



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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Aug-13-2009 1:28 pm

Case Number: CGC-09-487934

Filing Date: Aug-12-2009 1:26

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CROSS COMPLAINT

MARK KLEE VS. SUKIE LEE et al

001C02585321

Instructions:

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FILED
San Francisco County Superior Court

AUG 12 2009

GORDON PARK-LI, Clerk
3Y: *Karen A. Lee* Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 CITY AND COUNTY OF SAN FRANCISCO
10 (Unlimited Jurisdiction)

11 MARK KLEE,)
12 Plaintiff,)
13 vs.)
14 SUKIE LEE dba GANGWAY BAR; 909)
15 GEARY STREET, LLC; and DOES 1 to 10,)
16 Defendants.)
17 _____)
18 909 GEARY STREET, LLC,)
19 Cross-Complainant,)
20 vs.)
21 SUKIE LEE d.b.a. GANGWAY BAR; THE)
22 TENDERLOIN HOUSING CLINIC, INC.,)
23 AND ROES 1-10, inclusive,)
24 Cross-defendants.)

CASE NO.: CGC09-487934

CROSS-COMPLAINT FOR EXPRESS,
IMPLIED and EQUITABLE INDEMNITY,
BREACH OF CONTRACT, CONTRIBU-
TION AND DECLARATORY RELIEF

Complaint Filed: April 30, 2009

23 Defendant and Cross-Complainant 909 GEARY STREET, LLC (hereinafter "cross-
24 complainant"), cross-complains against SUKIE LEE d.b.a. GANGWAY BAR; THE
25 TENDERLOIN HOUSING CLINIC, INC. and ROES 1-10 (hereinafter "cross-defendants"), and
26 each of them, alleging as follows:

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FIRST CAUSE OF ACTION

Implied Indemnity

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1. Cross-Complainant does not know the true names and capacities, whether individual, corporate, associate or otherwise, of the Cross-Defendants sued herein under the fictitious names of ROES 1 through 10, inclusive, but in this connection, Cross-Complainant alleges that the Cross-Defendants sued herein as ROES 1 through 10, inclusive, are liable to the Cross-Complainant for indemnity based upon their conduct in connection with the Plaintiff's claimed damages upon the principles of implied contractual and equitable indemnity; and cross-complaining further, alleges that all of the Cross-Defendants sued herein by such fictitious names, are jointly, severally and concurrently liable and responsible with their above-named Co-Cross-Defendants upon the causes of action hereinafter set forth and Cross-Complainant prays leave of this Court to insert by amendment the true names of the fictitiously named Cross-Defendants when they become known to Cross-Complainant.
2. Cross-Complainant is informed and believes and upon such information and belief alleges that Cross-Defendants were the agent(s), servant(s) and/or employee(s) of each of the other Cross-Defendants and in so doing the acts hereinafter alleged were acting within the course and scope of that agency, employment or representation, with the knowledge, consent and approval of each of the other Cross-Defendants.
3. Without admitting any of the allegations therein, Cross-Complainant incorporates by reference the complaint and any subsequent amendments thereto filed by plaintiff Mark Klee on or about April 30, 2009. Cross-Complainant's conduct (if any) in the matters referred to in plaintiff's complaint is passive; if cross-complainant should be held liable to plaintiff by reason of the complaint filed against it in this action, such liability would necessarily be founded upon passive conduct, rather than active conduct and/or negligence (any negligence whatsoever being at all times denied), and any such liability imposed by the trier of fact upon cross-complainant would be the result of the activities and/or negligence of Cross-Defendants, and each of them.

