



**TOWN OF LOS GATOS
SPECIAL MEETING OF THE TOWN COUNCIL AGENDA
JUNE 28, 2022
TELECONFERENCE
7:00 P.M.**

*Rob Rennie, Mayor
Maria Ristow, Vice Mayor
Mary Badame, Council Member
Matthew Hudes, Council Member
Marico Sayoc, Council Member*

PARTICIPATION IN THE PUBLIC PROCESS

How to participate: The Town of Los Gatos strongly encourages your active participation in the public process, which is the cornerstone of democracy. If you wish to speak to an item on the agenda, please follow the participation instructions on page 2 of this agenda. The time allocated to speakers may change to better facilitate the Town Council meeting.

Effective Proceedings: The purpose of the Town Council meeting is to conduct the business of the community in an effective and efficient manner. For the benefit of the community, the Town of Los Gatos asks that you follow the Town's meeting guidelines while attending Town Council meetings and treat everyone with respect and dignity. This is done by following meeting guidelines set forth in State law and in the Town Code. Disruptive conduct is not tolerated, including but not limited to: addressing the Town Council without first being recognized; interrupting speakers, Town Council or Town staff; continuing to speak after the allotted time has expired; failing to relinquish the podium when directed to do so; and repetitiously addressing the same subject.

Deadlines for Public Comment and Presentations are as follows:

- Persons wishing to make an audio/visual presentation on any agenda item must submit the presentation electronically, either in person or via email, to the Clerk's Office no later than 3:00 p.m. on the day of the Council meeting.
- Persons wishing to submit written comments to be included in the materials provided to Town Council must provide the comments as follows:
 - For inclusion in the regular packet: by 11:00 a.m. the Thursday before the Council meeting
 - For inclusion in any Addendum: by 11:00 a.m. the Monday before the Council meeting
 - For inclusion in any Desk Item: by 11:00 a.m. on the day of the Council Meeting

***Town Council Meetings Broadcast Live on KCAT, Channel 15 (on Comcast) on the 1st and 3rd Tuesdays at 7:00 p.m.
Rebroadcast of Town Council Meetings on the 2nd and 4th Mondays at 7:00 p.m.
Live & Archived Council Meetings can be viewed by going to:
www.LosGatosCA.gov/TownYouTube***

IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN THIS MEETING, PLEASE CONTACT THE CLERK DEPARTMENT AT (408) 354-6834. NOTIFICATION 48 HOURS BEFORE THE MEETING WILL ENABLE THE TOWN TO MAKE REASONABLE ARRANGEMENTS TO ENSURE ACCESSIBILITY TO THIS MEETING [28 CFR §35.102-35.104]

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SPECIAL MEETING OF THE TOWN COUNCIL AGENDA
JUNE 28, 2022
TELECONFERENCE
7:00 PM

IMPORTANT NOTICE

This meeting is being conducted utilizing teleconferencing and electronic means consistent with Government Code Section 54953, as Amended by Assembly Bill 361, in response to the state of emergency relating to COVID-19 and enabling teleconferencing accommodations by suspending or waiving specified provisions in the Ralph M. Brown Act (Government Code § 54950 et seq.). Consistent with AB 361 and Town of Los Gatos Resolution 2021-044, this meeting will not be physically open to the public and the Council will be teleconferencing from remote locations. Members of the public can only participate in the meeting by joining the Zoom webinar (log in information provided below).

PARTICIPATION

To provide oral comments in real-time during the meeting:

- **Zoom webinar:** Join from a PC, Mac, iPad, iPhone or Android device: Please click this URL to join: <https://losgatosca.gov.zoom.us/j/85705653238?pwd=S3pRVE01aWdEZmk4Z2RGeC9veTBjUT09>. Passcode: 701911. You can also type in 857 0565 3238 in the “Join a Meeting” page on the Zoom website at <https://zoom.us/join>.
- **Join by telephone:** Join by Telephone: Dial: USA 877 336 1839 US Toll-free or 636-651-0008 US Toll. Conference code: 969184

When the Mayor announces the item for which you wish to speak, click the “raise hand” feature in Zoom. If you are participating by phone on the Zoom app, press *9 on your telephone keypad to raise your hand. If you are participating by calling in, press #2 on your telephone keypad to raise your hand.

When called to speak, you will be asked to provide your full name and your town/city of residence. This identifying information is optional and not a requirement for participation. Please limit your comments to three (3) minutes, or such other time as the Mayor may decide, consistent with the time limit for speakers at a Council meeting. If you wish to speak to an item or items on the Consent Calendar, please state which item number(s) you are commenting on at the beginning of your time.

If you are unable to participate in real-time, you may email to PublicComment@losgatosca.gov the subject line “Public Comment Item #__” (insert the item number relevant to your comment) or “Verbal Communications – Non-Agenda Item.” Comments received by 11:00 a.m. the day of the meeting will be reviewed and distributed before the meeting. All comments received will become part of the record.

REMOTE LOCATION PARTICIPANTS *The following Council Members are listed to permit them to appear electronically or telephonically at the Town Council meeting: MAYOR ROB RENNIE, VICE MAYOR MARIA RISTOW, COUNCIL MEMBER MARY BADAME, COUNCIL MEMBER MATTHEW HUDES, and COUNCIL MEMBER MARICO SAYOC. All votes during the teleconferencing session will be conducted by roll call vote.*

RULES OF DECORUM AND CIVILITY

To conduct the business of the community in an effective and efficient manner, please follow the meeting guidelines set forth in the Town Code and State law.

The Town does not tolerate disruptive conduct, which includes but is not limited to:

- addressing the town Council without first being recognized;
- interrupting speakers, Town Council, or Town staff;
- continuing to speak after the allotted time has expired;
- failing to relinquish the microphone when directed to do so;
- repetitiously addressing the same subject.

