



# STAFF REPORT

## SAUSALITO CITY COUNCIL

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### AGENDA TITLE:

Adoption of a Resolution approving the Lease of Premises by and between the City of Sausalito and The New Village School

### RECOMMENDED MOTION:

Adopt a Resolution of the City Council of the City of Sausalito approving the Lease of Premises by and between the City of Sausalito and The New Village School

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### BACKGROUND

The proposed Lease of Premises between City and The New Village School ("NVS") provides for the lease of Suite 144 and the adjacent restrooms and entry way in Building 1 at 100 Ebbtide. The leased premises comprise 1375 square feet and the lease term is for one year with a single two year option. The monthly lease rate for the premises will be \$1718.75 (\$1.25 per square foot). The proposed school use is consistent with the City's zoning and tenant improvements, including new paint and flooring, will be completed at NVS's sole expense.

The OMIT Committee has reviewed and approved the terms of the proposed Lease.

### FISCAL IMPACT

The proposed Lease of Premises provides for the lease of Suite 144 and the adjacent restrooms and entry way for a monthly rental rate of \$1718.75 and will be adjusted annually based on CPI, but not less than 3% and not more than 5%.

### STAFF RECOMMENDATIONS

Staff recommends that the City Council:  
Adopt a Resolution of the City Council of the City of Sausalito approving the Lease of Premises by and between the City of Sausalito and The New Village School.

### ATTACHMENTS

1. Resolution of the City Council of the City of Sausalito approving the Lease of Premises by and between the City of Sausalito and The New Village School.

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PREPARED BY:

\_\_\_\_\_  
Mary A. Wagner, City Attorney

REVIEWED AND SUBMITTED BY;

\_\_\_\_\_  
Adam W. Politzer, City Manager

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RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF SAUSALITO, CALIFORNIA  
APPROVING THE LEASE OF PREMISES BY AND BETWEEN  
THE CITY OF SAUSALITO AND THE NEW VILLAGE SCHOOL**

**WHEREAS**, the City of Sausalito owns certain property located at 100 Ebbtide, Sausalito; and

**WHEREAS**, the City and The New Village School (“NVS”) desire to enter into a Lease of Premises which is attached hereto as Exhibit “A” and incorporated herein by reference which provides for the lease of Suite 144 and the adjacent restrooms and entry way in Building 1 located at 100 Ebbtide for one year upon the terms and conditions set forth therein; and

**WHEREAS**, the approval of the Lease of Premises is exempt from the application of the California Environmental Quality Act (California Public Resources Code Section 21000, et seq., “CEQA”), 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 Lease of Premises 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 designee, is directed to cause a Notice of Exemption to be posted in accordance with CEQA.
2. The Lease of Premises by and between the City of Sausalito and NVS which is attached hereto as Exhibit “A” is hereby approved and the Mayor is authorized to execute the Lease of Premise on behalf of the City.
3. Upon execution of the Lease of Premises 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 Lease of Premises, and to administer the City's obligations, responsibilities and duties to be performed under the Lease of Premises and related documents.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Sausalito on the \_\_\_\_ day of \_\_\_\_\_, 2009, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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MAYOR OF THE CITY OF SAUSALITO

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DEPUTY CITY CLERK

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**Exhibit "A"**

**LEASE OF PREMISES**

**[To be attached]**

LEASE OF PREMISES

SUITE 144,  
BUILDING 1  
100 EBBTIDE  
SAUSALITO, CALIFORNIA

TENANT:

THE NEW VILLAGE SCHOOL

LANDLORD:

THE CITY OF SAUSALITO

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## LEASE SUMMARY

|                   |   |
|-------------------|---|
| DATE OF LEASE     | Effective Date – February 1, 2009                                 |
| LANDLORD          | City of Sausalito   |
| TENANT            | The New Village School  |
| ADDRESS OF TENANT | 100 Ebbtide, Building 1, Suite 144                                |
| PREMISES          | Suite 144, entry and bathrooms, 100 Ebbtide, Sausalito, CA.       |
| TERM              | One year  |
| BASE RENT         | \$1,718.75  |
| ADDITIONAL RENT   | Taxes (Article 4),  |
| PARKING SPACES    | None  |
| UTILITIES         | Additional  |
| SECURITY DEPOSIT  | \$3,437.50; Two month's Rent                                      |
| PERMITTED USE     | City Zoning Code Section 10.20-1 – School, elementary             |
| IMPROVEMENTS      | Tenant Improvements to be completed by Tenant at Tenant's expense |
| OPTION TO RENEW   | One option to renew for one period of two 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 **THE NEW VILLAGE SCHOOL**, a California Non-Profit Public Benefit Corporation ("Tenant") is dated effective as of February 1, 2009.