- 1 4. In equity and good conscience, if Cross-Complainant is held liable to plaintiff on the
2 complaint, Cross-Defendants, and each of them, should be equitably obligated to cross-
3 complainant to indemnify it and hold it harmless from any such liability or judgment
4 imposed by the trier of fact upon it, together with reasonable attorneys' fees and costs
5 incurred by cross-complainant in the defense of the principal action.
- 6 5. Cross-complainant hereby tenders the defense of plaintiff's complaint to cross-defendants,
7 and each of them, to represent the cross-complainant's interest therein, and to hold it
8 harmless and to reimburse it for any judgment or settlement, and all expenses, costs of
9 suit, legal fees, and other damages incurred by Cross-Complainant by reason of this action.
10 This tender of defense is made pursuant to Code of Civil Procedure section 1021.6.
- 11 6. Under the circumstances alleged above, including the special relationships between
12 plaintiff and Cross-Defendants, Cross-Defendants, and each of them, are obligated and
13 liable to indemnify and hold harmless cross-complainant from and against any and all
14 liability based upon or in any way arising out of the claims alleged by plaintiff in the
15 complaint, including expenses, costs of suit, legal fees, and other damages incurred by
16 cross-complainant in defending the allegations of plaintiff's complaint on file herein.
- 17 7. By reason of the foregoing, Cross-Complainant desires a judicial determination of the
18 respective liability and responsibility, if any, of Cross-Defendants and Cross-Complainant
19 for the alleged injuries and damages sustained by plaintiff. Such a declaration is necessary
20 and appropriate in order that the respective parties may ascertain their rights and duties,
21 avoid a multiplicity of actions, and resolve all claims between them.

22 **SECOND CAUSE OF ACTION**
23 **Equitable Indemnity**

- 24 8. Cross-Complainant realleges and incorporates by reference paragraphs 1 through 7 of the
25 First Cause of Action.
- 26 9. Should it be determined that Cross-Complainant is not entitled to be indemnified by cross-
27 defendants, and each of them, cross-complainant alleges that Cross-Defendants, and any
28 other parties to this action, would be concurrent tortfeasors and, based on the legal

1 principles as set forth in *American Motorcycle Association v. Superior Court* (1978)
2 20 Cal.3d 578, Cross-Complainant is entitled to partial indemnity, partial contribution, or
3 equitable indemnity as contribution from Cross-Defendants, and each of them, as
4 determined by the proportional degree of fault attributable to the conduct of cross-
5 defendants, and each of them.

6 10. That if Cross-Complainant is held liable to plaintiff, such liability would be based solely
7 upon a derivative form of liability not resulting from any conduct of Cross-Complainant,
8 and only from an obligation imposed upon it by law, and is therefore the proximate result
9 of the conduct as aforesaid by the cross-defendants, and each of them.

10 **THIRD CAUSE OF ACTION**
11 **Declaratory Relief**

12 11. Cross-complainant realleges and incorporates by reference paragraphs 1 through 10 of the
13 First and Second Causes of Action.

14 12. That an actual controversy has arisen and now exists between cross-complainant and
15 cross-defendants concerning their respective rights and duties because cross-complainant
16 contends, and cross-defendants dispute, that cross-defendants are obligated to indemnify
17 wholly or partially cross-complainant for any judgment against it.

18 13. Cross-complainant desires a judicial determination of its rights and duties relative to the
19 incidents and claims set forth in the principal action. A judicial declaration is necessary
20 and appropriate because cross-complainant has no other speedy or adequate remedy at
21 law to ascertain its rights and duties herein.

22 **FOURTH CAUSE OF ACTION**

23 **Express Indemnity**

24 **(Tenderloin Housing Clinic)**

25 14. Cross-complainant incorporates herein by reference paragraphs 1 through 13 of this
26 Cross-complaint as though fully set forth herein.

27 15. On or about July 22, 2000, Cross-complainant and cross-defendant TENDERLOIN
28 HOUSING CLINIC, INC. entered into a Master Lease agreement for the building located

1 at 909 Geary Street, San Francisco, California. A copy of the master lease agreement is
2 attached hereto as Exhibit A and incorporated by reference. The terms of the agreement
3 include the following at paragraph 6.3:

4 6.3 No Nuisance or Waste. Tenant or any property
5 management company with which it contracts shall be
6 responsible for managing the Premises in a first-class condition.
7 Tenant shall not knowingly allow the Premises to be used for
8 any improper, immoral or objectionable purpose, nor shall
9 Tenant knowingly cause, maintain or permit any nuisance in,
10 on, or about the Premises. Tenant shall not knowingly commit
11 or suffer the commission of any waste in, on, or about the Premises.

