement between the parties and CHINESE COMMUNITY HOUSING CORPORATION in 1983 wherein BANK provided CCHC Forty Thousand Dollars (\$40,000.00) to insure the completion of the substantial rehabilitation of thirty-four (34) rooms located at 1525-27 Grant Avenue, San Francisco, California, in lieu of building or rehabilitating a twenty second (22nd) unit.

4. There exists a dire need for the construction and/or rehabilitation of low income units in the greater Chinatown/North Beach area.

NOW, THEREFORE, the parties agree as follows:

1. BANK will pay the sum of One Hundred Five Thousand Dollars (\$105,000.00) to the Trust Account of Asian Law Caucus, Inc., a California non-profit corporation, into an interest bearing trust account, interest payable to PLAINTIFFS, for the following purposes:

a. To rehabilitate existing low income units in the greater Chinatown/North Beach area.

b. To construct new units or to make a contribution to new units being constructed by third party builders to make those units affordable or affordable during a period of time.

c. To assist in "putting back on the market" vacated or condemned units in the greater Chinatown/North Beach area or to maintain the affordability for a period of time of these units for low income persons.

d. In order to effect the foregoing, it may be necessary to hire a consultant or consultants. Said consultants may be hired by PLAINTIFFS, the total of all consulting fees not to exceed Three Thousand Dollars (\$3,000.00).

2. BANK shall pay Asian Law Caucus, Inc., the sum of Six Thousand Dollars (\$6,000.00) representing payment for services rendered by Asian Law Caucus, Inc., to its clients from July 14, 1982 to the date of execution of this Agreement and for any services rendered in the future to its clients, PLAINTIFFS, with regard to the use of the One Hundred Five Thousand Dollars (\$105,000.00).

3. Rent start-ups for the Ninth and Clement Street project will begin at One Hundred Twenty Five Dollars (\$125.00) per month for single occupancy and One Hundred Fifty Seven Dollars (\$157.00) for double occupancy in 1987 dollars, that is, if the rent start-up is in 1988 or thereafter, the start-up rents may be increased by four percent (4%) per annum.

4. The payment by the Bank shall be lieu of the construction or rehabilitation of seven (7) units.

5. Upon the granting of the Certificate of Occupancy for the units to be constructed at Ninth and Clement, and the final payment to PLAINTIFFS' attorneys in the sum of Four Thousand Six Hundred Thirteen Dollars and Fifty Cents (\$4,613.50), simultaneous with the filing of the Dismissal with Prejudice in the action (Man Wai Yu, et al. vs. Bank of Canton of California, San Francisco Superior Court Action No. 783-132), the Dismissal with Prejudice will be filed and a file-stamped copy provided to the Bank.

6. This Agreement is subject to the approval of the Director of the San Francisco Department of City Planning.

Executed at San Francisco, California.

BANK OF CANTON OF CALIFORNIA  
BY [Signature]  
Y.T. Lin, SVP

BANK OF CANTON OF CALIFORNIA  
BY [Signature]  
DATED: Lucas Dang, SVP, 1987

BANK OF CANTON OF CALIFORNIA BUILDING CORPORATION  
BY [Signature]  
J.F. Tun; Executive Director

BANK OF CANTON OF CALIFORNIA BUILDING CORPORATION  
BY [Signature]  
DATED: Lucas Dang, Chief Financial Officer, 1987

PLAINTIFFS MAN WAI YU, ET AL.  
BY [Signature]  
Attorney for PLAINTIFFS  
DATED: \_\_\_\_\_, 1987

I concur with the Agreement.

SAN FRANCISCO DEPARTMENT OF CITY PLANNING  
BY [Signature]  
Planning Director  
DATED: Sept 23, 1987

5. Upon the granting of the Certificate of Occupancy for the units to be constructed at Ninth and Clement, and the final payment to PLAINTIFFS' attorneys in the sum of Four Thousand Six Hundred Thirteen Dollars and Fifty Cents (\$4,613.50), simultaneous with the filing of the Dismissal with Prejudice in the action (Man Wai Yu, et al. vs. Bank of Canton of California, San Francisco Superior Court Action No. 783-132), the Dismissal with Prejudice will be filed and a file-stamped copy provided to the Bank.

6. This Agreement is subject to the approval of the Director of the San Francisco Department of City Planning.

Executed at San Francisco, California.

BANK OF CANTON OF CALIFORNIA

BY [Signature]  
Y.T. Lin, SVP

BANK OF CANTON OF CALIFORNIA

BY [Signature]  
DATED: Lucas Dang, SVP, 1987

BANK OF CANTON OF CALIFORNIA  
BUILDING CORPORATION

BY [Signature]  
J.F. Tun, Executive Director

BANK OF CANTON OF CALIFORNIA  
BUILDING CORPORATION

BY [Signature]  
DATED: Lucas Dang, Chief Financial Officer, 1987

PLAINTIFFS MAN WAI YU, ET AL.

BY [Signature]  
Attorney for PLAINTIFFS  
DATED: \_\_\_\_\_, 1987

I concur with the Agreement.

SAN FRANCISCO DEPARTMENT OF  
CITY PLANNING

BY [Signature]  
Planning Director  
DATED: Sept 23, 1987

**EXHIBIT D**

OFFICIAL COPY

SAN FRANCISCO DEPARTMENT OF BUILDING INSPECTION

DEPARTMENT OF PUBLIC WORKS

APPLICATION FOR BUILDING PERMIT ADDITIONS, ALTERATIONS OR REPAIRS

3 W

NOTICE OF SPECIAL RESTRICTIONS

D936971 RECORDED L27182

APPLICATION IS HEREBY MADE TO THE DEPARTMENT OF PUBLIC WORKS OF SAN FRANCISCO FOR PERMISSION TO BUILD IN ACCORDANCE WITH THE PLANS AND SPECIFICATIONS SUBMITTED HEREBY AND ACCORDING TO THE DESCRIPTION AND FOR THE PURPOSE HEREAFTER SET FORTH

STREET ADDRESS OF JOB 289 9TH AVE ESTIMATED COST OF JOB \$400,000

PLUMBING PERMIT NO 123697 PLUMBING RECEIPT NO 7-23-87

DESCRIPTION OF EXISTING BUILDING, DESCRIPTION OF BUILDING AFTER PROPOSED ALTERATION, GENERAL CONTRACTOR, ARCHITECT, CONSTRUCTION LENDER, OWNER, and WORK DESCRIPTION.

