

RECORDING REQUESTED BY:

City of San Leandro
Planning Services Division
835 East 14th Street
San Leandro, California 94577

WHEN RECORDED MAIL TO:

Marian Handa, City Clerk
City of San Leandro
835 East 14th Street
San Leandro, California 94577



2013381316

12/11/2013 11:54 AM

OFFICIAL RECORDS OF ALAMEDA COUNTY
PATRICK O'CONNELL
RECORDING FEE: 0.00



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THIS SPACE FOR RECORDER'S USE ONLY

(No fee pursuant to Government Code Section 27383)

AGREEMENT TO CONDITIONS

**PLN2013-00015
MODIFYING CONDITIONS OF APPROVAL PLN2013-00015
14808 East 14th Street - The BAL Theatre
Dan and Gina Dillman (Applicant and Property Owner)**

THIS AGREEMENT is entered into by and between the CITY OF SAN LEANDRO, a municipal corporation, hereinafter referred to as "City", Dan Dillman, an individual, and Gina Dillman, an individual, both are hereinafter referred to as "Applicant" and as "Property Owner".

Applicant applied for and received a Conditional Use Permit (CUP) modification to the existing Conditional Use Permit (CUP) for the BAL Theatre (PLN2011-00011) to extend the hours of business for events, to allow an increased frequency of events, and to allow the service of alcoholic beverages appropriately licensed and permitted by the State of California Alcohol Beverage Control (ABC); 14808 East 14th Street; Alameda County Assessor's Parcel Number 77E-1593-8.

NOW, THEREFORE, pursuant to the applicable provisions of the Zoning Code, it is mutually agreed as follows:

1. Applicant agrees to comply with the Conditions of Approval adopted by the City of San Leandro Board of Zoning Adjustments, more specifically described in the list of Conditions of Approval, attached hereto, and as described in the exhibits on file in the Community Development Department, all of which are incorporated herein by this reference.

2. This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

3. City is authorized to record this agreement and any amendments thereto with the Alameda County Recorder, California. All amendments hereto must be in writing and signed by the appropriate authorities of the City, Applicant and Property Owner. The Applicant will be charged the costs of recordation and agrees to pay same. Conditions run with the land and are binding to future owners of the property.

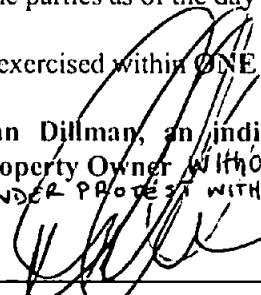
4. Applicant and Property Owner have read and fully understand all of the foregoing terms and conditions, and hereby agree that all said terms and conditions are as approved by the San Leandro Board of Zoning Adjustments in accordance with law, and hereby agree to comply with all of said terms and conditions, provided that the Property Owner is not and shall not become liable, as successor or interest or operation of law or otherwise, for any obligations expressly applicable only to the Applicant hereunder, unless Property Owner hereafter expressly assumes and agrees in writing to be liable for such Applicant obligations. If Applicant defaults on such obligations and Property Owner does not expressly assume and agree to be liable in writing for such defaulted Applicant obligations, then the City may terminate this Agreement and development entitlements hereunder by giving Property Owner at least 30 days advance written notice of City's intention to do so.

IN WITNESS WHEREOF, duly executed by the parties as of the day and year below written.

This **CONDITIONAL USE PERMIT** must be exercised within **ONE YEAR** or it expires.

(Acknowledgment)


Dan Dillman, an individual, as Applicant and Property Owner ~~WITHOUT PREJUDICE~~ UCC 1-207, UCC 1-308
UNDER PROTEST WITH FULL RESERVATION OF RIGHTS



Signature Date 10-24-13

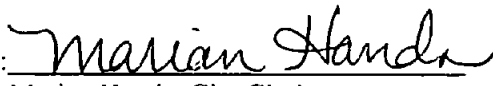
(Acknowledgment)

AKA - DANIEL HENRY DILLMAN
Gina Dillman, an individual, as Applicant and Property Owner ~~WITHOUT PREJUDICE~~ UCC 1-207, UCC 1-308
UNDER PROTEST WITH FULL RESERVATION OF RIGHTS

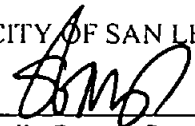


Signature Date 10/24/13
AKA - GINA SUZETTE DILLMAN

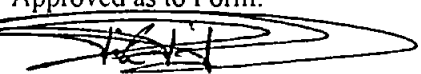
Receipt of Executed Approval: I hereby certify that I am the Secretary to the Board of Zoning Adjustments of the City of San Leandro and in that capacity did receive this copy of PLN2013-00015 Agreement to Conditions fully executed by all parties thereto, and that the effective date of this zoning approval granted herein is July 25, 2013.