12 The terms of the agreement also include the following at paragraph 11.1:

13 11.1 Tenant's Indemnity. Tenant agrees to indemnify
14 and defend Landlord against, and hold Landlord free and harmless
15 from, any and all losses, costs, liabilities, damages, claims, liens
16 and expenses, including, without limitation, reasonable attorney's
17 fees and costs, incurred in connection with or arising from: (a)
18 any default (which remains uncured following receipt of all
19 required notices and expiration of all applicable cure periods)
20 by Tenant in the observation or performance of any of the terms,
21 covenants or conditions of this Lease on Tenant's part to be
22 observed or performed, (b) any breach of any representations or
23 warranties made by Tenant, or (c) any negligence or misconduct
24 of Tenant or of Tenant's Subtenants, contractors, agents, servants
25 or employees, in, on or about the Premises, except to the extent
26 caused by the negligence or misconduct of Landlord, its agents,
27 servants or employees. Tenant's obligations under this Section
28 shall survive the termination of the Lease.

19 The terms of the agreement also include the following at paragraph 13.2:

20 13.2 Tenant's Insurance. Throughout the Term and the Option
21 Periods, Tenant shall maintain or cause to be maintained commercial
22 general liability insurance covering Tenant's use and occupancy of
23 the Premises and property insurance covering the Tenant's personal
24 property, and any other additional commercially available insurance
25 coverage reasonably requested in writing by the City and County of
26 San Francisco or by Landlord prior to the commencement of this
27 Lease or within thirty (30) days prior to the commencement of any
28 Option Period. Landlord agrees that the limits of coverage under
tenant's commercial general liability insurance shall be \$2,000,000
per occurrence and \$4,000,000 aggregate during any one policy
period. Tenant is solely responsible for the payment of the premiums
for all such insurance. In the event of an insured loss, Tenant is
solely responsible for paying any deductible or self-insured
retention provided in such insurance policies. Tenant shall cause
Landlord and individual owners to be named as an additional
insured on all insurance policies procured by Tenant under this
Section.

1 The terms of the agreement also include the following at paragraph 18.2:

2 18.2 Attorney's Fees. In the event of any arbitration, action
3 or proceeding brought by either party against the other under this
4 Lease, the prevailing party shall be entitled to recover court costs
5 and the fees of its attorneys in such action or proceeding (whether
6 at the administrative, trial or appellate levels) in such amount as the
7 arbitrator, court or administrative body may adjudge reasonable.

- 8 16. As a term and condition of this contract, Cross-Defendant TENDERLOIN HOUSING
9 CLINIC , INC. agreed to defend and indemnify and hold Cross-complainant harmless as
10 provided by Section 11.1 of the contract above, to provide insurance in keeping with the
11 terms of Section 13.2 above, and to avoid breaches under section 6.3 above including but
12 not limited to not permitting any nuisance.
- 13 17. Cross-Complainant has performed all the conditions and obligations on its part under
14 said contract.
- 15 18. On or about June 19, 2009 Cross-Complainant gave written notice to Cross-
16 Defendant, TENDERLOIN HOUSING CLINIC, INC. of the action commenced by
17 Plaintiff MARK KLEE against Cross-complainant, requesting defense of the action by
18 Cross-Defendant and indicating that Cross-Defendants would be bound under its
19 agreement to defend and indemnify Cross-Complainant for any loss or liability that Cross-
20 Complainant might sustain as a result of the action. Nevertheless, Cross-Defendant has
21 failed, refused, or neglected to undertake the defense of the action or to properly respond
22 to Cross-complainant' request.
- 23 19. Pursuant to the contract agreements Cross-complainant are entitled to defense and
24 indemnification from Cross-Defendants for all otherwise recoverable fees, expenses,
25 costs, consultant fees, expert fees, and attorneys' fees, incurred in connection with this
26 suit, as well as all damages resulting from Cross-Defendants' breach of their contractual
27 responsibilities.

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FIFTH CAUSE OF ACTION

(Breach of Contract)

(Tenderloin Housing Clinic, Inc.)

