

ADMINISTRATIVE MANUAL  
TOWN OF LOS GATOS

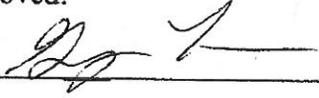
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Subject: Library Rules of Conduct

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Approved:



Effective Date:

1/11/2012

Revised Date:

04/01/2013

05/01/2014

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PURPOSE

The Los Gatos Library is a gathering place for enrichment of community life. As such, the library strives to provide a safe, comfortable, clean, supportive and informal environment for the community. To ensure that all library users have a positive experience, all visitors are expected to comply with the following policy. Appropriate library conduct includes activities such as reading, studying, properly using library materials or computers and other similar conduct normally associated with a public library.

SCOPE

No individual may engage in inappropriate conduct on the premises of the Town of Los Gatos Library, or when using library facilities, or when participating in library programs. Visitors shall be engaged in normal activities associated with the use of a public library while in the building. Visitors not engaged in reading, studying, or using library materials or computers may be asked to leave the building.

Inappropriate conduct includes any individual or group activity which is unreasonably disturbing to other individuals lawfully using library facilities, materials and/or premises or is otherwise inconsistent with activities such as reading, studying, properly using library materials and other similar conduct normally associated with a public library.

When possible, staff will first educate individuals about the applicable policies before taking stronger measures to enforce those policies. Staff may ask a visitor who is in violation of the Library Rules of Conduct to leave Library property, and may call the Police Department for assistance if necessary. Although the policy is designed for progressive application, staff will use their judgment in each situation to decide the severity of the offense and the appropriate course of action, including a ban from Library property. Likewise, visitors are subject to arrest at any time if their behavior warrants it.

Visitors to the Los Gatos Library are responsible for the consequences of their choices and actions. The library retains the right to take any action necessary to ensure a safe and pleasant environment for everyone. Individuals who do not comply with the following rules may lose their library privileges.

## POLICY

### **Respect the right of everyone in the library to enjoy a pleasant environment.**

- Follow all library rules, policies, and procedures; comply with the requests of library staff.
- Obey all applicable federal, state, and local laws.
- Behave appropriately and immediately report to library staff any behavior that is disruptive, threatening, abusive, or questionable in any way.
- Strive to keep conversations quiet; make cell phone calls or any audio conversation (i.e. Skype) as discreet as possible or take these conversations outside; take disruptive children outside.
- Selling, soliciting, surveying, distributing written materials, panhandling or canvassing for any political, charitable or religious purposes inside a library building, doorway or vestibule without prior authorization of the Town Librarian or designee is prohibited.
- Individuals whose conduct or personal hygiene disturbs others will be asked to leave the library.
- Consume all food and drinks in a discreet manner & away from library electronic equipment, making sure to clean up when you are finished.
- Turn off or disable any audible equipment or devices while in the Library or, alternatively, use earphones.
- Personally monopolizing library space, seating, tables or equipment to the exclusion of other visitors or staff is not permitted.
- Smoking is not permitted anywhere in the library building or within 50 feet of any entrance.
- Use of abusive, threatening, harassing or insulting language and/or behavior will not be tolerated.
- Engaging in any behavior that a reasonable person would find to be disruptive, harassing, or threatening in nature to library users or staff including stalking, prolonged staring at or following another with the intent to annoy or intentionally behaving in a manner that could reasonably be expected to annoy or disturb other visitors will not be tolerated.

**Keep your Library a safe place.**

- For their safety, children under age 10 must be supervised by an adult at all times.
- Secure/monitor your property; the library is not responsible for loss or theft. Items may be removed from the library premises if they reasonably appear to be abandoned or have been left unattended for 30 minutes or more.
- Avoid activities on library premises that could cause injury to you or to others.
- Large or bulky items (such as bicycles, wagons, skateboards, etc.), or any item that might create a safety hazard, must be left outside the library.
- Unattended bags, baggage, or packages are not permitted inside or outside the library.
- Library entrances, exits, elevators, stairs, or aisles may not be blocked.
- Clothing (tops and bottoms), including footwear, must be worn in the library.
- Sleeping, napping or dozing in or on library premises is not permitted.
- Being under the influence of alcohol/illegal drugs and selling, using or possessing alcohol or illegal drugs in the library is prohibited.
- Maintain responsibility for the safety, well-being and conduct of the minors in your charge. *See Minors in the Library Policy.*

**Treat your library appropriately and with respect.**

- Use library facility, materials, and furnishings as intended; Moving furniture without the express consent of the library staff or use of furniture in any manner that may damage the furniture, to include placing feet on the furniture is prohibited..
- Bathing, shaving, & doing laundry are prohibited in the library, including the library restrooms.
- Damage and/or destruction of library materials or property are violations of *California Penal Code Section 594.*
- The library facility may not be used for conducting or soliciting business.
- The library welcomes assistance animals with their companions; all other animals must remain outside (except as part of a sponsored library program).
- Violating the library's rules for acceptable use of the internet and library public

computers shall not be tolerated. A user accepts these rules before accessing the Internet through a library computer. Copies of these rules will be made available by staff upon request.

- Exhibiting harmful or offensive materials to minors, whether in print or on an electronic screen, is prohibited.
- Library staff has limited resources, including time. Requests for library services should be concise and non-duplicative. Any patron deemed to be monopolizing or abusing staff resources may be asked to submit all requests in writing, to be addressed as staff time and resources permit.
- Refusing to follow the reasonable directions of library staff shall not be tolerated.

### STAFF RESPONSE TO INFRACTIONS

Violation of these rules is misconduct that can result in expulsion from the library and forfeiture of library privileges. Minor violations of these rules will first result in library staff attempting to educate or warn individuals about the policies before enforcing such policies. However, any conduct that threatens the life or safety of any person or that is damaging to library property, equipment or facilities may result in immediate expulsion from the library premises. Library staff is authorized to contact the Town Police Department to respond to such situations. Repeat misconduct or severe offenses (even if a single isolated event) may result in individuals being banned from the library from a week to 180 days. Staff will follow the established procedures below. Staff will call the police for severe or illegal behavior or when an individual refuses to leave when told by staff to do so.

Length of Ban: Based on the severity of the misconduct, an offender is subject to a ban for one day, one week, one month, or permanently with the possibility of appeal.

Phase one: Staff may bar a visitor for the day, hand them a copy of the Rules of Conduct, and warn them that further violations of the Rules could lead to imposition of a longer ban. Staff shall explain the reasons for the ban. If the visitor refuses to leave the library facilities, Staff should contact the Police Department for assistance. Staff will document the ban with a staff security report & an incident number from police dispatch.

Phase two: Staff may ban repeat or severe offenders for one week from the date of the first or repeat incident. Staff should contact the Police Department to report a disruptive patron and request Officer assistance. When the Officer/Police Assistant arrives, the staff member should provide details to him/her about the situation and request that the Police Assistant/Officer assist in banning the offender for one week. The Officer/Assistant shall obtain identification from the violator and the violator will be handed a copy of the Rules of Conduct, receive a letter from either a police officer or administrative staff explaining the week- long ban and its consequences, and be warned that further violations of the Rules of Conduct could lead to imposition of a longer ban. Staff will document the ban with a staff security report & an incident number from

police dispatch.

Phase three: Staff may ban repeat or severe offenders for one month from the date of the third incident or second severe incident. This is for repeat or severe offenders of the Library Rules of Conduct who have already been banned for a week. Staff should call the non-emergency number to report a disruptive patron and request Police Officer assistance. When the Officer arrives, the staff member should provide details to him/her about the situation and request that the Police Officer assist in banning the offender. The Officer shall obtain identification from the violator and the violator will be handed a copy of the Rules of Conduct and be issued a written letter by either a police officer or administrative staff explaining the seriousness of the month-long ban and warning them that further violations of the Rules of Conduct could lead to imposition of a longer ban. Staff will collect available identifying information and file an incident report with the Police and on the staff security report.

180 day ban: An individual who interrupts the work of Library staff employees by continuously violating the Library's Rules of Conduct and has been barred from the library for a month may be banned for 180 days. Staff should call the non-emergency number to report a disruptive patron and request officer assistance. When the Officer arrives, the staff member should provide details to him/her about the situation and request that the Police Officer assist in banning the offender. The Officer shall obtain identification from the violator and a Final Notice of Trespass letter will be issued as a written letter by either the police officer or administrative staff to the individual or be sent first class mail to the offending individual's home address. All information surrounding the incident will be given to the police and the Town Attorney's office will be notified. Staff will file an incident report with the police department & on the staff security report.

Special Considerations for Minors under 18 years of age:

While children between the ages of 10 and 17 may be present in and use the Library independently of parents or caregivers (children under the age of 9 must be accompanied by an adult), they are accountable for their behavior and may be subject to the same progressive bans as adults. The following procedure modifications may apply with minors between 10 and 17:

Staff will make reasonable effort to call parents, caregivers, or adult person of record about the problem behavior of child.

Staff will not call the Town Police to remove a child under 18 from the building and property unless the problem behavior is severe, aggressive, threatening, repetitive or is creating a significant disturbance to visitors and staff and there is no other recourse.

For a Phase two and above ban, the Police Officer, in addition to obtaining identification will obtain information regarding the minor's parents, caregivers, or adult person of record. Staff will call the parent, caregiver, or adult person of record of a child who is an ongoing behavior problem (multiple bans without correction of behavior) and/or send a letter from Library Administration explaining reason(s) for child's ban, duration of ban, terms of ban, and terms of

required meeting with Library Administration before return of Library privileges for child will be considered.

Appeal

A visitor may request an appeal of the ban in writing to the Town Librarian within ten working days of the ban notification.

