



# STAFF REPORT

## SAUSALITO CITY COUNCIL

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### AGENDA TITLE:

Adoption of a Resolution approving the Lease Agreement by and between the City of Sausalito and A. Maurice Meyers and Elizabeth J. Meyers

### RECOMMENDED MOTION:

Adopt a Resolution of the City Council of the City of Sausalito approving the Lease Agreement by and between the City of Sausalito and A. Maurice Meyers and Elizabeth J. Meyers

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### BACKGROUND

The proposed lease is for approximately 560 square feet of City owned submerged tide lands for the location of a portion of a private dock serving the residential real property at 40 Alexander. The proposed lease includes the following terms:

1. Lease term of 25 years;
2. Annual rental payments of \$3000 subject to annual increase based upon CPI but not less than 3% nor more than 7%;
3. The effectiveness of the lease is contingent on receipt of all required approvals including Planning Commission approval;
4. Only one boat not to exceed 52' will be docked at this location;
5. The dock will be used for private purposes only – no commercial use of the dock will be allowed and the dock will be made available during an emergency for evacuation purposes; and
6. The dock must be constructed out of environmentally "friendly" materials.

### FISCAL IMPACT

The proposed Lease Agreement provides for annual rental income of \$3000 which would increase annually by not less than 3% nor more than 7%.

### STAFF RECOMMENDATIONS

Staff recommends that the City Council:

Adopt a Resolution of the City Council of the City of Sausalito approving the Lease Agreement by and between the City of Sausalito and A. Maurice Meyers and Elizabeth J. Meyers.


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**ATTACHMENTS**

1. Resolution of the City Council of the City of Sausalito approving the Lease Agreement by and between the City of Sausalito and A. Maurice Meyers and Elizabeth J. Meyers.
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PREPARED BY:

  
Mary A. Wagner, City Attorney

REVIEWED BY;

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Charlie Francis, Acting Finance Director

REVIEWED AND SUBMITTED BY;

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

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

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF SAUSALITO, CALIFORNIA  
APPROVING THE LEASE AGREEMENT BY AND BETWEEN  
THE CITY OF SAUSALITO AND A. MAURICE MEYERS AND ELIZABETH J.  
MEYERS**

**WHEREAS**, the State granted the City of Sausalito certain submerged tidelands which are immediately adjacent to 40 Alexander Avenue; and

**WHEREAS**, the owners of 40 Alexander desire to build a private dock to serve their residence and have asked the City to lease a portion of the submerged tidelands to locate a portion of the dock; and

**WHEREAS**, City desires to lease the property to the owners of 40 Alexander for the location of a portion of the private dock subject to the terms and conditions of the Lease Agreement attached hereto as Exhibit "A" and incorporated herein by this reference (the "Lease"); and

**WHEREAS**, the approval of the Lease 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 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 Lease Agreement by and between the City of Sausalito and A. Maurice Meyers and Elizabeth J. Meyers which is attached hereto as Exhibit "A" is hereby approved and the Mayor is authorized to execute the Second Amendment on behalf of the City.
3. Upon execution of 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 Lease, and to administer the City's obligations, responsibilities and duties to be performed under the Lease 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:

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CITY CLERK

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**Exhibit "A"**

**LEASE AGREEMENT**

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## LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease"), dated effective as of June 1, 2009 (the "Effective Date"), is entered into by and between the CITY OF SAUSALITO, a municipal corporation ("Lessor"), and A. MAURICE MYERS AND ELIZABETH J. MYERS, as individuals ("Lessee").

### RECITALS

The following Recitals are a substantive part of this Lease:

- A. Lessor is the grantee of certain real property consisting of submerged tidelands located within the City of Sausalito, County of Marin, State of California, which were granted to Lessor by the State of California pursuant to a statutory grant as set forth in Statutes of 1957, Chapter 791.
- B. Lessee is the owner of certain real property consisting of tidelands and submerged tidelands located within the City of Sausalito, County of Marin, State of California, as depicted on Exhibit "A" attached hereto ("Lessee's Property"). Lessee's Property is bordered by certain portions of the property granted to Lessor described in Recital A (the "Premises," as more particularly defined in Section 1.a. below).
- C. Lessor desires to lease the Premises to Lessee, and Lessee desires to lease the Premises from Lessor, for use as a private boat dock ("Lessee's Dock") on the terms and conditions set forth herein.

### AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and conditions contained in this Lease, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby agree as follows:

1. **Lease.** Lessor leases to Lessee, and Lessee leases from Lessor, subject to the following terms and conditions, that certain real property which is depicted on the Map attached hereto as Exhibit "B" and comprised of approximately Five Hundred Sixty (560) square feet (the "Premises").

2. **Commencement and Term.**

a. **Commencement Date.** The "Commencement Date" shall mean the first day of the month following Lessee's receipt of the Entitlements as provided in Section 5.d.