NOTICE OF SPECIAL RESTRICTIONS D936971 RECORDED L27182 COPY ATTACHED

PLEASE NOTE: 85.37EY GRANTED TO CONSTRUCT A THREE-STORY, 14-UNIT SENIOR CITIZEN HOUSING ON CONDITION THAT UPPER FLOOR COMMERCIAL IN EXISTING BLDG. REVERTED TO TWO DWELLING UNITS.

IMPORTANT NOTICES: No change shall be made in the character of the occupancy or use without first obtaining a Building Permit...

I HEREBY CERTIFY AND AGREE THAT IF A PERMIT IS ISSUED FOR THE CONSTRUCTION DESCRIBED IN THIS APPLICATION, ALL THE PROVISIONS OF THE PERMIT AND ALL LAWS AND ORDINANCES THERE TO WILL BE COMPLIED WITH.

NOTICE TO APPLICANT: HOLD HARMLESS CLAUSE. The Permittee(s) by acceptance of this permit, agrees to indemnify and hold harmless the City and County of San Francisco...

CHECK APPROPRIATE BOX: OWNER, ARCHITECT, ENGINEER, LESSEE, AGENT WITH POWER OF ATTORNEY, CONTRACTOR, ATTORNEY IN FACT

APPLICANT'S CERTIFICATION: I certify that in the performance of the work for which this Permit is issued, I shall not employ any person in any manner...

Applicant's Signature: [Signature] Date: 11/1/83



CONDITIONS AND STIPULATIONS

APPROVED: For work stated + noted on Plans only.  
 This building must comply with the Residential Energy Conservation Ordinance, 72-82, before a final inspection approval can be issued for the work stated on this application.  
 Any electrical or plumbing work will require appropriate separate permits.  
 CONTACT DISTRICT INSPECTOR AT 1515 CALIFORNIA STREET, SAN FRANCISCO, CALIF. 94109.  
 AUTHORITY MUST BE LOANED IN STRICT ACCORDANCE WITH ALL APPLICABLE CODES.  
 APPROVED: John H. Lee 3/11/87  
 DIVISION OF BUILDING INSPECTION

APPROVED: Per zoning administrator's variance decision letter No. 85, 1976 by letter dated 10-21-86; copy attached. As per conditions, see NSR #136971 dated 1-24-87; copy attached.  
 This proposal determined to have no zoning effect per NSR Dec. dated 8-16-85. Class 3 (c) copy attached. VAS PER PLANS ONLY!  
 APPROVED: Joanne C. Wilson 1-30-87  
 DEPARTMENT OF CITY PLANNING

APPROVED: As noted on plan.  
 SUBMIT SPRINKLER PLAN PER N.F.P.A. # 13, 1976, SEC. 1.9  
 APPROVED: R.D. [Signature] 1/1/87  
 BUREAU OF FIRE PREVENTION & PUBLIC SAFETY

SPECIAL INSPECTIONS AND TESTS  
 SPECIAL INSPECTIONS AND TESTS ARE REQUIRED BY BUILDING CODE SECTIONS 900. a b c.  
 See page 5-1  
 APPROVED: R.D. [Signature] 3/23/87  
 CIVIL ENGINEER, BUREAU OF BLDG. INSPECTION

APPROVED: As Noted on Plan  
 APPROVED: [Signature] 7-1-87  
 BUREAU OF ENGINEERING

APPROVED:  
 DEPARTMENT OF PUBLIC HEALTH

APPROVED:  
 REDEVELOPMENT AGENCY

APPROVED: PROVIDE APPROVED TYPE HANDRAILS FOR ALL STAIRS. FILE APPLICATIONS FOR PERMITS UPON COMPLETION OF WORK. OCCUPANCY PERMITS. This building must comply with the Residential Energy Conservation Ordinance, 72-82, before a final inspection approval can be issued for the work stated on this application.  
 APPROVED: [Signature] 11.16.87  
 DIVISION OF BUILDING INSPECTION

APPROVED: AS NOTED. OK FOR ELECTRIC SPACE HEATING. HOT WATER TO BE GAS HEAT.  
 APPROVED: Ted Kaden 5/28/87  
 MECH. ENGR - P.E.

I AGREE TO COMPLY WITH ALL CONDITIONS OR STIPULATIONS OF THE VARIOUS BUREAUS OR DEPARTMENTS NOTED ON THIS APPLICATION, AND ATTACHED STATEMENTS OF CONDITIONS OR STIPULATIONS, WHICH ARE HEREBY MADE A PART OF THIS APPLICATION.  
 NUMBER OF ATTACHMENTS:   
 SIGNATURE OF OWNER, LESSEE OR AUTHORIZED AGENT FOR OWNER OR LESSEE: [Signature]

OFFICIAL COPY



**HARDIN and CHOY  
ASSOCIATES, INC.**

ARCHITECTURE PLANNING  
401 IVY STREET SAN FRANCISCO  
CALIFORNIA 94102 415 626-5112

Re: Permit 8311396 P

Please Permit Seoman Lee  
of Transwald Construction, the  
Contractor for the Project, to  
pick up the building permit

Philya Choy

OFFICIAL COPY



FB-501a

CITY AND COUNTY OF SAN FRANCISCO  
DEPARTMENT OF PUBLIC WORKS  
BUREAU OF BUILDING INSPECTION

Application Number 0311396

### CERTIFICATE OF FINAL COMPLETION ~~AND OCCUPANCY~~

(NOTE: A separate PERMIT OF OCCUPANCY is required for buildings with a class R-1 occupancy)

Location 289- 9th AVENUE  
House Number (Street or Avenue) (Metes & Bounds if Applicable)

Type of Bldg. 5-1HR Stories 3 Occupancy R-18B-2 No. of Apts. \_\_\_\_\_  
(List Floors for B Occupancy)

Description of Construction TO ADD AN ADDITIONAL 14 GUEST ROOMS TO AN EXISTING STRUCTURE PER APPROVED PLANS. SEE AP# 8820448 FOR REMOVAL IN PROGRESS ON EXISTING STRUCTURE

The hereinabove described construction is completed and conforms to Ordinances of the City and County of San Francisco and Laws of the State of California effective as of the date on which the hereinabove mentioned application for building permit was filed and proposed occupancy is approved in pursuance to Sec. 306.C, Article 3, Chapter 1, Part II of the San Francisco Municipal Code.

