



# STAFF REPORT

## SAUSALITO CITY COUNCIL

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### AGENDA TITLE:

Approval of the First Amendment to the Lease Agreement by and between the City of Sausalito and George Dapsevicius.

### RECOMMENDED MOTION:

Adopt a Resolution of the City Council of the City of Sausalito Approving the First Amendment to the Lease Agreement by and between the City of Sausalito and George Dapsevicius

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### DISCUSSION

The City of Sausalito and George Dapsevicius entered into a Lease Agreement dated November 15, 2004 (the "Lease") which provides for George Dapsevicius to lease Suite 220 in Building Two at the MLK Site for use for as a design studio. Mr. Dapsevicius's lease expired on November 14, 2007.

George Dapsevicius wishes to continue to lease Suite 220 on a month-to-month basis on essentially the same terms and conditions as the Lease Agreement. A copy of the existing Lease is attached as Attachment 3.

The following are the changes to the Lease under the proposed First Amendment:

1. The term of the Lease will be month-to-moth, commencing February 1, 2008.
2. The monthly rent for Suite 220 will be \$789.65, plus a 10% common area maintenance charge. The monthly rent will increase four percent each February 1.

### FISCAL IMPACT

The City will receive \$868.62 in total monthly rent starting February 1, 2008.

### STAFF RECOMMENDATIONS

Staff recommends that the City Council adopt the Resolution of the City Council of the City of Sausalito Approving the First Amendment to the Lease Agreement by and between the City of Sausalito and George Dapsevicius.

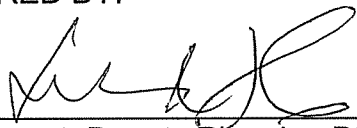
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Item #: 4.B.5  
Meeting Date: 1-29-08  
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**ATTACHMENTS:**

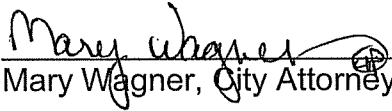
- 1) A Resolution of the City Council of the City of Sausalito Approving the First Amendment to the Lease Agreement by and between the City of Sausalito and George Dapsevicius.
- 2) Draft First Amendment to the Lease Agreement by and between the City of Sausalito and George Dapsevicius.
- 3) Lease Agreement by and between the City of Sausalito and George Dapsevicius.

PREPARED BY:



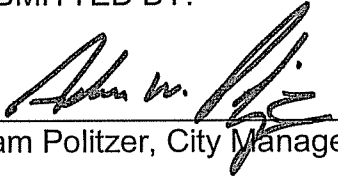
Kevin Bryant, Deputy Planning Director  
Louise Ho, Finance Director/Treasurer

REVIEWED BY:



Mary Wagner, City Attorney

SUBMITTED BY:



Adam Politzer, City Manager

**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF SAUSALITO, CALIFORNIA  
APPROVING THE FIRST AMENDMENT TO THE LEASE AGREEMENT BY AND  
BETWEEN THE CITY OF SAUSALITO AND GEORGE DAPSEVICIUS**

**WHEREAS**, the City of Sausalito leases that certain real property located at 100 Ebbtide, Sausalito from the Sausalito School District (the "Site"); and

**WHEREAS**, George Dapsevicius currently leases Suite 220 at the Site from the City for use as a design studio pursuant to that certain Lease Agreement by and between the City and George Dapsevicius dated November 15, 2004 (the "Lease"); and

**WHEREAS**, the City and George Dapsevicius have agreed to enter into a First Amendment to the Lease to allow for George Dapsevicius to lease Suite 220 upon all terms and conditions set forth therein; and

**WHEREAS**, the approval of the First Amendment to the Lease is exempt from the application of the California Environmental Quality Act, Public Resources Code Section 21000, *et seq.*, pursuant to Section 15301 (Class 1 Categorical Exemption) of the State CEQA Guidelines (Title 14, California Code of Regulations Section 15000, *et seq.*).

**NOW, THEREFORE**, the City Council of the City of Sausalito does hereby resolve as follows:

1. The City Council hereby finds that the First Amendment to the Lease is exempt from the application of CEQA pursuant to Section 15301 (Class 1 Categorical Exemption) of the State CEQA Guidelines and the City Clerk, or her designee, is directed to cause a Notice of Exemption to be posted in accordance with CEQA.
2. The First Amendment to the Lease by and between the City of Sausalito and George Dapsevicius, which is incorporated by reference, is hereby approved and the Mayor is authorized to execute the Lease on behalf of the City.
3. Upon execution of the First Amendment to the Lease by the Mayor, the City Manager (or his designee), is authorized, on behalf of the City, to approve and/or sign all documents necessary and appropriate to carry out and implement the First Amendment, and to administer the City's obligations,

responsibilities and duties to be performed under the First Amendment and related documents.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Sausalito on the \_\_\_\_ day of \_\_\_\_\_, 2008, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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MAYOR OF THE CITY OF SAUSALITO

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CITY CLERK

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## FIRST AMENDMENT TO LEASE OF PREMISES

**THIS FIRST AMENDMENT TO AMENDED AND RESTATED LEASE OF PREMISES** ("First Amendment"), dated effective as of February 1, 2008 (the "Effective Date"), is entered into by and between the **CITY OF SAUSALITO**, a municipal corporation (the "Landlord"), and **GEORGE DAPSEVICIUS**, an individual (the "Tenant").

### RECITALS

The following Recitals are a substantive part of this Agreement:

A. Landlord and Tenant entered into the Amended and Restated Lease of Premises dated as of November 15, 2004 (the "Lease"). Capitalized terms utilized herein and not otherwise defined shall have the same meaning as set forth in the Lease.

B. The Lease provides for Landlord's lease to Tenant of approximately three four hundred sixty-eight (468) square feet located in Building 2, Suite 220 at 100 Ebbtide, City of Sausalito, County of Marin (the "Premises") for a term ending on November 14, 2007. The Tenant has remained in possession of the Premises since the end of the term and has complied with all the terms and conditions of the Lease.

C. Landlord and Tenant desire to enter into this First Amendment to the Lease to allow for the extension of the term of the Lease on a month-to-month basis upon the terms and conditions set forth herein.

### AGREEMENT

In consideration of the mutual covenants and conditions contained in this Amendment, Landlord and Tenant hereby agree as follows:

**Section 1. Term.** Section 2.1 of the Lease is hereby amended in its entirety to read as follows:

**"2.1 Term.** This Lease shall be on a month-to-month basis ("Term") commencing February 1, 2008 ("Commencement Date")."

**Section 2. Rent.** Commencing on the Effective Date of this Amendment, the monthly rent to be paid by Tenant to Landlord in accordance with Section 3.1 of the Lease shall be Seven Hundred Eighty Nine Dollars and 65/100 (\$789.65). Each subsequent February 1, the rent to be paid by Tenant to Landlord shall be increased by an amount equal to four percent (4%) of the then applicable Rent per month.

**Section 3. Security Deposit.** Concurrently with the execution of this First Amendment Tenant shall deposit with Landlord such additional sums as are required to cause the Security Deposit to be equal to one and one half month's Rent.

**Section 4. Relocation.** A new Article 21 is hereby added to the Lease to read as follows:

**ARTICLE 21. LANDLORD'S RIGHT TO RELOCATE TENANT.** Landlord, at any time and from time to time during the Term, shall have the right to relocate Tenant from the Premises (the Premises from which Tenant is being relocated pursuant to this Section 21 being referred to herein as the "Old Premises") to other space at the MLK Site which is comprised of the buildings at 100 Ebbtide and 610 Colma (such other space being referred to as the "New Premises"; Landlord's aforesaid right to relocate Tenant from the Old Premises to the New Premises being referred to herein as the "Relocation Option").

Landlord shall have the right to exercise the Relocation Option only by giving notice thereof (the "Relocation Notice") to Tenant not later than sixty (60) days before the date that the aforesaid relocation becomes effective (the date that the relocation becomes effective being referred to herein as the "Relocation Date"). A Relocation Notice shall not be effective for purposes of this Section 21 unless Landlord includes therewith a floor plan identifying the New Premises. The New Premises shall (i) be comprised of rentable area equal to or greater than the rentable area of the Old Premises, and (ii) be similar in configuration to the Old Premises.

Tenant shall vacate the Old Premises and surrender vacant and exclusive possession of the Old Premises to Landlord on or before the Relocation Date, provided that Landlord has theretofore delivered vacant and exclusive possession of the New Premises to Tenant in accordance with the terms of this Section 21. Landlord shall reimburse Tenant for any reasonable moving expenses and for any other reasonable costs and expenses incurred by Tenant in so relocating to the New Premises from the Old Premises, within thirty (30) days after Tenant's written request and Tenant's submission to Landlord of reasonable supporting documentation therefor.

From and after the Relocation Date, all references to the Premises herein shall mean the New Premises rather than the Old Premises."

**Section 5. Effect on Lease.** Except as expressly set forth herein, the terms and conditions of the Lease shall remain in full force and effect. In the event of any inconsistency between the Lease and this First Amendment, the terms of this First Amendment shall control.

**Section 6. Entire Agreement; Conflicts.** This Amendment and the Lease contain the entire agreement between the parties with respect to the subject matter hereof. Except as otherwise specified herein, no prior oral or written understanding shall be of

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any force or effect with respect to those matters covered herein. This Amendment and the Lease shall not be modified or altered except in writing signed by both parties.

**Section 7. Execution.** This First Amendment may be executed in duplicate original counterparts each of which shall constitute one and the same instrument.

**LANDLORD:**

**CITY OF SAUSALITO**, a municipal corporation

Dated: \_\_\_\_\_, 2008

By: \_\_\_\_\_  
Amy Belser, Mayor

**ATTEST:**

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

**APPROVED AS TO FORM:**

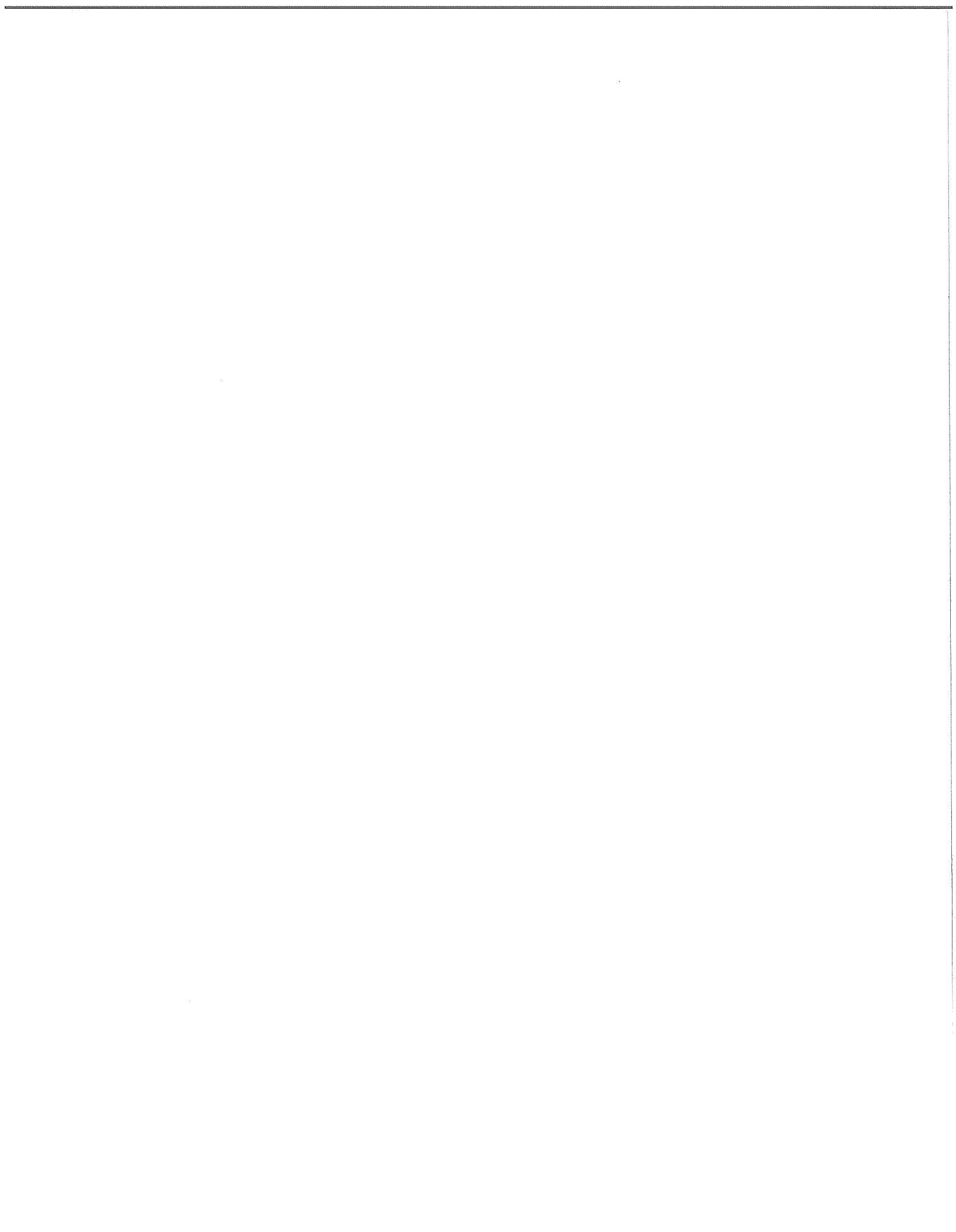
\_\_\_\_\_  
City Attorney

**TENANT:**

Dated: \_\_\_\_\_, 2008

By: \_\_\_\_\_  
George Dapsevicius

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AMENDED AND RESTATED LEASE OF PREMISES

SUITE 220,  
BUILDING 2  
100 EBBTIDE  
SAUSALITO, CALIFORNIA

TENANT:

GEORGE DAPSEVICIUS

LANDLORD:

THE CITY OF SAUSALITO

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## LEASE SUMMARY

DATE OF LEASE	Effective Date –November 15, 2004
LANDLORD	City of Sausalito
TENANT	George Dapsevicius
ADDRESS OF TENANT	100 Ebbtide, Building 2, Suite 220
PREMISES	Suite 220, 100 Ebbtide, Sausalito, CA.
TERM	One Year, November 15, 2004 – November 14, 2005
BASE RENT	\$ 702.00 per month
ADDITIONAL RENT	Taxes (Article 4), Incremental increases in Common Area Maintenance (10% of base rent per month - Section 16.6 \$70.20/month subject to 4% escalator)
ADJUSTED BASE RENT	4% annual escalator
PARKING SPACES	None
UTILITIES	Additional
SECURITY DEPOSIT	\$1053.00; One and one half month's Rent
PERMITTED USE	City Zoning Code Section 10.20-1 – design studio
IMPROVEMENTS	None
OPTION TO RENEW	1 option to renew for a period of 2 years

**LEASE OF PREMISES  
100 EBBTIDE  
SAUSALITO, CALIFORNIA**

This **LEASE OF PREMISES** (this "Lease"), executed in duplicate, by and between **THE CITY OF SAUSALITO**, a municipal corporation ("Landlord") and **GEORGE DAPSEVICIUS**, an individual ("Tenant") is dated effective as of November 15, 2004.

**ARTICLE 1. PREMISES.** Landlord leases to Tenant and Tenant leases from Landlord, subject to the following terms and conditions, the real property which is located in Building 2, Suite 220, at 100 Ebbtide, City of Sausalito, County of Marin, State of California, a plan of which is hereto attached and called Exhibit A (the "Premises").

**ARTICLE 2. TERM**

**2.1 Term.** This Lease shall be for a period of one (1) year ("Term") commencing November 15, 2004 ("Commencement Date"). This Lease shall end one (1) year from the Commencement Date, that is at midnight on November 14, 2005 ("Expiration Date"), unless otherwise terminated or extended in accordance with the provisions of this Lease.