**b. Lease Term.** This term of this Lease shall be for a period of twenty-five (25) years commencing on the "Commencement Date," and ending at 12:01 a.m. on the twenty-fifth anniversary thereof ("Expiration Date"), unless otherwise terminated in accordance with the provisions of this Lease (the "Term").

**c. Right to Terminate.** In addition to any other Lessee right to terminate this Lease as specifically set forth in this Lease, at Lessee's election, Lessee shall have a one-time right to terminate this Lease prior to the Expiration Date. Lessee shall provide thirty (30) days written notice to Lessor of Lessee's exercise of its rights to terminate this Lease pursuant to this Section 2(c). Promptly following delivery of such notice of termination, Lessee shall perform or cause to be performed the Removal Work pursuant to and in accordance with Section 8 hereof. Upon completion of the Removal Work and payment in full by Lessee of any amounts outstanding to Lessor pursuant to Section 3 hereof, this Lease shall automatically terminate and the parties shall have no rights, remedies, claims or liabilities to each other under this Lease, except those that specifically survive the expiration or earlier termination of this Lease.

### **3. Rent.**

**a. Annual Rental Payment.** Commencing on the Commencement Date, Lessee agrees to pay Lessor, as "Rent" for the Premises, Three Thousand Dollars and 00/100 (\$3000.00), plus such additional sums as may be required in this Lease, annually, in advance on the Commencement Date and on each anniversary of the Commencement Date thereafter during the Term. Payment of Rent shall be by check or money order made payable to the "City of Sausalito Library." In the event that this Lease is terminated on a date other than an anniversary of the Commencement Date, Lessor shall refund to Lessee the prorated portion of the Rent paid by Lessee for that year, on the basis of the number of months remaining until the next successive anniversary of the Commencement Date.

#### **b. Annual Rental Adjustments.**

On the first anniversary of the Commencement Date and for each anniversary thereafter during the Term (each an "Adjustment Date"), the Rent payable by Lessee hereunder shall 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; provided, however, that in no event will any adjustment hereunder result in the Rent being increased by less than three percent (3%) or by more than seven percent (7%) of the Rent in effect immediately before such 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 Lessor will be substituted for the Index. Lessor shall calculate and give notice to Lessee of any increase in the Rent before each respective Adjustment Date; provided, however, that no failure on the part of Lessor to

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so notify Lessee of any increase in Rent shall excuse Lessee from its obligation to pay the increased Rent in accordance with this Section 3(b).

c. **Interest and Late Charges.** If Lessee shall fail to pay when due and payable any Rent or other amounts or charges which Lessee is obligated to pay under the terms of this Lease, such unpaid amounts shall bear interest at the lesser of eighteen percent (18%) per annum or the maximum rate allowed in the State of California with respect to transactions subject to usury law. In addition to such interest, Lessee acknowledges that the late payment of any annual installment of Rent or any other amount or charge due hereunder will cause Lessor 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 Lessor within ten (10) days from the date such payment is due, Lessee shall pay Lessor a late charge equal to ten percent (10%) of such payment. Lessor and Lessee agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to Lessor for the loss suffered by such nonpayment by Lessee. Acceptance of any late charge shall not constitute a waiver of Lessee's default with respect to such nonpayment by Lessee, nor prevent Lessor from exercising any other rights or remedies available to Lessor under this Lease.

4. **Possessory Interest Tax and Other Charges.** Lessee 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. Lessee shall be responsible for the payment of Possessory Interest Taxes assessed to the Premises during the Term directly to the County of Marin.

5. **Use and Condition of Premises.**

a. **Use of the Premises.** Lessee shall use and permit the use of the Premises only for vessel docking purposes in accordance with all applicable laws, rules and regulations and shall not use or permit the use of the Premises for any other purpose without obtaining the prior written consent of Lessor. Lessee shall not use or permit the Premises to be used in any manner that may result in waste or the creation of a nuisance. Lessee shall fully comply with all laws, ordinances, zoning requirements, regulations and/or requirements of any governmental entity having authority in the jurisdiction where the Premises is located. Lessee acknowledges that no warranties or representations have been made regarding the fitness or suitability of the Premises for the conduct of Lessee's business or proposed use.

b. **Compliance with Grant.** Lessee acknowledges and agrees as follows:

i. Lessee is aware of the provisions of California Statutes of 1957, Chapter 791 (the "Statutory Grant"), and of the restrictions contained therein on the use of the Premises; and



ii. Lessee shall use the Premises in strict accordance with the provisions of the Statutory Grant; and

iii. The Statutory Grant of the Premises is not an irrevocable grant to the City and that the State of California retains full authority to revoke said Statutory Grant and to otherwise regulate and police the use of the Premises; and

iv. Lessee is aware of the provisions of California Public Resources Code Sections 6701-6706 and Lessee agrees that it shall undertake at its sole cost and expense any proceedings necessary to protect its interest under this Lease in accordance with such statutory provisions.