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20. Cross-complainant incorporates herein by reference Paragraph 1 through 19 of this Cross-Complaint as though fully set forth herein.
21. Cross-complainant has performed all terms and conditions required of it under its contract with the TENDERLOIN HOUSING CLINIC. Pursuant to the contract, Cross-Defendant THE TENDERLOIN HOUSING CLINIC INC. agreed to defend and indemnify cross-complainant and agreed to certain insurance requirements as more specifically set forth above, and in the attached contract.
22. Cross-defendants' failure to defend, indemnify and hold cross-complainant harmless constitutes a material breach of the contract.
23. Cross-complainant is informed and believes that cross-defendants may have failed to procure proper insurance as required by the contract and that any such failure also constitutes a breach of the agreement.
24. Cross-complainant is informed and believes that if the plaintiff's allegations are true (which is denied) cross-defendants may have failed to comply with sections 6.3, 11.1, 13.2 and 18.2 of the contract and that said failure also constitutes a breach of the agreement.
25. As a result of cross-defendants' breaches of the contract, cross-complainant has suffered, and will continue to suffer damages for costs, fees expenses all in an amount to be proven at trial.

SIXTH CAUSE OF ACTION

Express Indemnity

(Sukie Lee d.b.a. Gangway Bar)

26. Cross-complainant incorporates herein by reference paragraphs 1 through 25 of this cross-complaint as though fully set forth herein.

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1 27. On or about January 11, 1999, Cross-complainant and cross-defendant Sukie Lee,
2 and Jung K. Lee entered into a written contract for premises located at 841 Larkin Street,
3 San Francisco, California, a copy of which is attached hereto as Exhibit B and
4 incorporated herein by reference. A copy of an addendum signed by Sukie Lee is attached
5 hereto as Exhibit C. Cross-complainant is informed and believes that at all times relevant,
6 cross-defendants Sukie Lee d.b.a. Gangway Bar were the successor, alter ego, parent,
7 owner or affiliate of Sukie Lee d.b.a. Titanic Bar.

8 28. The terms of the agreement include the following at Article 11:

9 Article 11 - Use of Premises

10 Said premises shall, during the term of this lease and any extensions there,
11 be used for the purpose of operating and conducting thereon and therein a
12 Bar for uses normally incident to such purpose and for no other purpose.
13 Lessee shall not use the premises in a way which unreasonably interferes
14 with Lessors's use of the remainder of the property.

15 The terms of the agreement also include the following at Article 13:

16 Article 13 - Indemnification

17 Tenant agrees that Tenant will protect, indemnify, and hold Landlord
18 harmless against and from any and all liability claims, losses, and
19 expenses of any nature as a result of:

20 (a) Accidents, injuries, damages or other occurrences on or about
21 the Leased Premises or appurtenances, or on the adjoining streets,
22 sidewalks, curbs in any manner arising out of or connected with
23 Tenant, or Tenant's officers, employees, agents, or others acting
24 by sufferance of Tenant occasioned by or resulting from any
25 tortious or negligent act on the part of Tenant, Tenant's agents,
26 employees or persons permitted on the Leases Premises by Tenant;

27 (b) Failure by Tenant to perform any covenant required to
28 be performed by the Tenant hereunder;

(c) Failure to comply with any requirement of any
governmental authority;

(d) Any mechanics lien, construction lien, or security
agreement filed against the property of which the Leased
Premises are a part, any equipment therein, or any materials
used in construction or alteration of any building or improvement
thereon due to actions by Tenant or activities on the Leased
Premises;

(e) The use, storage, or disposal of hazardous substances
on or about the Leased Premises;

1 (f) Damages that may be caused by the Landlord in re-entering
2 and taking of the leased premises as herein provided or for loss or injury
3 of, by, or arising out of theft, burglary, fire, steam, gas, electricity, or
4 defect in the building, or by or out of the breaking, leakage, or overflow
5 of the roof, or of any pipe, sewer or plumbing, or by or out of the
6 destruction or injury of the building, or any part thereof, or
7 improvement to said building, or any part thereof, or by reason of
8 loss of property, or injury or damage to person or property occurring
9 in or about said leased premises or in or about said building no matter
10 how caused, except due to the intentional conduct of Landlord, and
11 except as to the ceiling, which shall be repaired at landlord's expense
12 if damaged by the leading or seepage of water.