Town Policy does not allow speakers to cede their commenting time to another speaker. Disruption of the meeting may result in a violation of Penal Code 403.

MEETING CALL TO ORDER

ROLL CALL

CONSENT ITEMS *Items appearing on the Consent Items are considered routine Town business and may be approved by one motion. Any member of the Council may request to have an item removed from the Consent Items for comment and action. Members of the public may provide input on any or multiple Consent Item(s) when the Mayor asks for public comments on the Consent Items. If you wish to comment, please follow the Participation Instructions contained on Page 2 of this agenda. If an item is removed, the Mayor has the sole discretion to determine when the item will be heard.*

1. Authorize the Town Manager to Negotiate and Execute a Lease Agreement with Anwar and Masoma Shoja, for 45 North Santa Cruz Avenue, in Substantially the Form Presented.
2. Authorize the Town Manager to Execute a Second Amendment to the Lease Agreement with Los Gatos Museum Association (LGMA) to Extend the Council Consideration Date in Section 7.2 of the First Amendment.

VERBAL COMMUNICATIONS *(Members of the public are welcome to address the Town Council on any matter that is listed on the agenda. To ensure all agenda items are heard and unless additional time is authorized by the Mayor, this portion of the agenda is limited to 30 minutes and no more than three (3) minutes per speaker. In the event additional speakers were not able to be heard during the initial Verbal Communications portion of the agenda, an additional Verbal Communications will be opened prior to adjournment.)*

OTHER BUSINESS *(Up to three minutes may be allotted to each speaker on any of the following items.)*

3. Authorize the Town Manager to Negotiate and Execute a Lease Agreement with CineLux Theatres Co. LLC for the Operation and Program Management of the Los Gatos Theatre in Substantially the Form Presented.

ADJOURNMENT *(Council policy is to adjourn no later than midnight unless a majority of Council votes for an extension of time)*

Writings related to an item on the Town Council meeting agenda distributed to members of the Council within 72 hours of the meeting are available for public inspection at the front desk of the Los Gatos Town Library, located at 100 Villa Avenue, and are also available for review on the official Town of Los Gatos website.

Note: The Town of Los Gatos has adopted the provisions of Code of Civil Procedure §1094.6; litigation challenging a decision of the Town Council must be brought within 90 days after the decision is announced unless a shorter time is required by State or Federal law.



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/28/2022

ITEM NO: 1

DATE: June 22, 2022
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize the Town Manager to Negotiate and Execute a Lease Agreement with Anwar and Masoma Shoja, for 45 North Santa Cruz Avenue, in Substantially the Form Presented

RECOMMENDATION:

Authorize the Town Manager to Negotiate and Execute a Lease Agreement with Anwar and Masoma Shoja, for 45 North Santa Cruz Avenue, in substantially the form presented.

BACKGROUND:

On December 30, 2021, the Town completed the transfer of the Los Gatos Theatre property to the Town's ownership. The property acquisition included assuming landlord oversight and the two respective leases for the existing retail properties at 41 and 45 North Santa Cruz Avenue. The lease at 45 North Santa Cruz Avenue expired February 28, 2022 and has been month to month since.

The property consists of approximately four hundred twenty-five (425) square feet of space and is currently utilized for the sale of high-end designer clothing. The current tenant requested to continue leasing the space and as such staff is bringing forward a new lease agreement (Attachment 1).

DISCUSSION:

Provided on the following page are the salient elements of the draft Lease Agreement (Agreement) staff is recommending.

PREPARED BY: Arn Andrews
Assistant Town Manager

Reviewed by: Town Manager, Town Attorney, and Finance Director

DISCUSSION (continued):

Agreement Elements	Comments		
Term	Three (3) year initial agreement with one (2) two-year option.		
Base Rent Schedule (@ \$7.0 per sq ft)	Year	Monthly Base Rent	Annual Base Rent
	Year 1 (Months 1-12)	\$2,975.00	\$35,700.00
	Year 2 (Months 13-24)	\$3,064.00	\$36,768.00
	Year 3 (Months 25-36)	\$3,156.00	\$37,872.00

CONCLUSION:

The current tenant has an established business which complements the reactivation of the Los Gatos Theatre well. Staff recommends maintaining Anwar and Masoma Shoja, as tenants for 45 North Santa Cruz Avenue.

COORDINATION:

This staff report was coordinated with the Town Manager, Town Attorney, Finance Director, and Economic Vitality Manager

FISCAL IMPACT:

Income derived from this agreement will be deposited to a Special Revenue Fund and would be utilized for the ongoing capital needs of the Theatre.

ENVIRONMENTAL ASSESSMENT:

In accordance with CEQA Guidelines Section 15301, this lease is categorically exempt from CEQA because it is a lease of an existing structure and will involve negligible expansion of an existing structure.

Attachment:

1. Draft Lease Agreement

LEASE AGREEMENT BETWEEN TOWN OF LOS GATOS AND
ANWAR and MASOMA SHOJA

Landlord: Town of Los Gatos

Tenant: Anwar and Masoma Shoja, as sole proprietors, dba Franco Masoma

Premises: Approximately four hundred twenty-five (425) square feet of space within the Los Gatos Theatre Building (as more particularly defined in the Lease) comprising of 41, 43 and 45 N. Santa Cruz Avenue in Los Gatos, California 95030 in the Town of Los Gatos, Santa Clara County, California ("Property"). Consists of the area marked "New Retail Space" in Exhibit A.

Lease Term: 36 months

Lease Commencement Date: July 1, 2022

Rent Commencement Date: Rent shall begin on the date of lease commencement. Rent is established at \$7.00 per square foot.