Attest: 

Marian Handa, City Clerk

CITY OF SAN LEANDRO, a municipal corporation


Sally Barros, Secretary
Board of Zoning Adjustments

Approved as to Form:


Richard Pio Roda, Assistant City Attorney

CONDITIONS OF APPROVAL

PLN2013-00015

MODIFYING CONDITIONS OF APPROVAL PLN2013-00015

14808 East 14th Street - The BAL Theatre

Dan and Gina Dillman (Applicant and Property Owner)

I. COMPLIANCE WITH APPROVED PLANS

- A. The applicant and/or property owner shall comply with Exhibits A through C, dated January 15, 2009, except as hereinafter modified. (Exhibits are on file at the City of San Leandro Community Development Department, 835 East 14th Street, San Leandro, California).

Exhibit A - Site Plan & Floor Plans

Exhibit B - First Floor Plan

Exhibit C - Second Floor Plan

- B. The applicant and/or property owner shall be responsible for assuring that any successor in interest who assumes responsibility for the zoning approval is informed of its terms and conditions.

II. USE RESTRICTIONS

- A. This is a conditional use approval and parking exception that allows a computer and media-related business to be operated inside the BAL Theatre in a 1,411-square foot area in the SA-1 South Area – 1 District.
- B. This approval is for a computer-repair business and alcohol consumption/sales at events and performances appropriately licensed and permitted by the State of California Alcohol Beverage Control (ABC).
- C. These conditions of approval shall be made accessible to all employees.

III. FIRE DEPARTMENT COMMENTS

- A. The applicant may submit plans to the Building and Safety Services Division for any change of use of the space or building.
- B. Prior to occupancy, the applicant may provide a Knox box at the main entry door to the space.
- C. The project shall comply with the applicable Building and Fire Codes as adopted by the City of San Leandro. Building construction plans shall be submitted and approved prior to start of any work.

IV. PERMITTED USES

- A. This Conditional Use Permit recognizes the existing uses for The BAL Theatre, 14808 East 14th Street, to conduct the following activities (events/performances) inside the building without exceeding maximum occupant load, which includes:
1. Theatrical Show.
 2. Dance Recital.
 3. Comedy Act.
 4. Live Music/Concert.
 5. Magic Show.
 6. Conference/Lecture.
 7. Motion Picture.
 8. Televised event featured with the "big screen projection system."
 9. Talent and Variety Shows
 10. Any combination of the above events
- B. Events or performances shall not utilize overhead curtains, drops, and scenery or stage effects other than lighting and sound. Combustible materials shall meet the fire propagation performance criteria in accordance with Sections 806 and 2603 of the Fire Code. Originally permitted rear projection screen curtains with a current and valid Certificate of Flame Resistance from the State of California Fire Marshal may remain.
- C. The double egress doors along both sides of the platform shall not be chained or barricaded shut during business hours and during theatre events/performances.
- D. Applicant shall comply with the following:
1. Within 15 days of the date of this approval, the exit discharge at the north facing egress doors shall be identified as an emergency egress path with ground markings "NO PARKING – EMERGENCY EXIT" and exterior door signage indicating "EMERGENCY EXIT – DO NOT BLOCK". In addition, within 30 days of the date of this approval, provisions to prevent the blockage of the exit doors shall be implemented.
 2. The-following features serving the raised platform shall be functional and in good operating condition:
 - a. emergency exit lighting and signs,
 - b. handrails at every stairway, and
 - c. guards (guardrails) at the side wings of the platforms and as required to protect openings adjacent to the stairways.
- E. In the event the platform is enlarged, modified, or its use is changed from those outlined above, the Building and Fire Code requirements applicable for new buildings or a change of use, shall be complied with, including provisions for an accessible platform or performance area to the satisfaction of the Chief Building Official. Permits shall be obtained from the City Building and Safety Services Division by filing the appropriate application, drawings, details and specifications (i.e., construction documents), which shall be prepared by an appropriately licensed professional.