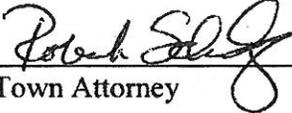
**THE BAN FROM THE LIBRARY SHALL REMAIN IN EFFECT DURING THE APPEAL PROCESS.**

The Town Librarian will respond in writing within ten working days. If the visitor is not satisfied with the Town Librarian's response, the visitor may appeal in writing within ten working days to the Town Manager. The Town Manager shall hold a hearing within 30 days after the notice has been filed. The appellant shall be notified at least 10 days before the hearing. Within 30 days of the completion of the hearing, the Town Manager shall issue a written decision stating the reasons therefore. The Town Manager shall have the power to affirm or reverse the written determination or to remand it to the Director or designee with instructions for reconsideration. The decision, except for remand, shall be a final determination for the purposes of judicial review.

NON-COMPLIANCE WITH BAN - TRESPASSING:

If a banned individual enters the Town of Los Gatos Library before the return date listed in the ban letter, police will be called and individual may be arrested for trespassing under Town Code Section 18.10.020 and/or Penal Code Section 602 & 415.

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Town Attorney

**LEASE AGREEMENT**

**BETWEEN**  
**TOWN OF LOS GATOS**  
**AND**  
**LOS GATOS MUSEUM ASSOCIATION**

CITY DEPARTMENT \_\_\_\_\_  
 AGR. 13-122 \_\_\_\_\_  
 Hh \_\_\_\_\_  
 ORD \_\_\_\_\_  
 REC \_\_\_\_\_  
 RESO \_\_\_\_\_

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**LEASE AGREEMENT  
BETWEEN  
TOWN OF LOS GATOS  
AND  
LOS GATOS MUSEUM ASSOCIATION**

This lease agreement (herein "Lease") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the Town of Los Gatos, a California municipal corporation (herein "Town") and Los Gatos Museum Association, a California nonprofit corporation (herein "Lessee"). Town and Lessee may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Lease." The Town Manager serves as Contract Administrator for this Lease on behalf of the Town Council.

In consideration of these recitals and the following covenants, terms, and conditions, Lessee and Town mutually agree as follows:

**LEASE PROVISIONS**

**1. PREMISES.**

Town hereby leases to Lessee, certain real property located in the Town of Los Gatos, County of Santa Clara, State of California, commonly known as 106 East Main Street (herein the "Premises") and more particularly described in Exhibit A attached hereto and incorporated herein by reference. The Premises consists of approximately eleven thousand six hundred and four (11,604) square feet of space for museum exhibits, Town offices, storage, educational lab, kitchen facilities, bathrooms, and a deck. Lessee accepts the Premises "as-is" on the date of execution of this Lease.

**2. TERM.**

2.1 Original Term. The term of this Lease shall be for ten (10) years plus the initial period of Town construction and improvements to the Premises, as set forth in paragraph 2.5, commencing on July 1, 2013 and ending ten (10) years from the Delivery Date, as defined below ("Term"). Lessee shall, at the expiration of the term of this Lease, or upon its earlier termination, surrender the Premises in as good condition as it is now at the date of this lease. The Parties expect reasonable wear and tear.

2.2 Option to Extend. Provided Lessee is not in default hereunder, either at the time of exercise or at the time the extended term commences, Lessee shall have the option to extend the initial term of this Lease for two (2) additional periods of five (5) years each ("Option Periods") with the same terms, covenants and conditions provided herein, except that upon such renewal the Base Rent due hereunder shall be adjusted pursuant to Paragraph 3. Lessee's option shall be exercised by Lessee providing Town with request for an extension in writing no less than sixty (60) days prior to the expiration of the then current term.

2.3 Early Termination by Either Party. If Town in its sole discretion determines that it requires the Premises for any public purpose, Town may terminate this Lease upon ninety (90) days written notice. The Lessee may terminate the lease upon 90 days written notice should the Museums of Los Gatos cease operations.

2.4 Expansion. Lessee shall have the first right of refusal on the adjacent space currently occupied by the Friends of the Library. In the event that Friends of the Library vacates its retail space, Town shall enter into negotiations with Museums of Los Gatos for that space at the then current full market value for rent, unless the Town Council agrees to negotiate other terms.

2.5 Delivery Date. The Town will undertake initial improvements to the Premises as determined by the Town at its sole discretion and complete such improvements no later than April 30, 2014. At the completion of those improvements, the Town will establish a Delivery Date of the Premises to the Lessee which will be the commencement date for the Term, and rent and monetary obligations of this Lease. If the Town is unable to establish a Delivery Date prior to April 30, 2014, Lessee shall have the option to terminate this Lease.

3. **RENT and MONETARY OBLIGATIONS.**

3.1 Base Rent. The base rent shall be in the amount of Fair Market Rate (FMR) of \$2.50 per square foot per month without deduction or offset based on 11,604 square feet, not including the conference room, Town office space, and exterior decks as shown on Exhibit A or as memorialized in an Addendum to Lease following the determination regarding the actual space needed for the new HVAC system, which shall occur prior to the Delivery Date. For the first three (3) years after the Delivery Date, Lessee shall pay no Base Rent for the Premises. The FMR shall be updated no less than once every ten (10) years and at each Option Period using an appraisal methodology satisfactory to the Parties.

3.2 Annual Increase. During the Term of this Lease, including each Option Period if an option is exercised, the Base Rent shall be increased effective on each anniversary of the Delivery Date as follows:

- |     |           |                         |
|-----|-----------|-------------------------|
| (a) | Years 1-3 | Not Applicable, No Rent |
| (b) | Year 4    | 1.25% of FMR            |
| (c) | Years 5   | Year 4 + 1.25% of FMR   |
| (d) | Year 6    | Year 5 + 1.25% of FMR   |

Despite the foregoing, in no event shall Base Rent shall exceed Two Thousand Dollars (\$2,000) per month during the initial 10 year period.

Prior to the extension of the Lease under the Option Periods of this Lease, if an option is exercised, the Town reserves the right to review the accounts and financial records of the Lessee and open negotiations for a potential increase in Base Rent.

3.3 Payment Date/Late Charge. Rent shall be payable on the first day of each and every month commencing on the Delivery Date, at Los Gatos Town Hall, Finance Department, or a place as may be designated in writing from time to time by Town. Lessee acknowledges late payment of rent may cause Town to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs include, without limitation, processing, accounting and late charges that may be imposed on Town. Therefore, if Town does not receive any installment of rent due from Lessee within ten (10) days after the date such rent is due, Lessee shall pay to Town an additional sum of five percent (5%) of the overdue rent as a late charge. The parties agree this late charge represents a fair and reasonable estimate of the costs Town will incur by reason of late payment by Lessee. Acceptance of any late charge shall not constitute a waiver of Lessee's default with respect to the overdue amount, nor prevent Town from exercising any of the other rights and remedies available to Town.

3.4 Payment Procedures. Lessee's obligation to pay rent shall commence upon the Delivery Date. If the term commences or terminates on a date other than the first of any month, monthly rent for the first and last month of this Lease shall be prorated based on a 30-day month. Payments shall be effective upon receipt. Town may apply any payment received from Lessee at any time against any obligation due and owing by Lessee under this Lease, regardless of any statement appearing on or referred to in any remittance from Lessee or any prior application of such payments.

3.5 Partial Payment. The receipt by Town of a partial payment of any amount due to Town endorsed as payment in full will be deemed to be a partial payment only. Town may accept and deposit said check without prejudice to its right to recover the balance. Any endorsements or statements on the check or any letter accompanying the check shall not be deemed an accord and/or satisfaction. Lessee's obligation (without prior notice or demands) to pay rent and all other amounts due hereunder shall be absolute and unconditional, and not subject to any abatement, set off, defense, recoupment or reduction.

3.6 Reimbursement for Downstairs Restroom Project. Lessee shall contribute 50% of the costs of downstairs restroom improvements, but in no event more than the sum of Twenty-Eight Thousand Dollars (\$28,000) for Lessee's share of the restroom project for the Premises. Such Payment shall be made commencing on the fourth anniversary of the Delivery Date and on each anniversary of the Delivery Date thereafter at the rate of Four Thousand Dollars (\$4,000) per year until the entire sum has been paid to the Town.

4. [reserved]

5. **USE OF PREMISES and OPERATING HOURS.**

5.1 Required Uses. Throughout the term of this Lease, Lessee shall provide the following

uses, services and activities ("Required Uses"):

5.1.1 Uses consistent with Lessee's business purposes and approved through a Conditional Use Permit.

5.1.2 4,335 square feet of space on the upper level and 7,260 square feet of space on the lower level of the old Town of Los Gatos Library located at 106 E. Main Street, Los Gatos, CA, as shown on Exhibit A or as memorialized in an Addendum to Lease following determination regarding the space needed for the new HVAC system, which shall occur prior to the Delivery Date.

5.1.3 Meeting rooms for public use consistent with current purposes of the Museums of Los Gatos and authorized under a Conditional Use Permit. In addition, the Town Council Chambers may be reserved in accordance with Town policies at cost.

5.1.4. Lessee shall apply to the Community Development Department of the Town of Los Gatos for a Condition Use Permit (CUP) or other appropriate planning permit to allow the requested uses on the Premises. Lessee shall pay one-half (1/2) of all fees to Town for a CUP, but may pay one-quarter (1/4) the fee at the time of filing the initial application and one-quarter (1/4) of the fee at completion of CUP process.

## 5.2 Hours of Operations.

5.2.1 Public Hours. The Premises shall be closed to the Public on Wednesdays until 1:00 P.M. Public hours shall not exceed Monday through Sunday from 11:00 A.M. to 7:00 P.M. Additional evening hours are allowed for special events, receptions, and Board/Committee meetings so long as no Town meeting or event is scheduled. Additional morning hours are allowed for visits by school children when those school children are transported by a bus or other vehicles that do not park in any of the Civic Center lots or on the streets immediately adjacent to the Civic Center. The Premises shall be open to the public a minimum of 25 hours per week, unless Lessee is in the process of changing exhibits.

5.2.2 Schedule. Lessee shall submit a calendar in advance of all scheduled events on a quarterly basis to Town Manager in order to avoid conflicts with Town events and meetings.