**2.2 Possession of Premises.** Tenant is currently in possession of the Premises.

**ARTICLE 3. RENTAL.**

**3.1 Rent.** Tenant agrees to pay Landlord, as "Rent" for the Premises, Seven Hundred Two Dollars and 00/100 (\$702.00) plus such additional sums as required in this Lease, monthly, in advance on the first day of each month during the Term of this Lease. If Tenant's obligation to pay Rent does not commence on the first day of a calendar month, the Rent payable by Tenant for the first fractional month shall be prorated on a thirty (30) day basis.

**3.2 Additional Rent.** Tenant shall pay as "Additional Rent" upon demand from Landlord, the sums described in Section 4.1 (Real Estate Taxes), Section 4.2 (Possessory Interest Property Taxes – unless paid directly to the County of Marin), Section 8.1 (Maintenance, Tenant's Obligations), and Common Area Section 16.6 (Common Area) and such other sums due and payable hereunder. Said sums shall be paid upon demand from Landlord and without setoff. For purposes of determining Tenant's percentage share of any common expenses shared with other tenants, the definition of Percentage Share shall be as described in Section 15.25 of this Lease.

**3.3 Rent Commencement Date.** Payment of Rent shall commence on the Commencement Date payable in accordance with Section 3.1.

**3.4 Interest and Late Charges.** If Tenant shall fail to pay when due and payable any Rent, Additional Rent or other amounts or charges which Tenant is obligated to pay under the

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**LEASE OF PREMISES  
100 EBBTIDE  
SAUSALITO, CALIFORNIA**

terms of this Lease, such unpaid amounts shall bear interest at the maximum rate allowed in the State of California. In addition to such interest, Tenant acknowledges that the late payment of any monthly installment of Rent or Additional Rent will cause Landlord to incur costs and expenses not contemplated under this Lease, including but not limited to administrative and collection costs and processing and accounting expenses the exact amount of which is extremely difficult to fix. Therefore, if any such payment is not received by Landlord within ten (10) days from the date such payment is due, Tenant shall pay Landlord a late charge equal to ten percent (10%) of such payment. Landlord and Tenant agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to Landlord for the loss suffered by such nonpayment by Tenant. Acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to such nonpayment by Tenant nor prevent Landlord from exercising any other rights or remedies available to Landlord under this Lease.

**ARTICLE 4. TAXES.**

**4.1 Real Estate Taxes.** The term "Real Estate Taxes" shall mean any assessments, license fee, rental taxes, levies, fees, taxes (other than estate, inheritance, or gift taxes) of any kind, or charges in lieu of taxes, levied by any federal, state, county or municipal government or governmental agency on: (a) the Premises and/or the underlying realty; or (b) Landlord's business of leasing the Premises.

In addition to the Rent and Additional Rent herein provided to be paid, Tenant agrees to pay to Landlord, upon demand, Tenant's pro rata share of any Real Estate Taxes which may be levied on the property, of which the demised Premises is a part, in excess of taxes levied for the fiscal year 2003/2004 whether such increase is caused by increase in the tax rate or increase in the assessed valuation.

In the event the Premises and underlying realty are not assessed separately, but are part of a larger parcel for assessment purposes, Tenant shall pay Landlord a fractional amount of the taxes levied against the larger parcel, the numerator of which shall be the total square footage available for Tenant's exclusive use and occupancy under this Lease, and the denominator of which shall be the total square footage of the improvements constructed on the parcel.

**4.2 Possessory Interest Tax.** Tenant recognizes and understands that this Lease may create a possessory interest pursuant to California Revenue and Taxation Code Section 107 and as such this Lease may result in the assessment of property taxes against the Premises by the County of Marin. Tenant shall be responsible for the payment of Possessory Interest Taxes assessed to the Premises during the Term directly to the County of Marin.

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**LEASE OF PREMISES  
100 EBBTIDE  
SAUSALITO, CALIFORNIA**

**4.3 Personal Property Tax.** Tenant shall pay when due all taxes levied on Tenant's personal property, including but not limited to equipment, trade fixtures and furnishings located in or on the Premises, and Tenant shall use Tenant's best efforts to cause such taxes to be assessed and billed separately from Landlord's taxes and cause such tax bill to be sent directly to Tenant.

**ARTICLE 5. UTILITIES.** Tenant shall pay for all heat, gas, electricity, telephone and other utilities and services provided to or for the Premises, including taxes thereon. In the case of any utilities or services that are not separately metered and billed directly to Tenant, but are metered jointly with other Premises, Tenant shall pay a pro rata share, as determined by Landlord, of all charges. Landlord shall not be liable in damages or otherwise for any failure or interruption of any utility service being provided to the Premises, and no such failure or interruption shall entitle Tenant to terminate this Lease or to discontinue the payment of rent or any other amount due hereunder. Landlord may, in its sole and absolute discretion, install separate meters to Tenant's space in order to more accurately assess utility consumption.

**ARTICLE 6. SECURITY DEPOSIT.** Prior to the Commencement Date Tenant shall deliver to Landlord, an amount in immediately available funds equal to one and one half month's Rent, as security for Tenant's faithful performance of its obligations under this Lease ("Security Deposit"). Tenant shall not mortgage, assign, transfer or encumber the Security Deposit without the prior written consent of Landlord and any attempt by Tenant to do so shall be void, without force or effect and shall not be binding upon Landlord. **Tenant shall not have the right to apply the Security Deposit to payment of Rent, including without limitation payment of Rent for the last month of the Term.**

If Tenant fails to pay any amount when due and payable hereunder, or fails to perform any of the terms hereof, Landlord may appropriate and apply or use all or any portion of the Security Deposit for rental payments or any other amount then due and unpaid, for payment of any amount for which Landlord has become obligated as a result of Tenant's default or breach, and for any loss or damage sustained by Landlord as a result of Tenant's default or breach, and Landlord may so apply or use the Security Deposit without prejudice to any other remedy Landlord may have on account of Tenant's default or breach. If Landlord so uses any of the Security Deposit, Tenant shall, within ten (10) days after written demand therefore, restore the Security Deposit to the full amount originally deposited; Tenant's failure to do so shall constitute an act of default hereunder and Landlord may terminate this Lease. Landlord shall not be required to keep the Security Deposit separate from its general accounts. Landlord shall not pay interest on the Security Deposit. The Security Deposit shall not be deemed an advance payment of Rent or a measure of damages for any default by Tenant under this Lease, nor shall it be a bar or defense of any action that Landlord may at any time commence against Tenant. If Tenant fails to properly vacate the Premises or deliver possession of the Premises to Landlord in an



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100 EBBTIDE  
SAUSALITO, CALIFORNIA**

undamaged and broom clean condition, Landlord may withhold such funds from this Security Deposit as necessary to repair or clean the Premises. Within thirty (30) days, or such longer period of time as provided by law, after Landlord has recovered possession of the Premises, provided Tenant is not then in default on any of its obligations hereunder, Landlord shall return the Security Deposit, or so much thereof as may be remaining, to Tenant. In the absence of evidence satisfactory to Landlord, an assignment of the right to receive the Security Deposit or the remaining balance thereof, Landlord may return the Security Deposit to the original Tenant, regardless of one or more assignments of this Lease. In the event Landlord transfers its interest in the Premises, Landlord may deliver the Security Deposit to the purchaser of Landlord's interest and thereupon be relieved of any further liability or obligation with respect to the Security Deposit. Tenant hereby waives any and all rights of Tenant under the provisions of Section 1950.7 of the California Civil Code or other law regarding security deposits and acknowledges and agrees that such deposit may be used for any and all damages incurred by Landlord as a result of a breach of this Lease by Tenant, including, without limitation, post termination damage.

**ARTICLE 7. USE AND CONDITION OF PREMISES.**

**7.1. Use.** Tenant shall use or permit the Premises to be used only for a design studio and related offices, limited to the conditions set forth in the Occupational Permit issued by the City of Sausalito and shall not use or permit the use of the Premises for any other purpose without obtaining the prior written consent of Landlord. Tenant shall have obtained an Occupational Permit from the City of Sausalito prior to the Commencement Date. Tenant shall not conduct nor permit any person to conduct any auction, distress or going-out-of-business sale on the Premises nor publish any advertisement for such sales without obtaining the prior written consent of Landlord. Tenant shall not use or permit the Premises to be used in any manner that may result in waste or the creation of a nuisance, and Tenant shall maintain the Premises free of any objectionable noises, odors or disturbances. Tenant shall fully comply with all health and police regulations and shall not use or permit the use of the Premises for any purpose or in any manner which may constitute a violation of the laws of the United States or the laws, ordinances, zoning requirements, regulations or requirements of any governmental entity having authority in the jurisdiction where the Premises are located. Tenant acknowledges that no warranties or representations have been made regarding the fitness or suitability of the Premises for the conduct of Tenant's business or proposed use.

In the event any permit for Tenant's use of the Premises requires parking spaces in excess of those parking spaces described in Section 16.3, herein, Tenant shall obtain prior written approval for the use of such spaces from Landlord.

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**LEASE OF PREMISES  
100 EBBTIDE  
SAUSALITO, CALIFORNIA**

**7.2 Uses Prohibited.** Tenant shall not operate Tenant's business in such a manner that would cause excess insurance rates to be charged to Landlord, or in such a manner that would violate any city, county, state or federal laws. Nor shall Tenant operate Tenant's business in such a manner as would be detrimental to other Tenants or to Landlord. Nor shall Tenant operate any business not in strict conformance with the Master Lease between the City of Sausalito and the Sausalito School District as amended (the "School District Lease"), and Section 14, hereof. Tenant acknowledges that it has received a true and correct copy of the School District Lease.

**7.3 Rules and Regulations.** Landlord shall, from time to time, establish and amend rules and regulations for the property of which the Premises are a part, including the allocation and regulation of parking areas. Tenant and Tenant's employees shall obey all rules and regulations governing the use of the Premises as such may from time to time be issued or amended by Landlord. However, Landlord shall not be liable for any violation by other tenant(s) of any such rules or regulations. [Exhibit B.]

**7.4 Condition of Premises.** Tenant acknowledges that it has had an opportunity to inspect the Premises and that the Premises are being taken on an "as-is" condition with no warranties expressed or implied by Landlord. Tenant takes possession hereunder subject to all laws, ordinances and regulations applicable to the Premises, and their use, and any covenants or restrictions of record. Tenant shall, at Tenant's expense, comply promptly with all laws, ordinances and regulations applicable to the Premises or their use which are or may be in effect during the Term .

**7.5 Hazardous Materials.**

Landlord and Tenant agree as follows with respect to the existence or use of Hazardous Materials on the Property.

a. Environmental Laws shall mean all present and future applicable federal, state and local laws, ordinances or regulations or policies pertaining to Hazardous Materials (including, without limitation, the use, handling, transportation, production, disposal, discharge or storage thereof) or to industrial hygiene or the environmental conditions on, under or about the Premises and to the protection of the environment or human or animal health and safety.

b. Hazardous Materials shall mean any hazardous or toxic substance, material or waste the storage, use, or disposition of which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term Hazardous Material includes, without limitation, any material or substance which is (i) defined as hazardous or extremely hazardous pursuant to Article II of Title 22 of the California Administrative Code, Division 4, Chapter 20, (ii) defined as a hazardous waste pursuant to Section 1004 of the Federal

**LEASE OF PREMISES  
100 EBBTIDE  
SAUSALITO, CALIFORNIA**

Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq. (42 U.S.C. 69093), (iii) defined as a hazardous substance pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq. (42 U.S.C. 9601 ) or (iv) is listed or defined as a hazardous waste, hazardous substance , or other similar designation by any regulatory scheme of the State of California or the U.S. Government that is similar to the foregoing.

c. Tenant shall not use, generate, manufacture, produce, store, release, discharge, or dispose of, on, under or about the Premises or transport to or from the Premises any Hazardous Material or allow its employees, agents , contractors, licenses, invitees or subtenants (collectively, Tenant' s Agents) to do so. Tenant shall comply with and shall cause Tenant's Agents to comply with, and shall keep and maintain the Premises and cause Tenant's Agents to keep and maintain the Premises in compliance with all Environmental Laws.

d. Tenant shall give written notice to Landlord promptly after Tenant receives notice of any of the following: (i) any proceeding or inquiry by, notice from, or order of any governmental authority (including, without limitation, the California State Department of Health Services) with respect to the presence of any Hazardous Material on, under or about the Premises or the migration thereof from or to other property; and (ii) all claims made or threatened by any third party against Tenant or the Premises relating to any loss or injury resulting from any Hazardous Materials. Tenant shall give written notice to Landlord promptly after Tenant becomes aware of any spill, release or discharge of Hazardous Materials with respect to the Premises by Tenant or Tenant's Agents.

e. Tenant shall protect, defend, indemnify and hold harmless Landlord, its officers, elected and appointed officials, employees, agents, volunteers, successor and assigns from and against any and all claims, fines, judgments, penalties, losses, damages, costs, expenses or liability (including reasonable attorneys' fees and costs) to the extent directly or indirectly arising out of or attributable to the use, generation, manufacture, production, storage, release, threatened release, discharge or disposal of any Hazardous Material on, under or about the Premises or the transportation of any Hazardous Material to or from the Premises by Tenant or Tenant's Agents including, without limitation, the costs of any investigation, monitoring, removal, restoration, abatement, repair, cleanup, detoxification or other ameliorative work of any kind or nature (collectively, "Remedial Work"). Tenant's obligations under this Section 7.5(e) shall survive the expiration or earlier termination of this Lease.

f. Upon any spill or release of Hazardous Materials by Tenant or Tenant's Agents, Tenant shall promptly notify Landlord of the spill or release of Hazardous Materials and shall, at its sole expense and promptly after demand by Landlord, commence to perform and thereafter

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diligently prosecute to completion such Remedial Work as is required under Environmental Laws.

**ARTICLE 8. MAINTENANCE, REPAIR AND ALTERATIONS.**

**8.1 Tenant's Obligations.**

a. Subject the provisions of Article 10 hereof, except for that portion of the Premises to be maintained by Landlord as provided in Section 8.2 below, Tenant shall, at Tenant's sole cost and expense, maintain in good repair, order and serviceable condition the Premises and every part thereof, including but not limited to all plumbing, ventilation, heating, electrical systems, refrigeration, and equipment in, on or exclusively serving the Premises, windows, doors, storefronts, plate glass, interior walls and ceilings which are part of the Premises. Tenant shall contract with a service company for necessary periodic maintenance of the heating, ventilating and air conditioning equipment exclusively serving the Premises and Tenant shall furnish to Landlord a copy of such service contract within five (5) days after request therefor. Except in case of an emergency, prior to Tenant's making any repair, Tenant shall give Landlord written notice that such work will be performed and Landlord shall have the right to approve or disapprove the plans for such repair and all repairs shall be performed in accordance with all applicable regulations, including without limitation applicable provisions of the City of Sausalito Municipal Code.

b. Upon the expiration or earlier termination of this Lease, Tenant shall return the Premises to Landlord broom clean and in the same condition as on the date Tenant took possession, except for normal wear and tear. Any damage to the Premises, including any structural damage, resulting from Tenant's use or from the removal of Tenant's fixtures, furnishing and equipment pursuant to section 8.4(d) shall be repaired by Tenant at Tenant's expense.

c. Notwithstanding the foregoing, Tenant shall not have the obligation to repair damage to the Premises resulting from causes outside the Premises beyond the control of Tenant, or damage to the Premises caused by Landlord's failure to perform any of its obligations under Section 8.2 of this Lease.

**8.2 Landlord's Obligations.** Subject to the provisions of Article 10, and except for damage caused by the intentional or negligent acts or omissions of Tenant, its employees, agents or invitees, Landlord shall maintain and repair the foundations and the exterior roof and exterior walls of the Premises; provided, however, Landlord's obligation to make any such repairs shall not arise until receipt of written notice from Tenant that such repairs are needed. After receipt of such notice, Landlord shall have a reasonable period of time to commence and complete such

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repairs. Landlord's obligations hereunder shall not include the maintenance or repair of any interior portion of the exterior walls or roof, or the maintenance or repair of windows, doors, plate glass or storefronts. Tenant waives the provisions of Civil Code Sections 1941 and 1942 and any other law that would require Landlord to maintain the Premises in a tenantable condition or would provide Tenant with the right to make repairs and deduct the cost of those repairs from the rent or to terminate this Lease because of Landlord's failure to make any repairs.