Base Rent Schedule:

Year	Monthly Base Rent	Annual Base Rent
Year 1 (Months 1-12)	\$2,975.00	\$35,700.00
Year 2 (Months 13-24)	\$3,064.00	\$36,768.00
Year 3 Months 25-36)	\$3,156.00	\$37,872.00

Option to Extend: At the discretion of the Landlord, one (1) twenty-four (24) month option to extend at a 3% increase of prior base year, with at least 90-day written notice from the tenant asking for the extension.

Permitted Use: Retail

Landlord's Address: The Town of Los Gatos – 110 E. Main Street, Los Gatos, California 95030, Attention: Finance Department

Landlord's Telephone: 408-354-6836

Property Manager: Town of Los Gatos Attn: Arn Andrews Assistant Town Manager

Tenant Address: TBD

Tenant Telephone: 408-351-0099

ATTACHMENT 1

Lease Exhibits:

Exhibit A: Premises

Exhibit B: Floor Plan

Town of Los Gatos ("Landlord") and Anwar and Masoma Shoja, as sole proprietors, dba Franco Masoma ("Tenant") agree as follows:

1. **PROPERTY:** Landlord rents to Tenant and Tenant rents from Landlord, an approximately four hundred twenty-five (425) square feet of space within the Los Gatos Theatre Building comprising 45 N. Santa Cruz Avenue in Los Gatos, California 95030 in the Town of Los Gatos, Santa Clara County, California ("Property"). Consists of the area marked "New Retail Space" in Exhibit A.
2. **BASE RENT:** Beginning on July 1, 2022, Tenant agrees to pay a monthly Base Rent ("Base Rent") at the rate of \$2,975 per month, with a 3 percent annual increase effective July 1 of each year. The base rent schedule shall be as follows:

Months	Monthly Base Rent	Annual Base Rent
1-12	\$2,975.00	\$35,700.00
13-24	\$3,064.00	\$36,768.00
25-36	\$3,156.00	\$37,872.00

3. **RENT:**
 - A. **Definition:** "Rent" shall mean all monetary obligations of Tenant to Landlord under the terms of this Lease, except security deposit.
 - B. **Payment:** Rent shall be paid at Los Gatos Town Hall, Finance Department, or at any other location specified by Landlord in writing to Tenant.
 - C. **Timing:** Rent is payable in advance on the **1st day** of each calendar month and is delinquent **10 days after**.
4. **TENANT OPERATING EXPENSES:** Landlord shall provide, during normal business hours, to the extent applicable and not separately metered to the Premises, water, gas, power and electric current to the Premises. Tenant shall pay for all telephone, broadband, cable, security alarm services and other utilities and services specially or exclusively supplied and/or metered exclusively to the Premises or to Tenant, together with any taxes thereon. Under no circumstances shall Landlord be liable in damages or otherwise for any failure or interruption of any utility service being furnished to the Premises. No such failure or interruption shall entitle Tenant to terminate this Lease.

Tenant shall be responsible and directly pay for all other charges, including, but not limited to, Town permit fees, fees for any regulatory licenses or inspections, or other governmental charges such as unsecured business property tax, possessory interest tax, or ABC permits.

5. **Taxes, Assessments, Fees, and Charges:** The property interests created by this Lease may be subject to property taxation and Tenant, in whom the possessory interest is vested, will be responsible for the timely payment of any property taxes levied on such possessory interest. Tenant agrees to pay before delinquency all lawful taxes, assessments, fees or charges which at any time may be levied by the state, county, city or any tax or assessment levying body against the transfer of the leasehold interest hereunder upon recordation or otherwise, or upon any activity carried on under this Lease, any interest in this Lease or any possessory right which Tenant may have in or to the Premises by reason of its use or occupancy thereof or otherwise

Tenant specifically acknowledges that, in accordance with Revenue and Taxation Code Section 107.6, the Premises may be subject to possessory interest tax and that Tenant is responsible for any possessory interest tax levied on Tenant's leasehold interest in the Premises.

6. **TERM:**

Lease: is for a term of 3 years (36 months) and terminates on June 30, 2025 at 6:00 PM.

7. **EXTENSION OPTION:** Provided Tenant has not been late in payment of rent more than 2 times in a calendar year, Tenant shall have one (1) option to extend the Term of the Lease beyond the expiration date for an additional period of twenty-four (24) months by giving Landlord and the Town's Property Manager a written notice of such election no later than 90 days prior to the expiration of the Lease. The option to exercise the extension notice shall be given by certified or registered mail (return receipt requested) or by Federal Express, United Parcel Service or other overnight courier service which obtains personal signatures upon delivery. If Landlord does not receive the notification to extend the term within the time period provided above, all rights under the extension option shall terminate. Tenant shall have no right to exercise the extension option notwithstanding any provision to the contrary while Tenant is in default of the Lease beyond any applicable cure period.

- A. **Monthly Base Rent During Extended Term:** Monthly Base Rent for the extended term shall be 3% increase of prior base year with annual increase of three percent 3% per year.

8. **SECURITY DEPOSIT:**

- A. Tenant agrees to pay Landlord \$4,000 as a security deposit.
- B. All or any portion of the security deposit may be used, as reasonably necessary, to:
- (i) cure Tenant's default in payment of Rent, late charges, non-sufficient funds ("NSF") fees, or other sums due;
 - (ii) repair damage, excluding ordinary wear and tear, caused by Tenant or by a guest or licensee of Tenant;
 - (iii) broom clean the

Premises, if necessary, upon termination of tenancy; and (iv) cover any other unfulfilled obligation of **Tenant**. **SECURITY DEPOSIT SHALL NOT BE USED BY TENANT IN LIEU OF PAYMENT OF LAST MONTH'S RENT.** If all or any portion of the security deposit is used during tenancy, Tenant agrees to reinstate the total security deposit within 5 days after written notice is delivered to Tenant. Within 30 days after Landlord receives possession of the Premises, Landlord shall: (i) furnish Tenant an itemized statement indicating the amount of any security deposit received and the basis for its disposition, and (ii) return any remaining portion of security deposit to Tenant.