13 The terms of the agreement also include the following at Article 17:

14 Article 17 - Compliance with Law

15 Lessee shall at Lessee's own cost and expense comply will all
16 statutes, ordinances, regulations and requirements of all governmental
17 entities, both federal and state and county or municipal, relating to
18 Lessee's use and occupancy of said premises whether such statutes,
19 ordinances, regulations and requirement now be in force or hereinafter
20 enacted. The judgment of any court of competent jurisdiction, or the
21 admission by Lessee in a proceeding brought against Lessee by any
22 government entity that Lessee has violated any such statute, ordinance,
23 regulation or requirements shall be conclusive as between Lessor and
24 Lessee and shall be grounds for termination of this lease by Lessor.

25 The terms of the agreement also include the following at Article 20:

26 Article 20 - Waste or Nuisance

27 Lessee shall not commit or permit the commission of any waste on
28 said premises; Lessee shall not maintain, commit, or permit the
maintenance or commission of any nuisance as defined in Section
3479 of the California Civil Code on said premises and Lessee shall
not use or permit the use of said premises for any unlawful purpose.

The terms of the agreement also include the following at Article 38:

Article 38 - Liability Insurance

Lessee shall, at his own cost and expense, secure within thirty (30)
days and maintain during the entire term of this lease and any
renewals or extensions of such term a broad form comprehensive
coverage policy of public liability insurance issued by an insurance
company acceptable to Lessor, with deductibility of not greater
than One Thousand Dollars (\$1000.00), and insuring Lessor
against loss or liability caused by or connected with Lessee's
occupation and use of said premises under this lease in amounts
not less than:

1. One Million Dollars (\$1,000,000.00) for injury to or death of one person, and subject to such limitation for injury or

1 death of one person, of not less than One Million Dollars
2 (\$1,000,000.00) for injury or death of two or more persons
as a result of any one accident of incident; and

3 2. One Hundred Thousand Dollars (\$100,000) for damage
4 to or destruction of any property of others.

5 The terms of the agreement also include the following at Article 41:

6 Article 41 - Attorney Fees

7 Should any litigation be commenced between the parties to this lease
8 concerning said premises, this lease, or the rights and duties of either
9 in relation thereto, the party, Lessor or Lessee, prevalent in such
10 litigation shall be entitled in addition to such other relief s may
be granted in the litigation, to a reasonable sum as and for his
attorney's fees in such litigation which shall be determined by
the court in such litigation or in a separate action brought for
that purpose.

11 There was an addendum to the contract which is attached hereto as Exhibit C and
12 incorporated herein by reference.

13 29. As a term and condition of this contract, Cross-Defendant Sukie Lee agreed to defend and
14 indemnify and hold Cross-complainant harmless as provided above, agreed to provide
15 insurance as provided above, agreed to avoid interference with the remainder of Cross-
16 complainant's property, agreed to comply with laws as provided above, agreed to avoid
17 causing nuisances as provided above, and to pay attorneys fees and costs as provided
18 above and in the attached exhibits.

19 30. Cross-Complainant has performed all the conditions and obligations on its part under
20 said contract.

21 31. On or about June 19, 2009 Cross-Complainant gave written notice to Cross-
22 Defendant Sukie Lee dba Gangway Bar and insurer Crusader Insurance Agency of the
23 action commenced by Plaintiff MARK KLEE against Cross-complainant, requesting
24 defense of the action by Cross-Defendants and indicating that Cross-Defendants would be
25 bound under its agreement to defend and indemnify Cross-Complainant for any loss or
26 liability that Cross-Complainant might sustain as a result of the action. Nevertheless,
27 Cross-Defendant has failed, refused, or neglected to undertake the defense of the action or
28 to properly respond to Cross-complainant' request.

1 32. Pursuant to the contract agreements Cross-complainant are entitled to defense and
2 indemnification from Cross-Defendants for all otherwise recoverable fees, expenses, costs,
3 consultant fees, expert fees, and attorneys' fees, incurred in connection with this suit, as
4 well as all damages resulting from Cross-Defendants' breach of their contractual
5 responsibilities.

6 **SEVENTH CAUSE OF ACTION**

7 **(Breach of Contract)**

8 **(Sukie Lee dba Gangway Bar)**

9 33. Cross-complainant incorporates herein by reference Paragraph 1 through 32 of this
10 Cross-Complaint as though fully set forth herein.