**8.3 Landlord's Rights.** If Tenant refuses or neglects to make repairs and/or maintain the Premises, or any part thereof, in a manner reasonably satisfactory to Landlord, without prejudice to any other remedy Landlord may have hereunder, upon giving Tenant ten (10) days prior written notice, Landlord shall have the right to enter the Premises and perform such maintenance or make such repairs on behalf of and for the account of Tenant. In the event Landlord so elects, Tenant shall pay the cost of such repairs or maintenance promptly following Tenant's receipt of a bill therefor, with interest thereon at the maximum allowable legal rate from the date of Tenant's receipt of such bill until the date paid. The costs incurred by Landlord in making such repairs shall be treated as Additional Rent. Tenant agrees to permit Landlord or its agent to enter the Premises at any time during normal business hours for the purpose of inspecting the Premises.

**8.4 Alterations and Additions.**

a. Tenant shall not make any additions, alterations or improvements to the Premises without obtaining the prior written consent of Landlord, which consent shall not be unreasonably withheld. Landlord's consent may be conditioned upon Tenant's agreement to remove any such additions, alterations or improvements upon the expiration of the Term hereof and to restore the Premises to the same condition as on the date Tenant took possession. All work with respect to any addition, alteration or improvement shall be done in a good and workmanlike manner by properly qualified and licensed personnel, and such work shall be diligently prosecuted to completion.

b. Prior to the commencement of any Tenant improvements or remodeling, including without limitation, the doorway referred to in sub-section a. above, Tenant shall provide to Landlord a true copy of the written, executed agreement between Tenant and the contractor hired to make such improvements for Landlord's approval. During the course of said construction, Tenant shall provide Landlord with all written, executed change orders for Landlord's approval. If Landlord fails to object to any provisions of the agreement or subsequent change order(s) within five (5) days of receipt, then the agreement or change order(s) shall be deemed accepted. Prior to the commencement of any work, Landlord reserves the right to require Tenant post a sum equal to the total amount of the cost of said improvements, including subsequent change order(s), in cash, in a special account, or provide a performance bond equal to the cost of said

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improvements and subsequent change order(s) and provide satisfactory evidence of same to Landlord.

c. Except as otherwise set forth herein, Tenant shall pay the costs of any work done on the Premises pursuant to section 8.4(a), and shall keep the Premises free and clear of liens of any kind. Tenant shall indemnify, defend against and keep Landlord free and harmless from all liability, loss, damage, costs, attorneys' fees and any other expense incurred on account of claims of lien by any person performing work or furnishing materials or supplies for Tenant or any person claiming under Tenant.

Tenant shall keep Tenant's leasehold interest, and any additions or improvements which are or become the property of Landlord under this Lease, free and clear of all attachment or judgment liens. Before the actual commencement of any work for which a claim of lien may be filed, Tenant shall give Landlord written notice of the intended commencement date a sufficient time before said date to enable Landlord to post notices of non-responsibility or any other notices which Landlord deems necessary for the proper protection of Landlord's interest in the Premises and Landlord shall have the right to enter the Premises and post such notices at any reasonable time.

d. Landlord may require, at Landlord's sole option, that Tenant provide to Landlord, at Tenant's expense, a lien and completion bond in an amount equal to at least one and one-half (1-1/2) times the total estimated cost of any additions, alterations or improvements to be made in or to the Premises, to protect Landlord against any liability for mechanic's and materialman's liens and to insure timely completion of the work. Provided, however, nothing contained herein shall relieve Tenant of its obligation under section 8.4(b) to keep the Premises free of all liens.

e. Unless their removal is required by Landlord as provided in section 8.4(a), all additions, alterations and improvements made on the Premises shall become the property of Landlord and be surrendered with the Premises upon the expiration of the Term of this Lease; provided, however, Tenant's equipment, machinery and trade fixtures which can be removed without damage to the Premises shall remain the property of Tenant and may be removed, subject to the provisions of section 8.1(b).

**ARTICLE 9. INSURANCE AND INDEMNIFICATION.** Tenant shall procure and maintain for the duration of the Term insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Tenant's operation and use of the Premises in accordance with the terms and conditions of this Article 9. The cost of such insurance shall be borne by Tenant.

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**9.1 Minimum Scope of Insurance.** The insurance required to be maintained by Tenant shall provide coverage at least as broad as:

- a. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- b. Workers' Compensation insurance as required by the State of California and Employer's Liability insurance (for tenants with employees).
- c. Property insurance against all risks of loss to any tenant improvements or betterments.

**9.2 Minimum Limits of Insurance.** Tenant shall maintain limits no less than:

- a. General Liability: **\$1,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- b. Employer's Liability: **\$1,000,000** per accident for bodily injury or disease.
- c. Property Insurance: Full replacement cost with no coinsurance penalty provision.

**9.3 Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by Landlord. At the option of Landlord, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Landlord, its officers, elected and appointed officials, employees, agents and volunteers; or the Tenant shall provide a financial guarantee satisfactory to Landlord guaranteeing payment of losses and related investigations, claim administration and defense expenses.

**9.4 Other Insurance Provisions.** The general liability policy is to contain, or be endorsed to contain, the following provisions:

a. Landlord, its officers, elected and appointed officials, employees, agents and volunteers are to be covered as insureds with respect to liability arising out of ownership, maintenance or use of that part of the Premises.

b. Tenant's insurance coverage shall be primary insurance as respects Landlord, its officers, elected and appointed officials, employees, agents and volunteers. Any insurance or

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self-insurance maintained by Landlord, its officers, elected and appointed officials, employees, agents or volunteers shall be excess of Tenant's insurance and shall not contribute with it.

c. Each insurance policy required by this Lease shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to Landlord.

**9.5 Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

**9.6 Verification of Coverage.** Lessee shall furnish Landlord with original certificates and amendatory endorsements effecting coverage required by this Article 9. The endorsements should be on forms provided by Landlord or on other than the Landlord's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by the Landlord before the Commencement Date. Landlord reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

**9.7 Subrogation Waiver.** Landlord and Tenant hereby waive any rights of recovery each may have against the other for any loss or damage to Landlord or Tenant, or their respective property, the Premises or its contents arising from any risk insured by fire, extended coverage and any other property insurance policies in effect at the time of such loss or damage. The foregoing waivers of subrogation shall be effective to the extent permitted by Landlord's and Tenant's respective insurers and provided that no policy of insurance is invalidated as a result of such waivers.

**9.8 Indemnification.** Tenant shall indemnify and hold Landlord, its elected and appointed officials, officers, employees, agents and volunteers harmless against and from liability and claims of any kind including, without limitation, claims for loss or damage to property of Tenant or any other person, or for any injury to or death of any person, arising out of: (a) Tenant's use and occupancy of the Premises, or any work, activity or other things allowed or suffered by Tenant to be done in, on or about the Premises; (b) any breach or default by Tenant of any of Tenant's obligations under this Lease; or (c) any negligent or otherwise tortuous act or omission of Tenant, its agents, employees, invitees or contractors. Tenant shall, at Tenant's sole cost and expense, defend Landlord its elected and appointed officials, officers, employees, agents and volunteers in any action or proceeding arising from any such claim by counsel satisfactory to Landlord and shall indemnify Landlord its elected and appointed officials, officers, employees, agents and volunteers against all costs, attorneys' fees, expert witness fees and any other expenses incurred in or for such action or proceeding. As a material part of the consideration for Landlord's execution of this Lease, Tenant hereby assumes all risk of damage or injury to any

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person or property in, on or about the Premises from any cause, but Tenant shall not be liable for any damage or injury caused by the negligence of Landlord unless covered by insurance Tenant is required to provide.

**9.9 Acts of Other Tenants.** Landlord shall not be liable to Tenant, or any person claiming under Tenant, for any injury or damage arising out of any act or omission of any other tenant of the building of which the Premises are a part.

**9.10 Use of Premises.** Tenant agrees that it will not, at any time during the Term of this Lease, do or permit anything to be done in, on or about the Premises which will in any way tend to increase the insurance rates on the Premises or the building of which the Premises are a part. Tenant shall pay Landlord, upon demand therefor, the amount of any increase in premiums charged during the Term of the Lease for fire and extended coverage insurance carried by Landlord on the building of which the Premises are a part, as a result of Tenant's doing or permitting anything to be done in, on or about the Premises which does so increase the insurance rates, notwithstanding Landlord's consent to such action by Tenant.

**ARTICLE 10. DAMAGE OR DESTRUCTION.**

**10.1 Damage.**

a. If the Premises are damaged by perils covered by Landlord's insurance, Landlord shall, within ninety (90) days, commence repair, reconstruction and restoration of the Premises and this Lease shall remain in full force and effect.

b. If the Premises are damaged by perils covered by insurance required to be maintained by Tenant hereunder, and if the proceeds received by Landlord from such insurance are not sufficient to complete the required repair, reconstruction and restoration, Landlord shall give Tenant written notice of the amount of the deficiency and Tenant may, within thirty (30) days after receipt of such notice, contribute such amount. If Tenant elects not to contribute such amount, Landlord shall have the right, at Landlord's option, to terminate this Lease with no liability to Tenant. If Tenant elects to contribute such amount, Landlord shall, within ninety (90) days, commence repair, reconstruction and restoration and this Lease shall continue in full force and effect. Tenant shall not have a right of reimbursement from Landlord for any amount contributed under the provisions of this Section 10.1(b).

c. If the Premises are damaged by perils not covered by insurance, Landlord shall repair, reconstruct and restore the Premises, provided, however, if the extent of such damage is greater than twenty five percent (25%) of the total cost for complete restoration of the Premises, excluding therefrom the replacement cost of Tenant's trade fixtures and equipment and the

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restoration costs of building foundations, then Landlord may elect not to restore the Premises, in which case Landlord shall have the right to terminate this Lease with no liability to Tenant. Landlord shall give Tenant written notice of its election not to restore the Premises within thirty (30) days from the date such damage occurs and if such notice is not given, Landlord shall be deemed to have elected to restore the Premises, in which case Landlord shall commence repair, reconstruction and restoration within ninety (90) days from the end of said thirty (30) day period. If Landlord elects not to restore the Premises Tenant may elect to restore the Premises at Tenant's expense by serving written notice of such election upon Landlord within ten (10) days after receipt of Landlord's notice. If Tenant so elects, this Lease shall remain in full force and effect and Tenant shall, within ninety (90) days, commence repair, reconstruction and restoration of the Premises. Tenant shall not have a right of reimbursement from Landlord for any amount expended by Tenant under the provisions of this Section 10.1(c).

**10.2 Damage - End of Term.** Notwithstanding anything to the contrary contained in this Lease, if the Premises are partially destroyed or damaged during the last six (6) months of the Term hereof, Landlord may elect to terminate this Lease as of the date such destruction or damage occurred with no liability to Tenant, by serving written notice of such election to terminate on Tenant within thirty (30) days from the date such destruction or damage occurred.

**10.3 Complete Destruction.** If the Premises are completely destroyed (excluding foundations) at any time during the Term of this Lease from any cause, whether insured or uninsured, then this Lease shall automatically terminate as of the date of such destruction.

**10.4 Abatement of Rent.** In the event of repair, reconstruction and restoration as provided for under this Article 10, the Rent to be paid by Tenant under Article 3 hereof shall be abated proportionately with the degree to which the Tenant's use of the Premises is impaired, commencing from the date of damage and continuing during the period of such repair, reconstruction and restoration. Tenant shall continue to operate its business on the Premises during any such period to the extent reasonably practicable from the standpoint of prudent business management and the obligation of Tenant to pay rent and additional charges due hereunder shall remain in full force and effect. Tenant shall not be entitled to any compensation or damages from Landlord for loss of use of the Premises or any part thereof, or for any other loss resulting from such damage, repair, reconstruction or restoration.

**ARTICLE 11. CONDEMNATION.**

**11.1 Total Taking.** If the entire Premises are taken under the power of eminent domain, this Lease shall terminate as of the date Tenant is required to vacate the Premises, and Landlord

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and Tenant shall each thereafter be released from any further liability under this Lease, except, subject to the terms of this Lease, for the return or application of any prepaid rents or security deposits.

**11.2 Partial Taking.** If a portion in excess of twenty-five percent (25%) of the Premises is taken under the power of eminent domain, or if, as a result of any taking regardless of the extent, the remainder of the Premises is not one undivided parcel of property, either Landlord or Tenant may terminate this Lease as of the date Tenant is required to vacate the Premises, by serving written notice of such election within thirty (30) days after receipt by Tenant of written notice from Landlord that the Premises have been so taken. If this Lease is so terminated each party shall thereafter be released from any further liability hereunder. If both parties elect not to terminate this Lease, Tenant shall remain in that portion of the Premises not so taken and, in that event, Landlord agrees, at Landlord's cost and expense, to restore the remaining portion of the Premises as soon as possible to a complete unit of like quality and character as existed prior to such taking; and thereafter the Rent set forth in Article 3 hereof shall be equitably reduced, taking into account the relative value of the portion taken as compared to the portion remaining.

**11.3 Compensation.** In the event of any taking and regardless of whether such taking results in termination of this Lease, Landlord shall be entitled to the entire award or compensation in such proceeding; provided, however, Tenant's right to receive compensation or damages for its fixtures and personal property shall not be affected hereby.

**11.4 Voluntary Sale; Waiver.** For purposes of this Article 11, a voluntary sale or conveyance in lieu of condemnation, under threat of condemnation, shall be deemed a taking under the power of eminent domain. Tenant hereby waives any statutory rights of termination Tenant may have by reason of any partial taking of the Premises under the power of eminent domain.

**ARTICLE 12. ASSIGNMENT, SUBLEASE, TRANSFER.**

**12.1 Definition.** For purposes of this Article 12, the terms "assign" and "assignment" shall include and mean any act attempting to or document purporting to assign, transfer, sublet, enter into license or concession agreements for, change ownership of, mortgage or hypothecate this Lease or Tenant's interest in and to the Premises or any part thereof. Tenant shall not assign this Lease or Tenant's interest in and to the Premises without obtaining the prior written consent of Landlord, which consent shall not be unreasonably withheld, subject to the terms, covenants and conditions contained herein. If the transfer is a sublease of all or part of the Premises or an assignment of this lease, Landlord has the right to terminate this Lease as of the effective date of the assignment or sublease (if less than the entire Premises, for that portion of the Premises subleased or assigned), in which case the Landlord may elect to enter into a direct lease with the

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proposed assignee or subtenant. Any attempt to assign this Lease without the prior written consent of Landlord shall be a breach hereof, and Landlord may, at Landlord's option, terminate this Lease.

**12.2 Use.** It is expressly agreed that Tenant shall not have the power to assign this Lease or sublet the Premises (a) for any use other than the use specified in Article 7 hereof, (b) to any party, if in Landlord's reasonable business judgment the quality of the business operation is or may be adversely affected thereby, or (c) to any party whose financial worth at the time of any proposed assignment or subletting is less than the financial worth of Tenant as of the date of this Lease, and any such purported assignment or subletting without Landlord's consent shall be void and of no force or effect and shall not confer any benefit or estate on any person, and Landlord shall not be required to terminate this Lease to prevent any such assignment or subletting.

**12.3 Instrument, Consent.** Any assignment to which Landlord has consented shall be by an instrument in writing satisfactory to Landlord, and any assignee, sublessee, transferee, licensee, concessionaire or mortgagee shall agree for the benefit of Landlord to be bound by, assume and perform all the terms, covenants and conditions of this Lease. Consent by Landlord to any assignment shall not constitute consent to any subsequent assignment. Notwithstanding Landlord's consent, Tenant shall remain fully liable hereunder as primary obligor during the unexpired term of this Lease.