C. No interest will be paid on security deposit.

9. PARKING: There shall be no assigned parking spaces associated with this Lease.

10. LATE CHARGE; INTEREST; NSF CHECKS: Tenant acknowledges that either late payment of Rent or issuance of a NSF check may cause Landlord to incur costs and expenses, the exact amount of which are extremely difficult and impractical to determine. These costs may include, but are not limited to, processing, enforcement and accounting expenses, and late charges imposed on Landlord. Therefore, if Town does not receive any installment of rent due from Tenant within ten (10) days after the date such rent is due, Tenant 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 Tenant. Acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to the overdue amount, nor prevent Town from extending any of the other rights and remedies available to Town.

Landlord's right to collect a late charge or NSF fee shall not be deemed an extension of the date Rent is due under section 2.

11. CONDITION OF PREMISES: Landlord warrants that the Premises will be in the following condition on delivery:

Tenant acknowledges that Landlord has made no representation or warranty with respect to the Premises, or the suitability of the Premises for the conduct of the Tenant's business, nor has Landlord agreed to undertake any modification, alteration or improvement to the Premises except as provided in this Lease. The taking of possession of the Premises by Tenant shall conclusively establish that the Premises was at such time in satisfactory condition. Tenant shall be solely responsible for any and all costs and/or expenses associated with improvements to the Premises relative to this Lease.

Tenant has examined the Premises and acknowledges that Premises is clean and in operative condition.

Tenant is responsible for the immediate notification to Landlord of maintenance, loss, damage or any other issues related to the Premises as indicated:

Maintenance Issues, - Public Works, 408-399-5770

Claims - First, Tenant insurer as stated in Lease

Secondly, the Town Attorney's Department, 408-354-6818
All other questions – Town Manager's Office, 408-354-6836

12. **ZONING AND LAND USE:** Tenant accepts the Premises subject to all local, state and federal laws, regulations and ordinances ("Laws"). Landlord makes no representation or warranty that Premises are now or in the future will be suitable for Tenant's use. Tenant has made its own investigation regarding all applicable Laws.
13. **USE:** The Premises are for the sole use as specified:
- A. **Use of the Premises:** Retail
 - B. **Exclusive Use:** Tenant shall have the right to use the Premises for the sale of high end designer clothing. Tenant shall have exclusive use of the Premises for the uses allowed under this Article, except that Landlord shall be allowed entry on the Premises to conduct necessary maintenance and repairs within its responsibility and as otherwise allowed under this Lease. No other use is permitted without Landlord's prior written consent. Tenant will comply with all Laws affecting its use of the Premises.
14. **RULES/REGULATIONS:** Tenant agrees to comply with all rules and regulations of Landlord that are at any time posted on the Premises or delivered to Tenant. Tenant shall not, and shall ensure that guests and licensees of Tenant do not, disturb, annoy, endanger, or interfere with other tenants of the building or neighbors, or use the Premises for any unlawful purposes, including, but not limited to, using, manufacturing, selling, storing, or transporting illicit drugs or other contraband, or violate any law or ordinance, or committing a waste or nuisance on or about the Premises. Tenant shall have access to operate the use upon the Premises twenty-four (24) hours a day, seven (7) days a week.
15. **MAINTENANCE:**
- A. Tenant shall professionally maintain the interior of the Premises. If Tenant fails to maintain the interior of the Premises, Landlord may contract for or perform such maintenance, and charge Tenant for Landlord's cost. Tenant shall be responsible for all expenses for maintenance, repair, replacement and all other associated expenses for all interior tenant improvements in the Premises, including but not limited to floors, walls, and fixtures.
 - B. Landlord shall maintain the roof, foundation, exterior walls, common areas and exterior of the Premises and keep glass, windows and doors in operable and safe condition. Landlord will warrant the good operating condition of the HVAC and electrical systems serving the premises for the lease term.
16. **LOSS OF KEY:** Loss of any key will result in re-keying of lock with all costs to re-key paid for by Tenant.
17. **TENANT IMPROVEMENTS:** Tenant shall be responsible for all improvements essential to their business operation.

- 18. ALTERATIONS:** Tenant shall not make any alterations in or about the Premises, including installation of trade fixtures and signs, without Landlord's prior written consent, which shall not be unreasonably withheld. Any alterations to the Premises shall be done according to law and with required permits. Tenant shall give Landlord advance notice of any planned alteration, so that Landlord, at its option, may post a Notice of Non-Responsibility to prevent potential liens against Landlord's interest in the Premises. Landlord may also require Tenant to provide Landlord with lien releases from any contractor performing work on the Premises. The Premises have been offered and accepted in an "as is" condition. Any Tenant alterations will be made at Tenant's expense.
- 19. GOVERNMENT IMPOSED ALTERATIONS:** Any alterations required by law as a result of Tenant's use shall be Tenant's responsibility. Landlord shall be responsible for any other alterations required by Law.
- 20. PREVAILING WAGES:** Tenant understands that any improvements to the Premises paid for in whole or in part out of public funds will require the payment of prevailing wages in accordance with California Labor Code Sections 1720 et seq. and that, in the event that improvements are paid for in whole or in part out of public funds, Tenant will be responsible for compliance with state prevailing wage laws.
- 21. ENTRY:** Tenant shall make Premises available to Landlord or Landlord's agent for the purpose of entering to make inspections, necessary or agreed repairs, alterations, or improvements, or to supply necessary or agreed services, or to show Premises to prospective or actual purchasers, tenants, mortgagees, lenders, appraisers, or contractors. Landlord and Tenant agree that 24 hours' notice (oral or written) shall be reasonable and sufficient notice. In an emergency, Landlord or Landlord's representative may enter Premises at any time without prior notice.
- 22. SIGNS:** Tenant authorizes Landlord to place a FOR LEASE sign on the Premises within the 30 day period preceding the termination of the Lease. Tenant may install signs in conformance with the Town's sign ordinance.
- 23. SUBLETTING/ASSIGNMENT:** Tenant shall not sublet or encumber all or any part of Premises, or assign or transfer this Lease or any interest in it, without the prior written consent of Landlord, which shall not be unreasonably withheld. Unless such consent is obtained, any subletting, assignment, transfer, or encumbrance of the Premises, Lease, or tenancy, by voluntary act of Tenant, operation of law, or otherwise, shall be null and void, and, at the option of Landlord, terminate this Lease. Any proposed sublessee, assignee, or transferee shall submit to Landlord an application and credit information for Landlord's approval, and, if approved, sign a separate written Lease with Landlord and Tenant. Landlord's consent to any one sublease, assignment, or transfer, shall not be construed as consent to any subsequent sublease, assignment, or transfer, and does not release Tenant of Tenant's obligation under this Lease.
- 24. POSSESSION:** If Landlord is unable to deliver possession of Premises on July 1, 2022, the rent commencement date shall be extended to the date on which possession is made available to Tenant. However, the expiration date shall remain the same as specified in section 5. If Landlord is unable to deliver possession within 90 **calendar days** after July 1,