5.2.3 Staff Hours. The Premises shall remain closed to the public, but available for use for up to five (5) staff members on Wednesdays prior to 1:00 P.M.

5.2.4 Special Events. Lessee shall be obligated to apply for a Special Event Permit in accordance with Town rules and regulations and pay all associated costs and fees for any event that meets the criteria set forth by Town Code. For those events that do not meet the criteria requiring a Special Event Permit, but do impact parking at the Civic Center, Lessee shall coordinate with the Town Manager's office to avoid conflicts during business hours or

when Town events or meetings are scheduled.

**5.3 Prohibited Uses.** Lessee shall not use Premises for any purpose not expressly permitted hereunder. Lessee shall not create, cause, maintain or permit any nuisance or waste in, on, or about the Premises, or permit or allow the Premises to be used for any unlawful or immoral purpose. Lessee shall not do or permit to be done anything in any manner which unreasonably disturbs the users of the Town Property or the occupants of neighboring property. Specifically, and without limiting the above, Lessee agrees not to cause any unreasonable odor, noise, vibration, power emission, or other item to emanate from the Premises. No materials or articles of any nature shall be stored outside upon any portion of the Premises. Lessee will not use Premises in a manner that increases the risk of fire, cost of fire insurance or improvements thereon. No unreasonable sign or placard shall be painted, inscribed or placed in or on said Premises; and no tree or shrub thereon shall be destroyed or removed or other waste committed of said Premises. No bicycles, motorcycles, automobiles or other mechanical means of transportation shall be placed or stored anywhere on the Premises. No repair, overhaul or modification of any motor vehicle shall take place on the Premises or the street in front of said Premises. Lessee, at his/her expense, shall keep the Premises in as good condition as it was at the beginning of the terms hereof, except damage occasioned by ordinary wear and tear, and except damage to the roof, sidewalks and underground plumbing, which is not the fault of Lessee.

**5.4 Condition. Use of Premises.** The Premises are currently being used for public purposes including meetings, and the Premises may be available for use exclusively for the limited purposes specified in Section 5.1. Town makes no warranty or representation regarding the condition of the Premises and has not conducted any inspections prior to leasing the Premises. Town has agreed to deliver the Premises with improvements specified in Exhibit B.

**5.5 Parking.** Lessee shall be obligated to purchase Olive Zone parking permits annually from Town for all Lessee employees and shared parking permits for volunteers working 20 hours or more during weekdays. Lessee's employees and volunteers will comply with the same parking requirements consistent with Town employees. In no event shall any buses or oversized vehicles associated with visitors to the Premises park in any of the Civic Center lots or on the streets immediately adjacent to the Civic Center.

**5.6 Coordination with Town.** Lessee shall schedule, attend, and fully participate in quarterly meetings with Town Manager and/or Manager's designee to address any and all conditions of this Agreement or any other matter which arises in conjunction with the use of the Premises. Lessee shall also be required to participate in Town Emergency Preparedness training and exercises.

**5.7 Use of Alcohol.** Any use of alcohol will be subject to approval and conditions contained in any Conditional Use Permit obtained by Museums of Los Gatos and, limited to beer and wine only. If any use of alcohol requires additional regulatory permits, including an ABC license, Lessee shall be responsible for obtaining such permit, paying all associated costs.

and notifying Town in writing of receipt of such permit.

5.8 Deliveries. Any and all deliveries shall be made between the hours of 8:00 a.m and 8:00 p.m. No deliveries shall occur on Wednesdays prior to 1:00 p.m. In no event shall delivery vehicles block access to the parking lot, parked vehicles, or Civic Center buildings.

5.9 Conference Room. The conference room as shown on Exhibit A shall be made available by Town to Lessee on a shared basis. Town shall have exclusive right to schedule the conference room on all week days during Town business hours. Lessee shall have priority of use of the conference room on Saturday, Sundays and Town Holidays.

6. HAZARDOUS MATERIALS.

6.4 Hazardous Materials Defined. The term "Hazardous Material(s)" shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant, or infectious or radioactive material, including but not limited to, those substances, materials, or wastes regulated now or in the future under any of the following statutes or regulations and any and all of those substances included within the definitions of "hazardous substances," "hazardous waste," "hazardous chemical substance or mixture," "imminently hazardous chemical substance or mixture," "toxic substances," "hazardous air pollutant," "toxic pollutant" or "solid waste" in the (a) CERCLA or Superfund as amended by SARA, 42 U.S.C. Sec. 9601 et seq., (b) RCRA, 42 U.S.C. Sec. 6901 et seq., (c) CWA., 33 U.S.C. Sec. 1251 et seq., (d) CAA, 42 U.S.C. 78401 et seq., (e) TSCA, 15 U.S.C. Sec. 2601 et seq., (f) The Refuse Act of 1899, 33 U.S.C. Sec. 407, (g) OSHA, 29 U.S.C. 651 et seq. (h) Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801 et seq., (i) USDOT Table (40 CFR Part 302 and amendments) or the EPA Table (40 CFR Part 302 and amendments), (j) California Superfund, Cal. Health & Safety Code Sec. 25300 et seq., (k) Cal. Hazardous Waste Control Act, Cal. Health & Safety Code Section 25100 et seq., (l) Porter-Cologne Act, Cal. Water Code Sec. 13000 et seq., (m) Hazardous Waste Disposal Land Use Law, Cal. Health & Safety Code Sec. 25220 et seq., (n) Proposition 65, Cal. Health and Safety Code Sec. 25249.5 et seq., (o) Hazardous Substances Underground Storage Tank Law, Cal. Health & Safety Code Sec. 25280 et seq., (p) California Hazardous Substance Act, Cal. Health & Safety Code Sec. 28740 et seq., (q) Air Resources Law, Cal. Health & Safety Code Sec. 39000 et seq., (r) Hazardous Materials Release Response Plans and Inventory, Cal. Health & Safety Code Secs. 25500-25541, (s) TCPA, Cal. Health and Safety Code Secs. 25208 et seq., and (t) regulations promulgated pursuant to said laws or any replacement thereof, or as similar terms are defined in the federal, state and local laws, statutes, regulations, orders or rules. Hazardous Materials shall also mean any and all other substances, materials, and wastes which are, or in the future become, regulated under applicable local, state or federal law for the protection of health or the environment, or which are classified as hazardous or toxic substances, materials or wastes, pollutants or contaminants, as defined, listed or regulated by any federal, state or local law, regulation or order or by common law decision, including without limitation: (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents; (ii) any petroleum products or fractions thereof; (iii) asbestos, (iv) polychlorinated biphenyls; (v) flammable explosives; (vi) urea formaldehyde; and, (vii)

radioactive materials and waste.

6.2. Compliance with Laws. Lessee shall not cause or permit any Hazardous Material (as defined below) to be brought upon, kept or used in or about the Premises or Project by Lessee, its agents, employees, contractors or invitees.

6.3 Termination of Lease. Town shall have the right to terminate the Lease in Town's sole and absolute discretion in the event that: (i) any anticipated use of the Premises by Lessee involves the generation or storage, use, treatment, disposal, or release of Hazardous Material in a manner or for a purpose prohibited or regulated by any governmental agency, authority, or Hazardous Materials Laws; (ii) Lessee has been required by any lender or governmental authority to take remedial action in connection with Hazardous Material contaminating the Premises, if the contamination resulted from Lessee's action or use of the Premises; or (iii) Lessee is subject to an enforcement order issued by any governmental authority in connection with the release, use, disposal, or storage of a Hazardous Material on the Premises.

6.4 Assignment and Subletting. It shall not be unreasonable for Town to withhold its consent to an assignment or subletting to such proposed assignee or sublessee if: (i) any anticipated use of the Premises by any proposed assignee or sublessee involves the generation or storage, use, treatment, disposal, or release of Hazardous Material in a manner or for any purpose; (ii) the proposed assignee or sublessee has been required by any prior landlord, lender, or governmental authority to take remedial action in connection with Hazardous Material contaminating a property, if the contamination resulted from such party's action or use of the property in question; or, (iii) the proposed assignee or sublessee is subject to an enforcement order issued by any governmental authority in connection with the release, use, disposal or storage of a Hazardous Material.

6.5 Hazardous Materials Indemnity. Lessee shall indemnify, defend (by counsel reasonably acceptable to Town), protect, and hold Landlord harmless from and against any and all claims, liabilities, penalties, forfeitures, losses, and/or expenses, including without limitation, diminution in value of the Premises, damages for the loss or restriction on use of the rentable or usable space or of any amenity of the Premises, damages arising from any adverse impact or marketing of the Premises and sums paid in settlement of claims, response costs, cleanup costs, site assessment costs, attorneys' fees, consultant and expert fees, judgments, administrative rulings or orders, fines, costs of death of or injury to any person, or damage to any property whatsoever (including, without limitation, groundwater, sewer systems, and atmosphere), arising from, caused, or resulting, either prior to or during the Lease Term, in whole or in part, directly or indirectly, by the presence or discharge in, on, under, or about the Premises by Lessee, Lessee's agents, employees, licensees, or invitees or at Lessee's direction, of Hazardous Material, or by Lessee's failure to comply with any Hazardous Materials Law, whether knowingly or by strict liability. For purposes of the indemnity provided herein, any acts or omissions of Lessee or its employees, agents, customers, sublessees, assignees, contractors, or subcontractors of Lessee (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to Lessee. Lessee's

indemnification obligations shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary Hazardous Materials management plan, investigation, repairs, cleanup or detoxification or decontamination of the Premises, and the presence and implementation of any closure, remedial action or other required plans, and shall survive the expiration of or early termination of the Lease Term.

6.6 Town's Right to Perform Tests. At any time prior to the expiration of the Lease Term, Town shall have the right to enter upon the Premises in order to conduct tests of water and soil.