11 34. Cross-complainant has performed all terms and conditions required of it under the
12 contract with SUKIE LEE dba THE GANGWAY BAR. Pursuant to the contract, Cross-
13 Defendant SUKIE LEE dba THE GANGWAY BAR agreed to defend and indemnify
14 Cross-Complainant and to certain insurance requirements as more specifically set forth
15 above and in the attached contract.

16 35. Cross-defendants' failure to defend, indemnify and hold Cross-Complainant
17 harmless constitutes a material breach of the contract.

18 36. Cross-complainant is informed and believes that cross-defendants may have failed to
19 procure proper insurance as required by the contract and that said failure also constitutes a
20 breach of the agreement.

21 37. Cross-complainant is informed and believes that if the plaintiff's allegations are true
22 (which is denied) cross-defendants may have failed to comply with Articles 11, 13, 17, 20,
23 38 and 41 of the contract and that said failure also constitutes a breach of the agreement.

24 38. As a result of cross-defendants' breaches of the contract, cross-complainant has suffered,
25 and will continue to suffer damages for costs, fees expenses all in an amount to be proven
26 at trial.

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SIXTH CAUSE OF ACTION

8. For a judicial determination and order holding that SUKIE LEE dba Gangway Bar owes a duty of express indemnity to Cross-Complainant pursuant to the terms of its contract.

SEVENTH CAUSE OF ACTION

9. For a judicial determination and order holding that SUKIE LEE dba Gangway Bar has breached the terms of its agreement with Cross-Complainant and for the consequential damages resulting therefrom.

ALL CAUSES OF ACTION

For attorney's fees and costs pursuant to contractual terms, as to the relief requested above and such other and further relief as the court may deem appropriate.

Dated: August 10, 2009

VOGL & MEREDITH LLP

By: 

MICHAEL S. BURKE
Attorneys for Defendant and Cross-complainant
909 GEARY STREET, LLC

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MASTER LEASE

THIS MASTER LEASE ("Lease") dated as of July 27, 2000, is entered into by and between 909 GEARY STREET LLC, a California Limited Liability Company ("Landlord"), and the TENDERLOIN HOUSING CLINIC, INC., a California nonprofit public benefit corporation, or its assignee, ("Tenant").

ARTICLE 1

LEASE OF PREMISES

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the Term and subject to the agreement, conditions and provisions hereinafter set forth, the following premises (the "Premises"): the building ("Building"), located at 909 Geary Street (also known as the Hartland Hotel), San Francisco, California, and more particularly described in Exhibit A to this Lease, including but not limited to 137 residential units, one manager's apartment, the restrooms, basement, common areas, storage facilities and all related utilities. The Premises also includes the penthouse apartment and the commercial space formerly occupied by a hair salon located adjacent to the Premises. The Premises includes all furniture, fixtures and equipment ("FFE") listed on the inventory attached as Exhibit B to this Lease.

ARTICLE 2

TERM

2.1 Term. The term of this Lease ("Term") shall include the Initial Term, defined in Section 2.2, and any Options to Extend, defined in Section 2.4.

2.2 Initial Term. The initial term of this Lease (the "Initial Term") shall commence on September 1, 2000 or on an earlier date if authorized by the San Francisco Department of Human Services. Unless sooner terminated as hereinafter provided, the Initial Term shall expire at midnight on the three hundred sixty-fifth day following the Commencement Date.

2.3 Failure to Deliver Possession. If for any reason Landlord fails to deliver possession of the Premises to the Tenant in the condition required by this Lease on or before the Commencement Date, then the Tenant shall be relieved of its obligations under this Lease, including the obligation to pay rent, until such time as Landlord delivers possession to the Tenant as required by this Lease. In any event, if Landlord fails to deliver possession of the Premises to the Tenant in the condition re-

quired by this Lease by September 1, 2000, then this Lease shall automatically terminate.