2022, Tenant may terminate this Lease by giving written notice to Landlord, and shall be refunded all Rent and security deposit paid.

25. TENANT'S OBLIGATIONS UPON VACATING PREMISES: Upon termination of this Lease, Tenant shall: **(i)** give Landlord all copies of all keys or opening devices to Premises, including restroom and any common areas; **(ii)** vacate Premises and surrender it to Landlord empty of all persons and personal property; **(iv)** deliver Premises to Landlord in the same condition as referenced in section 11; **(v)** clean Premises; and **(vi)** give written notice to Landlord of Tenant's forwarding address. All improvements installed by Tenant, with or without Landlord's consent, become the property of Landlord upon termination. Landlord may nevertheless require Tenant to remove any such improvement that did not exist at the time possession was made available to Tenant.

26. DEFAULT:

A. **Event of Default:** The occurrence of any of the following shall constitute an Event of Default of this Lease by Tenant:

- (i) The failure of Tenant to pay or cause to be paid within 10 days after receipt of written notice from Landlord, any Rent or charges required by this Lease to be paid by Tenant;
- (ii) The abandonment of the Premises by Tenant;
- (iii) The failure of Tenant to do or cause to be done any act, other than payment of rent, monies, or charges, required by this Lease within 30 days after written notice thereof to Tenant or such longer period as may be reasonably required to complete such cure so long as such cure is promptly commenced within such 30-day period and thereafter diligently and continuously prosecuted to completion;
- (iv) Tenant causing, permitting, or suffering, without the prior written consent of Landlord, any act when this Lease requires Landlord's prior written consent or prohibits such act, and failing to cure such act within 10 days after written notice thereof to Tenant; or
- (v) Any act of bankruptcy caused, suffered, or permitted by Tenant that is not discharged within 60 days. For the purposes of this Lease, "act of bankruptcy" shall include any of the following: i) Any general assignment or general arrangement for the benefit of creditors; ii) The filing of any petition by or against Tenant to have Tenant adjudged a bankrupt; iii) The appointment of a trustee or receiver to take possession of substantially all of Tenant's assets; iv) The attachment, execution, or other judicial seizure of substantially all of Tenant's assets;
- (vi) The failure of Tenant to maintain insurance coverage as defined in section 31 of this Lease.

B. In the event of a Tenant default in the payment of any installment of Rent, which default continues for ten (10) days after notice to Tenant and demand in writing by Landlord to correct such default, or, in the event of any other default which continues for thirty (30) days after notice from Landlord to Tenant, or if Tenant abandons the Premises prior to the expiration of the Term provided for in this Lease, the Landlord may at his option pursue the Default Remedies contained in this Lease.

C. Default Remedies: If an Event of Default shall occur and continue, then in addition to any other remedies available to Landlord at law or in equity, Landlord shall have the immediate option to terminate this Lease and bring suit against Tenant and recover as an award in such suit the following:

- (i) the worth at the time of award of the unpaid Rent and all other sums due hereunder which had been earned at the time of termination;
- (ii) the worth at the time of award of the amount by which the unpaid Rent and all other sums due hereunder which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided;
- (iii) the worth at the time of award of the amount by which the unpaid Rent and all other sums due hereunder for the balance of the term after termination exceeds the amount of such rental loss that Tenant proves could be reasonably avoided;
- (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease; and
- (v) such amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable California law.

27. DAMAGE TO PREMISES: If, by no fault of Tenant, Premises are totally or partially damaged or destroyed by fire, earthquake, accident or other casualty, Landlord shall have the right to restore the Premises by repair or rebuilding. If Landlord elects to repair or rebuild, and is able to complete such restoration within 90 days from the date of damage, subject to the terms of this section, this Lease shall remain in full force and effect. If Landlord is unable to restore the Premises within this time, or if Landlord elects not to restore, then either Landlord or Tenant may terminate this Lease by giving the other written notice. Rent shall be abated as of the date of damage. The abated amount shall be the current monthly Rent prorated on a 30-day basis. If this Lease is not terminated, and the damage is not repaired, then Rent shall be reduced based on the extent to which the damage interferes with Tenant's reasonable use of Premises. If damage occurs as a result of an act of Tenant or Tenant's guests, only Landlord shall have the right of termination, and no reduction in Rent shall be made.