7. UTILITIES AND OPERATING EXPENSES.

7.1 Lessee Obligations. Lessee at Lessee's sole expense shall fully and promptly pay for all expenses associated with the operation of the Premises, including but not limited to the furnishing of gas, water, sewer, electricity, telephone service, garbage pickup and disposal, other public utilities and custodial service that relate to the Premises. Lessee shall be obligated to pay a pro-rated share based on square footage for gas, water, sewer, electricity, garbage service and other public utilities provided by or through the Town. Lessee shall be obligated to pay their own direct costs for telephone, technology, audio-visual, custodial and other specialized services, including any initial costs for those services. Town shall maintain all exterior landscaping and integrated building HVAC system.

7.2 Custodial Services. Lessee at Lessee's sole expense shall fully maintain and pay for all custodial services to maintain the interior of the Premises, other than the Town occupied space, in a clean and safe manner. All vendors for custodial services shall be bonded, insured, and the Town named as an additional insured. Proof of bond and insurance including the additional insured certificate shall be provided to Town prior to any custodial services being performed.

8. TAXES.

8.1 Payment of Real Property Taxes. Town shall pay Lessee's share of all real property taxes relating to the Premises, if any.

8.3 Revenue and Taxation Code. Lessee specifically acknowledges it is familiar with section 107.6 of the California Revenue and Taxation Code. Lessee realizes that a possessory interest subject to property taxes may be created, agrees to pay any such tax, and hereby waives any rights Lessee may have under said California Revenue and Taxation Code section 107.6.

8.4 Personal Property Taxes. Lessee shall pay before delinquent, or if requested by Town, reimburse Town for, any and all taxes, fees, and assessments associated with the Premises, the personal property contained in the premises and other taxes, fees, and assessments regarding any activities which take place at the Premises. Lessee recognizes and understands in accepting this Lease that its interest therein may be subject to a possible possessory

interest tax that Town or County may impose on such interest and that such tax payment shall not reduce any rent due Town hereunder and any such tax shall be the liability of and be paid by Lessee.

9. MAINTENANCE.

9.1 Town and Lessee Responsibilities. Lessee at Lessee's expense, shall perform all interior maintenance and repairs, including all painting, necessary to keep the Premises in reasonable order, repair, and condition, and shall keep the Premises in a safe, clean, wholesome, and sanitary condition to the reasonable satisfaction of Town, and in compliance with all applicable laws, throughout the term of this Lease. In addition, Lessee shall maintain, at Lessee's expense, all equipment, furnishings and trade fixtures upon the Premises required for the maintenance and operation of first-class public services of the type to be conducted pursuant to this Lease. Routine interior plumbing and electrical maintenance (e.g., plugged toilets/sinks, faulty switches/lights) will be the responsibility of the Lessee. Town shall be responsible for the routine maintenance and repair of the exterior structure of the Premises and main support systems, including roof repair, exterior painting and structural repairs, sewer lines, water lines, and main electrical panel, excluding any maintenance or repairs resulting from Lessee's actions or activities. External windows broken or cracked from the exterior will be the responsibility of the Town, excluding broken windows resulting from Lessee's actions or activities, while windows broken from the interior will be the responsibility of the Lessee; when the source or cause of breakage is indeterminate, the costs will be shared.

9.2 Waiver of Civil Code. Lessee expressly waives the benefit of any statute now or hereinafter in effect, including the provisions of sections 1941 and 1942 of the Civil Code of California, which would otherwise afford Lessee the right to make repairs at Town's expense or to terminate this Lease because of Town's failure to keep Premises in good order, condition and repair. Lessee further agrees that if and when any repairs, alterations, additions or betterments shall be made by Lessee as required by this paragraph. Lessee shall promptly pay for all labor done or materials furnished and shall keep the Premises free and clear of any lien or encumbrance of any kind whatsoever. If Lessee fails to make any repairs or perform any maintenance work for which Lessee is responsible within a reasonable time (as determined by the Town Manager in the Town Manager's sole discretion) after demand by the Town, Town shall have the right, but not the obligation, to make the repairs at Lessee's expense; within ten (10) days of receipt of a bill, Lessee shall reimburse Town for the cost of such repairs, including a fifteen percent (15%) administrative overhead fee. The making of such repairs or performance of maintenance by Town shall in no event be construed as a waiver of the duty of Lessee to make repairs or perform maintenance as provided in this Section.

9.3 Maintenance of Common Areas. Town shall maintain or cause to be maintained, including repair and replacement as necessary, the exterior grounds, exterior shared deck, and the parking lot adjacent to the Premises. If Lessee uses the shared deck for activities or a

*what deck?*

special event, Lessee shall promptly remove all structures, accessories, decorations and trash associated with the activity or event.

**10. TENANT IMPROVEMENTS.**

10.1 Improvements Permitted. Subject to prior written approval of the Town Manager, which shall not be unreasonably withheld, Lessee shall be entitled to install improvements in an efficient and workmanlike manner within the Premises, at no cost to Town. All costs of plans, improvements, and permits shall be the sole responsibility of the Lessee. All structural improvements and improvements in excess of \$10,000 must be approved in writing by the Town Manager.

10.2 Cost of Improvements. Except for the improvements set forth on Exhibit B, all improvements shall be made at Lessee's sole expense.

10.3 Ownership of Improvements. All improvements constructed, erected, or installed upon the Premises must be free and clear of all liens, claims, or liability for labor or material and shall become the property of Town, at its election, upon expiration or earlier termination of this lease and upon Town's election, shall remain upon the Premises upon termination of this Lease. Title to all free standing equipment, furniture, furnishings, and trade fixtures placed by Lessee upon the Premises shall remain in Lessee's ownership, and replacements, substitutions and modifications thereof may be made by Lessee throughout the term of this Lease.

10.4 Indemnity for Claims Arising Out of Construction. Lessee shall defend and indemnify Town against all claims, liabilities, and losses of any type arising out of work performed on the Premises by Lessee, together with reasonable attorneys' fees and all costs and expenses reasonably incurred by Town in negotiating, settling, defending or otherwise protecting against such claims.

10.5 Certificate of Inspection. Upon completion of construction of any building, Lessee shall submit to the Town Manager a Certificate of Inspection, verifying that the construction was completed in conformance with Title 20 of the California Code of Regulations for residential construction, or in conformance with Title 24 of the California Code of Regulations for non-residential construction.

10.6 As Built Plans. Lessee shall provide the Town Manager with a complete set of reproducible "as built plans" reflecting actual construction within or upon the Premises upon completion of any: (i) new construction; (ii) structural alterations; or, (iii) non-structural alterations costing more than \$25,000.

**11. ALTERATIONS BY LESSEE**

Lessee shall not make any alterations or improvements to the Premises without obtaining the prior written consent of the Town Manager. Lessee may, at any time and at its sole expense, install and place business fixtures and equipment within the Premises, provided such fixtures and installation have been reviewed and approved by the Town Manager.

12. **HOLD HARMLESS/INDEMNIFICATION.**

12.1 Indemnification. To the extent permitted by law, Lessee agrees to protect, defend, hold harmless and indemnify Town, its Town Council, commissions, officers, agents, volunteers, and employees from and against any claim, injury, liability, loss, cost, and/or expense or damage, however same may be caused, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom for which Town shall become legally liable arising from Lessee's negligent, reckless, or wrongful acts, errors, or omissions with respect to or in any way connected with this Lease. Lessee shall give Town immediate notice of any claim or liability hereby indemnified against. This indemnity shall be in addition to the Hazardous Materials indemnity contained in this Lease and shall survive shall survive the expiration of or early termination of the Lease Term.

12.2 Waiver of Claims. Lessee waives any claims against Town for injury to Lessee's business or any loss of income therefrom, for damage to Lessee's property, or for injury or death of any person in or about the Premises or the Town Property, from any cause whatsoever, except to the extent caused by Town's active negligence or willful misconduct.

13. **DAMAGE, DESTRUCTION AND TERMINATION.**

13.1 Nontermination and Nonabatement. Except as provided herein, no destruction or damage to the Premises by fire, windstorm or other casualty, whether insured or uninsured, shall entitle Lessee to terminate this Lease. Town and Lessee waive the provisions of any statutes which relate to termination of a lease when leased property is destroyed and agree that such event shall be governed by the terms of this Lease.

13.2 Force Majeure. Prevention, delay or stoppage due to strikes, lockouts, labor disputes, Acts of God, inability to obtain labor, inability to obtain materials or reasonable substitutes, governmental restrictions, governmental regulation, governmental controls, judicial orders, enemy or hostile governmental actions, civil commotion, fire or other casualty, and other causes beyond the reasonable control of Lessee (financial inability excepted), shall excuse the performance by Lessee for a period equal to the prevention, delay, or stoppage, except the obligations imposed with regard to rent to be paid by Lessee pursuant to this Lease. In the event any work performed by Lessee or Lessee's contractors results in a strike, lockout, and/or labor dispute, the strike, lockout, and/or labor dispute shall not excuse the performance by Lessee of the provisions of this Lease.

13.3 Restoration of Premises by Lessee.

13.3.1 Destruction Due to Risk Covered by Insurance. If, during the term, the

Premises are totally or partially destroyed from a risk covered by the insurance described in Section 20 (Insurance), rendering the Premises totally or partially inaccessible or unusable, Lessee shall restore the Premises to substantially the same condition as it was in immediately before destruction, whether or not the insurance proceeds are sufficient to cover the actual cost of restoration. Such destruction shall not terminate this Lease. If the laws existing at that time do not permit the restoration, either party can terminate this Lease immediately by giving notice to the other party.

A. Minor Loss. If, during the term of this Lease, the Premises are destroyed from a risk covered by the insurance described in Section 20 (Insurance), and the total amount of loss does not exceed twenty thousand dollars (\$20,000), Lessee shall make the loss adjustment with the insurance company insuring the loss. The proceeds shall be paid directly to Lessee for the sole purpose of making the restoration of the Premises in accordance with this Lease.