2.4 Option to Extend. Tenant shall have the right and option (each an "Option to Extend") to extend the Initial Term of this Lease for the Premises for nineteen (19) separate additional periods of one (1) year. Each additional term shall be called an "Option Period." Each Option Period shall be for a period of one (1) year. During each Option Period Tenant shall lease the Premises from Landlord on the same terms and conditions as are set forth in this Lease, except that Monthly Rent for each Option Period shall be determined in accordance with paragraph 3.2 below. Tenant's exercise of its option to extend the lease for an additional Option Period shall occur automatically. However, Tenant may exercise an Option to Terminate this Lease by giving written notice thereof to Landlord not later than one hundred eighty (180) calendar days prior to (i) expiration of the Initial Term in the case of the first Option Period, or (ii) expiration of the preceding Option Period in the case of the second through ninth Option Periods.

2.5 Condition to Commencement of Lease. Notwithstanding any other provision hereof, this Lease shall not be effective, and Tenant shall have no obligation or liability to Landlord of any kind or description, in the event that Tenant has not, on or before the Commencement Date, entered into a mutually acceptable funding agreement with the Department of Human Services of the City and County of San Francisco, a copy of which is attached hereto as Exhibit A.

2.6 Purchase Option. Landlord cannot transfer ownership of the Premises during the first ten years of this Lease without the written consent of Lessee/City and County of San Francisco ("CCSF"). Subsequently, in the event the Landlord wishes to transfer or convey all of its right, title and interest in and to the Premises during the term of this Lease, Landlord shall notify Tenant/CCSF in writing of such intent. In such notice, Landlord shall specify the price which it believes to be the fair market value for the Premises without regard for the terms of this Lease, and said fair market value shall be the offering price for the Premises. Thereupon, Tenant/CCSF shall have 15 days from the date of such notice to notify Landlord of their interest and intention to purchase the Premises. Should Tenant/CCSF dispute Landlord's assertion as to the fair market value of the Premises, Tenant/CCSF shall have 30 days in which to provide good and competent independent appraisal evidence to support their assertion as to the fair market value. If the Landlord and Tenant/CCSF are still unable to agree on a price, each shall select an appraiser (if not done so already), and each appraiser so selected shall select a third appraiser, whose appraisal shall determine the fair market value and selling price of the Premises. The fees of the third appraiser shall be paid half each by Landlord and Tenant/CCSF. Escrow shall close no later than 90 days after the price has been agreed upon, or after receipt of the appraisal from the third appraiser.

ARTICLE 3

RENT

3.1 Monthly Rent. During the Initial Term, Tenant shall pay to Landlord for the rental of the Premises, in lawful money of the United States, \$372.00 per month for each guest room, and shall pay \$0 for the penthouse and commercial space formerly occupied by a hair salon. Monthly rent (the "Monthly Rent") will be in the amount of Fifty Thousand Nine Hundred Sixty-Four Dollars and One Cent (\$50,964.01). This amount will be paid in two installments of \$25,482.00 and \$25,482.01 on the sixth and twenty-second days of each calendar month during the Term; provided, however, that for any partial month at the commencement of the Initial Term, Tenant shall pay to Landlord a pro rata portion of the Monthly Rent based on the actual number of days in such month which occur during the Initial Term. Tenant shall not be obligated to pay to Landlord any portion of rent or any other charges payable to Tenant by any Subtenant.

3.2 Adjustments to Monthly Rent During Option Periods.

(a) The Monthly Rent shall be increased at the commencement of each applicable Option Term by the annual allowable rent increase established by the San Francisco Rent Stabilization and Arbitration Board for that year. Said increase is based on 60% of the Consumer Price Index ("CPI"). In no event shall the increase be less than 2% or greater than 6%.

3.3 Payment. All payments required to be made by Tenant under this Lease shall be made payable to 909 Geary Street LLC, and mailed to the following address:

Raman Patel
1350 Sixth Avenue
San Francisco, California 94122

or at such other place as Landlord may hereafter designate from time to time in a written notice to Tenant, which notice of a new address shall take effect on the later of (i) the effective date specified in such notice or (ii) ten (10) days after the date such notice is given.

3.4 Additional Rent. Tenant shall pay, as additional rent, all sums of money required to be paid by Tenant pursuant to the terms of this Lease, whether or not such sums are designated as "Additional Rent." All such Additional Rent shall be payable to Landlord at the time and in the manner in which Monthly Rent is payable. Landlord shall have the same remedies for a default in the payment of any Additional Rent as for a default in the payment of Monthly Rent.