**12.4 Rent.** If Tenant assigns its interest in this Lease, the Base Rent provided in Article 3 hereof shall be increased effective as of the date of such assignment based upon the Consumer Price Index for all Urban Consumers, (base year 1998=100) for San Francisco-Oakland published by the U.S. Department of Labor, Bureau of Labor Statistics (the Index). The Index published as of the month prior to the Commencement Date of the Term shall be considered the "the Base Index". The index, which is published most immediately proceeding the date of the assignment shall be considered "the Extension Index". Upon the date of the assignment, the Rent shall be increased by a percentage equal to the percentage increase, if any, in the Extended Index over the Base Index (Adjusted Rent). Notwithstanding any subsequent decrease in the Index, the Adjusted Rent shall not be less than the Rent paid by Tenant.

**12.5 Excess Rent from Assignment or Sub-Tenancy.** Should the Tenant assign or sublet its interests in this Lease, any monies received by Tenant from said assignment or sub-tenancy over and above the amount of Rent and Additional Rent due Landlord shall be payable to Landlord.

**ARTICLE 13. DEFAULT.**

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**13.1 Tenant's Default.** The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant:

- a. Abandoning or vacating the Premises; or
- b. Failing to pay any Rental, Additional Rent or any other charges when due and payable by Tenant, if such failure continues for ten (10) days after the due date for such payment provided for in this Lease; or
- c. Failure to promptly and fully perform any other covenant, condition or agreement contained in this Lease should such failure continue for twenty (20) days after written notice thereof from Landlord to Tenant; provided, however, if the failure to perform is such that it cannot reasonably be cured within twenty (20) days, Tenant shall not be in default hereunder if Tenant commences to cure within said twenty (20) day period and diligently prosecutes such curing to completion; or
- d. Permitting Tenant's assets to be placed in the hands of a receiver or trustee for a period in excess of thirty (30) days; making an assignment for the benefit of creditors; instituting any proceedings under any bankruptcy act wherein Tenant seeks to be adjudicated a bankrupt, to be discharged of its debts or to effect a plan of liquidation, extension or reorganization; failing to have dismissed within sixty (60) days any involuntary proceeding filed against Tenant under any bankruptcy act; becoming insolvent; or failing to have dismissed within thirty (30) days any proceedings seeking to execute or levy against or attach fifty percent (50%) or more of Tenant's assets.

**13.2 Remedies.** In the event of Tenant's default hereunder, in addition to any other rights or remedies, Landlord may have under any law, Landlord shall have the right, at Landlord's option, without further notice or demand of any kind to do the following:

- a. Terminate this Lease and Tenant's right to possession of Premises and reenter the Premises and take possession thereof, and Tenant shall have no further claim to Premises or under this Lease; or
- b. Continue this Lease in full force and effect, reenter and occupy the Premises for the account of Tenant and collect any unpaid rental or other charges which have or may thereafter become due and payable; or
- c. Reenter the Premises under the provisions of subparagraph (b), and thereafter elect to terminate this Lease and Tenant's right to possession of the Premises.

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Should Landlord reenter the Premises under the provisions of subparagraphs (b) or (c) above, Landlord shall not be deemed to have terminated this Lease or the obligation of Tenant to pay any rental or other charges thereafter accruing, unless Landlord notifies Tenant in writing of Landlord's election to terminate this Lease in the event of any reentry or retaking of possession by Landlord. Landlord shall have the right, but not the obligation, to remove all or any part of the personal property in the Premises and to place such property in storage at a public warehouse at the expense and risk of the Tenant.

Should Landlord elect to terminate this Lease under the provisions of subparagraph (a) or (c) above, Landlord may recover as damages from Tenant the following:

1. The worth at the time of award of any unpaid Rent and Additional Rent which had been earned at the time of termination; plus
2. The worth at the time of the award of the amount by which the unpaid Rent and Additional Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Tenant proves could have been reasonably avoided; plus
3. The worth at the time of the award of the amount by which the unpaid Rent and Additional Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus
4. Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to any costs of expenses including attorneys' fees, incurred by Landlord in (a) retaking possession of the Premises, (b) maintaining the Premises after Tenant's default, (c) preparing the Premises for reletting to a new tenant including any repairs or alterations and (d) reletting the Premises including broker's commissions.

"The worth at the time of the award," as used in (1) and (2) above, is to be computed by allowing interest at the rate of ten percent (10%) per annum. "The worth at the time of the award," as used in (3) above, is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank situated nearest to the location of the Premises at the time of the award plus one percent (1%).

The waiver by Landlord of any breach of any term, covenant or condition of this Lease shall not be deemed a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition. Acceptance of Rent and/or Additional Rent by Landlord subsequent to any breach hereof shall not be deemed a waiver of any preceding breach

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other than the failure to pay the particular Rent also accepted, regardless of Landlord's knowledge of any breach at the time of such acceptance of rental. Landlord shall not be deemed to have waived any term, covenant or condition unless Landlord gives Tenant written notice of such waiver.

**13.3 Landlord's Default.** If Landlord fails to perform any covenant, condition or agreement contained in this Lease within thirty (30) days after receipt of written notice from Tenant specifying such default, or if such default cannot reasonably be cured within thirty (30) days, if Landlord fails to commence to cure within said thirty (30) day period, then Landlord shall be liable to Tenant for any damages sustained by Tenant as a result of Landlord's breach; provided, however, it is expressly understood and agreed that if Tenant obtains a money judgment against Landlord resulting from any default or other claim arising under this Lease, such judgment shall be satisfied only out of rents, issues, profits and other income actually received on account of Landlord's right, title and interest in the Premises or in the building of which the Premises are a part and the underlying real property, and no other real, personal or mixed property of Landlord wherever situated, shall be subject to levy to satisfy any such judgment. Tenant shall not have the right to terminate this Lease or to withhold, reduce or offset any amount against any payments of rent or any other charges due and payable hereunder.

**ARTICLE 14. CONDUCT OF BUSINESS.** Tenant covenants and agrees that from and after the Commencement Date of this Lease, Tenant will continuously and uninterruptedly operate and conduct within the Premises the business it is permitted to operate and conduct under the provisions of this Lease, except while the Premises are untenable by reason of fire or other casualty. Tenant covenants and agrees that it shall be open for business during usual business hours on all usual business days, as customary for sole-proprietor businesses of the nature of Tenant's permitted uses.

**ARTICLE 15. GENERAL PROVISIONS**

**15.1 Transfer of Landlord's Interest.** In the event of any sale, transfer, or reversion by Landlord of the Premises or the building of which the Premises are a part, and assignment of this Lease by Landlord, Landlord shall be and is hereby entirely freed and relieved of any and all liability and obligations contained in or derived from this Lease arising out of any act, occurrence or omission relating to the Premises or this Lease occurring after the consummation of such sale or transfer, provided the purchaser shall expressly assume all of the covenants and obligations of Landlord under this Lease. If any security deposit or prepaid rent has been paid by Tenant, Landlord shall transfer the security deposit or prepaid rent to Landlord's successor and upon such transfer, Landlord shall be relieved of any and all further liability with respect thereto.

**LEASE OF PREMISES  
100 EBBTIDE  
SAUSALITO, CALIFORNIA**

**15.2 Estoppel Statement.** Upon not less than ten (10) days prior written request from Landlord, Tenant shall execute and deliver to Landlord or Landlord's designee, a written statement certifying (a) that this Lease is unmodified and in full force and effect, or in full force and effect as modified and stating the modifications; (b) the amount of Rent and the date to which said rent and other charges have been paid in advance; (c) the amount of any security deposited with Landlord; and (d) that Landlord is not in default hereunder or, if Landlord is claimed to be in default, stating the nature of any claimed default. Any such statement may be relied upon by a purchaser, assignee or lender. Tenant's failure to execute and deliver such statement within the time allowed shall be conclusive upon Tenant that: (1) this Lease is in full force and effect and has not been modified except as represented by Landlord; (2) there are no uncured defaults in Landlord's performance and that Tenant has no right of offset, counter-claim or deduction against rental; and (3) not more than one month's rent has been paid in advance.

**15.3 Financial Statement.** Upon request from Landlord, Tenant agrees to deliver to Landlord and/or any holder of a mortgage or deed of trust and/or to a mortgage, deed of trust beneficiary or proposed mortgages or deed of trust beneficiary, upon fifteen (15) days written request therefor, such financial information as may be required by such party. Landlord agrees that such information, if confidential, shall to the extent permitted by law, be held in confidence and disclosed only for the purposes and to the parties set forth above.

**15.4 Subordination; Attornment.** Upon written request of Landlord, or any first mortgagee, first deed of trust beneficiary of Landlord, or lessor of Landlord, Tenant shall, in writing, subordinate its rights hereunder to the lien of any first mortgage, first deed of trust, or the interest of any lease in which the Landlord is lessee, and to all advances made or hereafter to be made upon the security therefor; provided, however, prior to executing any such subordination agreement, Tenant shall have the right to obtain from any lender or lessor of Landlord requesting such subordination, an agreement in writing providing that, as long as Tenant is not in default hereunder, this Lease shall remain in full force and effect for the full Term hereof. The holder of any security interest may, upon written notice to Tenant, elect to have this Lease prior to such security interest regardless of the time of granting or recording such security interest.

In the event of any foreclosure sale, transfer in lieu of foreclosure or termination of the lease in which the Landlord is lessee, Tenant shall attorn to the purchaser, transferee or lessor as the case may be, and recognize such party as Landlord under this Lease, provided such party acquires and accepts the Premises subject to this Lease.

**15.5 Access to Premises.** Landlord or Landlord's agents shall have the right to enter the Premises at any time whether or not Tenant is present for any purpose not in conflict with the provisions of this Lease, including without limitation to show the Premises to prospective tenants. Landlord shall give Tenant reasonable notice prior to entering the Premises. In addition



**LEASE OF PREMISES  
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to the foregoing, during any emergency, Landlord may enter at any time without any notice to Tenant required. Landlord may, at any time, place "For Sale" signs on or about the Premises and may, during the last three (3) months of the term hereof, place "For Lease" signs on or about the Premises and show the Premises to prospective tenants without any liability to Tenant.

**15.6 Holding Over.** If Tenant, with Landlord's consent, retains possession of the Premises after the expiration of the Term or termination of the Lease, such possession shall be deemed to be a month-to-month tenancy terminable upon thirty (30) days written notice given at any time by either party. During any such month-to-month tenancy Tenant shall pay monthly rent equal to two hundred (200%) percent of the amount of Rent which was payable by Tenant during the last month of the Term prior to expiration or termination, shall pay Additional Rent as required by this Lease and such month-to-month tenancy shall be subject to all provisions of this Lease except those pertaining to Term.

**15.7 Merger.** The voluntary or other surrender of this Lease by Tenant or termination hereof shall not cause a merger but shall, at Landlord's option, terminate any existing subtenancies or operate as an assignment to Landlord of any such subtenancies.

**15.8 Recording.** This Lease shall not be recorded by either Landlord or Tenant, provided, however, upon obtaining the prior written consent of the other party, either party may record a memorandum of lease.

**15.9 Prior Agreements; Amendments.** This Lease, including Exhibits A and B which are attached hereto and incorporated herein by reference as though set forth herein in full, represents the entire agreement between the parties pertaining to the Premises and supersedes and cancels any and all previous negotiations, arrangements, representations, agreements and communications between the parties whether written or oral, and none of the foregoing shall be used to construe or interpret this Lease. Notwithstanding the foregoing, the terms of the previous lease between Landlord and Tenant shall govern Tenant's prior occupancy of the Premises.

**15.10 Attorneys' Fees.** In the event of any action or proceeding brought by either party against the other pertaining to or arising out of this Lease, the finally prevailing party shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred on account of such action or proceeding.

**15.11 Remedies; Choice of Law.** No remedy or election exercised hereunder shall be deemed exclusive but shall be cumulative with all other remedies at law or in equity. This Lease shall be governed by the laws of the State of California.

**LEASE OF PREMISES  
100 EBBTIDE  
SAUSALITO, CALIFORNIA**

**15.12 Successors and Assigns.** Subject to the provisions regarding assignment contained herein, this Lease shall apply to and bind the heirs, personal representatives, successors and assigns of the parties hereto.

**15.13 Severability.** A final determination by a court of competent jurisdiction that any provision of this Lease is invalid shall not affect the validity of any other provision, and any provision so determined to be invalid shall, to the extent possible, be construed to accomplish its reflected intent.

**15.14 Authority.** If a Tenant is a corporation or a partnership, each individual executing this Lease on behalf of Tenant hereby warrants and represents that he is duly authorized to execute this Lease on behalf of said corporation or partnership and upon execution of this Lease, will deliver to Landlord a certified copy of the Articles of Incorporation, the resolution of the Board of Directors of said corporation and minutes of the meeting authorizing said Resolution; or certified copy of the partnership agreement of said partnership, as the case may be, authorizing execution of this Lease and naming the officers or partners who are authorized to execute this Lease on behalf of Tenant.

**15.15 Signs.** Tenant shall not, without Landlord's written consent, place, construct, maintain or permit the placement of any sign, advertisement, name, insignia, trademark, or similar item on the exterior side walls, rear wall or roof of the Premises or of the building of which the Premises are a part. Landlord shall have the right to approve or disapprove the use of any sign, advertisement, name insignia, trademark, or similar item to be placed, constructed, or maintained on the exterior front wall of the Premises or of the building of which the Premises are a part. In addition to the foregoing, Tenant shall comply with all applicable provisions of the Sausalito Municipal Code regarding such signs. Tenant shall have the right to maintain, place, or construct whatever signs Tenant wants on the interior walls of the Premises so long as such construction does not constitute an alteration to the Premises as defined herein.

Landlord, at Landlord's discretion, may place an entry sign and directory on the building and/or doors of the building that would include Tenant's business name. Said signs shall be of material, style, size, and color of Landlord's choice. Tenant agrees to pay Landlord the cost or proportional cost of any sign which bears Tenant's name, business name or trade name.

**15.16 Time of Essence.** Time is of the essence in the performance of each and every term, covenant and condition of this Lease.

**15.17 Covenants and Conditions.** Each and every provision of this Lease to be performed by Tenant shall be deemed both a covenant and condition.

**LEASE OF PREMISES  
100 EBBTIDE  
SAUSALITO, CALIFORNIA**

**15.18 Captions.** The article and section captions contained herein are for reference purposes only and are not a part of this Lease.

**15.19 Waiver.** A waiver by Landlord of any breach or default shall not be deemed a waiver of any other breach or default. Landlord's consent to or approval of any act by Tenant requiring such consent or approval shall not be deemed to waive or abrogate the requirement of Landlord's consent or approval of any subsequent or similar act.

**15.20 No Setoffs.** All payments to be made by Tenant hereunder shall, unless otherwise expressly provided, be paid to Landlord without notice or demand and without adjustment, deduction or setoff, in lawful money of the United States.

**15.21. Force Majeure.** Any provision, delay or stoppage which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefor, acts of God, governmental restrictions or requisitions or controls, judicial orders, enemy or hostile government actions, civil commotion, fire or other casualty, or other causes beyond reasonable control of the party obligated to perform hereunder, shall excuse performance by such party for a period equal to the duration of such prevention, delay or stoppage, except where such performance is the payment of rental or other charges to be paid by Tenant pursuant to the provisions of this Lease.

**15.22 Notices.** Wherever in this Lease it is required or permitted that notice or demand be given or served by either party to this Lease to or on the other, such notice or demand shall be in writing and shall be deemed duly served or given only if personally delivered or sent by United States mail, certified or registered, postage prepaid, to the address of the parties as specified below.

To Landlord

THE CITY OF SAUSALITO  
CITY MANAGER  
CITY OF SAUSALITO  
420 LITHO STREET  
SAUSALITO, CA 94965

To Tenant

GEORGE DAPSEVICIUS  
100 EBBTIDE, SUITE 220  
SAUSALITO, CA 94965

Landlord and Tenant may change their respective addresses for notices by giving notice of such new address in accordance with this section 15.22.

**15.23 Brokers.** Tenant warrants that it has had no dealings with any real estate broker or agent in connection with the negotiation of this Lease.

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100 EBBTIDE  
SAUSALITO, CALIFORNIA**

**15.24 Keys.** In the event Tenant changes the door hardware, locks, or tumblers to Premises, Tenant shall provide Landlord with a set of keys to all said changed locks within twenty (24) four hours of said change. In the event Tenant fails to provide said keys within five (5) days of written demand of Landlord, then Landlord may change said locks at Tenant's expense and provide Tenant with new keys.