**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 1, Suite 144, and the adjacent entry and bathrooms 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 February 1, 2009 ("Commencement Date"). This Lease shall end one (1) year from the Commencement Date, that is at midnight on January 31, 2010 ("Expiration Date"), unless otherwise terminated or extended in accordance with the provisions of this Lease. Provided that Tenant is not in default under this Lease, Tenant shall have one (1) option to extend the Term for one additional period of two (2) years, that is from February 1, 2010 until midnight on January 31, 2012 (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 January 31, 2012 and the monthly Rent payable by Tenant hereunder shall be increased as set forth in Section 3.3 below. Tenant shall exercise its option by delivering written notice of its election to extend the term of this Lease to Landlord on or before October 1, 2009.

**2.2 Possession of Premises.**

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 an event of force majeure, including without limitation, failure of the prior occupant of the Premises to vacate, Landlord has not delivered possession of the Premises to Tenant within thirty (30) days after the Commencement Date, Landlord may

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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 shall not be obligated to pay rent until the Rent Commencement Date.

**ARTICLE 3. RENTAL.**

**3.1 Rent.** Tenant agrees to pay Landlord, as "Base Rent" for the Premises, One Thousand Seven Hundred Eighteen Dollars and 75/100 (\$1718.75 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 Base Rent and Additional Rent does not commence on the first day of a calendar month, the Base Rent and Additional 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), and Section 8.1 (Maintenance, Tenant's Obligations - unless paid directly by Tenant), and such other sums due and payable hereunder. Said sums shall be paid without setoff, except as otherwise set forth in this Lease.

**3.3 Adjusted Base Rent.** The Base Rent payable under Section 3.1 will be adjusted as set forth in this Section 3.3. 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

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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 3.3 be less than three percent (3%) or more than five percent (5%) of the prior year's Base Rent.

**3.4 Rent Commencement Date.** Payment of Rent shall commence on March 1, 2009 payable in accordance with Section 3.1.

**3.5 Interest and Late Charges.** If Tenant shall fail to pay when due and payable any Base Rent, and/or Additional Rent 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 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 the Premises and/or the underlying realty.

In addition to the Base Rent and Additional Rent herein provided to be paid, Tenant agrees to pay to Landlord, within ten (10) days following notice, 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,

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in excess of taxes levied for the fiscal year 2008/2009 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 of the Premises 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.

**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 equitably 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; provided, however, if Tenant is reasonably unable to and actually does not conduct its business operations in the Premises for at least two (2) consecutive days as a result of interruption of any utility service caused as direct result of action of Landland, and which failure was not the fault in whole or in part of Tenant, all Base Rent and Additional Rent payable by Tenant hereunder shall abate beginning on the third (3rd) day of such closure and continuing until such time as Tenant is again reasonably able to conduct its business operation in the Premises. and no such failure or interruption shall entitle Tenant to terminate this Lease. Landlord may, in its sole and absolute discretion, install separate meters to Tenant's space in order to more accurately assess utility consumption. The monthly utility charges to be paid by Tenant as set forth in this Article 5 of the Lease shall not be less than Ten Cents (\$0.10) per square foot nor more than Fifteen Cents (\$0.15) per square foot of the Premises which include 1375 square feet.

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**ARTICLE 6. SECURITY DEPOSIT.** Prior to the Commencement Date Tenant shall deliver to Landlord, an amount in immediately available funds equal to two month's Base 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 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

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result of a breach of this Lease by Tenant, including, without limitation, post termination damage by Tenant.

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

**7.1. Use.** Tenant shall use or permit the Premises to be used only for a K-8 elementary school and related uses, 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.