B. Major Loss- Insurance Trustee. If, during the term of this Lease, the Premises are destroyed from a risk covered by the insurance described in Section 20 (Insurance), and the total amount of loss exceeds the amount set forth in paragraph (1), Lessee shall make the loss adjustment with the insurance company insuring the loss and on receipt of the proceeds shall immediately pay them to an institutional lender or title company as may be jointly selected by the parties ("the Insurance Trustee").

13.3.2 Destruction Due to Risk Not Covered by Insurance. If, during the term, the Premises are totally or partially destroyed from a risk covered by the insurance described in Section 20 (Insurance), rendering the Premises totally or partially inaccessible or unusable, Lessee shall restore the Premises to substantially the same condition as it was in immediately before destruction, whether or not the insurance proceeds are sufficient to cover the actual cost of restoration. Such destruction shall not terminate this Lease. If the laws existing at that time do not permit the restoration, either party can terminate this Lease immediately by giving notice to the other party.

If the cost of restoration exceeds ten percent (10%) of the then replacement value of the Premises totally or partially destroyed, Lessee can elect to terminate this Lease by giving notice to Town within sixty (60) days after determining the restoration cost and replacement value. If Lessee elects to terminate this Lease, Town, within thirty (30) days after receiving Lessee's notice to terminate, can elect to pay to Lessee, at the time Town notifies Lessee of its election, the difference between ten percent (10%) of the replacement value of the Premises and the actual cost of restoration, in which case Lessee shall restore the Premises. On Town's making its election to contribute, each party shall deposit immediately the amount of its contribution with such institutional lender or title company as may be jointly

selected by the parties ("the Insurance Trustee"). If the Destruction does not exceed ten percent (10%) of the then replacement value of the Premises, Lessee shall immediately deposit the cost of restoration with the Insurance Trustee as provided in Exhibit C. This Lease shall terminate if Lessee elects to terminate this Lease and Town does not elect to contribute toward the cost of restoration as provided in this section.

If the Premises are destroyed from a risk not covered by the insurance described in Section 20 (Insurance), and Lessee has the obligation to restore the Premises as provided in subsection (B), both parties shall deposit with the Insurance Trustee their respective contributions toward the cost of restoration. All sums deposited with the Insurance Trustee shall be held for the following purposes and the Insurance Trustee shall have the following powers and duties:

The sums shall be paid in installments by the Insurance Trustee to the contractor retained by Lessee as construction progresses, for payment of the cost of Restoration. A 10% retention fund shall be established that will be paid to the contractor on completion of restoration, payment of all costs, expiration of all applicable lien periods, and proof that the Premises are free of all mechanics' liens and lienable claims.

Payments shall be made on presentation of certificates or vouchers from the architect or engineer retained by Lessee showing the amount due. If the Insurance Trustee, in its reasonable discretion, determines that the certificates or vouchers are being improperly approved by the architect or engineer retained by Lessee, the Insurance Trustee shall have the right to appoint an architect or an engineer to supervise construction and to make payments on certificates or vouchers approved by the architect or engineer retained by the Insurance Trustee. The reasonable expenses and charges of the architect or engineer retained by the Insurance Trustee shall be paid by the insurance trustee out of the trust fund. Both parties shall promptly execute all documents and perform all acts reasonably required by the Insurance Trustee to perform its obligations under this section.

If the sums held by the Insurance Trustee are not sufficient to pay the actual cost of restoration Lessee shall deposit the amount of the deficiency with the Insurance Trustee within fifteen (15) days after request by the Insurance Trustee indicating the amount of the deficiency. Any undisbursed funds after compliance with the provisions of this section shall be delivered to Town to the extent of Town's contribution to the fund, and the balance, if any, shall be paid to Lessee. All actual costs and charges of the Insurance Trustee shall be paid by Lessee.

If the Insurance Trustee resigns or for any reason is unwilling to act or

continue to act, Town shall substitute a new trustee in the place of the designated Insurance Trustee. The new trustee must be an institutional lender or title company.

13.3.3 Procedure for Restoring Premises. When Lessee is obligated to restore the Premises within sixty (60) days Lessee at its cost shall prepare final plans, specifications, and working drawings complying with applicable Laws that will be necessary for restoration of the Premises. The plans, specifications, and working drawings must be approved by Town. Town shall have thirty (30) days after receipt of the plans and specifications and working drawings to either approve or disapprove the plans, specifications, and working drawings and return them to Lessee. If Town disapproves the plans, specifications, and working drawings, Town shall notify Lessee of its objections and Town's proposed solution to each objection. Lessee acknowledges that the plans, specifications, and working drawings shall be subject to approval of the appropriate governmental bodies and that they will be prepared in such a manner as to obtain that approval.

The restoration shall be accomplished as follows:

A. Lessee shall complete the restoration within 60 working days after final plans and specifications and working drawings have been approved by the appropriate governmental bodies and all required permits have been obtained (subject to a reasonable extension for delays resulting from causes beyond Lessee's reasonable control).

B. Lessee shall retain a licensed contractor that is bondable. The contractor shall be required to carry public liability and property damage insurance, standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements, during the period of construction in accordance with Section 20 (Insurance). Such insurance shall contain waiver of subrogation clauses in favor of Town and Lessee in accordance with the Provisions of Exhibit B.

C. Lessee shall notify Town of the date of commencement of the restoration at least ten (10) days before commencement of the restoration to enable Town to post and record notices of nonresponsibility. The contractor retained by Lessee shall not commence construction until a completion bond and a labor and materials bond have been delivered to Town to insure completion of the construction.

D. Lessee shall accomplish the restoration in a manner that will cause the least inconvenience, annoyance, and disruption at the Premises.

E. On completion of the restoration Lessee shall immediately record a notice of completion in the county in which the Premises are located.

F. The restoration shall not be commenced until sums sufficient to cover the cost of restoration are placed with the Insurance Trustee as provided in this section.

14. **SIGNS AND MARKETING.**

14.1 Lessee shall not place, construct, maintain, or allow any signs affixed to the building or to the exterior of the Premises without prior written consent of the Town following Town Council review and approval. Lessee shall be obligated to pay all costs associated with any application process required to obtain approval for any signs.

14.2 Lessee shall not place, construct, maintain, or allow any other signs, including minor ones, visible to the exterior of the Premises without prior written consent of the Town Manager. Lessee shall submit an application to the Community Development Department and, be obligated to pay all costs associated with any application process required to obtain approval for any signs. Exterior or otherwise visible signage shall be subject to the Town's naming policy and donation policy.

14.3 The value of the Town's in-kind and other contributions to the operation of Lessee will be reflected in all budgets and financial reports for Lessee. The contribution value of the premises will be determined by subtracting Lessee annual lease payments as required under this agreement from the annual market value of the premises as specified or determined through this lease. In addition, the Town's initial capital investment in facility improvements will be reflected and acknowledged in Lessee's capital campaign for facility improvements, at Lessee's option.

14.4 The Town will be included in all donor reports, listings and recognitions reflecting the value of the Town's combined in-kind and monetary grants, if any, at the appropriate level for all donors, as agreed to by the Town Manager.

14.5 The Mayor and Council, Chair of the Arts & Culture Commission, Town Manager and Assistant Town Manager shall be invited to all events.

14.4 The Town Logo, along with an optional designation as "Sustaining Sponsor" or equivalent as mutually agreed to by the Town and Lessee, will be included on all Lessee's marketing materials, including catalogues, brochures, programs, flyers, cards, banners, etc., for Lessee in general and/or for events, classes and exhibits at the Civic Center. The Town logo will be in a prominent location. The Town Manager, at the Town's sole discretion, may waive or alter inclusion of the Town logo when otherwise required to be included.

15. **ASSIGNMENT AND SUBLETTING.**

15.1 **Town's Consent Required.** Lessee shall not assign this Lease, nor any interest therein, and shall not sublet or encumber the Premises or any part thereof, nor any right or privilege appurtenant thereto, nor allow or permit any other person(s) to occupy or use the Premises, or any portion thereof, without the prior written consent of Town. This Lease shall be binding upon any permitted assignee or successor of Lessee. Consent by Town to one assignment, subletting, occupation or use by another person shall not be deemed to be consent to any subsequent assignment, subletting, occupation or use by another person. No assignment, subletting, or encumbrance by Lessee shall release it from or in any way alter any of Lessee's obligations under this Lease. Lessee may have the Premises delivered to a subsidiary company of Lessee, but such arrangement shall in no way alter Lessee's responsibilities hereunder with respect to the Premises. Any assignment, subletting, encumbrances, occupation, or use contrary to the provisions of this Lease shall be void and shall constitute breach of this Lease. Town may assign any of its rights hereunder without notice to Lessee.

15.2 **No Release of Lessee.** No subletting or assignment as approved by Town shall release Lessee of Lessee's obligation or alter the primary liability of Lessee to pay the rent and to perform all other obligations by Lessee hereunder. The acceptance of rent by Town from any other person shall not be deemed to be a waiver by Town of any provision hereof. In the event of default by any assignee of Lessee or any successor of Lessee in the performance of any of the terms hereof, Town may proceed directly against Lessee without the necessity of exhausting remedies against said assignee.

16. **DEFAULTS; REMEDIES.**

16.1 **Defaults.** The occurrence of any one or more of the following events shall constitute a material default, or breach of this Lease, by Lessee:

16.1.1 Abandonment of the Premises by Lessee as defined by California Civil Code section 1951.3;

16.1.2 Failure by Lessee to make any payment of rent or any other payment required to be made by Lessee hereunder, as provided in this Lease, where such failure shall continue for a period of ten (10) business days after written notice thereof from Town to Lessee. In the event Town serves Lessee with a Notice to Pay Rent or Quit pursuant to applicable Unlawful Detainer statutes, such Notice to Pay Rent or Quit shall also constitute the notice required by this subparagraph;

16.1.3 Failure by Lessee to observe or perform any of the covenants, conditions or

provisions of this Lease in any material respect where such failure shall continue for a period of thirty (30) days after written notice thereof from Town to Lessee; provided, however, that if the nature of Lessee's default is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee commenced such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion;

16.1.4 Making by Lessee of any general arrangement or assignment for the benefit of creditors; Lessee's becoming a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days); the appointment of a bankruptcy trustee or receiver to take possession of all or substantially all of Lessee's assets located at or on the Premises or of Lessee's interest in this Lease where possession is not restored to Lessee within thirty (30) days; or the attachment, execution or other judicial seizure of all or substantially all of Lessee's assets located at or on the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days.