Approved: E. L. SEED 1/19/39  
BUREAU OF FIRE PREVENTION & PUBLIC SAFETY

Approved: NA 19 \_\_\_\_\_  
DEPT. OF PUBLIC HEALTH

This certificate posted on 2-22 1939

SUPERINTENDENT, BUREAU OF BUILDING INSPECTION  
By John R. Raymond Building Inspector

OFFICIAL COPY



289 9TH -		ADDRESS OF JOB	AV	BLOCK/LOT	APPLICATION NO. 8311396	
OWNER NAME BANK OF CALIFORNIA OF CA.				TELEPHONE 474-6433		
ESTIMATED COST \$400,000	FILE DATE 11/08/83	DISPOSITION ISSUED	DISPOSITION DATE 07/23/87	PERMIT NO. 572245	EXPIRE DATE 07/23/89	
FORM CONST. TYPE 3	OCCUPANCY CODES R-1 B-2	PLANS 2	STORIES 3	UNITS 219	DISTRICT BID-INSP 06	
CONTACT NAME HARDIN & CHOY ASSOC.			TELEPHONE 626-5112 16			
STANDARD DESCRIPTION/BLDG. USE APARTMENTS			OTHER DESCRIPTION BUILD 4 STORES ON EXISTING OPEN SPACE			
SPECIAL INSPECTIONS? YES	FIRE ZONE	NO		COMPLIANCE WITH REPORTS		
SPECIAL USE DISTRICT	TIDF	NO				
PENALTY		NO				
NOTES:						
PERMIT INSPECTION RECORD DEPARTMENT OF PUBLIC WORKS CITY AND COUNTY OF SAN FRANCISCO BUILDING INSPECTION JOB-CARD						

9003-15

0

OFFICIAL COPY



DATE	BUILDING INSPECTORS JOB RECORD
8/17/87	APPROV. FILED
1 1	HEARING DATE: 9-23-87
9/23/87	PLANS APPROVED WITH
1 1	CONDITIONS
10/21/87	CONCRETE PINS OK
2/15/88	RE INSP APPROVED PLANS
1 1	NOT AT SITE
2/10/88	OK TO POUR CONCRETE
2/23/88	OK FOR ANCHOR BOLTS
4/16/88	VISITED SITE RE (CONCRETE OR STEEL)
1 1	WORK IS PER THE APPROVED PLANS
6/22/88	OK TO COVER ALL WORK TO
1 1	BE 1 HOUR CAST AS PER PLANS
10/12/88	WHAT SHALL IN PROGRESS
12/22/88	MADE INSPECTION FOR T.P.O
1/19/89	SPEC. INSP. SENT TO IAD FOR SIGNATURE
1/19/89	SPEC. INSP. OK BY IAD
2/22/89	Completed
1 1	
1 1	

WORK COMPLETED FINAL CERTIFICATE POSTED.

APP. NO. 8311396

*Michael Richmond*  
BUILDING INSPECTOR

**EXHIBIT E**



City and County of San Francisco  
Department of City Planning

450 McAllister Street  
San Francisco, CA 94102

ADMINISTRATION  
415-558-5111 558-4556  
CITY PLANNING COMMISSION  
415-558-4958  
PLANS AND PROGRAMS  
415-558-4541  
IMPLEMENTATION DIVISION  
415-558-3058

October 21, 1986

V A R I A N C E D E C I S I O N

UNDER THE CITY PLANNING CODE  
CASE NO. 35.317EV

APPLICANT: Hardin and Croy Associates  
401 Ivy Street  
San Francisco, California 94102

PROPERTY IDENTIFICATION: 300 Clement Street, northwest corner of 9th Avenue;  
Lot 17 in Assessor's Block 1424 in a C-2 (Community  
Business) Inner Clement Neighborhood Commercial  
District.

DESCRIPTION OF VARIANCE SOUGHT: REAR YARD AND USABLE OPEN SPACE VARIANCE  
SOUGHT. The proposal to construct a three-story  
over garage, eighteen (18) unit senior citizen  
housing addition to the existing two-story  
commercial building. The proposed addition would  
be located entirely in the rear yard of the subject  
property when the City Planning Code requires a  
rear yard equal to 25 percent of lot depth at  
swelling levels or 25 feet for the subject  
property. Additionally, the proposal would  
contain the 33.33 square feet of private open space  
per unit or 44.33 square feet of common usable open  
space per unit as required under the Planning Code  
for Senior Citizen housing.

The project sponsor also proposes to provide  
to parking spaces to serve the eighteen  
senior units which meets the Planning Code  
therefore is not a subject of this variance.

The proposed eighteen (18) unit senior  
housing will partially replace twenty-two  
removed from the City's housing stock as a result  
of the demolition of the Clayton Hotel and the  
subsequent construction of the 17 story Bank of  
London project at 555 Montgomery Street approx.  
July 16, 1982. The remaining 4 units will  
be replaced at a later date.

Case No. 85.317Ev  
300 Clement Street  
October 21, 1986  
Page Two

PROCEDURAL BACKGROUND:

1. A Negative Declaration stating that the present project would not have a significant effect on the environment was adopted and issued by the Office of Environmental Review on August 15, 1985.
2. The Zoning Administrator held a public hearing on variance Application No. 86.317VE on August 28, 1985.

DECISION:

GRANTED, to construct a three-story, 14-unit senior citizen housing in general conformity with revised plans on file with this application, shown as Exhibit A and dated July 1, 1986, ON CONDITION:

1. That the illegal upper floor commercial use in the existing building be reverted back to two (2) residential units.

Section 305(c) of the City Planning Code states that in order to grant a variance, the Zoning Administrator must determine that the facts of the case are sufficient to establish the following five findings:

1. That there are exceptional or extraordinary circumstances applying to the property involved or to the intended use of the property that do not apply generally to other property or uses in the same class of district;
2. That owing to such exception and extraordinary circumstances the literal enforcement of specified provisions of this Code would result in practical difficulty or unnecessary hardship not created by or attributable to the applicant or the owner of the property;
3. That such variance is necessary for the preservation and enjoyment of a substantial property right of the subject property, possessed by other property in the same class of district;
4. That the granting of such variance will not be materially detrimental to the public welfare or materially injurious to the property or improvements in the vicinity; and
5. That the granting of such variance will be in harmony with the general purpose and intent of this Code and will not adversely affect the Master Plan.