**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. Landlord acknowledges that Tenant's permitted use will not increase Landlord's insurance rates. 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



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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 Tenant’s use of the Premises 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 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.

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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, licensees, 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 by Tenant or Tenant's Agents 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 diligently prosecute to completion such Remedial Work as is required under Environmental Laws.

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

**8.1 Tenant's Obligations.**

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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 to the extent they exclusively serve the Premises every part thereof, including but not limited to all plumbing, ventilation, heating, electrical systems, refrigeration, and equipment 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) business 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 and damage by casualty. Subject to Section 9.7 which shall control, 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 covered by Section 9.7 which shall control, 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 subject to Section 9.7 which shall control, 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, not to exceed thirty (30) days, to commence and diligently pursue completion of such repairs or to notify Tenant that Landlord does not believe that such repair is necessary and/or is the responsibility of Tenant. 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. If Landlord refuses or

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neglects to commence and diligently pursue making repairs which the parties agree Landlord is required to make as set forth herein within thirty (30) days after Tenant has given Landlord notice of the need for such repairs, Tenant may deliver to Landlord a second notice of such failure. If Landlord has not commenced and diligently pursued completion of the subject repairs within five (5) days after delivery of the second such notice, or if an emergency arises, Tenant may, at its option, undertake to perform such repairs. If Tenant undertakes to perform such repairs, Tenant may deduct the cost of such repairs from the Base Rent and Additional next coming due under this Lease. In the event of an emergency where something is required to be done forthwith in order to avoid injury, death or damage, Tenant shall have the right of self-help, and the right to be reimbursed for the reasonable cost of such action, subject to the following. This right of self-help shall be carefully and judiciously exercised by Tenant, it being understood and agreed that wherever possible Landlord shall be given sufficient opportunity to perform, in order to avoid any conflict with respect to whether self help should have been availed of, or with respect to the reasonableness of the expenses incurred. Tenant shall not initiate any self-help remedy until and unless Tenant has telephoned the representative of the Landlord.

**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 twenty (20) 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.

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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 of Twenty Five Thousand Dollars (\$25,000.00) or more, 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 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. Prior to the commencement of any work of Twenty Five Thousand Dollars (\$25,000.00) or more, 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.** 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.

**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

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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 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 (including the building), the Premises and their contents arising from any risk that could be insured against under a Special Form policy and any other greater 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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**9.8 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 or its Agents. 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 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 its elected and appointed officials, officers, employees, agents or volunteers.

**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 increase the insurance rates on the Premises or the building of which the Premises are a part. Tenant shall pay Landlord, within ten (10) days following 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 operating in, on or about the Premises for a use other than Tenant's permitted use 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.

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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 or Tenant shall have the right, at its 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 Landlord's 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 building in which the Premises are located, excluding therefrom the replacement cost of Tenant's trade fixtures and equipment, 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 building in which the Premises are located, 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, either party may elect to terminate this Lease as of the date such destruction or damage occurred, by serving written notice of such election to terminate on the other within thirty (30) days from the date such destruction or damage occurred.

**10.3 Complete Destruction.** If the building in which the Premises are located is 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.

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**10.4 Abatement of Rent.** In the event of repair, reconstruction and restoration as provided for under this Article 10, the Base Rent and Additional 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 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 any portion 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 Base Rent and Additional 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 relocation costs, 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

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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 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.

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**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.**

**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 or Additional Rent 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; provided, however, such penalties shall not accrue if Tenant provides Landlord with evidence reasonably acceptable to Landlord that Tenant sent the payment by a commercially acceptable delivery method and the delay in receipt was not the fault of Tenant; 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

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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.

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

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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 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

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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, during normal business hours, 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.

**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) to Tenant's actual knowledge 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, after the notice and cure period provided for in Article 13, 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

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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, reasonably acceptable to Tenant, providing that, as long as Tenant is not in default hereunder, this Lease shall remain in full force and effect and Tenant's possession of the Premises undisturbed 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 assumes the obligations of Landlord under 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 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 building and may, during the last three (3) months of the Term hereof, place "For Lease" signs on or about the building 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 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.



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**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.

**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.

**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

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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 not to exceed \$150.00 per year.

**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 either party 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.

