

# DRAFT

## RESOLUTION NO. XXXX

### RESOLUTION OF THE SAUSALITO CITY COUNCIL APPROVING AN ENCROACHMENT AGREEMENT (APPLICATION NO. SP/DR/EA 07-004) TO ALLOW THE ENCROACHMENT OF A PROJECTING BLADE SIGN AND AWNING INTO THE PUBLIC RIGHT-OF-WAY FOR THE BUSINESS LOCATED AT 599-B BRIDGEWAY (APN 065-132-04)

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**WHEREAS**, an application has been filed pursuant to Sausalito Municipal Code Title 10 (Zoning) by Paul Slavin, on behalf of business owners Tim and Amy Cantor requesting Planning Commission approval of a Sign Permit for an awning with signage and a projecting sign to be installed for the business located at 599-B Bridgeway; and

**WHEREAS**, the Planning Commission conducted a duly noticed public meeting on November 28, 2007, in the manner prescribed by local ordinance, at which time all interested persons were given an opportunity to be heard; and

**WHEREAS**, the Planning Commission reviewed and considered the sign plans date-stamped received October 31, 2007; and

**WHEREAS**, the Planning Commission has reviewed and considered the information contained in the November 28, 2007 staff report for the proposed signage; and

**WHEREAS**, the Planning Commission found that, as conditioned herein, the proposed signage complies with Sign Permit criteria of the Zoning Code, the Sausalito Downtown Historic District Signage Guidelines, and the General Plan as outlined in the November 28, 2007 staff report; and

**WHEREAS**, the Planning Commission found that the proposed project is categorically exempt from the requirements of CEQA pursuant to Section 15301; and

**WHEREAS**, the Planning Commission adopted Resolution No. 2007-40 on November 28, 2007, approving Sign Permit and Design Review Permit No. SP/DR/EA 07-004 and recommending approval to the City Council for the requested encroachments in the public right-of-way; and

**WHEREAS**, the City Council has reviewed and considered the Planning Commission's recommendation of the Encroachment Agreement; and

**WHEREAS**, the City Council has reviewed and considered the project plans date-stamped received October 31, 2007; and

**WHEREAS**, the City Council has received and considered written testimony on the subject application and obtained evidence from site visits; and

**WHEREAS**, the City Council agrees with the Planning Commission that the proposed project is categorically exempt from the requirements of the California Environmental Quality Act pursuant to CEQA Guidelines Section 15301 (e).

**NOW, THEREFORE, THE CITY COUNCIL HEREBY** approves the Encroachment Agreement for Application No. SP/DR/EA 07-004 to allow the encroachment of a projecting blade sign and awning in the public right-of-way for the business located at 599-B Bridgeway (APN 065-132-04), as included in Exhibit A (Encroachment Agreement) and Exhibit B (Sign Plans), and subject to the conditions of approval contained herein.

**Section 1. Conditions of Approval**

1. Approval of this application is limited to the sign plans for The Art of Tim Cantor business date-stamped received October 31, 2007 and attached to this resolution.
2. No illumination is proposed or approved.
3. This approval will expire in one (1) year from the date of adoption of this resolution if the property owner has not exercised the entitlements hereby granted.
4. This approval does not include any other construction, site improvements, tree removal and/or alteration, exterior alterations and/or renovations.
5. This project involves the installation of a projecting sign and awning with lettered signage as indicated in the attached sign plans. Should the applicant desire to incorporate additional signage, the applicant will need to submit the proposal to the Community Development Department.
6. The Community Development Department is authorized to administratively approve minor modifications to the approved plans. Major design modifications to the approved project will require further review and approval by the Planning Commission.
7. The signage shall be continuously maintained in a safe, clean, and legible condition at all times, portraying a high quality finished product.
8. In the event that any condition imposing a fee, exaction, dedication or other mitigation measure is challenged by the project sponsors in an action filed in a court of law or threatened to be filed therein which action is brought within the time period provided by law, this approval shall be suspended pending dismissal or final resolution of such action. If any condition is invalidated by a court of law, the entire project shall be reviewed by the City and substitute conditions may be imposed.
9. In accordance with Ordinance No. 1160, the applicant shall pay any and all City costs arising out of or concerning the proposed project, including without limitation, permit fees, attorneys' fees, engineering fees, license fees and taxes, whether incurred prior to or subsequent to the date of this approval. Applicant acknowledges and agrees that City's costs shall be reimbursed prior to this approval becoming valid.
10. The applicant shall indemnify the City for any and all costs, including without limitation attorneys' fees, in defending this project or any portion of this project and shall reimburse the City for any

costs incurred by the City's defense of the approval of the project.