Case No. 85.317E  
300 Clement Street  
October 21, 1986  
Page Three

The decision to grant or to deny the variance was based on the following conclusions as to whether or not the facts of the case supported the five findings:

FINDINGS:

FINDING 1. The subject property is a corner lot located in the Inner Clement Neighborhood Commercial District and contains a one-story over ground level commercial building on a rectangular-shaped lot with dimensions of 57.50 feet wide by 100 feet deep. The proposed project will be located at the north end of the subject lot which is currently vacant and serves as the rear yard for the existing building. The subject property is surrounded by residential buildings to the north and to the east on Ninth (9th) Avenue and mixed use commercial/residential to the west on Clement Street. The adjacent building to the west is a commercial building fronting on Clement Street which covers the entire lot. The abutting property to the north is a residential building which fronts on 9th Avenue.

The Inner Clement Neighborhood Commercial District requires an open and unobstructed rear yard equal to 25 percent of lot depth at all residential levels and would permit commercial use to extend to the rear property line on the ground level with the rear yard required only at any level above the second floor.

The original proposal was to construct an eighteen-(18) unit senior citizen housing on three stories over ground level garage. Concerns were raised by the Planning Association for the Richmond Neighborhood group (PAR) that each unit should have individual toilet facilities and that the proposed number of dwelling units was out of scale with the surrounding neighborhood. Furthermore, the amount of open space proposed was inadequate for 18 dwelling units. Concerns were also raised by the 9th Avenue residents and the Zoning Administrator that a three-story over garage building would shade the abutting residential property on 9th Avenue. In response to these concerns, the project sponsor reduced the number of dwelling units to fourteen (14) senior citizens units with individual toilet facilities in each unit and reduced the height of the building to two (2) stories over garage in order to mitigate any shading to the abutting property to the north on Ninth Avenue. Furthermore, a recreation penthouse is proposed as usable open space for the senior citizens. This revised proposal was reviewed by the Planning Association for the Richmond (PAR) and received their support.

Case No. 85.317EV  
300 Clement Street  
October 21, 1986  
Page Four

The proposed fourteen (14) unit senior citizen housing will partially replace twenty-two units removed from the City's housing stock as a result of the demolition of the Clayton Hotel and the subsequent construction of the 17-story Bank of Canton project at 555 Montgomery Street approved on July 15, 1982. The remaining eight (8) units will be replaced at a later date. The project sponsor has a sublease agreement with the Chinese Community Housing Corporation, a nonprofit corporation, guaranteeing low rents to tenants for at least thirty (30) years. According to the applicant, this is the only new construction of residential uses for low-income seniors entirely financed by the private sector. The existing site is one of the few sites in the City available for low-income senior citizens with easy access to transit, local commercial and the Chinese community.

FINDING 2. Literal enforcement of the rear yard requirement of the Planning Code would essentially preclude any further extension of the existing structure toward the rear property line except for the construction of additional commercial space which can extend the entire length of the subject lot with the rear yard required only at the second level and above. In order to construct a fourteen (14) unit senior citizen housing, the applicant could demolish the existing building. However, the demolition of the existing building to construct the proposed fourteen (14) residential units would make it impossible to keep the rents low and affordable for fourteen (14) senior citizen units and would render the proposed project infeasible. Another alternative would be to extend the existing building upward. An upward extension of the proposed project would increase the shading to the surrounding properties. Therefore, the only feasible area to construct would be at the rear of the subject building.

FINDING 3. Many of the existing buildings along Clement Street frontage extend to the rear property line. The granting of this variance would allow the applicant to expand to the rear property line in a similar manner as other building along Clement Street. Furthermore, the provision of housing on the Ninth Avenue side of the subject lot would be consistent with the residential nature of Ninth Avenue.

FINDING 4. Support for the project was expressed orally at the time of the hearing and in writing by the Richmond Neighborhood Center, Asian Law Caucus, Asian Neighborhood Design, various residents of the area and other interested parties. However, as mentioned in Finding 1, there was also strong opposition by the Planning Association for the Richmond and residents of along 9th Avenue between Clement and California. With the revisions proposed by the project sponsor, the Planning Association for the Richmond

Case No. 35.317Ev  
800 Clement Street  
October 21, 1986  
Page Five

reversed its position and supports the revised project. Although the Ninth (9th) Street residents did not support the revised project, the reduction of height of the revised project would mitigate the adverse effects of diminished light and air to the abutting properties on 9th Street. Furthermore, as mentioned in Finding 3, many of the existing buildings along Clement Street between Ninth and Tenth Avenues extend to the rear property line. Therefore, there is not a pattern of mid-block open space in this area.


FINDING 5. The neighborhood commercial rezoning controls encourages housing development in new buildings and in new buildings above the ground. The granting of this variance will be in conformity with city policy encouraging the construction of new housing and the construction of new, low-income housing in harmony with the Master Plan.

This variance from the City Planning Code is valid for a period of three (3) years from the effective date of this decision (the date of this decision letter if not appealed or the date of the Notice of Decision and Order if appealed to the Board of Permit Appeals).

Implementation of this variance will be accomplished by completion of construction work under the appropriate Building Permit Applications and issuance of the appropriate Certificate of Final Completion.

APPEAL: Any aggrieved person may appeal this variance decision to the Board of Permit Appeals within ten (10) days after the date of the issuance of this variance Decision.

very truly yours,

  
Robert W. Passmore  
Assistant Director of  
Planning-Implementation  
(Zoning Administrator)

=====  
THIS IS NOT A PERMIT TO COMMENCE ANY WORK OR CHANGE OCCUPANCY. PERMITS --  
APPROPRIATE DEPARTMENTS MUST BE SECURED BEFORE WORK IS STARTED OR OCCUPAN-  
CHANGED.