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**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, with proof of delivery, 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

THE NEW VILLAGE SCHOOL  
100 EBBTIDE, SUITE 144  
SAUSALITO, CA 94965

If a notice or demand is served prepaid and addressed as provided above, then it shall be deemed to be given or served at the time of delivery or rejection. 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.

**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

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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 1375 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 and 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.

**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

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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.** 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 is included in the base Rent, and Landlord shall not separately charge Tenant for any such costs.

**ARTICLE 17. TENANT IMPROVEMENTS.** Tenant shall make no alterations, additions or improvements to the Premises without the prior written authorization of Landlord, and Landlord may impose as a condition to such consent such requirements as Landlord in its reasonable discretion may deem necessary or desirable, including, but not limited to, requirements as to the manner in which, and the time or times at which, such work shall be done, and the right to approve the contractor selected by Tenant to perform the work. All alterations shall be made by Tenant at Tenant's sole cost and expense, and shall be diligently prosecuted to completion and in conformance will all applicable laws. All such alterations, additions or improvements shall become the property of Landlord and shall be surrendered with the Premises at the end of the term hereof, except that Landlord may, by written notice to Tenant given at least thirty (30) days prior to the end of the term, require Tenant to remove some or all of such alterations, additions or improvements installed by Tenant, and to repair any damage to the Premises from such removal, all at Tenant's sole expense.

The following proposed Tenant improvement shall be deemed approved by the Landlord pursuant to this Article 17: new interior wall paint, replacement flooring, repair of ceiling tiles, installation of new sink, installation of a fire alarm system in compliance with the order of the Fire Marshall, and redesign of certain door(s) to swing out as designated by the Fire Marshall.

**ARTICLE 18. OPTION TO RENEW.** See Section 2.1.

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

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**ARTICLE 20. GUARANTY OF LEASE.** As a condition precedent to Tenant taking possession of the Premises, Tenant shall obtain and provide to Landlord the personal guaranty of Greg Price, as guarantor, which shall guarantee to Landlord the full, timely and faithful performance by Tenant of all of its obligations, duties, promises, covenants and agreements under this Lease, including, without limitation, any payment and performance obligations of Tenant and which such guaranty shall be unconditional and may be enforced directly against the guarantor, in such written form as may be approved by the City Attorney. Upon Tenant's valid exercise of its Option to Renew the parties shall determine the need for a continuation of the Guaranty. In the event that Tenant demonstrates to Landlord's satisfaction that Tenant is financially solvent based upon audited financial statements and has adequate reserve funds to meet Tenant's obligations hereunder Landlord shall release the Guaranty required under this Article 20.

**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 as a whole (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, with the consent of Tenant, greater than the rentable area of the Old Premises, and (ii) be similar in configuration and visibility to the Old Premises. In addition, (i) the size and configuration of the New Premises shall be substantially the same as the size and configuration of the Old Premises; (ii) Landlord shall, at its sole cost and expense, install fixtures ("Landlord's Work") (as distinguished from Tenant's personal property) in the New Premises that are substantially the same as the fixtures in the Old Premises; (iii) Tenant shall not be required to close in the Old Premises prior to the New Premises being ready for occupancy for Tenant's use; (iv) Base Rent shall not be increased if the size of the New Premises is greater than the Old Premises; and (v) indirect costs incurred by Tenant as a result of the relocation, such as costs incurred in changing addresses on stationery, business cards, directories and advertising shall be reimbursed to Tenant provided however, that such amount shall not exceed \$150.00. If any payment required to be made by Landlord pursuant

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to this Article 21 is not made when due, Tenant shall have the right to off-set such amount (in lieu of payment thereof) from Base Rent and Additional Rent together with interest, at the rate set forth in Section 3.5 until paid.

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 therefore.

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

[SIGNATURES ON FOLLOWING PAGE]

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**LANDLORD:**

**CITY OF SAUSALITO**, a municipal corporation

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

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

**ATTEST:**

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

**APPROVED AS TO FORM:**

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

**TENANT:**

**THE NEW VILLAGE SCHOOL**, a California Non-Profit Public Benefit Corporation

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

By: \_\_\_\_\_  
Printed name: \_\_\_\_\_

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