c. **Lessee's Rights to Equitable Abatement of Rent or Termination.** In the event the State of California revokes, amends or modifies the Statutory Grant or otherwise exercises its police powers or any other rights or powers with respect to the Premises, or there is any challenge to the validity of this Lease or any provision hereof or any challenge to Lessor's title to the Premises or right to lease the Premises to Lessee, or there is any use of the Premises legally made by Lessor or the public which may not be prohibited as a matter of law despite the rights conferred upon Lessee pursuant to this Lease, and any one or more of the foregoing events or circumstances materially affects the rights of Lessee and/or Lessee's use of the Premises in connection with the operation of Lessee's Dock, as such rights and use are intended and contemplated to be conferred upon Lessee pursuant to this Lease, then the parties shall meet and confer to discuss appropriate actions to be taken in response to the occurrence of such events or circumstances, which actions may include, but are not limited to, an equitable abatement of the Rent payable by Lessee under this Lease. In the event that the parties are unable to reach an agreement on the appropriate actions to be taken, the matter shall be submitted to mediation with a mutually agreed upon mediator with the costs of such mediation to be shared equally by the parties, provided, however, that each party shall be responsible for the payment of its own legal fees. If the parties are still unable to reach agreement on the appropriate actions to be taken, Lessee may, at its option, terminate this Lease on sixty (60) days written notice to Lessor.

d. **Entitlements.** Lessee shall obtain and thereafter comply with the terms and conditions of any land use entitlements (and any amendments and/or modifications thereto) as are necessary to construct and use Lessee's Dock, issued by the City, the State of California, and any other governmental agency with jurisdiction over the Premises, which shall include without limitation a Conditional Use Permit ("CUP")(collectively, the "Entitlements"). Lessee acknowledges and agrees that the Planning Commission shall make a determination on Lessee's request for certain of the Entitlements at a noticed public hearing and that the Planning Commission may or may not grant such a request and/or that the Planning Commission may require conditions be added in connection with Lessee's request. In the event that Lessee has not obtained the Entitlements on or before May 31, 2010 that is satisfactory to Lessee, Lessee may terminate this Lease by giving Lessor written notice of such termination. Notwithstanding any other provision contained in this Lease, it is agreed that the above described Entitlement application process shall not in any event serve as

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grounds for any claim of breach or other violation of the terms of this Lease. Lessee acknowledges and agrees that Lessor in its regulatory capacity may seek compliance with the terms and conditions of the CUP or any other applicable entitlement through all available legal mechanisms, including without limitations, action to revoke the CUP and/or otherwise require compliance with the City's Municipal Code and nothing in this Lease shall be construed as a limitation on such rights.

**e. Hazardous Materials.**

Lessor and Lessee agree as follows with respect to the existence or use of Hazardous Materials on the Premises.

i. 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.

ii. 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 Materials 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.

iii. Except for normal and customary uses associated with boat harbor/marina uses conducted in compliance with all applicable laws, Lessee and Lessee's employees, agents, contractors, licensees, invitees or sublessees (collectively, "Lessee's Agents") 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 Materials. Lessee shall comply with and shall cause Lessee's Agents to comply with, and shall keep and maintain the Premises and cause Lessee's Agents to keep and maintain the Premises in compliance with all Environmental Laws; provided, however, that Lessee shall not be responsible for any remediation, repairs or maintenance of the Premises relative to Environmental Laws if and to the

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extent the need for such remediation, repairs or maintenance arises out of the act or omission of any person or entity other than Lessee or Lessee's Agents.

iv. Lessee shall give written notice to Lessor promptly after Lessee 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 Materials 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 Lessee or the Premises relating to any loss or injury resulting from any Hazardous Materials. Lessee shall give written notice to Lessor promptly after Lessee becomes aware of any spill, release or discharge of Hazardous Materials with respect to the Premises by Lessee or Lessee's Agents.

v. Lessee shall protect, defend, indemnify and hold harmless Lessor, 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 Materials on, under or about the Premises by Lessee or Lessee's Agents or the transportation of any Hazardous Materials to or from the Premises by Lessee or Lessee'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"). Lessee's obligations under this Section 5.e. shall survive the expiration or earlier termination of this Lease.

vi. Upon any spill or release of Hazardous Materials by Lessee or Lessee's Agents, Lessee shall promptly notify Lessor of the spill or release of Hazardous Materials and shall, at its sole expense, and promptly after demand by Lessor, commence to perform and thereafter diligently prosecute to completion such Remedial Work as is required under Environmental Laws to remediate the spill or release of Hazardous Materials by Lessee or Lessee's Agents.

f. **Public Use of Premises.** Lessor reserves the right to use and make public use of all portions of the Premises not physically required for the improvements set forth in the plans approved in connection with the entitlements, including the CUP and any modifications and/or amendments thereto; provided, however, that such use shall not interfere with Lessee's or Lessee's Agents' use or operation of Lessee's Dock or the Premises. Within the limits set forth herein, such use by Lessor and the public shall include all legally permissible uses of the Premises, including, without limitation, use of the waters on the Premises to navigate to the open waters of Richardsons and San Francisco Bays.