RWP:MF/pg/0358v

**EXHIBIT F**

OFFICIAL COPY



RECORDING REQUESTED BY  
 And When Recorded Mail To  
 Name: Dept. of City Planning  
 Address: 450 McAllister Street  
 5th Floor  
 City: San Francisco  
 State: California 94102

SAN FRANCISCO, CA  
 RECORDER'S OFFICE

DOC- D936971

Thursday, January 29, 1987 09:05:23am  
 Rec 6.00 — Ps 4.00  
 Mic 1.00 — Amt 11.00  
 TOTAL -> \$11.00

Space Above This Line For Recorder's Use

NOTICE OF SPECIAL RESTRICTIONS UNDER THE CITY PLANNING CODE

I (We) Bank of Canton of California, the owner(s) of that certain real property situate in the City and County of San Francisco, State of California, more particularly described as follows:

(LEGAL DESCRIPTION AS ON DEED)

BEING Assessor's Block 1424 , Lot 17 ,  
 commonly known as 800 Clement St. and, 291, 9th Ave.,  
 San Francisco, Ca.

hereby give notice that there are special restrictions on the use of said property under Part II, Chapter II of the San Francisco Municipal Code (City Planning Code).

Said restrictions consist of conditions attached to the approval of Building Permit Application No. 8311396 by the Department of City Planning and are conditions that had to be so attached in order that said application could be approved under the City Planning Code. (Building Form 3).

The plans filed with the present application indicate on the lower floor (ground floor) of the existing building, known as 800 Clement Street, the existing commercial use and the second floor as two dwelling units. The plans filed with the present application also indicate on the lower floor (ground floor) of the proposed addition, fronting on 9th Avenue, a minimum of three (3) independently accessible parking spaces, each containing 160 square feet, to serve the 14 senior citizen housing units located on the second and third floors, above.

The restrictions and conditions of which notice is hereby given are:

1. That the illegal upper floor (second floor) commercial use in the existing building, known as 800 Clement Street, shall be reverted to two (2) residential dwelling units; and



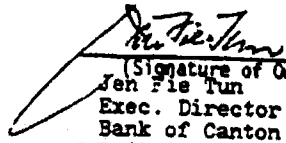
## NOTICE OF SPECIAL RESTRICTIONS UNDER THE CITY PLANNING CODE

2. That the said second floor of the existing building, known as 800 Clement Street, shall be used as a maximum of two dwelling units, containing one kitchen in each dwelling unit. Section 151 of the City Planning Code provides that one (1) independently accessible, on-site, off-street parking space shall be provided for any new dwelling unit and the subject property contains no such additional space(s); and
3. That this second floor area shall not be used for more than two dwelling units or rooming units; that utilities, other services, mailboxes and doorbells shall be provided for these dwelling units solely on a two-unit basis; and
4. That for the purposes of this restriction and the City Planning Code, installation of any appliances for cooking, such as a stove or hot plate, in this second floor area shall be deemed the creation of an additional kitchen and therefore the creation of an additional separate dwelling unit as defined in Section 102.6 of the City Planning Code.
5. That the 14 unit senior citizen housing addition fronting on 9th Avenue shall be specifically designed for and occupied by senior citizens or physically handicapped persons, and shall be limited to such occupancy for the actual lifetime of the building by the requirements of State or Federal programs for housing for senior citizens or physically handicapped persons or otherwise by design features and by legal arrangements approved as to form by the City Attorney and satisfactory to the Department of City Planning, as required by Section 209.1(m) of the City Planning Code; and
6. That three, independently accessible off-street parking spaces, each containing 160 square feet, shall be provided on site to serve the 14 senior citizen housing units as required by Section 151 of the City Planning Code.

The use of said property contrary to these special restrictions shall constitute a violation of the City Planning Code, and no release, modification or elimination of these restrictions shall be valid unless notice thereof is recorded on the Land Records by the Zoning Administrator of the City and County of San Francisco; except that in the event that the zoning standards above are modified so as to be less restrictive and the uses herein restricted are thereby permitted and in conformity with the provisions of the City Planning Code, this document would no longer be in effect and would be null and void.

NOTICE OF SPECIAL RESTRICTIONS UNDER THE CITY PLANNING CODE

Dated: January 27, 1987 at San Francisco, California.

  
(Signature of Owner)  
Jen Fie Tun  
Exec. Director  
Bank of Canton of Ca.  
Building Corporation

STATE OF CALIFORNIA )  
CITY AND COUNTY OF SAN FRANCISCO ) ss.

In January 27, 1987, before me, Rosa Chen, the undersigned, a Notary Public, in and for said City and County and State, personally appeared Jen Fie Tun ~~and~~ Bank of Canton of Ca. Building Corporation known to me (or 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 or she (they) executed the same.

WITNESS my hand and official seal.

Signature Rosa Chen (This area for official notarial seal.)





DESCRIPTION OF REAL PROPERTY

That certain real property situate in the City and County of San Francisco, State of California, described as follows:

Commencing at a point at the intersection of the Northerly line of Clement Street with the westerly line of Ninth Avenue, running thence northerly along the westerly line of Ninth Avenue 100 feet; thence at a right angle westerly 57 feet 6 inches; thence at a right angle southerly 100 feet to the northerly line of Clement Street; thence at a right angle easterly along said line of Clement Street 57 feet 6 inches to the point of commencement

Said real property is commonly designated as 300-810 Clement Street and 291 - 9th Avenue, San Francisco, California.