16.1.5 Failure to make the Funding Commitment payments as required under this Lease Agreement for a period of six (6) months or more.

16.2 Remedies. In the event of any material default or breach by Lessee, Town may at any time thereafter, following any notice required by statute, and without limiting Town in the exercise of any right or remedy which Town may have by reason of such default or breach:

16.2.1 Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession of the Premises and Improvements to Town. In such event, Town shall be entitled to recover from Lessee all damages incurred by Town by reason of Lessee's default including but not limited to: the cost of recovering possession of the Premises and Improvements; expenses of reletting, including necessary renovation and alteration of the Premises and Improvements; reasonable attorneys' fees; the worth at the time of the award of the unpaid rent that had been earned at the time of termination of this Lease and the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of such award exceeds the amount of such rental loss for the same period that Lessee proves could be reasonably avoided.

16.2.2 Maintain Lessee's right to possession, in which case this Lease shall continue in effect whether or not Lessee shall have abandoned the Premises. In such event, Town shall be entitled to enforce all of Town's rights and remedies under this Lease, including the right to recover rent and other payments as they become due hereunder.

16.2.3 Pursue any other remedy now or hereafter available to Town under the laws or judicial decisions of the State of California. Town shall have all remedies

provided by law and equity.

16.3 No Relief from Forfeiture After Default. Lessee waives all rights of redemption or relief from forfeiture under California Code of Civil Procedure sections 1174 and 1179, and any other present or future law, in the event Lessee is evicted or Town otherwise lawfully takes possession of the Premises by reason of any default or breach of this Lease by Lessee.

16.4 Disposition of Abandoned Personal Property. If the Lessee fails to remove any personal property belonging to Lessee from the Premises after forty-five (45) days of the expiration or termination of this Lease, such property shall at the option of Town be deemed to have been transferred to Town. Town shall have the right to remove and to dispose of such property without liability to Lessee or to any person claiming under Lessee, and the Town shall have no need to account for such property.

17. INTEREST ON PAST-DUE OBLIGATIONS.

Except as expressly provided herein, any amount due Town when not paid when due shall bear interest at the lesser of ten percent (10%) per year or the maximum rate then allowable by law from the date due.

18. HOLDING OVER.

If Lessee remains in possession of the Premises or any part thereof after the expiration of the term or option terms hereof, such occupancy shall be a tenancy from month to month with all the obligations of this Lease applicable to Lessee and at a monthly rental obligation of two (2) times the Base Rent in effect at the time of expiration. Nothing contained in this Lease shall give to Lessee the right to occupy the Premises after the expiration of the term, or upon an earlier termination for breach.

19. TOWN'S ACCESS.

19.1 Access for Inspection. Town and Town's agents shall have the right to enter the Premises at reasonable times, upon not less than twenty-four (24) hours prior notice to Lessee, for the purpose of inspecting same, showing same to prospective purchasers, lenders or lessees, and making such alterations, repairs, improvements, or additions to the Premises as Town may deem necessary.

19.2 Security Measures. Lessee shall provide a reasonable security system, device, operation, and/or plan within and for Lessee to protect the Premises and the Civic Center. Lessee shall obtain Town's prior approval before installing, implementing or changing any security system, device, operation and/or plan.

19.3 New Locks. Lessee may not install new locks on any doors exterior doors without express written consent by Town. Lessee shall advise Town of such action and shall provide Town with keys to said locks. Lessee shall also deliver to Town the old locks with keys.

Upon termination, Lessee shall leave new locks that shall become the property of Town.

20. INSURANCE.

Lessee's responsibility for the Premises begins immediately upon delivery and Lessee, at its sole cost and expense, and at no cost to Town, shall purchase and maintain in full force and effect during the entire term of this Lease insurance coverage in amounts and in a form acceptable to Town as set forth in Exhibit C attached hereto and incorporated herein by reference. Said policies shall be maintained with respect to Lessee's employees, if any, and all vehicles operated on the Premises. The policies shall include the required endorsements, certificates of insurance and coverage verifications as described in Exhibit C. Lessee also agrees to secure insurance coverage for all of its contents, museum collection, and personal property maintained on the Premises.

Lessee shall deposit with the Town Manager, on or before the effective date of this Lease, certificates of insurance necessary to satisfy Town that the insurance provisions of this Lease have been complied with, and to keep such insurance in effect and the certificates therefore on deposit with Town during the entire term of this Lease. Should Lessee not provide evidence of such required coverage at least three (3) days prior to the expiration of any existing insurance coverage, Town may purchase such insurance, on behalf of and at the expense of Lessee to provide six months of coverage.

Town shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of the Town's Risk Manager (or comparable official), the insurance provisions in this Lease do not provide adequate protection for Town and for members of the public using the Premises, the Town Manager may require Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection as determined by the Risk Manager. Town's requirements shall be reasonable and shall be designed to assure protection from and against the kind and extent of risk that exists at the time a change in insurance is required.

The Town Manager shall notify Lessee in writing of changes in the insurance requirements. If Lessee does not deposit copies of acceptable insurance policies with Town incorporating such changes within sixty (60) days of receipt of such notice, or in the event Lessee fails to maintain in effect any required insurance coverage, Lessee shall be in default under this lease without further notice to Lessee. Such failure shall constitute a material breach and shall be grounds for immediate termination of this Lease at the option of Town.

The procuring of such required policy or policies of insurance shall not be construed to limit Lessee's liability hereunder nor to fulfill the indemnification provision and requirements of this Lease. Notwithstanding the policy or policies of insurance, Lessee shall be obligated for the full and total amount of any damage, injury, or loss caused by or connected with this Lease or with use or occupancy of the Premises.

21. [reserved]

22. **DISPUTE RESOLUTION.**

22.1 Unless otherwise mutually agreed to, any controversies between Lessee and Town regarding the construction or application of this Lease, and claims arising out of this Lease or its breach shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.

22.2 The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Lease.

22.3 The costs of mediation shall be borne by the Parties equally.

22.4 Mediation under this section is a condition precedent to filing an action in any court. In the event of litigation arising out of any dispute related to this Lease, the cost of attorney's fees, expert witness costs and cost of suit shall be paid to the prevailing party.

23. **NON-LIABILITY OF OFFICIALS AND EMPLOYEES OF THE TOWN.**

No official or employee of Town shall be personally liable for any default or liability under this agreement.

24. **NON-DISCRIMINATION**

24.1 Non-discrimination in Lease Activities. Lessee agrees that in the performance of this Lease and in connection with all of the activities Lessee conducts on the Premises, it shall not discriminate against any employee or person because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person. Lessee acknowledges that is familiar with the provisions set forth in Section 2.30.510 of the Los Gatos Municipal Code relating to nondiscrimination in employment and Section 9.73 of the Los Gatos Municipal Code relating to Town policy against arbitrary discrimination.

24.2 Human Rights Policy. In connection with all activities that are conducted upon the Premises, Lessee agrees to accept and enforce the statements of policy set forth in Section 9.73.010 which provides: "It is the policy of the Town of Los Gatos to affirm, support and protect the human rights of every person within its jurisdiction. These rights include, but are not limited to, equal economic, political, and educational opportunity; equal accommodations in all business establishments in the Town; and equal service and protection by all public agencies of the Town."

25. **INDEPENDENT CONTRACTOR.**

It is agreed that Lessee shall act and be an independent contractor and not an agent nor employee of

Town.

26. **CONFLICT OF INTEREST.**

Lessee shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this agreement. Lessee warrants and covenants that no official or employee of Town nor any business entity in which any official or employee of Town is interested: (1) has been employed or retained to solicit or aid in the procuring of this agreement; or (2) will be employed in the performance of this agreement without the divulgence of such fact to Town. In the event that Town determines that the employment of any such official, employee or business entity is not compatible with such official's or employee's duties as an official or employee of Town, Lessee upon request of Town shall immediately terminate such employment. Violation of this provision constitutes a serious breach of this Lease and Town may terminate this Lease as a result of such violation.

27. **MEMORANDUM OF LEASE.**

Following execution of this Lease, Town shall be entitled to record a Memorandum of Lease in the official records of Santa Clara County. Upon termination or expiration of this Lease, Lessee shall execute and record a quitclaim deed as to its leasehold interest.

28. **ESTOPPEL CERTIFICATE.**

Lessee shall, from time to time, upon at least thirty (30) days prior written notice from Town, execute, acknowledge and deliver to Town a statement in writing: (i) certifying this Lease is unmodified and in full force and effect, or, if modified, stating the nature of the modification and certifying that the Lease, as modified, is in full force and effect, and the date to which the rental and other charges, if any, have been paid; and, (ii) acknowledging that there are not to Lessee's knowledge, any defaults, or stating if any defaults are claimed, any statement may be relied upon by any prospective purchaser or encumbrance of the Town Property.

29. **LIENS.**

Lessee agrees at its sole cost and expense to keep the Premises free and clear of any and all claims, levies, liens, encumbrances or attachments.

30. **VACATING.**

Upon termination of the tenancy, Lessee shall completely vacate the Premises, including the removal of any and all of its property. Before departure, Lessee shall return keys and personal property listed on the inventory to Town in good, clean and sanitary condition, reasonable wear and tear excepted. Lessee shall allow Town to inspect the Premises to verify the condition of the Premises and its contents.

31. **ABANDONMENT.**

Lessee's absence from the Premises for thirty (30) consecutive days, without prior notice, during which time rent or other charges are delinquent, shall be deemed abandonment of the Premises. Such abandonment will be deemed cause for immediate termination without notice. Town shall thereupon be authorized to enter and take possession and to remove and dispose of the property of Lessee or its guests without any liability whatsoever to Town.