**15.25 Percentage Share.** Notwithstanding anything to the contrary provided for in this Lease, Tenant's percentage share ("Percentage Share") of any costs provided for in this Lease including, but not limited to those described in Section 3.2 (Additional Rent) shall be determined by dividing Tenant's rentable square footage by the total rentable square footage of the buildings comprising 100 Ebbtide, Sausalito, California, the result of which shall equal Tenant's Percentage Share. Landlord and Tenant agree that for purposes of this Section 15.25 the Premises is comprised of 468 rental square feet.

**15.26 Review of Billing Records.** For any item for which Landlord bills Tenant including, but not limited to, all obligations collectively described as Additional Rent, Tenant shall have the right to inspect the actual paid bills on which Tenant's Percentage Share is based. Such inspection shall be in Landlord's management office during normal business hours and Tenant shall give Landlord twenty-four (24) hours notice of Tenant's inspection of these records.

**ARTICLE 16. COMMON AREA**

**16.1 Revisions to Common Area.** Landlord reserves the right to change, from time-to-time, the dimensions and location of the Common Area provided that such changes and additional construction do not materially affect access to parking for and visibility of the Premises.

**16.2 Use of Common Area.** Tenant, and its employees, customers, subtenants, licensees and concessionaires shall have the nonexclusive right to use the Common Area, as constituted from time-to-time, such use to be in common with Landlord, other Tenants and other persons entitled to use the same and subject to such reasonable rules and regulations governing use as Landlord may, from time-to-time, prescribe.

Tenant shall not solicit business or display merchandise within the Common Area, or distribute handbills therein, or take any action which would interfere with the rights of other persons to use the Common Area, Landlord may temporarily close any part of the Common Area for such periods of time as may be necessary to make repairs or alterations.

**LEASE OF PREMISES  
100 EBBTIDE  
SAUSALITO, CALIFORNIA**

**16.3 Parking.** Landlord may, from time-to-time, designate specific areas in which automobiles owned by Tenant, its employees, subtenants, licensees and concessionaires shall be parked and Tenant shall use best efforts to see that such vehicles are parked in such areas. Landlord may, from time-to-time, substitute for any parking area other areas reasonably accessible to Tenants of the building, which areas may be elevated, surface or underground. Landlord, at Landlord's sole discretion, may elect to enter into a reciprocal parking arrangement with adjoining properties. Any such arrangement would provide additional parking for Tenant's visitors from Monday through Friday during normal business hours and would limit Tenant's nonexclusive use of the parking areas on weekday evenings, Saturdays, and Sundays. The maximum potential reduction and related increase to Tenant's parking shall be equal to fifty (50%) percent of the allowed parking described in Section 16.3. Landlord shall provide Tenant with thirty (30) days notice of any such change in parking regulations.

**16.4 Operation and Control.** The Common Area shall be and remain under Landlord's operation and control, and Landlord shall adequately operate, manage and maintain the same; the manner of maintenance and the expenditures therefor to be in the sole discretion of the Landlord.

**16.6. Common Area Charges.** In addition to the Rent, and other charges prescribed in this Lease, Tenant shall pay to Landlord monthly currently with its payment of Rent, as Additional Rent, an amount equal to ten percent (10%) of the monthly Rental amount paid by Tenant for the Tenant's share of the cost of operation and maintenance of the buildings and Common Area, including, but not limited to, costs for lighting, water and sewer, painting, cleaning, maintaining, policing, inspecting, repairing and replacing items of the building, common bathroom facilities, parking area, management fees, and surrounding grounds, which may be incurred by Landlord at its discretion. Landlord may, at its option, make monthly or other periodic assessments based on the annual Common Area maintenance costs, payable in advance but subject to year-end adjustment, based on the actual cost of such maintenance and operation.

**ARTICLE 17. TENANT IMPROVEMENTS.** Tenant accepts the Premises and its now "as-is" condition.

**ARTICLE 18. OPTION TO RENEW.** Provided that Tenant is not in default under this Lease, Tenant shall have one (1) option to extend the Term for an additional period of two years, that is from November 15, 2005 until midnight on November 14, 2007 (the "Extension Term") upon all of the terms and conditions of this Lease; provided, however that upon the valid exercise of the option the Termination Date of this Lease shall be November 14, 2007 and the monthly Rent payable by Tenant hereunder shall be increased annually on November 15, 2005 and November 15, 2006 by an amount equal to four percent (4%) of the then applicable Rent per month. Tenant shall exercise its option by delivering written notice of its election to extend the term of this

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**LEASE OF PREMISES  
100 EBBTIDE  
SAUSALITO, CALIFORNIA**

Lease to Landlord on or before July 31, 2005. In the event that Tenant elects not to exercise its option to renew, Tenant shall so notify Landlord in writing on or before July 31, 2005.

**ARTICLE 19. FLOOD HAZARD - PROPERTY OF OTHERS [INTENTIONALLY OMMITTED]**

**ARTICLE 20. [INTENTIONALLY OMITTED]**

[SIGNATURES ON FOLLOWING PAGE]

LEASE OF PREMISES  
100 EBBTIDE  
SAUSALITO, CALIFORNIA

LANDLORD:

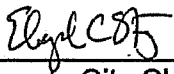
CITY OF SAUSALITO, a municipal  
corporation

Dated: November 9, 2004

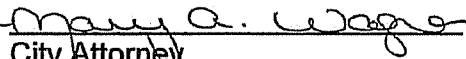
By: 

Paul Albritton, Mayor

ATTEST:

  
Deputy City Clerk

APPROVED AS TO FORM:

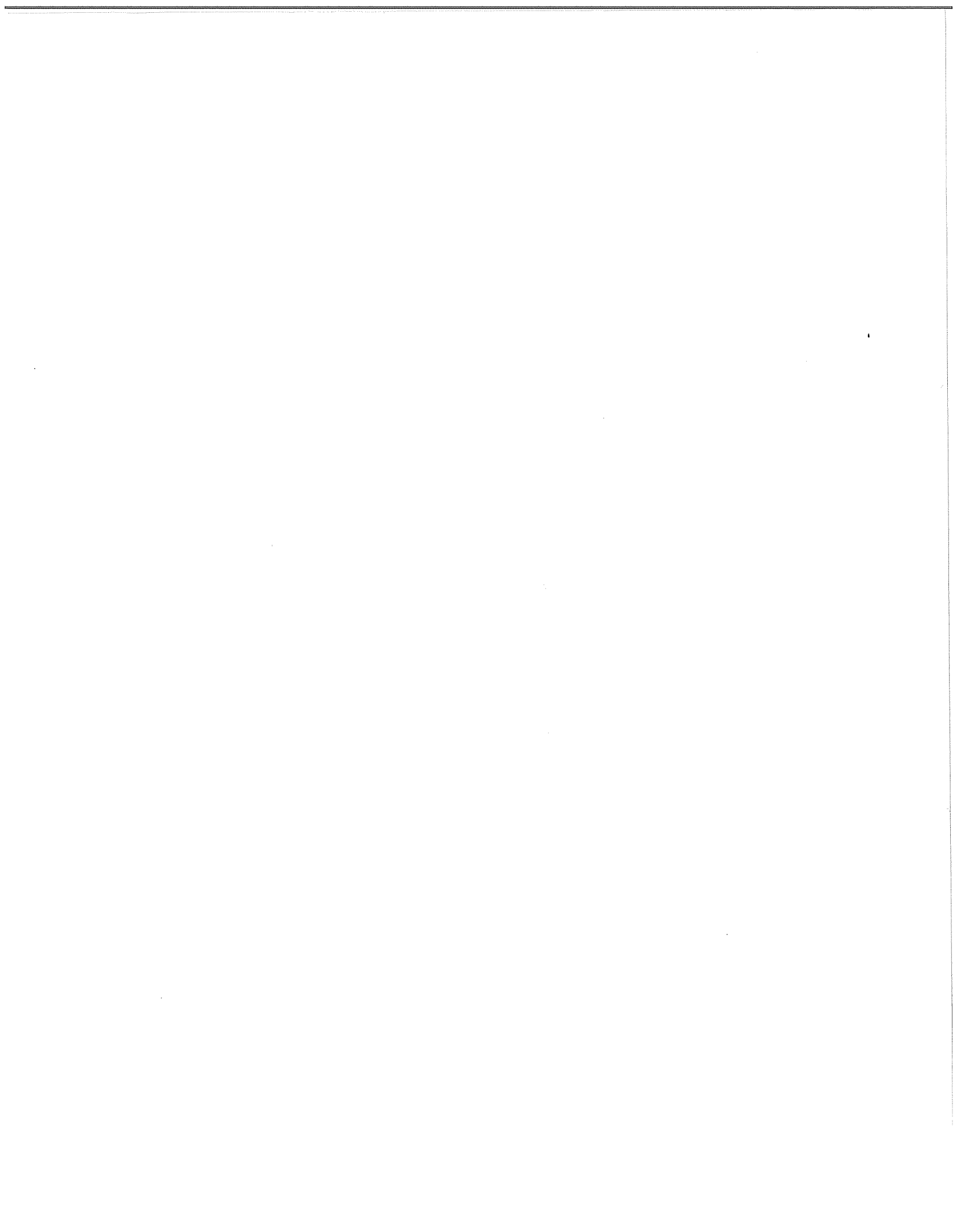
  
City Attorney

TENANT:

Dated: 11/7/4, 2004

By: 

Printed name: George Dapsevicius





LEASE OF PREMISES

SUITE 220,  
BUILDING 2  
100 EBBTIDE  
SAUSALITO, CALIFORNIA

TENANT:

GEORGE DAPSEVICIUS

LANDLORD:

THE CITY OF SAUSALITO

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**LEASE OF PREMISES  
100 EBBTIDE  
SAUSALITO, CALIFORNIA  
To GEORGE DAPSEVICIUS**

**LEASE SUMMARY**

**George Dapsevicius**

DATE OF LEASE	November 2, 1999
LANDLORD	City of Sausalito
TENANT	George Dapsevicius
ADDRESS OF TENANT	100 Ebbtide, Building Two, Suite 220
PREMISES	512 square feet of Building Two, 100 Ebbtide, Sausalito, CA.
TERM	November 1, 1999—October 31, 2002
RENT	\$ 1.50 (per square foot per month) Nov. 1, 1999 – Oct. 31, 2000
Base Rent	\$ 768.00
Additional Rent	Taxes (Article #4), Incremental increases in Common Area Maintenance (#16.6)
Adjusted Base Rent	\$ 896.00 Nov. 1, 2000 – Oct. 31, 2001 \$ 1,024.00 Nov. 1, 2001 – Oct. 31, 2002
PARKING SPACES	None stated.
UTILITIES	Included (approximately \$0.09/square foot/month)
SECURITY DEPOSIT	\$ 768.00
PERMITTED USE	Ord. 1027 – 10.801.2 (c) (1) Art Studio
IMPROVEMENTS	Completed by Tenant
OPTION TO RENEW	None

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**LEASE OF PREMISES  
100 EBBTIDE  
SAUSALITO, CALIFORNIA  
To GEORGE DAPSEVICIUS**

This lease, executed in duplicate, by and between THE CITY OF SAUSALITO (LANDLORD) and GEORGE DAPSEVICIUS (TENANT) is executed and effective on November 1, 1999.

**ARTICLE 1. PREMISES**

Landlord leases to Tenant and Tenant leases from Landlord, subject to the following terms and conditions, the real property located in Building 2, Suite 220 at 100 Ebbtide, City of Sausalito, County of Marin, State of California and more particularly described as follows: Approximately five hundred twelve (512) square feet of space known as Building 2, Suite 220, a plan of which is hereto attached and called Exhibit A. All square footage figures contained herein are approximate and subject to field measurements.

**ARTICLE 2. TERM**

2.1 Term. This Lease shall be for a period of three (3) years (TERM) commencing November 1, 1999 (LEASE COMMENCEMENT DATE). This Lease shall end three (3) years from commencement date, October 31, 2002 (EXPIRATION DATE), unless otherwise terminated in accordance with the provisions of this Lease.

**2.2 Delivery of Possession.**

a. If Landlord is unable to deliver possession of the Premises to Tenant by the Commencement Date, Landlord shall not be liable to Tenant for damages of any kind. Any such delay in delivery shall not affect Tenant's obligations hereunder nor extend the Expiration Date of this Lease; however, Tenant's obligation to pay rent shall not commence until possession is tendered to Tenant.

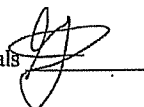
b. If Landlord has not tendered possession of the Premises to Tenant within thirty (30) days after the Commencement Date, Tenant may terminate this Lease by giving at least ten (10) days written notice to Landlord from the end of said thirty (30) day period.

c. If, as a result of causes beyond Landlord's control, Landlord has not delivered possession of the Premises to Tenant within thirty (30) days after the Commencement Date, Landlord may terminate this Lease by giving Tenant at least ten (10) days written notice of such election to terminate.

d. If either party terminates this Lease in accordance with this section 2.2, all money paid by Tenant to Landlord shall be refunded and both parties shall be released from all obligations under this Lease, except, in the event Tenant terminates this Lease in accordance with section 2.2, then any monies tendered to Landlord for Tenant Improvements shall be forfeited and become the property of the Landlord.

e. If Landlord permits Tenant to take possession of the Premises before the Commencement Date, all provisions of this Lease shall apply; however, the Expiration Date of this Lease shall remain the same and Tenant's obligation to pay rent shall commence from the date Tenant takes possession.

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**LEASE OF PREMISES  
100 EBBTIDE  
SAUSALITO, CALIFORNIA  
To GEORGE DAPSEVICIUS**

**ARTICLE 3. RENTAL.**

3.1 Base Rent. Tenant agrees to pay Landlord, as Base Rent for the Premises, Seven hundred sixty-eight (\$768.00) DOLLARS, plus such additional sums as required in this Lease, monthly, in advance on the first day of each month during the Term of this Lease. Tenant agrees to pay Landlord, upon possession of the Premises, Seven hundred sixty-eight (\$768.00) DOLLARS, as rent for the first month of the term. If Tenant's obligation to pay Base Rent does not commence on the first day of a calendar month, the Base Rent payable by Tenant for the first fractional month shall be prorated on a thirty (30) day basis.

3.2 Additional Rent. Tenant shall pay as additional rent, upon demand from Landlord, the sums described in Article #4.1 (Real Estate Taxes), #4.2 (Possessory Interest Property Taxes), #8.1 (Maintenance, Tenant's Obligations), and increases in the costs of #16 (Common Area). Said sums shall be paid upon demand from Landlord and without setoff. For purposes of determining Tenant's percentage share of any common expenses shared with other tenants, the definition of Percentage Share shall be as described in Article 15.25 of this Lease.

3.3 RENT COMMENCEMENT DATE. Payment of Rent shall commence on November 1, 1999 payable in accordance with paragraph 3.1.

3.4 Adjusted Base Rent.

- a. Provided that there is nothing to the contrary provided for in this Lease, the amount of Base Rent payable hereunder shall be adjusted annually, commencing with the date twelve (12) months after the Commencement Date of the Term (the Adjustment Date). At each Adjustment Date the rent shall increase \$ .25 per rentable square foot per month.
- b. The Last Month's Rent and Security Deposit described herein shall be increased annually pursuant to Article 3.4(a) herein. Upon ten (10) days written notice from Landlord to Tenant, Tenant shall tender to Landlord funds sufficient to increase the Last Month's Rent and Security Deposit to comply with this provision. In the event Tenant fails to tender said funds within fifteen (15) days of the posting of such notice by first class mail, Tenant shall be in default with the terms and conditions of this Lease.