EXHIBIT "A"

*Handwritten signature*



OFFICIAL COPY

City and County of San Francisco

Department of Public Works  
Bureau of Building Inspection



NOTIFICATIONS OF STRUCTURAL ADDITION

MAILED: 07/24/87

PAGE: 1

APPLICATION NUMBER: 8511396 PERMIT NUMBER: 572245 PERMIT ISSUED: 07/25/87  
BUILDING LOCATED AT: 289 - 9TH AVE BLOCK/LOT: 1424 /017  
PERMIT HOLDER: BANK OF CANTON OF CA ADDRESS: 030 CLAY ST  
SAN FRANCISCO CA 94111

DESC CODE:  
DESC: HORIZONTAL EXTENSION, STORY ADDITION

ADDRESSEE	MAILING ADDRESS	ADJACENT PARCEL LOCATIO
WHITCOMB CATHERINE	279 9TH AV SAN FRANCISCO CA 94113	279 9TH AV BLOCK/LOT: 1424 /015
TAFORO JOHN L & BARBARA J	1602 SAN ANTONIO ALAMEDA CA 94501	514 - 816 CLEMENT ST BLOCK/LOT: 1424 /016

**EXHIBIT G**

July 15, 1982  
Bank of Canton  
82.9D

SAN FRANCISCO  
CITY PLANNING COMMISSION

RESOLUTION NO. 9456

WHEREAS, The City Planning Commission on July 15, 1982 heard Application No. 82.9D for Discretionary Review of Building Permit Application No. 8106361 for a proposed 17-story office building of approximately 230,500 square feet and an additional 6,600 square feet of non-commercial public space within a designated city landmark in the C-3-0 (Downtown Office) and 400 and 320-I Height and Bulk districts, to determine the appropriateness of the proposed use, overall project density and character, on the property described as follows:

555 Montgomery Street (Bank of Canton Headquarters), southwest corner of Clay and Montgomery Streets, Lots 1, 2, 3, 4, 29, 46, and 47 in Assessor's Block 227;

WHEREAS, The City Planning Commission on January 17, 1980 approved Resolution No. 8474 establishing a policy whereby any building permit application in the Downtown Interim Special Review Area would be reviewed by the Commission under its discretionary powers, and that the topics of review would include the protection and enhancement of the pedestrian environment, preservation of architecturally and historically significant buildings, preservation of housing, avoidance of industrial displacement, adequate and appropriate means of transportation, energy conservation, relationship to environs, and effect on views from public areas and on the skyline; and

WHEREAS, The proposed project would be the development of a 17-story high rise office building containing approximately 230,500 square feet and an additional 6,600 square feet of non-commercial public space within a designated city landmark in the downtown commercial core area, being well served by several modes of public transportation, including BART and MUNI; and

WHEREAS, The project will not result in the loss of any housing units or significant displacement of jobs or land uses; and

WHEREAS, The objective of this project is to build a new headquarters building and banking hall for Bank of Canton, California Headquarters, which will meet this institution's current space needs and allow for future expansion, retaining this business and accompanying jobs within the city; and

WHEREAS, In order to make land available for the development of a viable and well functioning headquarters building, will require the demolition of several buildings, including a currently vacant 22 unit residential hotel building, and three additional commercial structures which currently contain approximately 105 jobs. The project will also result in the demolition of approximately 10% of the Landmark Old Subtreasury building, and the new building will straddle this historic structure; and

WHEREAS, On January 20, 1982, the Landmarks Preservation Advisory Board reviewed application number 82.9A for a Certificate of Appropriateness for alterations to the Original U.S. Mint and Subtreasury at 608 Commercial Street as part of a development proposal for the Bank of Canton of California; and

WHEREAS, Said Advisory Board recommended approval of the Certificate of Appropriateness in its Resolution No. 247, dated January 20, 1982; and

WHEREAS, This Commission reviewed the subject application and recommendation of the Landmarks Board at the hearing of July 15, 1982 and approved said Certificate of Appropriateness by Resolution No. 9455; and

WHEREAS, The project sponsor agrees to replace the 22 vacant residential hotel units that are scheduled for demolition as part of this project, and agrees to maintain these units at rent levels that are affordable to low income people for a period of at least 30 years; and

WHEREAS, Recent national and state policies as evidenced by cutbacks in Federal HUD programs and Proposition 13, have resulted in a reduced ability to generate resources locally to provide for and continue city programs for housing, transportation, parking, open space and employment; and

WHEREAS, The nation, region and the city are currently experiencing a high level of unemployment, which does not reflect those that are discouraged and no longer seeking employment; and

WHEREAS, The project sponsor has agreed to provide resources to mitigate project related impacts for transportation, housing, and parking; and to develop a project that will expand employment opportunities in San Francisco; and

WHEREAS, The City Planning Commission acknowledges that before acting on the project, it has reviewed, considered and approved the information contained in the Final Environmental Impact Report, dated July 15, 1982, concerning EE80.296, Bank of Canton of California Headquarters, San Francisco, having found said report to be adequate, accurate and objective, and have CERTIFIED THE COMPLETION of said Report in compliance with the California Environmental Quality Act and the State EIR Guidelines; and

WHEREAS, The City Planning Commission, under Resolution No. 9454, found that the proposed project described in the Final Environmental Impact report, will have a significant effect on the environment in that the proposal will create a specific demand for housing from the project itself, and will contribute to the cumulative increase in transit ridership, pedestrian and vehicular traffic, and parking demand produced by development proposed, approved and under construction in the downtown area; and

WHEREAS, Conditions can be established in authorizing the proposed project that substantially mitigate such environmental impacts; and

WHEREAS, These conditions call for expansion of the housing supply and implementation of mitigation measures as required by this resolution and as described in the EIR, for parking and transportation; and

WHEREAS, The project sponsor has agreed to substantially preserve and restore the Old U.S. Mint and Subtreasury Building, a designated City Landmark (No. 34); and

WHEREAS, The project sponsor will take measures to promote public appreciation of the Landmark Subtreasury Building, by making it available for museum use on a non-profit basis; and

WHEREAS, On July 15, 1982, The City Planning Commission adopted Resolution No. 9453 which allows for the exclusion of area for purposes of F.A.R. calculation within designated landmarks subject to certain procedures; including review by the Landmarks Preservation Advisory Board and discretionary review by the City Planning Commission; and

WHEREAS, The project sponsor requests that gross floor area within the restored landmark Old U.S. Mint and Subtreasury be excluded from project F.A.R. calculations since the space within this structure will be restored and made available for public use, viewing and appreciation as part of a proposed museum; and

WHEREAS, The Landmarks Preservation Advisory Board has reviewed the proposal for the restoration of the landmark Old U.S. Mint and Subtreasury and found that exclusion of F.A.R. for this structure would promote the objectives of Article 10; and

WHEREAS, The City Planning Commission has instituted a policy of discretionary review to implement the rule for excluding F.A.R. area for landmarks under certain conditions, this action constituting the required discretionary review; and

WHEREAS, The proposed project complies with and is supportive of the Master Plan, including the elements for Transportation, Housing and Open Space, and particularly the objectives and policies for Commerce and Industry.