**f. Private and Public Use of Lessee's Dock.** Lessee's use of Lessee's Dock shall be strictly limited to Lessee's private, non-commercial use for docking a single vessel no greater than 52-feet in length. Notwithstanding the foregoing, Lessee grants Lessor the right to use and make public use of Lessee's Dock by emergency personnel and law enforcement during an emergency or evacuation event.

**6. Improvements.**

**a.** Except for minor additions, alterations and improvements, the cost of which do not exceed Five Thousand Dollars (\$5,000), Lessee shall not make any additions, alterations or improvements to the Premises without obtaining the prior written consent of Lessor, which consent shall not be unreasonably withheld or delayed. Lessor's consent may be conditioned upon Lessee's agreement to remove any such additions, alterations or improvements upon the expiration of the Term hereof. 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.** In constructing Lessee's Dock, Lessee shall use, to the extent reasonably available, materials that are non-hygroscopic, non-corrosive and non-polluting and that will not rust, rot, corrode or leach chemicals into the water.

**c.** Prior to the commencement of any additions, alterations or improvements the cost of which exceeds Five Thousand Dollars (\$5,000) including without limitation construction of Lessee's Dock, Lessee shall provide to Lessor a true copy of the written executed agreement between Lessee and the contractor hired to make such improvements for Lessor's approval. During the course of said construction, Lessee shall provide Lessor with all written executed change orders for Lessor's approval. If Lessor 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.

**d.** Lessee shall pay the costs of any work done on the Premises and shall keep the Premises free and clear of liens of any kind. Lessee shall indemnify, defend against and keep Lessor free and harmless from all liability, loss, damage, costs, attorneys' fees and any other expenses incurred on account of claims of lien on the Premises by any person performing work or furnishing materials or supplies for Lessee or any person claiming under Lessee.

**e.** Lessee shall keep Lessee's leasehold interest, and any additions or improvements located within the Premises, 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, Lessee shall give Lessor written notice of the intended commencement date in sufficient time before said date to enable Lessor to post notices of non-responsibility or any other notices which Lessor deems necessary for the proper protection of Lessor's interest in the Premises and Lessor shall have the right to enter the Premises and post such notices at any reasonable time.

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f. In the event of any material damage or destruction to the Premises, Lessee's Dock or any improvements located thereon, due to any casualty not covered by insurance, or if all or a material portion of the Premises, Lessee's Dock or the improvements located thereon, are taken under the power of eminent domain, Lessee shall have the right to terminate this Lease upon sixty (60) days written notice to Lessor.

7. **Maintenance.** Lessee shall, at all times, at Lessee's sole cost and expense, maintain the Premises and any and all improvements located thereon, in good condition and repair, and in accordance with all applicable laws, rules, ordinances, orders and regulations of any governmental entity having jurisdiction, any insurance underwriting board or insurance inspection bureau having jurisdiction, and all insurance companies insuring all or any part of the Premises, the improvements, or both; provided, however, that Lessee shall not be responsible to repair the Premises if and to the extent the damage arises out of the act or omission of Lessor, its elected and appointed officials, officers, employees, agents or volunteers. Lessee shall also be responsible to do any dredging for Lessee's Dock at its sole cost and expense and in no event shall the City be responsible for any dredging activities related to Lessee's Dock, the Premises or this Lease.

8. **Ownership and Removal of Improvements.** All improvements and fixtures constructed or otherwise placed on the Premises by Lessee prior to or during the Term of this Lease shall be owned by and remain the property of Lessee. Unless Lessor and Lessee otherwise agree in writing, within ninety (90) days following the expiration or earlier termination of this Lease, Lessee shall, at Lessee's sole cost and expense, remove from the Premises all improvements and fixtures constructed or otherwise placed on the Premises by Lessee and any personal property owned by Lessee or Lessee's Agents ("Removal Work"). In the event that Lessee does not perform the Removal Work within said ninety (90) day period, Lessor will then have the right (but not the obligation) to enter upon the Premises and perform the Removal Work. If Lessor performs the Removal Work, Lessee agrees that it will pay to Lessor the commercially reasonable cost of the Removal Work within thirty (30) days after Lessee's receipt of an invoice for the Removal Work, together with documentation substantiating the cost in reasonable detail.