32. **NOTICES.**

All notices to the Parties shall, unless otherwise requested in writing, be sent to Town addressed as follows:

Town of Los Gatos  
Attention: Town Manager  
110 E. Main Street  
Los Gatos, CA 95030  
E-Mail: [Manager@LosGatosca.gov](mailto:Manager@LosGatosca.gov)

And to Lessee addressed as follows:

Los Gatos Museum Association  
Mary Ellen Comport, President  
4 Tait Avenue  
Los Gatos, CA 95030  
E-mail: [mecomport@comcast.net](mailto:mecomport@comcast.net)

Notices may be served upon Lessee in person, by first class mail, or by certified mail whether or not said mailing is accepted by Lessee. If notice is sent via facsimile or e-mail, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday. These addresses shall be used for service of process.

33. **TIME.**

Time shall be of the essence in this Lease.

34. **AMENDMENTS.**

It is mutually agreed that no oral Leases have been entered into and that no alteration or variation of the terms of this Lease shall be valid unless made in writing and signed by the Parties to this Lease.

35. **SIGNING AUTHORITY.**

If this Lease is not signed by all Lessees named herein, the person actually signing warrants that he/she has the authority to sign for the others.

36. **CAPTIONS.**

The captions of the various sections, paragraphs and subparagraphs of this Lease are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

37. **SURRENDER OF LEASE NOT MERGER.**

The voluntary or other surrender of this lease by Lessee, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Town, terminate all or any existing subleases or subtenancies, or may, at the option of Town, operate as an assignment of any and all such subleases or subtenancies.

38. **INTEGRATED DOCUMENT.**

This Lease, including any exhibits attached hereto, embodies the entire agreement between Town and Lessee. No other understanding, agreements, conversations or otherwise, with any officer, agent or employee of Town prior to execution of this Lease shall affect or modify any of the terms or obligations contained in any documents comprising this Lease. Any such verbal agreement shall be considered as unofficial information and in no way binding upon Town. All agreements with Town are subject to approval of the Town Council before Town shall be bound thereby.

39. **WAIVER.**

Waiver by Town of one or more conditions of performance or any breach of a condition under this Lease shall not be construed as a waiver of any other condition of performance or subsequent breaches. The subsequent acceptance by a Party of the performance of any obligation or duty by another Party shall not be deemed to be a waiver of any term or condition of this Lease. The exercise of any remedy, right, option or privilege hereunder by Town shall not preclude Town from exercising the same or any and all other remedies, rights, options and privileges hereunder and Town's failure to exercise any remedy, right, option or privilege at law or equity, or otherwise which Town may have, shall not be construed as a waiver.

40. **INTERPRETATIONS.**

In construing or interpreting this Lease, the word "or" shall not be construed as exclusive and the word "including" shall not be limiting. The Parties agree that this Lease shall be fairly interpreted in accordance with its terms without any strict construction in favor of or against any other Party.

41. **SEVERABILITY CLAUSE.**

If any provision of this Lease is held to be illegal, invalid or unenforceable in full or in part, for any reason, then such provision shall be modified to the minimum extent necessary to make the provision legal, valid and enforceable, and the other provisions of this Lease shall not be affected thereby.

42. **GOVERNING LAW.**

This Lease shall be governed and construed in accordance with the statutes and laws of the State of California.

43. **VENUE.**

In the event that suit shall be brought by any Party to this Lease, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara.

44. **COMPLIANCE WITH LAWS.**

The Parties hereto shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments in the performance of their rights, duties and obligations under this Lease.

45. **BROKERS.**

Each party represents that is has not had dealings with any real estate broker, finder, or other person, with respect to this lease in any manner. Each Party shall hold harmless the other party from all damages resulting from any claims that may be asserted against the other party by any broker, finder, or other person with whom the Indemnifying Party has or purportedly has dealt.

46. **ATTACHMENTS TO LEASE.**

The following exhibits are attached to and made a part of this Agreement:

- "A" – Description of Subject Premises
- "B" – Description of Tenant Improvements by Town
- "C" – Standard Insurance Requirements

IN WITNESS WHEREOF, the parties have executed this Lease the day and year first above written.

**TOWN:**

**TENANT:**

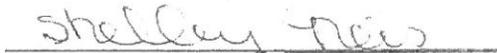
TOWN OF LOS GATOS (LESSOR)