28. HAZARDOUS MATERIALS: Tenant shall not use, store, generate, release or dispose of any hazardous material on the Premises or the property of which the Premises are part. However, Tenant is permitted to make use of such materials that are required to be used in the normal course of Tenant's business provided that Tenant complies with all applicable Laws related to the hazardous materials. Tenant is responsible for the cost of removal and remediation, or any clean-up of any contamination caused by Tenant.

- 29. CONDEMNATION:** If all or part of the Premises is condemned for public use, either party may terminate this Lease as of the date possession is given to the condemner. All condemnation proceeds, exclusive of those allocated by the condemner to Tenant's relocation costs and trade fixtures, belong to Landlord.
- 30. INDEMNIFICATION:** Tenant agrees to indemnify, and hold harmless Landlord, and its officers, officials, agents, and employees, from any and all liabilities, claims, demands, actions, losses, damages, and costs, including all costs of defense thereof and any award of attorney's fees, caused by, arising out of, or in any way related to Tenant's use or occupancy of the leased premises. Tenant agrees to defend Landlord against any such claims.
- 31. INSURANCE:** Tenant shall procure and maintain for the duration of the Lease insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Tenant's operation and use of the Premises, as described in this section. The cost of such insurance shall be borne by the Tenant.

A. Minimum Scope Of Insurance:

- Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- Workers' compensation insurance as required by the State of California and Employer's Liability insurance (for tenants with employees).
- Property insurance against all risks of loss to any tenant improvements or betterments.

B. Minimum Limits Of Insurance: Tenant shall maintain limits no less than:

- General liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- Employer's liability: \$1,000,000 per accident for bodily injury or disease.
- Property insurance: Full replacement cost with no coinsurance penalty provision.

C. Deductibles And Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the Landlord. At the option of the Landlord, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Landlord, its officers, officials, agents, and employees; or the Tenant shall provide a financial guarantee satisfactory to the Landlord guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

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

- The Landlord, its officers, officials, agents, and employees are to be covered as insureds with respect to liability arising out of ownership, maintenance or use of that part of the premises leased to the Tenant.
- The Tenant's insurance coverage shall be primary insurance as respects the Landlord, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the Landlord, its officers, officials, agents and employees shall be excess of the Tenant's insurance and shall not contribute with it.
- Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after 30 days' prior written notice by certified mail, return receipt requested, has been given to the Landlord.

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

F. **Verification Of Coverage:** Tenant shall furnish Landlord with the original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the Landlord or on other than the Landlord's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by the Landlord before taking possession of the Premises. The Landlord reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

32. TENANT REPRESENTATIONS; CREDIT: Tenant warrants that all statements in Tenant's financial documents and rental application are accurate. Tenant authorizes Landlord to obtain Tenant's credit report at time of application and periodically during tenancy in connection with approval, modification, or enforcement of this Lease. Landlord may cancel this Lease: **(i)** before occupancy begins, upon disapproval of the credit report(s); or **(ii)** at any time, upon discovering that information in Tenant's application is false. A negative credit report reflecting on Tenant's record may be submitted to a credit reporting agency, if Tenant fails to pay Rent or comply with any other obligation under this Lease.

33. DISPUTE RESOLUTION:

D. **Mediation:** Tenant and Landlord agree to mediate any dispute or claim arising between them out of this Lease, or any resulting transaction, before resorting to court action, subject to subsection (1) below. Mediation fees, if any, shall be divided equally among the parties involved. If for any dispute or claim to which this paragraph applies, any party commences an action without first attempting to resolve the matter through mediation or refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney fees, even if they would otherwise be available to that party in any such action.

(1) Exclusions From Mediation: The following matters are excluded from Mediation hereunder:

(i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or Installment land sale contract as defined in Civil Code §2985; (ii) an unlawful detainer action; (iii) the filing or enforcement of a mechanic's lien; (iv) any matter that is within the jurisdiction of a probate, small claims, or bankruptcy court; and (v) an action for bodily injury or wrongful death, or for latent or patent defects to which Code of Civil Procedure §337.1 or §337.15 applies. The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a violation of the mediation provision.

- 34. NOTICE:** Notices may be served by certified mail, email, or courier at the following address or location or at any other location subsequently designated:

Landlord: Town of Los Gatos

Attn: Arn Andrews
Assistant City Manager
110 E. Main Street.,
Los Gatos, CA 95030
408-354-6836

Tenant: Franco Masoma

Attn: Anwar and
Masoma Shoja,
dba Franco
Masoma
TBD

Notice is deemed effective upon the earliest of the following: (i) personal receipt by either party or their agent; or (ii) written acknowledgement of notice.

- 35. WAIVER:** The waiver of any Event of Default shall not be construed as a continuing waiver of the same Event of Default or a waiver of any subsequent Event of Default.
- 36. OTHER TERMS AND CONDITIONS/SUPPLEMENTS:** Exhibit A – Leased Premises, Exhibit B – Floor Plan
- 37. NONDISCRIMINATION:** The Tenant herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this Lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises nor shall the Tenant himself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the Premises.
- 38. ENTIRE CONTRACT:** All prior agreements between Landlord and Tenant are incorporated in this Lease, which constitutes the entire contract. It is intended as a final expression of

the parties' agreement, and may not be contradicted by evidence of any prior Lease or contemporaneous oral agreement. The parties further intend that this Lease constitutes the complete and exclusive statement of its terms, and that no extrinsic evidence whatsoever may be introduced in any judicial or other proceeding, if any, involving this Lease. Any amendment to this Lease must be in writing.

39. SEVERABILITY: Any provision of this Lease that is held to be invalid shall not affect the validity or enforceability of any other provision in this Lease.

40. BINDING ON SUCCESSORS: This Lease shall be binding upon, and inure to the benefit of, the heirs, assignees and successors to the parties.