9. **No Warranty as to Title.** Lessee acknowledges and agrees that Lessor is not making any expressed or implied warranties regarding title to the Premises. Lessee makes no claim and agrees to make no future claim to any right, title or interest in or to the Premises, other than the rights enjoyed by Lessee under the terms of this Lease.

10. **Insurance.** Lessee shall procure and maintain for the duration of the Term insurance against claims for injuries to persons or damage to property arising from or in connection with Lessee's operation and use of the Premises in accordance with the terms and conditions of this Section 10. The cost of such insurance shall be borne by Lessee.

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

i. General Liability coverage.

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ii. Workers' Compensation insurance as and if required by the State of California and Employer's Liability Insurance.

iii. Property insurance against all risks of loss to any Lessee improvements or betterments.

**b. Minimum Limits of Insurance.** Lessee shall maintain limits no less than:

i. 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.

ii. Employer's Liability: **\$1,000,000** per accident for bodily injury or disease.

iii. Property Insurance: Full replacement cost with no coinsurance penalty provision.

Notwithstanding Sections 10a and 10b above, provided that Lessee maintains in effect throughout the Term a homeowner's insurance policy containing, at minimum, General Liability coverage and Property Insurance coverage, the provisions of Sections 10a and 10b shall be deemed satisfied in all respects.

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

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

i. Lessor, its officers, elected and appointed officials, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of Lessee's maintenance or use of the Premises.

ii. Lessee's insurance coverage shall be primary insurance as respects to Lessor, its officers, elected and appointed officials, employees, agents and volunteers. Any insurance or self-insurance maintained by Lessor, its officers, elected and appointed officials, employees, agents or volunteers shall be in excess of Lessee's insurance and shall not contribute with it.

iii. 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 Lessor.

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

f. **Verification of Coverage.** Lessee shall furnish Lessor with original certificates and amendatory endorsements effecting coverage required by this Section 10. All certificates and endorsements are to be received and approved by the Lessor within ten (10) days after execution of this Lease. Lessor reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

g. **Subrogation Waiver.** Lessor and Lessee hereby waive any rights of recovery each may have against the other for any loss or damage to Lessor or Lessee, 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 Lessor's and Lessee's respective insurers and provided that no policy of insurance is invalidated as a result of such waivers.

11. **Indemnification.** Lessee shall indemnify and hold Lessor, its elected and appointed officials, officers, employees, agents and volunteers harmless against and from liability and claims, including claims for loss or damage to property of Lessee or any other person, or for any injury to or death of any person, arising out of: (a) Lessee's or Lessee's Agents (as defined in Section 5d above) use and occupancy of the Premises, or any work, activity or other things allowed or suffered by Lessee to be done in, on or about the Premises; (b) any breach or default by Lessee of any of Lessee's obligations under this Lease; (c) any negligent or otherwise tortuous act or omission of Lessee or Lessee's Agents with respect to the maintenance or use of the Premises; and/or (d) any challenge to the validity of this Lease and/or Lessor's right to lease the Premises to Lessee; provided, however, if Lessee terminates this Lease pursuant to Section 5.c. above, Lessee shall have no further obligations to Lessor under this Section 11.a. Lessee shall, at Lessee's sole cost and expense, defend Lessor, its elected and appointed officials, officers, employees, agents and volunteers in any action or proceeding arising from any such claim and shall indemnify Lessor, 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.

## 12. **Assignment.**

a. **Lessor's Consent Required; Exceptions.** Except for an assignment of this Lease to a purchaser of the entire of Lessee's fee simple title interest in Lessee's Property (to which Lessor hereby consents), Lessee shall not assign or otherwise transfer Lessee's interest in this Lease and/or the estate created by this Lease nor sublet all or any part of parts of the

Premises without first obtaining Lessor's written consent, which consent shall not be unreasonably withheld or delayed. Lessor shall respond in writing to either approve or deny any complete requests for an "Assignment for Security" as defined in Section 12.b below within thirty (30) days of Lessor's receipt of such request or the request shall be deemed approved. Lessor shall have the right to make reasonable requests for additional documentation and no request for an assignment shall be deemed complete until such additional documentation is received by Lessor. Any purported assignment or subletting without Lessor's consent, where such consent is required hereunder, shall be void and of no force or effect and shall not confer any benefit or estate on any person, and Lessor shall not be required to terminate this Lease to prevent any such assignment or subletting. Any assignment to which Lessor has consented shall be by an instrument in writing satisfactory to Lessor, and any assignee, sublessee, transferee, licensee, concessionaire or mortgagee shall agree for the benefit of Lessor to be bound by, assume and perform all the terms, covenants and conditions of this Lease. Consent by Lessor to any assignment shall not constitute consent to any subsequent assignment. Notwithstanding Lessor's consent, Lessee shall remain fully liable hereunder as primary obligor during the unexpired term of this Lease.