THEREFORE BE IT RESOLVED, That the City Planning Commission finds that the following measures will mitigate the significant effects on traffic and pedestrian use of adjoining streets, on transit use and transit and parking demand in the downtown area, and on housing demand:

Transportation, Parking and Pedestrian Movement

1. The project sponsor will help expand transportation services by agreeing to contribute funds to augment transportation service, in an amount proportionate to the demand created by the project, through a funding mechanism enacted by the City.
2. The project sponsor will retain a transportation broker responsible for coordinating programs designed to encourage transit use, ridesharing, carpool/vanpool systems.
3. The project sponsor will conduct or provide funding for a transportation survey in accordance with Departmental guidelines.
4. The project sponsor will provide two loading spaces for delivery and service vehicles.
5. The project sponsor will cooperate in mitigating both long and short term parking demand generated by the project.

Housing

1. The project sponsor agrees to cause the construction and/or rehabilitation of housing in San Francisco.

BE IT FURTHER RESOLVED, That the City Planning Commission finds that the proposed project which includes substantial preservation and restoration of the Landmark Old U.S. Mint and Subtreasury Building will mitigate impacts on architecturally significant buildings; and

BE IT FURTHER RESOLVED, That the City Planning Commission finds that measures or alternatives which are described in the Final EIR and which would reduce or avoid impacts identified to be significant and which are not included as part of the approved project are either within the jurisdiction of another city agency or are infeasible due to economic and other considerations described in the FEIR; and

BE IT FURTHER RESOLVED, That the City Planning Commission finds that the following positive aspects of the project would override any significant impacts not mitigated:

- a. improvement of downtown land with a new headquarters office structure;
- b. retention of a firm headquartered and founded in the city;
- c. creation of approximately 340 person-years of construction employment;
- d. accommodation of approximately 880 permanent jobs with a net increase of up to 710 jobs;
- e. further strengthening of the C-3-0 district as a compact center for financial, technical, professional, and administrative services;
- f. preservation and restoration of the Landmark U.S. Subtreasury Building;
- g. promote public appreciation of the Landmark U.S. Subtreasury Building by making it available as a museum on a non-profit basis.

and

BE IT FURTHER RESOLVED, That the City Planning Commission finds that the purpose of Article 10 is promoted by exclusion of area for F.A.R. calculation of the Old U.S. Mint and Subtreasury, since the interior will be restored and made available for public use, viewing, appreciation and enjoyment by being put into museum use; and

BE IT FURTHER RESOLVED, That the Commission hereby finds that the project proposed under Building Permit Application No. 8106361 is in conformity with all applicable standards of the City Planning Code, and is consistent with the purposes of the Code provided under Code Section 101, and said Permit Application is hereby APPROVED subject to the following conditions:

General Mitigation Measures

1. "Mitigation Measures To Be Included In The Project", as outlined in the final EIR, EE80.296, shall be conditions of this Resolution. If said measures are less restrictive than the following conditions, the more restrictive and protective control, as determined by the Department of City Planning, shall govern.

Design and Cultural Resources

1. The final plans shall meet the standards of the Planning Code and be in general conformity with the plans accepted by the City Planning Commission on July 15, 1982, and filed with the Department of City Planning as "EXHIBIT A, Bank of Canton of California Headquarters", said project being similar in scale and scope to the proposed project described as "alternative 5" in the EIR - EE80.296.
2. This approval is for a building with a maximum commercial Floor Area Ratio of 14 to 1, approximately 230,500 gross square feet. To the extent the space in the Landmark U.S. Subtreasury Building is dedicated to non-profit public use for the life of this project, this space shall not be counted against the allowable F.A.R. The project sponsor shall provide such documentation; and record such restrictions as may be acceptable to the City to insure public access and the non-profit/non-commercial use of the Subtreasury Building.
3. Final materials, glazing, color, texture and detailing shall be reviewed and approved by the Department of City Planning. Reflective coated mirrored glass or deeply tinted glass shall not be permitted.
4. The project architects shall continue to work with the Department of City Planning to further develop the design, particularly the top of the building and design development details.
5. The project sponsor shall preserve and restore the U.S. Subtreasury Building and make this building available for public access and enjoyment on a non-profit basis, for the life of this project.

Transportation

1. In recognition of the need for expanded transportation services to meet the peak demand generated by cumulative commercial development in the downtown area, the project sponsor shall contribute funds for maintaining and augmenting transportation service, in an amount proportionate to the demand created by the project as provided by Board of Supervisor's Ordinance No. 224-81 or any subsequent funding mechanism enacted by the City.
2. The project sponsor shall retain a transportation broker responsible for coordinating, implementing and monitoring the programs among tenants and employees to encourage flex-time transit use and ridesharing, including but not limited to the following: on-site sale of BART tickets and Muni passes and employer subsidized transit passes, establishment of an employee carpool/vanpool system in cooperation with RIDES for Bay Area Commuters or other such enterprises.
3. Within a year after completion of the project, the project sponsor shall conduct a survey, in accordance with methodology approved by the Department of City Planning, to assess actual trip generation, trip distribution, and modal split pattern of project occupants, and actual pick-up and drop-off areas for carpoolers and vanpoolers. The results of this survey shall be made available to the Department of City Planning. Alternatively, at the request of the Department of City Planning, the project sponsor shall provide an in lieu contribution for an overall survey of the downtown area to be conducted by the City.

4. Project sponsors shall provide a minimum of two on-site loading service vehicle spaces meeting the guidelines adopted by the City Planning Commission Resolution #9286, on January 21, 1982.
5. The project sponsor shall, as required by the Department of City Planning,:  
(i) participate with other project sponsors and/or the San Francisco Parking Authority in undertaking studies of the feasibility of constructing parking facilities in approved locations to meet the unmet demand for both long and short term parking for trips generated by the project which cannot reasonably be made by transit and (ii) participate with other project sponsors and/or the Municipal Railway in studies of the feasibility for the establishment of shuttle systems serving the project site and parking facilities.

When directed by the Department of City Planning, the project sponsor shall report to Department staff of progress being made in meeting this requirement, and shall continue to report on progress on a six month basis until a Temporary Certificate of Occupancy is issued by the City.