3.5 Interest and Late Charges. If Tenant shall fail to pay when due and payable any rent or other amounts or charges which Tenant is obligated to pay under the terms of this Lease, such unpaid amounts shall bear interest at the maximum rate allowed in the state where the Premises are located. In addition to such interest, Tenant acknowledges that the late payment of any monthly installment of Base Rent, Additional Rent, or Adjusted Base Rent will cause Landlord to incur costs and expenses not contemplated under this Lease, including but not limited to administrative and collection costs and processing and accounting expenses the exact amount of which is extremely difficult to fix. Therefore, if any such installment is not received by Landlord within ten (10) days from the date such installment is due, Tenant shall pay Landlord a late charge equal to ten percent (10%) of such installment. Landlord and Tenant agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to Landlord for the loss suffered by such nonpayment by Tenant. Acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to such nonpayment by Tenant nor prevent Landlord from exercising any other rights or remedies available to Landlord under this Lease.

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**LEASE OF PREMISES  
100 EBBTIDE  
SAUSALITO, CALIFORNIA  
To GEORGE DAPSEVICIUS**

**ARTICLE 4. TAXES.**

4.1 Real Estate Taxes. The term "real estate taxes" shall mean any assessments, license fee, rental taxes, levies, fees, taxes (other than estate, inheritance, or gift taxes) of any kind, or charges in lieu of taxes, levied by any federal, state, county or municipal government or governmental agency on: (a) the Premises and underlying realty; or (b) Landlord's business of leasing the Premises.

In addition to the rent herein provided to be paid, Tenant agrees to pay to Landlord, upon demand, Tenant's pro rata share of any Real Estate Taxes which may be levied on the herein described property, of which the demised Premises is a part, in excess of taxes levied for the fiscal year 1999/2000 or the date of final assessment after completion of the improvements, whichever is later, whether such increase is caused by increase in the tax rate or increase in the assessed valuation.

In the event the Premises and underlying realty are not assessed separately, but are part of a larger parcel for assessment purposes, Tenant shall pay Landlord a fractional amount of the taxes levied against the larger parcel, the numerator of which shall be the total square footage available for Tenant's exclusive use and occupancy under this Lease, and the denominator of which shall be the total square footage of the improvements constructed on the parcel.

4.2 Possessory Interest Tax. Tenant shall be responsible for the payment of Possessory Interest Taxes assessed to the property during the Lease Term.

4.3 Personal Property Tax. Tenant shall pay when due all taxes levied on Tenant's personal property, including but not limited to equipment, trade fixtures and furnishings located in or on the Premises, and Tenant shall use Tenant's best efforts to cause such taxes to be assessed and billed separately from Landlord's taxes and cause such tax bill to be sent directly to Tenant.

**ARTICLE 5. UTILITIES.**

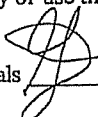
Landlord shall pay for all heat, gas, electricity, and other utilities and services provided to or for the Premises, including taxes thereon. However, Landlord retains the right to separately meter individual spaces in order to determine any extraordinary uses by a particular tenant. In the event usage by Tenant is 10% or more greater than the pro rata average utility use per square foot by the remainder of the tenants, Landlord retains the right to bill Tenant for any excess use. Landlord shall not be liable in damages or otherwise for any failure or interruption of any utility service being provided to the Premises, and no such failure or interruption shall entitle Tenant to terminate this Lease or to discontinue the payment of rent or any other amount due hereunder. Landlord may install separate meters to tenant's space in order to more accurately assess utility consumption.

**ARTICLE 6. SECURITY DEPOSIT.**

Subject to the provisions of Article 3.3(c), Tenant agrees to deposit with Landlord, Seven hundred sixty-eight (\$768.00) DOLLARS, upon execution of this Lease, as security for Tenant's faithful performance of its obligations under this Lease. Tenant shall not mortgage, assign, transfer or encumber the security deposit without the prior written consent of Landlord and any attempt by Tenant to do so shall be void, without force or effect and shall not be binding upon Landlord.

If Tenant fails to pay any amount when due and payable hereunder, or fails to perform any of the terms hereof, Landlord may appropriate and apply or use all or any portion of this deposit for rental payments or any other amount then due and unpaid, for payment of any amount for which Landlord has become obligated as a result of Tenant's default or breach, and for any loss or damage sustained by Landlord as a result of Tenant's default or breach, and Landlord may so apply or use this deposit without prejudice to any other remedy Landlord may have on account of

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Tenant's default or breach. If Tenant fails to properly vacate the Premises or deliver possession of the Premises to Landlord in an undamaged and broom clean condition, Landlord may withhold such funds from this deposit as necessary to repair or clean Premises. If Landlord so uses any of the security deposit, Tenant shall, within ten (10) days after written demand therefor, restore the security deposit to the full amount originally deposited; Tenant's failure to do so shall constitute an act of default hereunder and Landlord may terminate this Lease. Within fifteen (15) days after the Term of this Lease (or any extension thereof) has expired or Tenant has vacated the Premises, whichever shall last occur, provided Tenant is not then in default on any of its obligations hereunder, Landlord shall return the security deposit to Tenant or, if Tenant has assigned its interest under this Lease, to the last assignee of Tenant. In the event Landlord sells its interest in the Premises, Landlord may deliver this deposit to the purchaser of Landlord's interest and thereupon be relieved of any further liability or obligation with respect to this security deposit.

**ARTICLE 7. USE AND CONDITION OF PREMISES.**

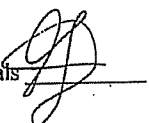
7.1. Use. Tenant shall use or permit the Premises to be used only for an Art Studio and related offices, limited to the conditions set forth in the Occupancy Permit issued by the City of Sausalito and shall not use or permit the use of the Premises for any other purpose without obtaining the prior written consent of Landlord. Tenant shall submit the application for said use permit to Landlord for prior approval. Tenant shall not conduct nor permit any person to conduct any auction, distress or going-out-of-business sale on the Premises nor publish any advertisement for such sales without obtaining the prior written consent of Landlord. Tenant shall not use or permit the Premises to be used in any manner that may result in waste or the creation of a nuisance, and Tenant shall maintain the Premises free of any objectionable noises, odors or disturbances. Tenant shall fully comply with all health and police regulations and shall not use or permit the use of the Premises for any purpose or in any manner which may constitute a violation of the laws of the United States or the laws, ordinances, zoning requirements, regulations or requirements of any governmental entity having authority in the jurisdiction where the Premises are located. Tenant agrees to obtain a use permit for the operation of Tenant's business from the City of Sausalito within ten (10) days of the execution of this Lease. Tenant acknowledges that no warranties or representations have been made regarding the fitness or suitability of the Premises for the conduct of Tenant's business.

In the event any Use Permit requires parking spaces in excess of those parking spaces described in Article 16.3, herein, Tenant shall obtain prior written approval from Landlord.

7.2 Uses Prohibited. Tenant shall not operate Tenant's business in such a manner that would cause excess insurance rates to be charged to Landlord, or in such a manner that would violate any city, county, state or federal laws. Nor shall Tenant operate Tenant's business in such a manner as would be detrimental to other Tenants or to Landlord. Nor shall Tenant operate any business not in strict conformance with the Master Lease between the City of Sausalito and the Sausalito School District and with Paragraph #14, hereof.

7.3 Rules and Regulations. Landlord shall, from time to time, establish and amend rules and regulations for the Property, including the allocation and regulation of parking areas. Tenant and Tenant's employees shall obey all rules and regulations governing the use of the Premises as such may from time to time be issued or amended by Landlord. However, Landlord shall not be liable for any violation by other Tenants of any such rules or regulations.

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7.4 Condition of Premises. As the tenant has been an occupant of this property for some time prior to the execution of this lease, the Premises shall be deemed as acceptable as is. Tenant takes possession hereunder subject to all laws, ordinances and regulations applicable to the Premises, and their use, and any covenants or restrictions of record. Tenant shall, at Tenant's expense, comply promptly with all laws, ordinances and regulations applicable to the Premises or their use which are or may be in effect during the Term of this Lease, including any extensions thereof.

**ARTICLE 8. MAINTENANCE, REPAIR AND ALTERATIONS.**

**8.1 Tenant's Obligations.**

- a. Subject the provisions of Article 10, except for that portion of the Premises to be maintained by Landlord as provided in section 8.2, Tenant shall, at Tenant's expense, maintain in good repair, order and serviceable condition the Premises and every part thereof, including but not limited to all plumbing, ventilation, heating, exposed electrical systems, refrigeration, and equipment in, on or exclusively serving the Premises, windows, doors, storefronts, plate glass, interior walls and ceilings which are part of the Premises. Tenant shall contract with a service company for necessary periodic maintenance of the heating, ventilating and air conditioning equipment exclusively serving the Premises and Tenant shall furnish to Landlord a copy of such service contract within five (5) days after request therefor. Except in case of an emergency, prior to Tenant's making any repair, Tenant shall give Landlord written notice that such work will be performed and Landlord shall have the right to approve or disapprove the plans for such repair.
- b. Upon the expiration or earlier termination of this Lease, Tenant shall return the Premises to Landlord clean and in the same condition as on the date Tenant took possession, except for normal wear and tear. Any damage to the Premises, including any structural damage, resulting from Tenant's use or from the removal of Tenant's fixtures, furnishing and equipment pursuant to section 8.4(d) shall be repaired by Tenant at Tenant's expense.
- c. Notwithstanding the foregoing, Tenant shall not have the obligation to repair and maintain unexposed plumbing and wiring not installed by Tenant, damage to the Premises resulting from causes outside the Premises beyond the control of Tenant, damage to the Premises caused by Landlord's failure to perform any of its obligations under the Lease.

8.2 Landlord's Obligations. Subject to the provisions of Article 10, and except for damage caused by the intentional or negligent acts or omissions of Tenant, its employees, agents or invitees, Landlord shall maintain and repair the foundations, exterior roof and exterior walls of the Premises; provided, however, Landlord's obligation to make any such repairs shall not arise until receipt of written notice from Tenant that such repairs are needed. After receipt of such notice, Landlord shall have a reasonable period of time to commence and complete such repairs. Landlord's obligations hereunder shall not include the maintenance or repair of any interior portion of the exterior walls or roof, or the maintenance or repair of windows, doors, plate glass or storefronts. To the extent permitted by law, Tenant waives any statutory right to make repairs at Landlord's expense, to withhold rental or other payments due hereunder, or to terminate this Lease because of Landlord's failure to make any repairs.

8.3 Landlord's Rights. If Tenant refuses or neglects to make repairs and/or maintain the Premises, or any part thereof, in a manner reasonably satisfactory to Landlord, without prejudice to any other remedy Landlord may have hereunder, upon giving Tenant ten (10) days prior written notice, Landlord shall have the right to enter the Premises and perform such maintenance or make such repairs on behalf of and for the account of Tenant. In the event Landlord so elects, Tenant shall pay the cost of such repairs or maintenance promptly following Tenant's receipt of a

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bill therefor, with interest thereon at the maximum allowable legal rate from the date of Tenant's receipt of such bill until the date paid. Tenant agrees to permit Landlord or its agent to enter the Premises at any time during normal business hours for the purpose of inspecting the Premises.

**8.4 Alterations and Additions.**

a. Tenant shall not make any additions, alterations or improvements to the Premises without obtaining the prior written consent of Landlord, which consent shall not be unreasonably withheld. Landlord's consent may be conditioned upon Tenant's agreement to remove any such additions, alterations or improvements upon the expiration of the Term hereof and to restore the Premises to the same condition as on the date Tenant took possession. All work with respect to any addition, alteration or improvement shall be done in a good and workmanlike manner by properly qualified and licensed personnel, and such work shall be diligently prosecuted to completion.

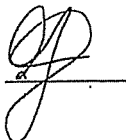
b. Prior to the commencement of any Tenant improvements or remodeling, Tenant shall provide to Landlord a true copy of the written, executed Contractors Agreement for Landlord's approval. During the course of said construction, Tenant shall provide Landlord with all written, executed Change Orders for Landlord's approval. If Landlord fails to object to any provisions of this Agreement or subsequent Change Orders within five (5) days of receipt, then the Agreement or Change Orders shall be deemed accepted. Prior to the commencement of any work, Landlord reserves the right to require Tenant post a sum equal to the total amount of the cost of said improvements, including subsequent Change Orders, in cash, in a special account, or provide a performance bond equal to the cost of said improvements and subsequent Change Orders and provide satisfactory evidence of same to Landlord.

c. Tenant shall pay the costs of any work done on the Premises pursuant to section 8.4(a), and shall keep the Premises free and clear of liens of any kind. Tenant shall indemnify, defend against and keep Landlord free and harmless from all liability, loss, damage, costs, attorneys' fees and any other expense incurred on account of claims of lien by any person performing work or furnishing materials or supplies for Tenant or any person claiming under Tenant.

Tenant shall keep Tenant's leasehold interest, and any additions or improvements which are or become the property of Landlord under this Lease, free and clear of all attachment or judgment liens. Before the actual commencement of any work for which a claim of lien may be filed, Tenant shall give Landlord notice of the intended commencement date a sufficient time before said date to enable Landlord to post notices of non-responsibility or any other notices which Landlord deems necessary for the proper protection of Landlord's interest in the Premises and Landlord shall have the right to enter the Premises and post such notices at any reasonable time.

d. Landlord may require, at Landlord's sole option, that Tenant provide to Landlord, at Tenant's expense, a lien and completion bond in an amount equal to at least one and one-half (1-1/2) times the total estimated cost of any additions, alterations or improvements to be made in or to the Premises, to protect Landlord against any liability for mechanic's and materialman's liens and to insure timely completion of the work. Provided, however, nothing contained herein shall relieve Tenant of its obligation under section 8.4(b) to keep the Premises free of all liens.

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e. Unless their removal is required by Landlord as provided in section 8.4(a), all additions, alterations and improvements made on the Premises shall become the property of Landlord and be surrendered with the Premises upon the expiration of the Term of this Lease; provided, however, Tenant's equipment, machinery and trade fixtures which can be removed without damage to the Premises shall remain the property of Tenant and may be removed, subject to the provisions of section 8.1(b).

**ARTICLE 9. INSURANCE AND INDEMNIFICATION.**

**9.1 Liability and Casualty Insurance.**

a. Prior to taking possession of the Premises, Tenant shall obtain a policy of comprehensive general public liability insurance insuring both Landlord and Tenant against liability arising out of the ownership, use occupancy or maintenance of the Premises and appurtenant areas. Landlord shall be named as Additionally Insured under any such policy. Tenant shall, at Tenant's expense, maintain such insurance in full force and effect during the Term with coverage limits of not less than \$1,000,000 combined for each occurrence. The limits of said Insurance shall not, however, limit the liability of Tenant hereunder. Tenant may carry such Insurance under a blanket policy provided such Insurance has a Landlord's protective liability endorsement thereon.

b. From and after the Commencement Date, Tenant shall maintain Insurance covering Tenant's leasehold improvements, alterations, additions or improvements permitted under section 8.4, trade fixtures, merchandise and personal property which is from time to time in or on the Premises, in an amount which is not less than ninety percent (90%) of their full replacement cost as such may be from time to time during the Term, providing protection against any peril included within the generally accepted classification of "fire and Extended Coverage," and against sprinkler damage, vandalism and malicious mischief. Any policy proceeds shall be used for the repair or replacement of the property damaged or destroyed unless this Lease is terminated pursuant to the provisions of Article 10 hereof.

c. All public liability and property damage policies shall contain a provision that Landlord, although named as an insured, shall nevertheless be entitled to recover under said policies for any loss occasioned to it, its servants, agents and employees by reason of the negligence of Tenant. If Tenant fails to procure and maintain such coverage as is required hereunder, Landlord may, but shall not be required to, procure and maintain such insurance at the expense of Tenant. The insurance, which Tenant is required to carry hereunder, shall be with companies satisfactory to Landlord. Prior to taking possession of the Premises, Tenant shall deliver to Landlord copies of policies of all required insurance or certificates of insurance evidencing the existence and amounts of such insurance with loss payable clauses satisfactory to Landlord. All policies shall be primary policies and not contributing with or as excess coverage for any insurance carried by Landlord.

9.2 Subrogation Waiver. Landlord and Tenant hereby waive any rights of recovery each may have against the other for any loss or damage to Landlord or Tenant, or their respective property, the Premises or its contents arising from any risk insured by fire, extended coverage and any other property insurance policies in effect at the time of such loss or damage. The foregoing waivers of subrogation shall be effective to the extent permitted by Landlord's and Tenant's respective insurers and provided that no policy of insurance is invalidated as a result of such waivers.