**b. Leasehold Mortgage.** As used herein, "Assignment for Security" means a transaction in which Lessee assigns all of its interest hereunder for the purpose of security to an institutional lender, and which will have a priority of encumbrance or assignment in position first in priority as against any other encumbrances by Lessee. An Assignment for Security shall convey no rights in the Premises greater than the rights of Lessee under this Lease and in all events shall be subordinate and subject to all of the provisions of this Lease and all of the rights of Lessor in the Premises. "Leasehold Mortgage" means the encumbrance against Lessee's interest in the Premises created by an Assignment for Security. "Leasehold Mortgagee" means the secured party under a Leasehold Mortgage, which shall be a bank or savings and loan association authorized to do business in California. "Mortgaged Premises" means Lessee's interest in this Lease encumbered by a Leasehold Mortgage. With respect to an Assignment of Security approved, or deemed approved, by Lessor as provided herein, the following provisions shall apply:

**i.** This Lease shall not be subject to termination solely by reason of or upon the happening of judicial or nonjudicial foreclosure of any Leasehold Mortgage or acquisition by a Leasehold Mortgagee of the entire Mortgaged Premises or Lessee's entire interest therein by resorting to any remedy for default under or pursuant to a Leasehold Mortgage or by conveyance in lieu of foreclosure thereof. Upon completion of proceedings to assume possession of the Mortgaged Premises (or actual assumption of possession, whichever is earlier) for any purpose, a Leasehold Mortgagee shall have all of the rights of Lessee and the duty to perform all of Lessee's personal obligations hereunder for and during the period of such possession. No Leasehold Mortgagee shall be liable to perform, or be liable in damages for failure to perform, any of the obligations of Lessee, unless and until such holder shall complete proceedings or obtain an order authorizing it to take possession of the Mortgaged Premises (or takes actual possession thereof, whichever is earlier) in connection with or as a result of foreclosure or other default proceedings or surrender or assignment in lieu thereof. A Leasehold Mortgagee's liability shall be dependent upon the right to possession and if any

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foreclosure or other possessory proceedings are terminated prior to assumption of possession, liability hereunder shall remain with the owner of the equity in the Mortgaged Premises.

ii. No act or failure to act on the part of Lessee which would entitle Lessor under the terms of this Lease, or by law, to be relieved of Lessor's obligations hereunder or to terminate this Lease, shall result in a release or termination of such obligations or a termination of this Lease unless: (a) Lessor shall have first given written notice of Lessee's act or failure to act to any Leasehold Mortgagee of record who has previously requested any such notice in writing, specifying the act or failure to act on the part of Lessee which could or would give basis to Lessor's rights; and (b) such Leasehold Mortgagee, after receipt of such notice, has failed or refused to correct or cure the condition complained of within the time permitted for Lessee hereunder plus five (5) days for non-payment of monetary obligations and thirty (30) days for all other defaults; but nothing contained in this subparagraph shall be deemed to impose any obligation on any such Leasehold Mortgagee to correct or cure any such condition.

iii. Lessor shall, on written request of Lessee, review and consider from time to time agreement(s) which may reasonably be deemed necessary to implement the provisions of this Section 12.b.

### 13. Default.

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

i. Abandoning or vacating the Premises (provided that Lessee's mere vacating of the Premises will not be deemed an abandonment as long as Lessee continues to pay Rent when due and otherwise complies with the terms and conditions of this Lease); or

ii. Failing to pay any Rent or any other charges when due and payable by Lessee, if such failure continues for fifteen (15) calendar days after Lessee receives written demand therefore from Lessor; or

iii. Failure to promptly and fully perform any other covenant, condition or agreement contained in this Lease should such failure continue for thirty (30) days after Lessee receives written notice thereof from Lessor to Lessee; provided, however, if the failure to perform is such that it cannot reasonably be cured within thirty (30) days, Lessee shall not be in default hereunder if Lessee commences to cure within said thirty (30) day period and diligently prosecutes such curing to completion; or

iv. Permitting Lessee'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 Lessee 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 Lessee 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 Lessee's assets.

**b. Remedies.** In the event of Lessee's material default hereunder, in addition to any other rights or remedies Lessor may have under any law, Lessor shall have the right at Lessor's option to terminate this Lease and Lessee's right to possession of the Premises and reenter the Premises and take possession thereof. Within ten (10) days of receipt of Lessor's notice of termination in accordance with this Section 13(b), Lessee shall peaceably surrender possession of the Premises and, in accordance with Section 8 hereof, shall timely remove from the Premises all improvements and fixtures constructed or otherwise placed on the Premises by Lessee and any personal property owned by Lessee or Lessee's Agents. In the event of any such termination, Lessee's obligation to pay Rent and any other sum(s) that would become due hereunder after the date of termination shall cease.