- F. There shall be no permanent storage of any type outside the building.
- G. Alcoholic beverages may be served for fundraising events that includes catered food where the non-profit organization [i.e., 501 (c) (3), tax-exempt, nonprofit corporation or association] shall be responsible for obtaining the required State of California Alcohol Beverage Control (ABC) Special Daily Beer and/or Wine License (Form ABC-221) or the non-profit organization and the caterer both obtain the necessary ABC License for the fundraising event
- H. The appropriate State of California Alcohol Beverage Control (ABC) license shall be obtained for serving alcoholic beverages not related to fundraising events. Service shall be limited to the hours of 10:00 a.m. to 12:00 a.m. (midnight). Alcohol shall be served in an appropriate container.
- I. The general hours of the permitted activities (events/performances) shall be limited to the following:
1. Sunday, Monday, Tuesday, Wednesday, and Thursday - Not prior to 9:00 a.m. and shall cease by 12:00 a.m.
 2. Friday and Saturday - Not prior to 9:00 a.m. and shall cease by 1:00 a.m.
 3. These conditions do not apply to New Year's Eve (December 31st) when it occurs on a Sunday through Thursday, where the event shall cease by 1:00 a.m.
- J. The frequency of the permitted activities (events/performances) shall be limited to a maximum of 260 per year where an event or performance may include multiple shows in a day. This condition on frequency does not apply to the showing of motion pictures or televised events featured with the "big screen projection system."
- K. Any proposed increase in general hours, increase in frequency, or addition of another type of assembly activity shall be submitted in writing to the Community Development Director who may administratively approve minor changes or for more substantial changes, require review by the Board of Zoning Adjustments as a modification to the Conditional Use Permit.
- L. Litter pick up shall be required for a minimum distance of a 300 foot radius.
- M. **PROHIBITED USES.** The following activities (events/performances) shall not be permitted at the BAL Theatre, 14808 East 14th Street.
1. No Dance Hall/No Dance Permit.
 2. No Adult Cabaret.
 3. No Adult Motion Pictures.
 4. No Adult Theatre (No adult live entertainment).
- N. Any noise or sounds from the activities inside the building shall not be detectable from beyond the property lines.
- O. There shall be no loitering permitted outside the building. "NO LOITERING" signs shall be posted outside the building.

- P. This Conditional Use Permit may be subject to review by the City within six-months.
- Q. Annually, prior to December 1, the property may be subject to inspection and clearance from the City.

V. MAINTENANCE

- A. The site shall be maintained and shall be kept free of litter, debris and weeds.
- B. Any graffiti shall be promptly removed from the building walls and fences.

VI. GENERAL CONDITIONS

- A. The approvals granted by the City as a result of this application, as well as the Conditions of Approval, shall be recorded in the Office of the County Recorder of Alameda County.
- B. No application for amendment of the application or conditions of approval may be submitted or accepted for processing by the City of San Leandro's unless (i) there is full compliance with all terms of the application and Conditions of Approval; or (ii) the Community Development Director waives compliance with the terms of the application and Conditions of Approval pending application for amendment.
- C. Pursuant to Zoning Code Section 5-2218, this approval shall lapse on **July 25, 2014**, unless a) a business license has been issued, coupled with diligent progress evidencing a good-faith intent to commence the intended use, or b) a written request for a one-year extension of the use permit is approved by the Zoning Enforcement Official.

**Memorandum of Understanding
CUP PLN2013-00015
14808 East 14th Street - The BAL Theatre
Dan and Gina Dillman (Applicant and Property Owner)**

It is understood that we are signing this agreement, Without Prejudice UCC1-207, UCC 1-308, Under Protest with full reservation of our rights, with the understanding that we are not abandoning any of our rights. We are willing to agree to certain stipulations within this Conditional Use Permit that do not violate our existing Grandfathered Rights, our Constitutional Rights, our Individual Rights, our bundled Land Rights, the fire code, the LAW or the Constitution, as stated on the record. We also do not agree to certain stipulations in this agreement, as noted on the record, and the Board of Zoning still voted in favor of and passed this permit knowing we would not fully comply with the agreement, as stated on the record.

All of the Board of Zoning meetings, hearings, written and oral correspondents, emails, statements, including but not limited to audio, video recordings are all apart of this agreement.