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9.3 Indemnification. Tenant shall indemnify and hold Landlord harmless against and from liability and claims of any kind for loss or damage to property of Tenant or any other person, or for any injury to or death of any person, arising out of: (a) Tenant's use and occupancy of the Premises, or any work, activity or other things allowed or suffered by Tenant to be done in, on or about the Premises; (b) any breach or default by Tenant of any of Tenant's obligations under this Lease; or (c) any negligent or otherwise tortious act or omission of Tenant, its agents, employees, invitees or contractors. Tenant shall, at Tenant's expense, defend Landlord in any action or proceeding arising from any such claim by counsel satisfactory to Landlord and shall indemnify Landlord against all costs, attorneys fees, expert witness fees and any other expenses incurred in or for such action or proceeding. As a material part of the consideration for Landlord's execution of this Lease, Tenant hereby assumes all risk of damage or injury to any person or property in, on or about the Premises from any cause, but Tenant shall not be liable for any damage or injury caused by the negligence of Landlord unless covered by insurance Tenant is required to provide.

9.4 Acts of Other Tenants. Landlord shall not be liable to Tenant, or any person claiming under Tenant, for any injury or damage arising out of any act or omission of any other tenant of the building of which the Premises are a part.

9.5 Use of Premises. Tenant agrees that it will not, at any time during the Term of this Lease, do or permit anything to be done in, on or about the Premises which will in any way tend to increase the insurance rates on the Premises or the building of which the Premises are a part. Tenant shall pay Landlord, upon demand therefor, the amount of any increase in premiums charged during the Term of the Lease for fire and extended coverage insurance carried by Landlord on the building of which the Premises are a part, as a result of Tenant's doing or permitting anything to be done in, on or about the Premises which does so increase the insurance rates, notwithstanding Landlord's consent to such action by Tenant.

**ARTICLE 10. DAMAGE OR DESTRUCTION.**

**10.1 Damage.**

a. If the Premises are damaged by perils covered by Landlord's insurance, Landlord shall, within ninety (90) days, commence repair, reconstruction and restoration of the Premises, and this Lease shall remain in full force and effect.

b. If the Premises are damaged by perils covered by insurance required to be maintained by Tenant hereunder, and if the proceeds received by Landlord from such insurance are not sufficient to complete the required repair, reconstruction and restoration, Landlord shall give Tenant written notice of the amount of the deficiency and Tenant may, within thirty (30) days after receipt of such notice, contribute such amount. If Tenant elects not to contribute such amount, Landlord shall have the right, at Landlord's option, to terminate this Lease with no liability to Tenant. If Tenant elects to contribute such amount, Landlord shall, within ninety (90) days, commence repair, reconstruction and restoration and this Lease shall continue in full force and effect. Tenant shall not have a right of reimbursement from Landlord for any amount contributed under the provisions of this section 10.1(b).

c. If the Premises are damaged by perils not covered by insurance, Landlord shall repair, reconstruct and restore the Premises, provided, however, if the extent of such damage is greater than twenty five (25) percent of the total cost for complete restoration of the Premises, excluding therefrom the replacement cost of Tenant's trade fixtures and equipment and the restoration costs of building foundations, then Landlord may elect not to restore the Premises, in which case Landlord shall have

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the right to terminate this Lease with no liability to Tenant. Landlord shall give Tenant written notice of its election not to restore the Premises within thirty (30) days from the date such damage occurs and if such notice is not given, Landlord shall be deemed to have elected to restore the Premises, in which case Landlord shall commence repair, reconstruction and restoration within ninety (90) days from the end of said thirty (30) day period. If Landlord elects not to restore Premises, Tenant may elect to restore Premises at Tenant's expense by serving written notice of such election upon Landlord within ten (10) days after receipt of Landlord's notice. If Tenant so elects, this Lease shall remain in full force and effect and Tenant shall, within ninety (90) days, commence repair, reconstruction and restoration of the Premises. Tenant shall not have a right of reimbursement from Landlord for any amount expended by Tenant under the provisions of this section 10.1(c).

10.2 Damage - End of Term. Notwithstanding anything to the contrary contained in this Lease, if the Premises are partially destroyed or damaged during the last twelve (12) months of the term hereof, Landlord may elect to terminate this Lease as of the date such destruction or damage occurred with no liability to Tenant, by serving written notice of such election to terminate on Tenant within thirty (30) days from the date such destruction or damage occurred.

10.3 Complete Destruction. If the Premises are completely destroyed (excluding foundations) at any time during the term of this Lease from any cause, whether insured or uninsured, then this Lease shall automatically terminate as of the date of such destruction.

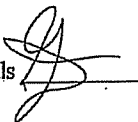
10.4 Abatement of Base Rent. In the event of repair, reconstruction and restoration as provided for under this Article 10, the Base Rent or Adjusted Base Rent to be paid by Tenant under Article 3 hereof shall be abated proportionately with the degree to which the Tenant's use of the Premises is impaired, commencing from the date of damage and continuing during the period of such repair, reconstruction and restoration. Tenant shall continue to operate its business on the Premises during any such period to the extent reasonably practicable from the standpoint of prudent business management and the obligation of Tenant to pay rent and additional charges due hereunder shall remain in full force and effect. Tenant shall not be entitled to any compensation or damages from Landlord for loss of use of the Premises or any part thereof, or for any other loss resulting from such damage, repair, reconstruction or restoration.

**ARTICLE 11. CONDEMNATION.**

11.1 Total Taking. If the entire Premises are taken under the power of eminent domain, this Lease shall terminate as of the date Tenant is required to vacate Premises, and Landlord and Tenant shall each thereafter be released from any further liability under this Lease, except, subject to the terms of this Lease, for the return or application of any prepaid rents or security deposits.

11.2 Partial Taking. If a portion in excess of twenty-five percent (25%) is taken under the power of eminent domain, or if, as a result of any taking regardless of the extent, the remainder of the Premises is not one undivided parcel of property, either Landlord or Tenant may terminate this Lease as of the date Tenant is required to vacate the Premises, by serving written notice of such election within thirty (30) days after receipt by Tenant of written notice from Landlord that Premises have been so taken. If this Lease is so terminated each party shall thereafter be released from any further liability hereunder. If both parties elect not to terminate this Lease, Tenant shall remain in that portion of the Premises not so taken and, in that event, Landlord agrees, at Landlord's cost and expense, to restore the remaining portion of the Premises as soon as possible to a complete unit of like quality and character as existed prior to such taking; and

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thereafter the Base Rent set forth in Article 3 hereof shall be equitably reduced, taking into account the relative value of the portion taken as compared to the portion remaining.

11.3 Compensation. In the event of any taking and regardless of whether such taking results in termination of this Lease, Landlord shall be entitled to the entire award or compensation in such proceeding; provided, however, Tenant's right to receive compensation or damages for its fixtures and personal property shall not be affected hereby.

11.4 Voluntary Sale; Waiver. For purposes of this Article 11, a voluntary sale or conveyance in lieu of condemnation, under threat of condemnation, shall be deemed a taking under the power of eminent domain. Tenant hereby waives any statutory rights of termination Tenant may have by reason of any partial taking of the Premises under the power of eminent domain.

**ARTICLE 12. ASSIGNMENT, SUBLEASE, TRANSFER.**

12.1 Definition. For purposes of this Article 12, the terms "assign" and "assignment" shall include and mean any act attempting to or document purporting to assign, transfer, sublet, enter into license or concession agreements for, change ownership of, mortgage or hypothecate this Lease or Tenant's interest in and to the Premises or any part thereof. Tenant shall not assign this Lease or Tenant's interest in and to the Premises without obtaining the prior written consent of Landlord, which consent shall not be unreasonably withheld, subject to the terms, covenants and conditions contained herein. Any attempt to assign this Lease without the prior written consent of Landlord shall be a breach hereof, and Landlord may, at Landlord's option, terminate this Lease.

12.2 Use. It is expressly agreed that Tenant shall not have the power to assign this Lease or sublet the Premises (i) for any use other than the use specified in Article 7 hereof, (ii) to any party, if in Landlord's reasonable business judgment the quality of the business operation is or may be adversely affected thereby, or (iii) to any party whose financial worth at the time of any proposed assignment or subletting is less than the financial worth of Tenant as of the date of this Lease, and any such purported assignment or subletting without Landlord's consent shall be void and of no force or effect and shall not confer any benefit or estate on any person, and Landlord shall not be required to terminate this Lease to prevent any such assignment or subletting.

12.3 Instrument, Consent. Any assignment to which Landlord has consented shall be by an instrument in writing satisfactory to Landlord, and any assignee, sublessee, transferee, licensee, concessionaire or mortgagee shall agree for the benefit of Landlord to be bound by, assume and perform all the terms, covenants and conditions of this Lease. Consent by Landlord to any assignment shall not constitute consent to any subsequent assignment and notwithstanding Landlord's consent. Tenant shall remain fully liable hereunder as primary obligor during the unexpired term of this Lease. Any transfer by merger, consolidation, sale, liquidation or change in ownership of thirty percent (30%) or more, in the aggregate, of any stock or interest in Tenant shall constitute an assignment for purposes of this Article 12.

12.4 Rent. If Tenant assigns its interest in this Lease, the Base Rent or Adjusted Base Rent provided in Article 3 hereof shall be increased effective as of the date of such assignment to the Base Rent specified in ARTICLE 3 hereof adjusted as provided in section 3.2 but using as the adjustment date the date of such assignment.

12.5 Excess Rent from Assignment or Sub-Tenancy. Should the Tenant assign or sublet its interests in this lease, any monies received by Tenant from said assignment or sub-tenancy over and above the amount of rent and additional rent due Landlord shall be payable to Landlord.

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**ARTICLE 13. DEFAULT.**

13.1 Tenant's Default. The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant.

- a. Abandoning or vacating the Premises; or
- b. Failing to pay any rental payment or any other charges when due and payable by Tenant, if such failure continues for ten (10) days after the due date for such payment provided for in this Lease; or
- c. Failure to promptly and fully perform any other covenant, condition or agreement contained in this Lease should such failure continue for twenty (20) days after written notice thereof from Landlord to Tenant; provided, however, if the failure to perform is such that it cannot reasonably be cured with twenty (20) days, Tenant shall not be in default hereunder if Tenant commences to cure within said twenty (20) day period and diligently prosecutes such curing to completion; or
- d. Permitting Tenant's assets to be placed in the hands of a receiver or trustee for a period in excess of thirty (30) days; making an assignment for the benefit of creditors; instituting any proceedings under any bankruptcy act wherein Tenant seeks to be adjudicated a bankrupt, to be discharged of its debts or to effect a plan of liquidation, extension or reorganization; failing to have dismissed within sixty (60) days any involuntary proceeding filed against Tenant under any bankruptcy act; becoming insolvent; or failing to have dismissed within thirty (30) days any proceedings seeking to execute or levy against or attach fifty percent (50%) or more of Tenant's assets.

13.2 Remedies. In the event of Tenant's default hereunder, in addition to any other rights or remedies, Landlord may have under any law, Landlord shall have the right, at Landlord's option, without further notice or demand of any kind to do the following:

- a. Terminate this Lease and Tenant's right to possession of Premises and reenter the Premises and take possession thereof, and Tenant shall have no further claim to Premises or under this Lease; or
- b. Continue this Lease in full force and effect, reenter and occupy the Premises for the account of Tenant and collect any unpaid rental or other charges which have or may thereafter become due and payable; or
- c. Reenter the Premises under the provisions of subparagraph (b), and thereafter elect to terminate this Lease and Tenant's right to possession of the Premises.

Should Landlord reenter the Premises under the provisions of subparagraphs (b) or (c) above, Landlord shall not be deemed to have terminated this Lease or the obligation of Tenant to pay any rental or other charges thereafter accruing, unless Landlord notifies Tenant in writing of Landlord's election to terminate this Lease in the event of any reentry or retaking of possession by Landlord. Landlord shall have the right, but not the obligation, to remove all or any part of the personal property in the Premises and to place such property in storage at a public warehouse at the expense and risk of the Tenant.

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Should Landlord elect to terminate this Lease under the provisions of subparagraph (a) or (c) above, Landlord may recover as damages from Tenant the following:

1. The worth at the time of award of any unpaid rental which had been earned at the time of termination; plus
2. The worth at the time of the award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Tenant proves could have been reasonably avoided; plus
3. The worth at the time of the award of the amount by which the unpaid rental for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus
4. Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to any costs of expenses including attorney's fees, incurred by Landlord in (a) retaking possession of the Premises, (b) maintaining the Premises after Tenant's default, (c) preparing the Premises for reletting to a new tenant including any repairs or alterations and (d) reletting the Premises including broker's commissions.

"The worth at the time of the award," as used in (1) and (2) above, is to be computed by allowing interest at the rate of ten percent (10%) per annum. "The worth at the time of the award," as used in (3) above, is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank situated nearest to the location of the Premises at the time of the award plus one percent (1%).

The waiver by Landlord of any breach of any term, covenant or condition of this Lease shall not be deemed a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition. Acceptance of rental by Landlord subsequent to any breach hereof shall not be deemed a waiver of any preceding breach other than the failure to pay the particular rent also accepted, regardless of Landlord's knowledge of any breach at the time of such acceptance of rental. Landlord shall not be deemed to have waived any term, covenant or condition unless Landlord gives Tenant written notice of such waiver.

13.3 Landlord's Default. If Landlord fails to perform any covenant, condition or agreement contained in this Lease within thirty (30) days after receipt of written notice from Tenant specifying such default, or if such default cannot reasonably be cured within thirty (30) days, if Landlord fails to commence to cure within said thirty (30) day period, then Landlord shall be liable to Tenant for any damages sustained by Tenant as a result of Landlord's breach; provided, however, it is expressly understood and agreed that if Tenant obtains a money judgement against Landlord resulting from any default or other claim arising under this Lease, such judgement shall be satisfied only out of rents, issues, profits and other income actually received on account of Landlord's right, title and interest in the Premises or in the building of which the Premises are a part and the underlying real property, and no other real, personal or mixed property of a Landlord (or of any of the partners, which comprise Landlord, if any) wherever situated, shall be subject to

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levy to satisfy any such judgment Tenant shall not have the right to terminate this Lease or to withhold, reduce or offset any amount against any payments of rent or any other charges due and payable hereunder.

**ARTICLE 14. CONDUCT OF BUSINESS**

14. Conduct of Business. Tenant covenants and agrees that from and after the Commencement Date of this Lease, Tenant will continuously and uninterruptedly operate and conduct within the Premises the business it is permitted to operate and conduct under the provisions of this Lease, except while the Premises are untenable by reason of fire or other casualty. Tenant covenants and agrees that it shall be open for business daily during usual business hours on all usual business days.

**ARTICLE 15. GENERAL PROVISIONS**

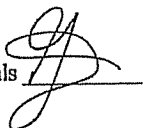
15.1. Transfer of Landlord's Interest. In the event of any sale, transfer, or reversion by Landlord of the Premises or the building of which the Premises are a part, and assignment of this Lease by Landlord, Landlord shall be and is hereby entirely freed and relieved of any and all liability and obligations contained in or derived from this Lease arising out of any act, occurrence or omission relating to the Premises or this Lease occurring after the consummation of such sale or transfer, provided the purchaser shall expressly assume all of the covenants and obligations of Landlord under this Lease. If any security deposit or prepaid rent has been paid by Tenant, Landlord shall transfer the security deposit or prepaid rent to Landlord's successor and upon such transfer, Landlord shall be relieved of any and all further liability with respect thereto.