The waiver by Lessor 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 any other amount due hereunder by Lessor 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 Lessor's knowledge of any breach at the time of such acceptance of rental. Lessor shall not be deemed to have waived any term, covenant or condition, unless Lessor gives Lessee written notice of such waiver.

**c. Lessor's Default.** If Lessor fails to perform any covenant, condition or agreement contained in this Lease within thirty (30) days after receipt of written notice from Lessee specifying such default, or if such default cannot reasonably be cured within thirty (30) days, if Lessor fails to commence to cure within said thirty (30) day period, then Lessor shall be liable to Lessee for any damages sustained by Lessee as a result of Lessor's breach. Lessee 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.

**14. Access to Premises.** Lessor and/or Lessor's agents shall have the right to enter the Premises at any time whether or not Lessee is present for any purpose not in conflict with the provisions of this Lease. Lessor shall give Lessee reasonable notice prior to entering the Premises. In addition to the foregoing, during any emergency, Lessor may enter at any time without any notice to Lessee being required.

**15. Holding Over.** If Lessee, with Lessor'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, Lessee shall pay monthly rent equal to one hundred twenty five percent (125%) of the amount of the monthly equivalent of the Rent which was payable by Lessee during the last month of the Term prior to expiration

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or termination, shall pay such other sums as required by this Lease, and such month-to-month tenancy shall be subject to all provisions of this Lease, except those pertaining to the Term.

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

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

**18. 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.

**19. 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 final prevailing party shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred on account of such action or proceeding.

**20. 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.

**21. 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.

**22. 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.

**23. Intentionally Deleted.**

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

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

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

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

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

**29. Force Majeure.** Any provision, delay or stoppage which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefore, 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 the 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.

**30. 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 Lessor:

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

To Lessee:

A. MAURICE MYERS AND ELIZABETH J. MYERS  
40 ALEXANDER AVENUE  
SAUSALITO, CA 94965

With a copy to:

JOHN F. GARDNER, ESQ.  
CARROLL, BURDICK & MCDONOUGH LLP  
1676 N. CALIFORNIA BLVD., SUITE 620  
WALNUT CREEK, CA 94596

Lessor and Lessee may change their respective addresses for notices by giving notice of such new address in accordance with this Section 30.

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

**32. Estoppel Certificates.** Each party shall within ten (10) days after written notice from the other party, execute, acknowledge and deliver to the requesting party a statement in

writing certifying: (a) the Commencement Date and the Expiration Date; (b) the fact that this Lease is unmodified and in full force and effect (or, if there have been modifications hereto, that this Lease is in full force and effect, as modified, and stating the date and nature of such modifications); (c) the date to which the Rent and other sums payable under this Lease have been paid; (d) the fact that there are no current defaults under this Lease by either Lessor or Lessee, except as may be specified in the statement; and (e) such other matters requested by the requesting party or its lenders and as accurately reflect the status of the relationship between Lessor and Lessee. Lessor and Lessee agree that any such statement pursuant to this Section 32 may be relied upon by the requesting party and by any mortgagee, prospective mortgagee, assignee, beneficiary, purchaser, or prospective purchaser of the Premises, Lessee's Dock or any interest in either or both.

**33. Tax Advice.** Lessee represents and warrants that Lessor has not provided tax or legal advice to Lessee in connection with this Lease. Lessee further represents and warrants that they have been advised of their right to legal counsel and tax advice and have either obtained the advice of independent legal counsel or a tax advisor with respect to the terms of this Lease and all attachments hereto and other agreements required hereby, or have knowingly and voluntarily decided not to consult with legal counsel or a tax advisor of his/her choosing.

IN WITNESS WHEREOF, Lessor and Lessee have respectively executed this Lease as of the day and year set forth below.