11. An approval granted by the Planning Commission does not constitute a building permit or authorization to begin any construction. An appropriate permit issued by the Building Division must be obtained prior to installing the sign and awning.
12. The awning and projecting sign are subject to City Council approval of an Encroachment Agreement. The City may terminate the Encroachment Agreement for the awning and projecting sign at any time for any reason and the applicant would be required to remove them. The business owner agrees with this policy as a condition of the project's approval.
13. Upon approval of an Encroachment Agreement by the City Council, the property owner shall execute an encroachment agreement with the City subject to standard conditions in the model agreement within one year of the date of approval by the City Council.

## **Section 2. Judicial Review**

The time within which judicial review of this decision may be sought is governed by the provisions of section 65009 of the Government Code, section 1094.6 of the Code of Civil Procedure and all other applicable law.

**RESOLUTION PASSED AND ADOPTED** at the regular meeting of the City Council of the City of Sausalito on the 11<sup>th</sup> day of December 2007, by the following vote:

AYES: Councilmember:  
NOES: Councilmember:  
ABSENT: Councilmember:  
ABSTAIN: Councilmember:

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MAYOR D. MICHAEL KELLY

ATTEST: \_\_\_\_\_  
CITY CLERK

## EXHIBIT A

### CITY OF SAUSALITO ENCROACHMENT AGREEMENT

This **ENCROACHMENT AGREEMENT** (“Agreement”) is entered into this 11<sup>th</sup> day of December, 2007 (the “Effective Date”) by and between **LOUIS BURNETT** (“Owner”) and the **CITY OF SAUSALITO**, a municipal corporation (“City”).

#### RECITALS

The following Recitals are a substantive part of this Agreement:

A. Application No. SP/DR/EA 07-004 was submitted by Paul Slavin, on behalf of business owners Tim and Amy Cantor, for approval of a Sign Permit, Design Review Permit, and Encroachment Agreement to install a projecting blade sign and awning for their business located at 599-B Bridgeway.

B. Application No. SP/DR/EA 07-004 includes the placement of a blade sign and awning projecting 36 inches into the sidewalk and providing a minimum clearance of eight (8) feet above the sidewalk.

C. The Planning Commission of the City of Sausalito did duly pass and adopt Resolution No. 2007-40 on November 28, 2007 and did thereby approve the Sign Permit and Design Review Permit and recommended approval to the City Council of an Encroachment Agreement.

D. The City Council adopted Resolution No. XXX on December 11, 2007 approving the Encroachment Agreement subject to specific conditions contained in Section 1 of said Resolution.

E. The City has the authority to regulate the use of the public right-of-way and is willing to allow Owner the encroachments as set forth on and in accordance with the Plans in accordance with Titles 10 and 17 of the Sausalito Municipal Code under certain terms and conditions as set forth below.

**NOW, THEREFORE**, Owner and City hereby agree as follows:

1. Description of Encroachments. The encroachment covered by this Agreement is the blade sign and awning projecting within the public right-of-way as depicted on and subject to the plans date-stamped received October 31, 2007, a copy of which is attached hereto as Exhibit B and incorporated herein by this reference.
2. Term. The term of this Agreement is one (1) year after which it shall be automatically renewed on an annual basis unless City issues a notice of non-renewal.
3. Condition of Encroachments and Right of Way. Owner shall maintain all Encroachments and the City owned property affected thereby in good and safe condition and free from any nuisance to the satisfaction of the City Engineer.
4. Removal or Relocation. Owner acknowledges and agrees that it shall remove or relocate the

Encroachment(s) at its sole cost and expense if the Encroachment(s) interferes with any lawful governmental or proprietary purpose of the City of Sausalito; is detrimental to governmental activities; and/or the right of way or street is being vacated. If the Owner fails to remove the Encroachment(s) within the time specified by the City Engineer, City may cause the work to be done at the Owners' expense.

5. Taxes. Owners shall be responsible for payment of all fees and taxes charged in connection with the right, title and interest in the Encroachments.

6. Indemnification. Owners hereby agrees to indemnify, defend (with counsel reasonably acceptable to City) and hold harmless City and its elected and appointed officials, officers, employees, consultants, agents, volunteers and successors in interest from any and all claims, demands, causes of action, damages, liabilities and obligations arising from or in any way related to this Agreement and/or Owner's use of the right of way.