15.2. Estoppel Statement. Upon not less than ten (10) days prior written request from Landlord, Tenant shall execute and deliver to Landlord or Landlord's designee, a written statement certifying (a) that this Lease is unmodified and in full force and effect, or in full force and effect as modified and stating the modifications; (b) the amount of Base Rent or Adjusted Base Rent and the date to which said rent and other charges have been paid in advance; (c) the amount of any security deposited with Landlord; and (d) that Landlord is not in default hereunder or, if Landlord is claimed to be in default, stating the nature of any claimed default. Any such statement may be relied upon by a purchaser, assignee or lender. Tenant's failure to execute and deliver such statement within the time allowed shall be conclusive upon Tenant that: (1) this Lease is in full force and effect and has not been modified except as represented by Landlord; (2) there are no uncured defaults in Landlord's performance and that Tenant has no right of offset, counter-claim or deduction against rental; and (3) not more than one month's rent has been paid in advance.

15.3. Financial Statement. Upon request from Landlord, Tenant agrees to deliver to Landlord and/or any holder of a mortgage or deed of trust and/or to a mortgage, deed of trust beneficiary or proposed mortgages or deed of trust beneficiary, upon fifteen (15) days written request therefor, such financial information as may be required by such party. Landlord agrees that such information, if confidential, shall be held in confidence and disclosed only for the purposes and to the parties set forth above.

15.4. Subordination; Attornment. Upon written request of Landlord, or any first mortgagee, first deed of trust beneficiary of Landlord, or lessor of Landlord, Tenant shall, in writing, subordinate its rights hereunder to the lien of any first mortgage, first deed of trust, or the interest of any lease in which the Landlord is lessee, and to all advances made or hereafter to be made upon the security therefor; provided, however, prior to executing any such subordination agreement, Tenant shall have the right to obtain from any lender or lessor of Landlord requesting such subordination, an agreement in writing providing that, as long as Tenant is not in default hereunder, this Lease shall remain in full force and effect for the full term hereof. The holder of

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any security interest may, upon written notice to Tenant, elect to have this Lease prior to such security interest regardless of the time of granting or recording such security interest.

In the event of any foreclosure sale, transfer in lieu of foreclosure or termination of the lease in which the Landlord is lessee, Tenant shall attorn to the purchaser, transferee or lessor as the case may be, and recognize such party as Landlord under this Lease, provided such party acquires and accepts the Premises subject to this Lease.

15.5. Access to Premises. Landlord or Landlord's agents shall have the right to enter the Premises at any reasonable time during normal business hours for any purpose not in conflict with the provisions of this Lease or, during any emergency, Landlord may enter at any time. Landlord may, at any time, place "For Sale" signs on or about the Premises and may, during the last three (3) months of the term hereof, place "For Lease" signs on or about the Premises and show the Premises to prospective tenants without any liability to Tenant.

15.6. Holding Over. If Tenant, with Landlord's consent, retains possession of the Premises after the expiration of the term or termination of the Lease, such possession shall be deemed to be a month-to-month tenancy terminable upon thirty (30) days written notice given at any time by either party. During any such month-to-month tenancy Tenant shall pay monthly rent equal to two hundred (200%) percent of the amount of Base Rent or Adjusted Base Rent which was payable by Tenant during the last month of the Term prior to expiration or termination, shall pay Additional Rent as required by this Lease and such month-to-month tenancy shall be subject to all provisions of this Lease except those pertaining to Term.

15.7. Merger. The voluntary or other surrender of this Lease by Tenant or termination hereof shall not cause a merger but shall, at Landlord's option, terminate any existing subtenancies or operate as an assignment to Landlord of any such subtenancies.

15.8. Recording. This Lease shall not be recorded by either Landlord or Tenant, provided, however, upon obtaining the prior written consent of the other party, either party may record a memorandum of lease.

15.9. Prior Agreements; Amendments. This Lease represents the entire agreement between the parties pertaining to the Premises and supersedes and cancels any and all previous negotiations, arrangements, representations, agreements and communications between the parties whether written or oral, and none of the foregoing shall be used to construe or interpret this Lease. This Lease may be amended or modified only by a written instrument executed by both Landlord and Tenant.

15.10. Attorney's Fees. In the event of any action or proceeding brought by either party against the other pertaining to or arising out of this Lease, the finally prevailing party shall be entitled to recover all costs and expenses, including reasonable attorney's fees, incurred on account of such action or proceeding.

15.11. Remedies; Choice of Law. No remedy or election exercised hereunder shall be deemed exclusive but shall be cumulative with all other remedies at law or in equity. This Lease shall be governed by the laws of the State of California.

15.12. Successors and Assigns. Subject to the provisions regarding assignment contained herein, this Lease shall apply to and bind the heirs, personal representatives, successors and assigns of the parties hereto.

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15.13. Severability. A final determination by a court of competent jurisdiction that any provision of this Lease is invalid shall not affect the validity of any other provision, and any provision so determined to be invalid shall, to the extent possible, be construed to accomplish its reflected intent.

15.14. Authority. If a Tenant is a corporation or a partnership, each individual executing this Lease on behalf of Tenant hereby warrants and represents that he is duly authorized to execute this Lease on behalf of said corporation or partnership and upon execution of this Lease, will deliver to Landlord a certified copy of the Articles of Incorporation, the resolution of the Board of Directors of said corporation and minutes of the meeting authorizing said Resolution; or certified copy of the partnership agreement of said partnership, as the case may be, authorizing execution of this Lease and naming the officers or partners who are authorized to execute this Lease on behalf of Tenant.

15.15. Signs. Tenant shall not, without Landlord's written consent, place, construct, maintain or permit the placement of any sign, advertisement, name, insignia, trademark, or similar item on the exterior side walls, rear wall or roof of the Premises or of the building of which the Premises are a part. Landlord shall have the right to approve or disapprove the use of any sign, advertisement, name insignia, trademark, or similar item to be placed, constructed, or maintained on the exterior front wall of the Premises or of the building of which the Premises are a part. Tenant shall have the right to maintain, place, or construct whatever signs Tenant wants on the interior walls of the Premises so long as such construction does not constitute an alteration to the Premises as defined herein.

Landlord, at Landlord's discretion, may place an entry sign and directory on the building and/or doors of the building that would include Tenant's business name. Said signs shall be of material, style, size, and color of Landlord's choice. Tenant agrees to pay Landlord the cost or proportional cost of any sign which bears Tenant's name, business name or trade name.

15.16. Time of Essence. Time is of the essence in the performance of each and every term, covenant and condition of this Lease.

15.17. Covenants and Conditions. Each and every provision of this Lease to be performed by Tenant shall be deemed both a covenant and condition.

15.18. Captions. The article and section captions contained herein are for reference purposes only and are not a part of this Lease.

15.19. Waiver. A waiver by Landlord of any breach or default shall not be deemed a waiver of any other breach or default. Landlord's consent to or approval of any act by Tenant requiring such consent or approval shall not be deemed to waive or abrogate the requirement of Landlord's consent or approval of any subsequent or similar act.

15.20. No Setoffs. All payments to be made by Tenant hereunder shall, unless otherwise expressly provided, be paid to Landlord without notice or demand and without adjustment, deduction or setoff, in lawful money of the United States.

15.21. Force Majeure. Any provision, delay or stoppage which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefor, acts of God, governmental restrictions or requisitions or controls, judicial orders, enemy or hostile government actions, civil commotion, fire or other casualty, or other causes beyond reasonable control of the party obligated to perform hereunder, shall excuse performance by such party for a period equal to the duration of such prevention, delay or stoppage, except where such performance is the payment of rental or other charges to be paid by Tenant pursuant to the provisions of this Lease.

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15.22. Notices. Wherever in this Lease it is required or permitted that notice or demand be given or served by either party to this Lease to or on the other, such notice or demand shall be in writing and shall be deemed duly served or given only if personally delivered or sent by United States mail, certified or registered, postage prepaid, to the address of the parties as specified below.

To Landlord

To Tenant

THE CITY OF SAUSALITO  
C/o KIMBER COMMERCIAL  
BROKERAGE SERVICES, INC  
10 LIBERTY SHIP WAY, SUITE 94  
SAUSALITO, CA 94965

GEORGE DAPSEVICIUS  
100 EBBTIDE  
SAUSALITO, CA 94965

With a copy to the  
CITY MANAGER  
CITY OF SAUSALITO  
420 LITHO STREET  
SAUSALITO, CA 94965

Landlord and Tenant may change their respective addresses for notices by giving notice of such new address in accordance with this section 15.22.

15.23. Brokers. Tenant warrants that it has had no dealings with any real estate broker or agent in connection with the negotiation of this Lease other than the authorized agent of the Landlord, Kimber Commercial Brokerage Services, Inc., and Tenant knows of no other real estate broker or agent who is entitled to a commission in connection with this Lease.

15.24. Keys. In the event Tenant changes the door hardware, locks, or tumblers to Premises, Tenant shall provide Landlord with a set of keys to all said changed locks within twenty (24) four hours of said change. In the event Tenant fails to provide said keys within five (5) days of written demand of Landlord, then Landlord may change said locks at Tenant's expense and provide Tenant with new keys.

15.25. Percentage Share. Notwithstanding anything to the contrary provided for in this Lease, Tenants percentage share ("Percentage Share") of any costs provided for in this Lease including, but not limited to those described in Article 3.2 (Additional Rent) shall be determined by dividing Tenant's rentable square footage by the total rentable square footage of the buildings comprising 100 Ebbtide, Sausalito, California, the result of which shall equal Tenant's Percentage Share.

15.26 Review of Billing Records. For any item for which Landlord bills Tenant including, but not limited to, all obligations collectively described as Additional Rent, Tenant shall have the right to inspect the actual paid bills on which Tenant's Percentage Share is based. Such inspection shall be in Landlord's management office during normal business hours and Tenant shall give Landlord twenty-four (24) hours notice of Tenant's inspection of these records.

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**ARTICLE 16. COMMON AREA**

16.1. Landlord reserves the right to change, from time-to-time, the dimensions and location of the Common Area provided that such changes and additional construction do not materially affect access to parking, for and visibility of the Premises.

16.2. Tenant, and its employees, customers, subtenants, licensees and concessionaires shall have the nonexclusive right to use the Common Area, as constituted from time-to-time, such use to be in common with Landlord, other Tenants and other persons entitled to use the same and subject to such reasonable rules and regulations governing use as Landlord may, from time-to-time, prescribe.

Tenant shall not solicit business or display merchandise within the Common Area, or distribute handbills therein, or take any action which would interfere with the rights of other persons to use the Common Area, Landlord may temporarily close any part of the Common Area for such periods of time as may be necessary to make repairs or alterations.

16.3. Landlord may, from time-to-time, designate specific areas in which automobiles owned by Tenant, its employees, subtenants, licensees and concessionaires shall be parked and Tenant shall use best efforts to see that such vehicles are parked in such areas. Subject to the provisions of Article 16.7, herein Tenant shall be allowed three (3) parking spaces for Tenant's non-exclusive use.

16.4. The Common Area shall be and remain under Landlord's operation and control, and Landlord shall adequately operate, manage and maintain the same; the manner of maintenance and the expenditures therefor to be in the sole discretion of the Landlord.

16.5 Landlord may, from time-to-time, substitute for any parking area other areas reasonably accessible to Tenants of the building, which areas may be elevated, surface or underground.

16.6. In addition to the annual rent, and other charges prescribed in this Lease, Tenant shall pay to Landlord, as Additional Rent, the Tenant's Percentage Share of the incremental increases in the cost of operation and maintenance of the Buildings and Common Area over the Base Year of the Lease Term, including, but not limited to, costs for lighting, water and sewer, painting, cleaning, maintaining, policing, inspecting, repairing and replacing items of the building, common bathroom facilities, parking area, management fees, and surrounding grounds, which may be incurred by Landlord at its discretion. Tenant's Percentage Share of the Common Area maintenance expense shall be determined by dividing the total number of square feet in the demised premises by the gross leasable square footage in the entire building. Tenant shall make such payments to Landlord upon demand at intervals not more frequent than monthly. Landlord may, at its option, make monthly or other periodic assessments based on the annual Common Facilities maintenance costs, payable in advance but subject to year-end adjustment, based on the actual cost of such maintenance and operation.

16.7. Landlord, at Landlord's sole discretion, may elect to enter into a reciprocal parking arrangement with adjoining properties. Any such arrangement would provide additional parking for Tenant's visitors from Monday through Friday during normal business hours and would limit Tenant's nonexclusive use of the parking areas on weekday evenings, Saturdays, and Sundays. The maximum potential reduction and related increase to Tenant's parking shall be equal to fifty (50%) percent of the allowed parking described in Article 16.3. Landlord shall provide Tenant with thirty (30) days notice of any such change in parking regulations.

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**ARTICLE 17. TENANT IMPROVEMENTS**

17. Tenant Improvements. Tenant accepts the Premises and its now "as-is" condition except that Landlord shall complete the following prior to occupancy:

17.1 (Deleted).

17.2 (Deleted)

17.3 (Deleted).

**ARTICLE 18. OPTION TO RENEW**

18. Option To Renew. Landlord is precluded from offering any commitments beyond five years.

**ARTICLE 19. FLOOD HAZARD - PROPERTY OF OTHERS.**

19. Flood Hazard - Property of Others. Tenant acknowledges that Tenant has been informed by Landlord that the Premises are within a Special Flood Hazard Area, as determined by the Federal Emergency Management Agency, and are subject to flooding. Tenant shall indemnify and hold Landlord harmless against and from liability and claims of any kind for loss or damage to the property of Tenant or another caused by flooding. In the event that Tenant permits the property of any other person to be stored or placed on the Premises, Tenant shall first secure a written release executed by such person in the following form:

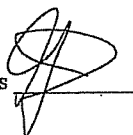
"FLOOD HAZARD. (Name of Bailor) acknowledges that (Name of Bailor) has been informed that the Premises located at the Liberty Ship Building, Sausalito, California are located within a Special Flood Hazard Area as determined by the Federal Emergency Management Agency, and are subject to flooding. Liberty Ship Properties shall not be liable for any loss or damage to the property of the undersigned stored or located on the Premises caused by flooding or any other condition or event. The undersigned hereby assumes the risk of such loss or damage and hereby releases Liberty Ship Properties from any and all liability with respect to claims for such loss or damage.

\_\_\_\_\_  
(Signature of Bailor)"

**ARTICLE 20. ENTIRE AGREEMENT & REPRESENTATIONS.**

20. Entire Agreement and Representations. This Lease represents the entire agreement between the parties. This lease supersedes any previous leases, rental agreements, of other prior agreements, written or oral, are void and of no force and effect. There are no other agreements or representation other than contained in this Lease. Any changes, modifications, or alterations to this Lease must be made in writing and executed by the parties hereto or their successor's in interest.

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**ARTICLE 21. GUARANTEE OF LEASE**

21. Guarantee of Lease. As an inducement to the Landlord to make the foregoing Lease with, as Tenant, the undersigned George Dapsevicius (GUARANTOR) unconditionally guarantee to the full performance and observance of all the covenants, conditions and agreements herein provided to be performed and observed by Tenant, Tenant's successors and assigns. Tenant expressly agrees that the validity of this agreement, and the obligations of the Guarantor hereunder, shall in no way be terminated, affected or impaired by reason of the granting by Landlord of any indulgences to Tenant or by reason of the assertion by Landlord against Tenant of any of the rights or remedies reserved to Landlord pursuant to the provisions of the Lease, or by the relief of Tenant from any of Tenant's obligations under the Lease by operation of law or otherwise (including, but without limitation, the rejection of the Lease in connection with proceedings of the bankruptcy laws now or hereafter enacted).

The Guarantor further covenants and agrees that this guarantee shall remain and continue in full force and effect as to any renewal, modification, or extension of this Lease, whether or not the Guarantor shall have received any notice of or consented to any such renewal, modification, or extension. The Guarantor further agrees that Guarantors liability shall be primary and that, in any action in which Landlord may be entitled, Landlord may proceed against Tenant and Guarantor, jointly or individually, and may proceed against Guarantor without having commenced any action against or having obtained any judgement against Tenant.

LANDLORD:  
THE CITY OF SAUSALITO

by *Sandra Bushmaker* 11/10/99  
SANDRA BUSHMAKER (date)  
MAYOR

TENANT:

by *George Dapsevicius* 11/4/99  
(date)

GUARANTORS

\_\_\_\_\_  
(date)

\_\_\_\_\_  
(date)

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