

## SECOND AMENDMENT TO AMENDED AND RESTATED LEASE OF PREMISES

**THIS SECOND AMENDMENT TO AMENDED AND RESTATED LEASE OF PREMISES** ("Second Amendment"), dated effective as February 1, 2009 (the "Effective Date"), is entered into by and between the **CITY OF SAUSALITO**, a municipal corporation (the "Landlord"), and **DAVID MAISEL**, an individual (the "Tenant").

### RECITALS

The following Recitals are a substantive part of this Agreement:

A. Landlord and Tenant entered into an Amended and Restated Lease of Premises dated as of July 1, 2005 and which was amended by the First Amendment to Lease of Premises dated December 1, 2008 (collectively the "Lease") which provides for Tenant's lease of that certain real property commonly known as Building 3, Suite 320, 100 Ebbtide, Sausalito, California.

B. Landlord and Tenant desire to enter into this Second Amendment to the Lease in order to provide for the continuation of the rent reduction and to convert the lease to a month to month rental 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 to provide that the lease of the Premises shall be on a month to month basis terminable by either party upon thirty (30) days notice.

**Section 2. Rent.** Commencing February 1, 2009, Tenant agrees to pay Landlord, One Thousand Four Hundred One Dollars (\$1,401.00) monthly, in advance of the first day of each month during the Term of this Lease (the "Base Rent").

**Section 3. Adjusted Base Rent.** The Base Rent payable under Section 2 above will be adjusted as set forth in this Section 3. Commencing on February 1, 2010 and every twelve months thereafter (each such anniversary date being referred to as an "Adjustment Date") thereafter, the Base Rent in effect immediately preceding the Adjustment Date in question will be adjusted to reflect the increases (only) in the same percentage that the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics (the "Bureau"), "All Items" for All Urban Consumers in the San Francisco-Oakland-San Jose metropolitan area (1982-1984=100) (the "Index") for the calendar month that is four (4) full months immediately preceding the Adjustment Date increased over the Index for the calendar month that is sixteen (16) full months immediately before the Adjustment Date. Landlord will use reasonable efforts to calculate and give Tenant written notice of any increase in the Base Rent before, and

Tenant will in all events pay the increased Base Rent effective on, each Adjustment Date. The Base Rent as adjusted will be the Base Rent until the next Adjustment Date. If the Bureau discontinues the publication of the Index, publishes the Index less frequently, or alters the Index in some other manner, the most nearly comparable index or procedure as selected by Landlord will be substituted for the Index. Notwithstanding the foregoing, in no event shall the adjusted Base Rent calculated in accordance with this Section 3 be less than four percent (4%) or more than seven percent (7%) of the prior year's Base Rent

**Section 4. 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 Second, the terms of this Second Amendment shall control.

**Section 5. Entire Agreement; Conflicts.** This Second 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 any force or effect with respect to those matters covered herein. This Second Amendment and the Lease shall not be modified or altered except in writing signed by both parties.

**Section 6. Execution.** This Second Amendment may be executed in duplicate original counterparts each of which shall constitute on and the same instrument.

[Signatures on following page]

**LANDLORD:**

**CITY OF SAUSALITO**, a municipal corporation

Dated: \_\_\_\_\_, 2009

By: \_\_\_\_\_  
Jonathan Leone, Mayor

**ATTEST:**

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

**APPROVED AS TO FORM:**

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

**TENANT:**

Dated: \_\_\_\_\_, 2009

By: \_\_\_\_\_  
David Maisel

4B6a  
3