6. The project sponsor shall, in consultation with the Municipal Railway, install eyebolts or make provisions for direct attachment of eyebolts for Muni trolley wires on the proposed building wherever necessary or agree to waive the right to refuse the attachment of eyebolts to the proposed building if such attachment is done at City expense.
7. The project sponsor shall provide a minimum of 10 secure spaces for bicycles and/or mopeds within the project.
8. The placement of paving, landscaping or structures in the sidewalk area (subject to City approval) shall be done in such a way as to minimize interference with pedestrian traffic.
9. While subsurface sidewalk vaults are discouraged, should they be needed, project sponsor shall design sub surface sidewalk vaults to allow for possible future widening of adjacent streets and vault design shall be of sufficient strength to carry maximum vehicular live and dynamic loads. Provision in the vault area for the placement of street trees shall also be made, subject to staff approval. In addition should vaults exist or be installed as part of the project, project sponsor shall accommodate and pay for the installation of all subsurface footings, supports and foundations as may be required for future public improvements such as street lights, street trees, trolley wire poles, signs, benches, transit shelters, etc. within project vault areas. Placement of such improvements is entirely within the discretion of the City.
10. Off-street parking spaces, if more than 15 spaces are provided, shall be controlled to assure priority for vanpool and carpool vehicles and vehicles driven by the physically handicapped. All remaining parking spaces shall be subject to a schedule of rates which encourage short-term use of said spaces and discourage all-day parking; the parking rate structure shall be reviewed and approved by the Department of City Planning, or alternatively, the project sponsor shall agree to be bound by a formula, to be developed by the Department of City Planning, which so structures rates, as to favor short term parking.



Housing

1. In order to help meet the housing demand generated by this project, the project sponsor and/or successive project owners shall meet a housing requirement of 155 units in a manner and within the time which complies with "The San Francisco Office/Housing Production Program (OHPP) Interim Guidelines for administering the Housing Requirements Placed on New Office Developments" adopted by motion by the City Planning Commission on January 26, 1982, the provisions of which are incorporated herein by reference.
2. At project sponsor's option, the housing requirement may be met pursuant to any revisions in the OHPP Guidelines which may be subsequently adopted by the Planning Commission or enacted by the City, prior to the issuance of a Temporary Certificate of Occupancy for this project.
3. The project sponsor shall replace the 22 vacant residential units to be demolished to clear the site for this project. Replacement of units can be accomplished by new construction or renovation of units that have been condemned. These units will be made available for at least a 30 year period and made available at rental levels that are affordable to low-income persons. The arrangements for meeting this requirement are subject to the review and approval of the Director of Planning. In addition, project sponsor shall post a letter of credit in the amount of \$480,000 to insure that this condition is complied with.

Energy

1. The project sponsor shall consider all appropriate energy conservation measures in building design and operations. Prior to issuance of the building permit, the sponsor shall submit to the Department of City Planning a report containing its assessment of the cost effectiveness of the utilization in the project of the various measures outlined in the attached checklist and its reasons for rejecting those measures not employed. Measures to be considered:
  - (1) passive solar energy design;
  - (2) increase in natural interior illumination (daylighting) through atriums, skylights, etc;
  - (3) shading devices on south facing windows;
  - (4) heat absorptive glass for all windows, except ground level;
  - (5) other lighting reduction strategies, including high efficiency outdoor lights, watt misers, task lighting, time switches on storerooms, occupancy sensors, etc.;
  - (6) alternates to air conditioning, including natural ventilation;
  - (7) economizer cycle (which increases use of outside air) in HVAC systems; automatic temperature reset in ducts and pipes;
  - (8) computer monitoring systems for HVAC, lighting;
  - (9) load shedding capacity;
  - (10) utility metering for individual users/tenants;
  - (11) alternate energy systems for hot water;
  - (12) heat recovery systems.

2. One year after occupancy of the structure, actual energy consumption, converted to thousands of British Thermal Units, from Pacific Gas and Electric monthly billings, shall be reported to the Department of City Planning by the project sponsor. If consumption exceeds energy use projections contained in the project EIR, a P.G. & E. or other certified energy audit shall be performed at sponsor's cost, and a copy supplied to the Department of City Planning. Those recommended energy conservation measures which have a 3-year or less payback shall be implemented by the project sponsor.

#### Employment

1. The project sponsor shall notify the City's Employment and Training System (CETS) at least six months prior to project completion of prospective building tenants and job opportunities within the building particularly entry level positions. This information will be used by CETS to design and structure job training programs and help direct those seeking employment to job opportunities.

#### Performance

1. The authorization and rights vested by virtue of this action shall be deemed void and cancelled, if within three months of this resolution a site permit has not been issued and foundation permits issued within twelve additional months.

This authorization may be extended only where the failure to issue a permit by the Bureau of Building Inspection to construct the proposed building is delayed by a City agency or by appeal of the issuance of such a permit.

#### Preservation/Archeology

1. Should evidence of historic or prehistoric artifacts be uncovered at the site during construction, the project sponsor shall be responsible for, and require the following: (1) that the contractor notify the Environmental Review Officer and the President of the Landmarks Preservation Advisory Board; (2) that the contractor suspend construction in the area of the discovery for a maximum of four weeks to permit review of the find and, if appropriate, retrieval of artifacts; (3) that the project sponsor pay for an archeologist or historian acceptable to the Environmental Review Officer to help review the find and identify feasible measures, if any, to preserve or recover artifacts; and (4) if feasible mitigation measures are identified, that they will be implemented, but need not exceed 1% of total construction cost as indicated on the Building Permit application on file with the Department of Public Works.

#### Recordation

1. Prior to the issuance of any building permit for the construction of 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, which notice shall state that construction of the project has been authorized by and is subject to the conditions of this resolution. From

CITY PLANNING COMMISSION

Resolution No. 9456  
Page Nine

time to time after the recordation of such notice, at the request of the project applicant or the successor thereto, the Zoning Administrator shall affirm in writing the extent to which the conditions of this resolution have been satisfied.

I hereby certify that the foregoing Resolution was ADOPTED by the City Planning Commission at its regular meeting of July 15, 1982.

Lee Woods, Jr.  
Secretary

AYES: Commissioners Bierman, Karasick, Klein, Nakashima, Rosenblatt, Salazar

NOES: Commissioner Kelleher

ABSENT: None

PASSED: July 15, 1982

2287A