3.5 Late Charges. Tenant hereby acknowledges that late payment by Tenant to Landlord of rent or other sums due hereunder

will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which may be difficult to ascertain. Such costs may include, but are not necessarily limited to, processing and accounting charges, and late charges which may be imposed upon Landlord by terms of any mortgage or trust deed covering the Premises. Accordingly, if any installment of rent or any sum due from Tenant shall not be received by Landlord or Landlord's designee within ten (10) days after said amount is due, then Tenant shall pay to Landlord a late charge equal to ten percent (10%) of the overdue amount; plus any reasonable attorneys' fees incurred by Landlord on account of Tenant's failure to pay rent and/or other charges when due hereunder. Acceptance of such late charges by the Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

ARTICLE 4

TAXES

4.1 Payment of Real Property Taxes. The Landlord is solely responsible for the payment of Real Estate Taxes for the Premises. "Real Estate Taxes" means all taxes, assessments and charges levied upon or with respect to the Premises, other than those taxes attributable or due to Tenant's use and operation of the Premises as described in Section 4.2. Real Estate Taxes shall include, without limitation, all general real property taxes and general and special assessments, charges, fees, or assessments for housing, police, fire, or other governmental occupants thereof, service payments in lieu of taxes, and any tax, fee, or excise on the act of entering into this Lease, or on the rent payable under any lease or in connection with Landlord's business of renting space in the Premises, that are now or hereafter levied or assessed against Landlord by the United States of America, the State of California or any political subdivision thereof, the City and County of San Francisco, any public corporation, district, or any other political or public entity, and shall also include any other tax, fee or other excise, however described, that may be levied or assessed as a substitute for, or as an addition to, in whole or in part, any other Real Estate Taxes, whether or not now customary or in the contemplation of the parties on the date of this Lease.

4.2 Payment of Other Taxes. During the Term, the Tenant is solely responsible for the payment of all taxes, fees and charges attributable or due to the Tenant's use and operation of Premises imposed by the United States of America, the State of California or any political subdivision thereof, or the City and County of San Francisco, including but not limited to Tenant's business license fees and renewal fees, elevator operation fees, transient taxes and other similar taxes, fees and charges, but only to the extent attributable to Tenant's use and operation of

the Premises. Any reassessments due to Tenant's improvements will be paid by Tenant.

ARTICLE 5

PERFORMANCE BOND

5.1 Performance Bond. Within three months of taking possession of the Premises, the City and County of San Francisco shall provide to Landlord, as the named obligee, appropriate surety bond(s) to secure the faithful performance of Tenant's obligations to pay rent under Article 3 of this Lease. Such bonds shall be in an amount equal to six months' rent, which is the sum of \$306,000.00. Such bonds shall be in a form and by a surety to the reasonable satisfaction of Landlord and all premiums for such bonds shall be paid for by Tenant.

5.2 Performance Bond Upon Lease Transfer. Tenant acknowledges that Landlord has the right to transfer its interest to the Premises, the Building and this Lease, and Tenant agrees that in the event of any such transfer pursuant to which the transferee assumes the obligations of Landlord under this Lease, Landlord shall transfer the Deposit to the transferee and upon actual transfer of the Deposit to transferee and written notice to Tenant of such transfer by either Landlord or transferee then thereafter Landlord shall be released by Tenant from all liability or obligation for the return of the Deposit and Tenant agrees to look solely to such transferee of the return of the Deposit.

ARTICLE 6

USE

6.1 General. The Tenant shall use the Premises to provide residential dwellings for individual subtenant rental households ("Subtenants"), together with support services for Subtenants and other services generally associated with such use; and for general administrative use associated with providing such dwellings and services. Tenant represents and warrants that Tenant will maintain its use of the Premises consistent with the existing permit of occupancy granted by the City and County of San Francisco, Exhibit E attached hereto.

6.2 Management. Tenant or one or more management company(ies) selected by the Tenant will be solely responsible for all aspects of property management of the Premises, including Subtenant selection, evictions and performance of Tenant's operating and maintenance obligations under this Lease.