7. Termination. This Agreement may be terminated by either party with or without cause upon thirty (30) days written notice. Upon such termination, the Encroachment(s) must be removed as specified by and within the time required by the City Engineer. In addition, the City owned right of way must be restored to the condition required by the City Engineer. In the event that Owner fails to remove the Encroachment(s) and/or restore the right of way as required by the City Engineer within the specified time, City shall have the right to perform the work and charge Owners.

8. No Grant. This Agreement is not a grant by City of any property interest but is made subject and subordinate to the prior and continuing right of City and its assigns to lawfully use any or all of the right of way for public facilities, including but not limited to, public use as a street and for the purpose of laying, installing, maintaining, repairing, protecting, replacing and removing sanitary sewers, water mains, storm drains, gas mains, poles, overhead and underground electric and telephone wires, television and other utility and municipal uses together with appurtenances thereof and with right of ingress and egress along, over, across and in the right of way. No use of any right of way or other interest under this Agreement shall create or vest in Owners any ownership interest in the right of way; nor shall anything in this Agreement be deemed or construed to grant or create any franchise rights.

9. Condemnation. If the right of way is taken totally by condemnation, this Agreement shall terminate on the date of the taking with no compensation to Owner therefore. If a portion of the right of way is taken by condemnation, then this Agreement shall remain in effect as to the part not taken.

10. Standard Conditions. Owner shall comply with any and all Standard Conditions for Encroachment Permits required by the City Engineer.

11. Compliance with Laws. Owners shall comply with all applicable laws, any permit issued by the City pursuant to this Agreement and any general or specific conditions required by the City Engineer.

12. Notices. All notices required or permitted to be given under the terms of this Agreement shall be in writing and shall be deemed to be given as of the time of hand delivery to the addresses set forth below, or three (3) days after deposit in the United States mail, postage prepaid, by register or certified mail, return receipt requested, addressed as follows:

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| <b>Owners:</b> | Louis Burnett<br>599 Bridgeway<br>Sausalito, CA. 94965 | City of Sausalito<br>Sausalito, CA 94965<br>Attention: City Engineer |
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13. Assignment. This Agreement is not assignable unless City consents in writing, which consent shall not be withheld unreasonably. Such consent to assignment shall bind and insure to the benefit of the respective successors and assigns of the parties. This requirement for consent shall not apply to: (a) any disposition of all or a portion of the Property; or (b) any collateral assignment, security interest or pledge of this Agreement by Owner(s) to any lender.

14. Waivers. The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce the same. No waiver by any party of any condition, or of any breach of any term, covenant, representation, or warranty contained herein, in any one or more instances, shall be deemed to be construed as a further or continuing waiver of any such condition or breach or waiver of any other condition or of any breach of any other term, covenant, representation or warranty.

15. Severability. If one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable or unenforceable, such provision shall be deemed severable from the remaining provisions of this Agreement and shall not affect the legality, validity or constitutionality of the remaining portions of the Agreement.

16. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters addressed herein.

17. Modification. This Agreement may not be amended unless made in writing and signed by each party.

18. California Law. The interpretation and enforcement of this Agreement shall be governed by the laws of the State of California. In the event that suit shall be brought by either party to this Agreement, the parties agree that venue shall be exclusively vested in the State courts of the County of Marin or where appropriate, in the United States District Court, Northern District of California.

19. Attorneys' Fees. Should any legal proceeding be commenced between the parties to this Agreement seeking to enforce any of its provisions the prevailing party in such a proceeding shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for attorneys' fees which shall be determined by the court or forum in such a proceeding or in a separate action brought for that purpose. For purposes of this provision, "prevailing party" shall include a party which dismisses an action for recovery hereunder in exchange for payment of the sum allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action or proceeding.

20. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.

21. Authority. The parties represent that the individuals signing this Agreement have the authority to do so.

22. No Personal Liability. No member, official or employee of City shall be personally liable to Owners or any successor in interest in the event of any default or breach by City or on any obligation under the terms of this Agreement.

**IN WITNESS WHEREOF**, the parties have hereto set their signatures as of the date first above named herein.

OWNER:

CITY:

By: \_\_\_\_\_  
Louis Burnett

By: \_\_\_\_\_  
D. Michael Kelly, Mayor

RECOMMENDED FOR APPROVAL:

APPROVED AS TO FORM:

\_\_\_\_\_  
Todd Teachout, City Engineer

\_\_\_\_\_  
Mary Wagner, City Attorney

ATTEST:

\_\_\_\_\_  
City Clerk

**EXHIBIT B**  
**SIGN PLANS**