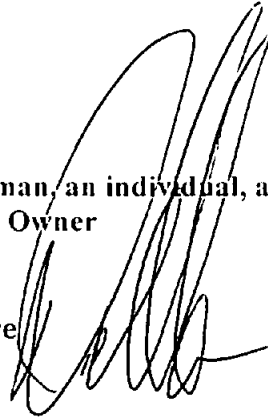
The City of San Leandro fully understands these stipulations and agrees to include this statement into the recorded agreement.

We will continue to work in Good Faith with the City of San Leandro and they have promised to work in Good Faith with The Historic BAL Theatre and it's Owners.

(Acknowledgment)

Dan Dillman, an individual, and
Property Owner

Signature



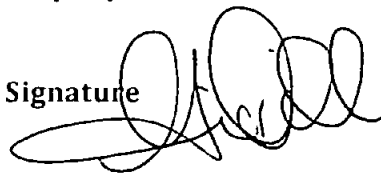
Date

10-24-13

(Acknowledgment)

Gina Dillman, an individual, and
Property Owner

Signature



Date

10/24/13

SEE ATTACHED ACKNOWLEDGEMENT

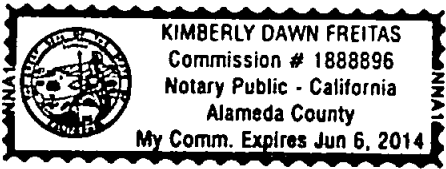
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Alameda

On Oct 31 2013 before me, Kimberly Dawn Freitas Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Smy Bartos
Name(s) of Signer(s)



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

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

WITNESS my hand and official seal.

Signature Kimberly Dawn Freitas
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: PLN 2013 00015

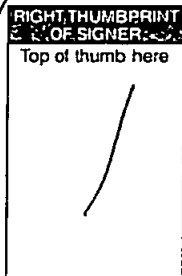
Document Date: 11-25-13 Number of Pages: —

Signer(s) Other Than Named Above: —

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

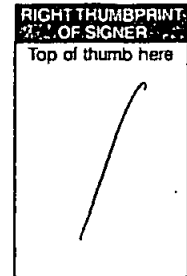
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Alameda

On 10/24/13 before me, Alexander K. Huynh, Notary Public.
(Here insert name and title of the officer)

personally appeared Daniel Henry Dillman and Gina Suzette Dillman.

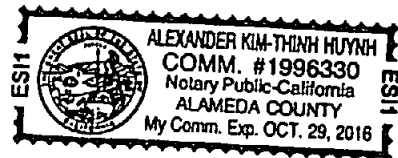
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that he/~~she~~ they executed the same in his/~~her~~ their authorized capacity(ies), and that by his/~~her~~ their signature(s) on the instrument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

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

WITNESS my hand and official seal.

Alexander K. Huynh
 Signature of Notary Public

(Notary Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

Agreement to Conditions
(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages 7 Document Date 7/25/13

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
- Corporate Officer
(Title)
- Partner(s)
- Attorney-in-Fact
- Trustee(s)
- Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they- is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Alameda

On 10/24/13 before me, Alexander K. Huynh, Notary Public
(Here, insert name and title of the officer)

personally appeared Daniel Henry Dillman and Gina Suzette Dillman

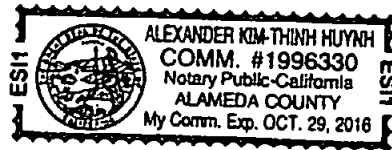
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is/are~~ subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument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

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

WITNESS my hand and official seal.

Alexander K. Huynh
 Signature of Notary Public

(Notary Seal)



ADDITIONAL OPTIONAL INFORMATION

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- Securely attach this document to the signed document

<p>DESCRIPTION OF THE ATTACHED DOCUMENT</p> <p><u>Memorandum of</u> <small>(Title or description of attached document)</small></p> <p><u>Understanding</u> <small>(Title or description of attached document continued)</small></p> <p>Number of Pages <u>7</u> Document Date <u>10/24/13</u></p> <p><u>WP PLN2013-00615</u> <small>(Additional information)</small></p>
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<p>CAPACITY CLAIMED BY THE SIGNER</p> <p><input checked="" type="checkbox"/> Individual (s) <input type="checkbox"/> Corporate Officer</p> <p>_____ (Title)</p> <p><input type="checkbox"/> Partner(s) <input type="checkbox"/> Attorney-in-Fact <input type="checkbox"/> Trustee(s) <input type="checkbox"/> Other _____</p>
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