**LESSOR:**

CITY OF SAUSALITO, a municipal corporation

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

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

**ATTEST:**

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

**APPROVED AS TO FORM:**

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

**LESSEE:**

\_\_\_\_\_

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

By: \_\_\_\_\_

By: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Lessee's Legal Counsel

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**EXHIBIT A**

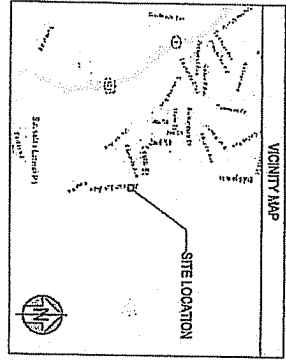
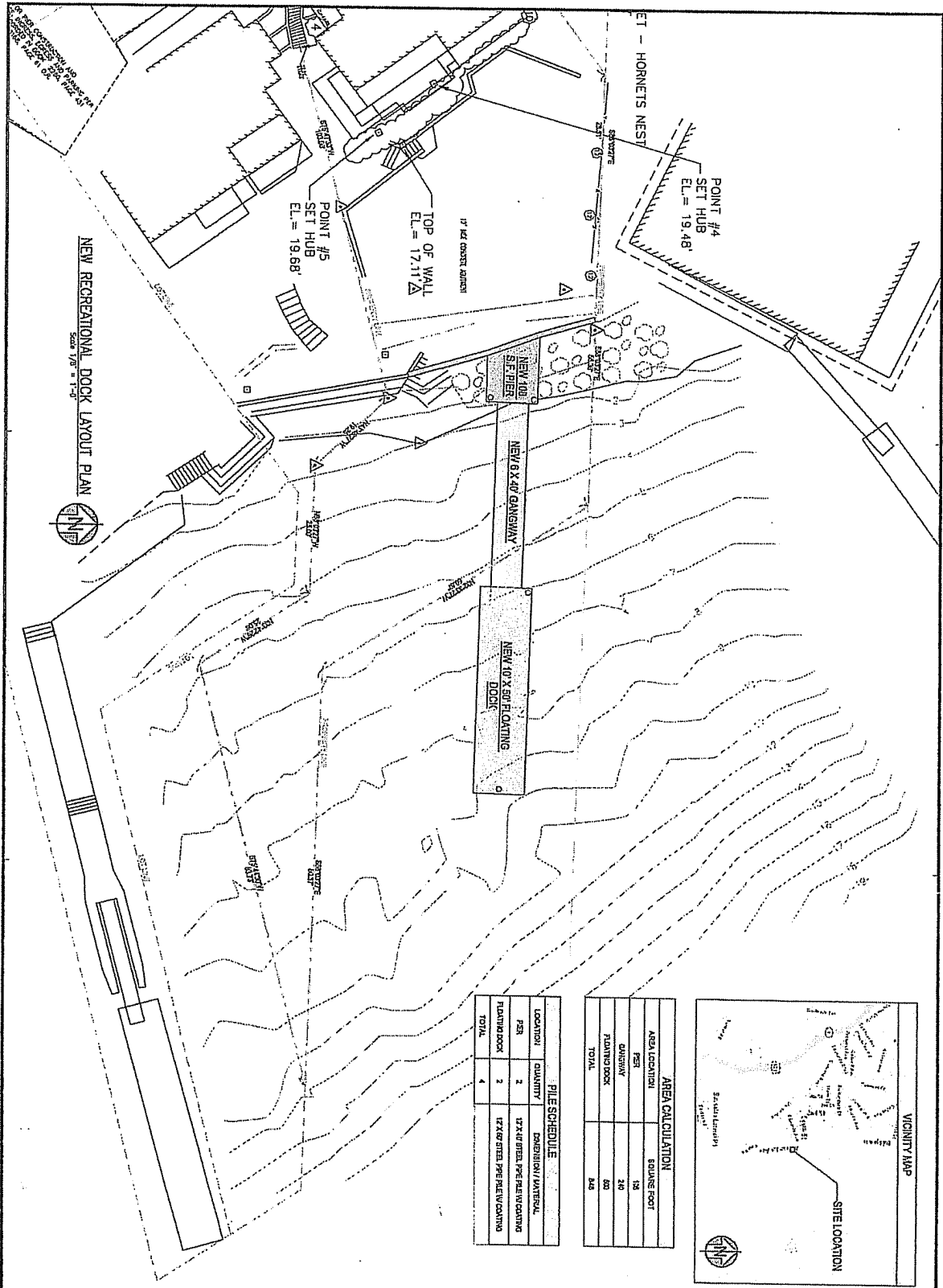
**LEGAL DESCRIPTION OF LESSEE'S PROPERTY**

**EXHIBIT B**  
**MAP OF PREMISES**

CBM-WC\WC067515.2

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AREA CALCULATION	
AREA LOCATION	SQUARE FOOT
PER	150
GANGWAY	240
FLOATING DOCK	800
TOTAL	1190

PILE SCHEDULE		
LOCATION	QUANTITY	CONDITION / MATERIAL
PER	2	12" X 12" BEEHIVE PILES WITH COATING
FLOATING DOCK	2	12" X 12" BEEHIVE PILES WITH COATING
TOTAL	4	

**W.E.B.**  
W.E. Glausen  
Structural Engineers

1000 14th Street  
Sausalito, CA 94965  
Tel: 415.338.1111  
Fax: 415.338.1112

**MAURICE MYERS**

40 ALEXANDER STREET  
SAUSALITO, CALIFORNIA

**C1.2**

28171

DATE: 08/22/2013

SCALE: 1/8" = 1'-0"

PROJECT: NEW RECREATIONAL DOCK LAYOUT PLAN

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