MUSEUMS OF LOS GATOS

  
\_\_\_\_\_  
Greg Larson, Town Manager

  
\_\_\_\_\_  
Mary Ellen Comport, President of the  
Board

**ATTEST:**

  
\_\_\_\_\_  
Town Clerk Administrator

**APPROVED AS TO FORM:**

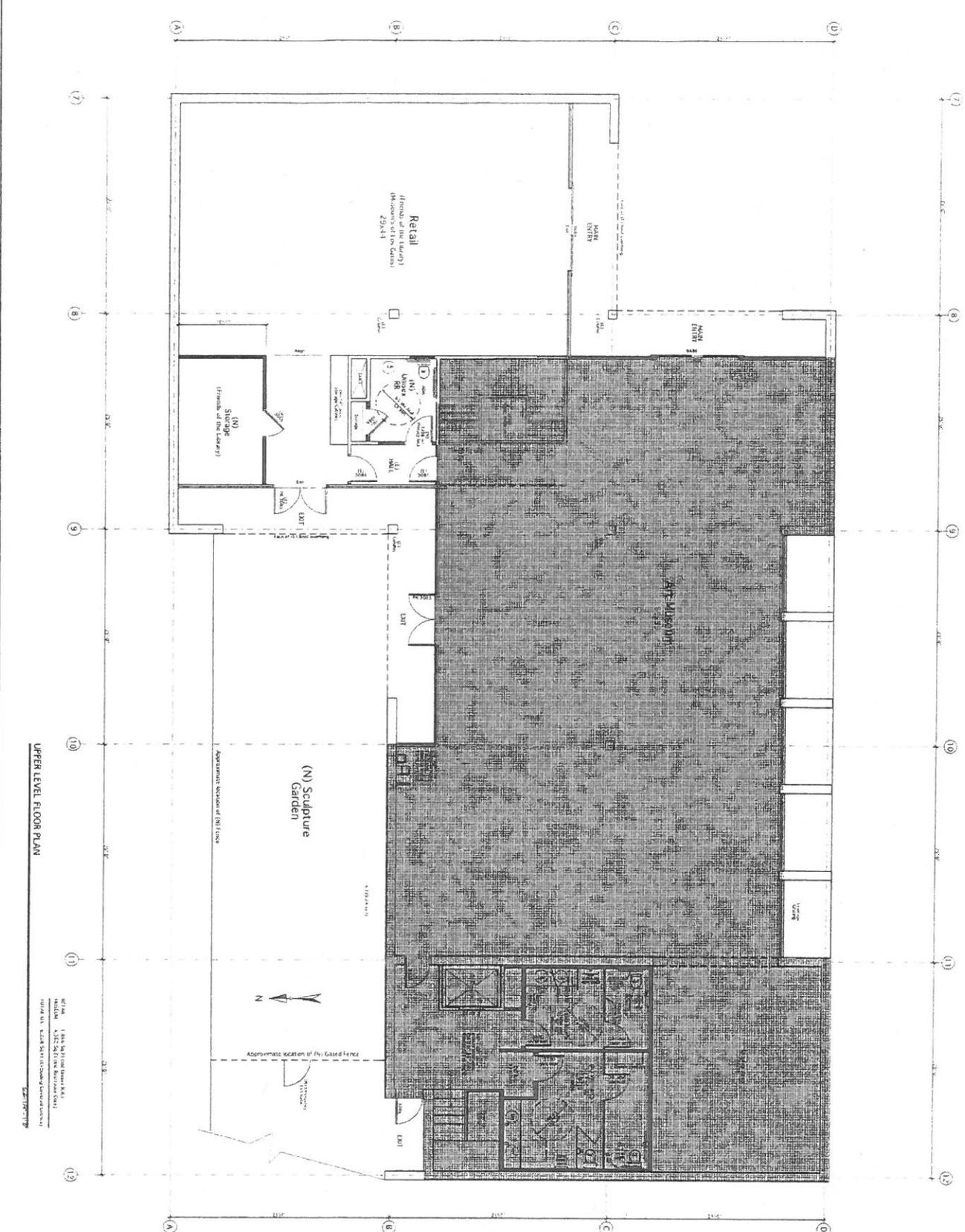
  
\_\_\_\_\_  
Judith Propp, Town Attorney



LEASE AGREEMENT  
BETWEEN  
TOWN OF LOS GATOS  
AND  
MUSEUMS OF LOS GATOS  
EXHIBIT A

DESCRIPTION OF SUBJECT PREMISES



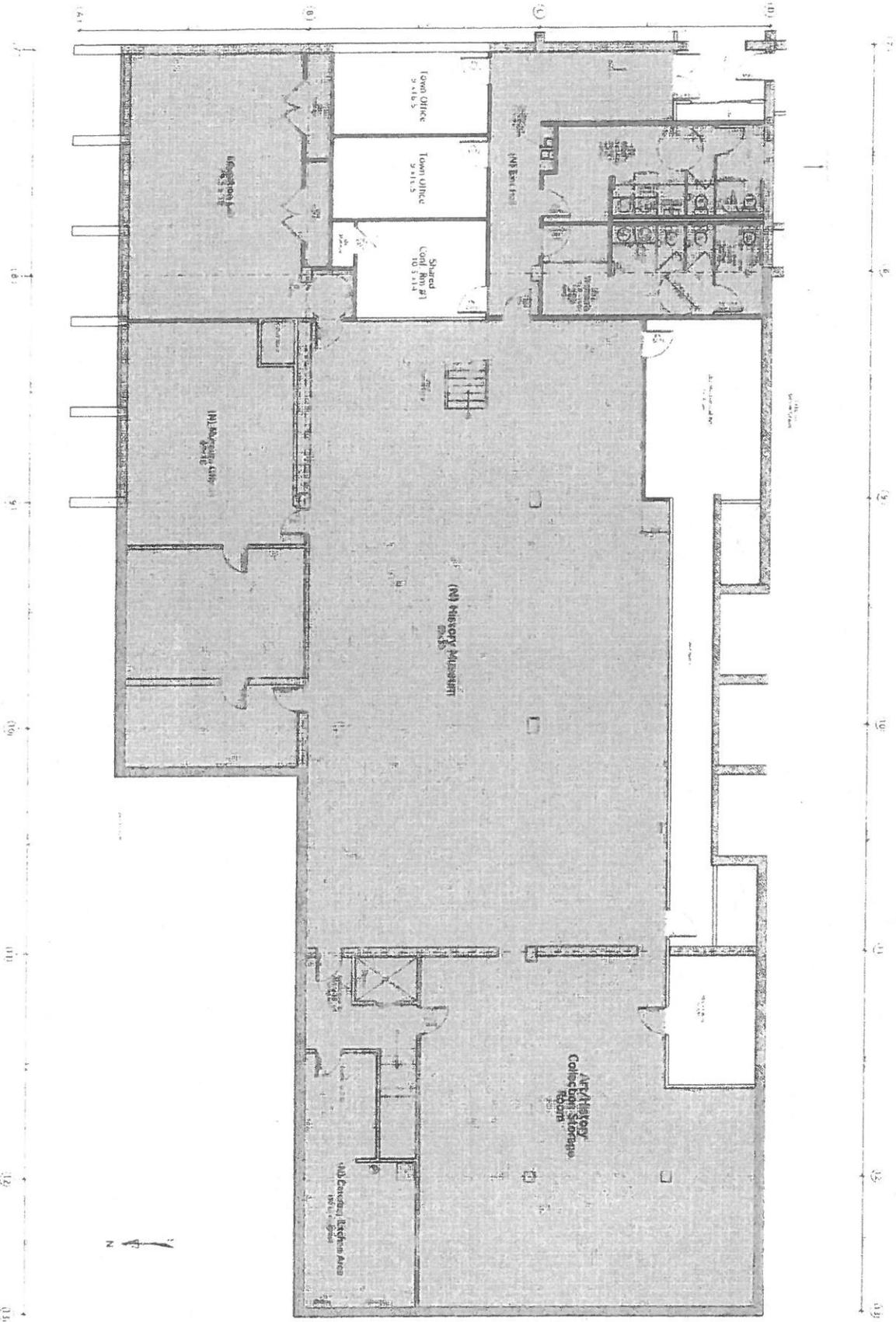


UPPER LEVEL FLOOR PLAN

NOTED: 1. SEE SHEET 101 FOR EXISTING CONDITIONS.  
 2. SEE SHEET 102 FOR EXISTING CONDITIONS.  
 3. SEE SHEET 103 FOR EXISTING CONDITIONS.  
 4. SEE SHEET 104 FOR EXISTING CONDITIONS.  
 5. SEE SHEET 105 FOR EXISTING CONDITIONS.  
 6. SEE SHEET 106 FOR EXISTING CONDITIONS.  
 7. SEE SHEET 107 FOR EXISTING CONDITIONS.  
 8. SEE SHEET 108 FOR EXISTING CONDITIONS.  
 9. SEE SHEET 109 FOR EXISTING CONDITIONS.  
 10. SEE SHEET 110 FOR EXISTING CONDITIONS.  
 11. SEE SHEET 111 FOR EXISTING CONDITIONS.  
 12. SEE SHEET 112 FOR EXISTING CONDITIONS.  
 13. SEE SHEET 113 FOR EXISTING CONDITIONS.  
 14. SEE SHEET 114 FOR EXISTING CONDITIONS.  
 15. SEE SHEET 115 FOR EXISTING CONDITIONS.  
 16. SEE SHEET 116 FOR EXISTING CONDITIONS.  
 17. SEE SHEET 117 FOR EXISTING CONDITIONS.  
 18. SEE SHEET 118 FOR EXISTING CONDITIONS.  
 19. SEE SHEET 119 FOR EXISTING CONDITIONS.  
 20. SEE SHEET 120 FOR EXISTING CONDITIONS.

<b>A-1.5</b>	<b>TOWN OF LOS GATOS CIVIC CENTER</b> Former Library Space Renovation 110 E. Main Street Los Gatos, CA 95030		
	UPPER LEVEL FLOOR PLAN (1/2" = 1'-0") (1/4" = 1'-0") (1/8" = 1'-0") (1/16" = 1'-0")	PROJECT NO. _____ SHEET NO. _____ DATE _____ REVISIONS: _____ DATE _____	TERRY J. MARTIN ASSOCIATES, A.I.A. 17 East Main Street, Suite E Los Gatos, CA 95030 Phone: 408-353-8314 Fax: 408-353-8733 WWW.TJMARTINASSOCIATES.COM





LOWER LEVEL FLOOR PLAN - OPTION #2

DATE: 08/11/11  
 DRAWN BY: TERRY J. MARTIN  
 CHECKED BY: TERRY J. MARTIN  
 SCALE: AS SHOWN

<p><b>A2</b> (of 21)</p>	<p>LOWER LEVEL FLOOR PLAN (OPTION #2)</p>	<p><b>TOWN OF LOS GATOS CIVIC CENTER</b>          Former Library Space Renovation          110 E. Main Street          Los Gatos, CA 95030</p>		<p>NO. _____</p>	<p>DATE _____</p>			<p>DATE: 08/11/11          DRAWN BY: TERRY J. MARTIN          CHECKED BY: TERRY J. MARTIN          SCALE: AS SHOWN</p>
		<p>NO. _____</p>	<p>DATE _____</p>	<p>NO. _____</p>	<p>DATE _____</p>	<p>NO. _____</p>	<p>DATE _____</p>	



**LEASE AGREEMENT**  
**BETWEEN**  
**TOWN OF LOS GATOS**  
**AND**  
**MUSEUMS OF LOS GATOS**  
**EXHIBIT B**

**LIST OF TOWN IMPROVEMENTS**

Town will make the following improvements to the Premises:

Upstairs and downstairs restrooms

Integrated-Building HVAC system

Construction of walls for two Town Offices and Conference Room

Elevator Improvements

**LEASE AGREEMENT  
BY AND BETWEEN  
TOWN OF LOS GATOS, CALIFORNIA  
AND  
MUSEUMS OF LOS GATOS**

**EXHIBIT C**

**STANDARD INSURANCE REQUIREMENTS**

Insurance Requirements for Lessee:

Lessee shall purchase and maintain the insurance policies set forth below on all of its operations under this Lease at its sole cost and expense. Such policies shall be maintained for the full term of this Lease and the related warranty period (if applicable). For purposes of the insurance policies required under this Lease, the term "Town" shall include the duly elected or appointed council members, commissioners, officers, agents, employees and volunteers of the Town of Los Gatos, California, individually or collectively.

Coverages (RL 28.1A) S

Minimum Scope of Insurance

Coverage shall be at least as broad as:

- 1) Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- 2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
- 3) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance (for lessees with employees).
- 4) Property insurance against all risks of loss to any tenant improvements or betterments

The policy or policies of insurance maintained by Lessee shall provide the following limits and coverages:

<u>POLICY</u>	<u>MINIMUM LIMITS OF LIABILITY</u>
(1) Commercial General Liability	\$1,000,000 per each occurrence for bodily injury, personal injury and property damage
(2) Automobile Liability	\$ 1,000,000 Combined Single Limit

Including Owned, Hired and  
Non-Owned Automobiles

(3) Workers' Compensation  
Employers Liability

Statutory  
\$1,000,000 per accident for bodily injury or  
disease

(4) Lessee's Property Insurance

Lessee shall procure and maintain property insurance coverage for:

- (a) all office furniture, trade fixture, office equipment, merchandise, and all other items of Lessee's property in, on, at, or about the premises and the building, include property installed by, for, or at the expense of Lessee;
- (b) all other improvements, betterments, alterations, and additions to the premises.

Lessee's property insurance must fulfill the following requirements:

- (a) it must be written on the broadest available "all risk" policy form or an equivalent form acceptable Town of Los Gatos, including earthquake sprinkler leakage.
- (b) for no less than ninety percent (90%) of the full replacement cost (new without deduction for depreciation) of the covered items and property; and
- (c) the amounts of coverage must meet any coinsurance requirements of the policy or policies.

(RL 28.2)

#### Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the Town. At the option of the Town either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Town, its officers, officials, employees and volunteers; or the Lessee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Insurance shall be in full force and effect commencing on the first day of the term of this Lease.

Each insurance policy required by this Lease shall:

1. Be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Town.
2. Include a waiver of all rights of subrogation against the Town and the members of the Town Council and elective or appointive officers or employees, and each party shall

indemnify the other against any loss or expense including reasonable attorney fees, resulting from the failure to obtain such waiver.

3. Name the Town of Los Gatos as a loss payee on the property policy.
4. Provide that the Town, its officers, officials, employees, agents and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Lessee; products and completed operations of the Lessee; premises owned, occupied or used by the Lessee; or automobiles owned, leased, hired or borrowed by the Lessee. The coverage shall contain no special limitations on the scope of protection afforded to the Town, its officers, officials, employees, agents or volunteers.
5. Provide that for any claims related to this Lease, the Lessee's insurance coverage shall be primary insurance as respects the Town, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the Town, its officers, officials, employees, agents or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.
6. Provide that any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Town, its officers, officials, employees, agents or volunteers.
7. Provide that Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
8. Lessee agrees to promptly pay to Town as Additional Rent, upon demand, the amount of any increase in the rate of insurance on the Premises or on any other part of Building that results by reason of Lessee's act(s) or Lessee's permitting certain activities to take place.

#### Acceptability of Insurers

All insurance policies shall be issued by California-admitted carriers having current A.M. Best's ratings of no lower than A-VII.