41. GOVERNING LAW AND VENUE: This Lease is governed by the laws of the State of California and, in the event of litigation, venue will be in the County of Santa Clara.

IN WITNESS WHEREOF, TOWN OF LOS GATOS and ANWAR and MASOMA SHOJA have executed this LEASE.

LANDLORD
TOWN OF LOS GATOS

TENANT
ANWAR and MASOMA SHOJA

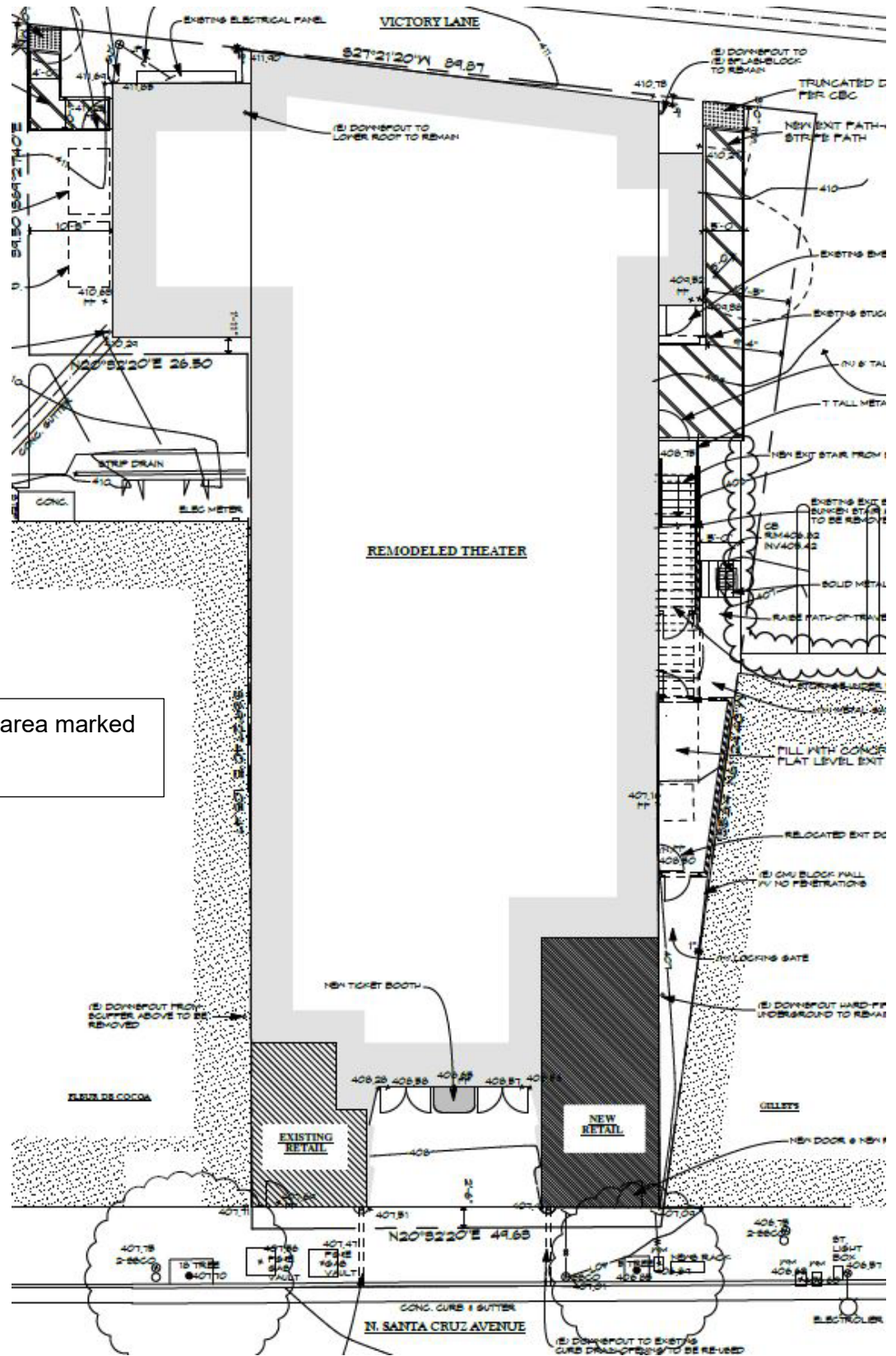
Laurel Prevetti, Town Manager

Anwar Shoja

Masoma Shoja

APPROVED AS TO FORM:

Gabrielle Whelan, Town Attorney



Page 19

**EXHIBIT A
PREMISES**

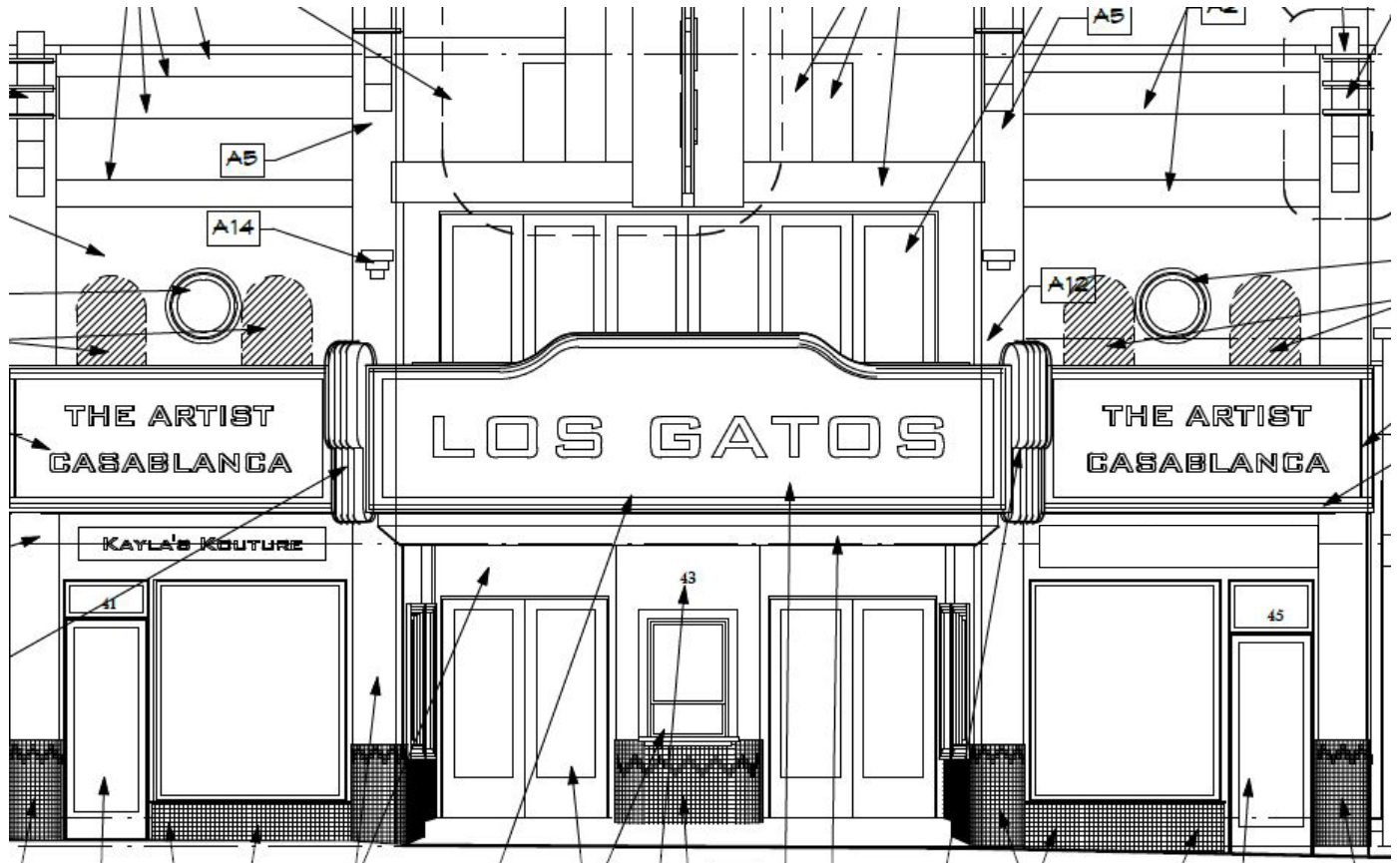
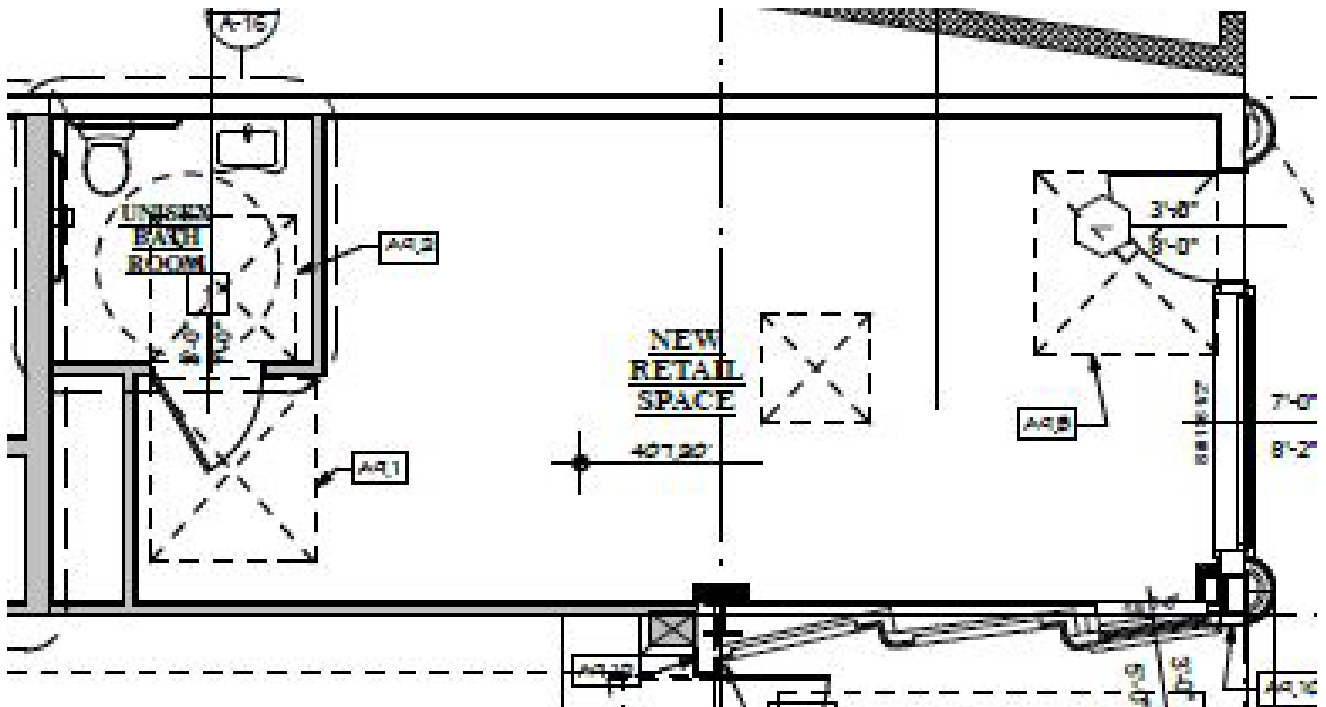


Exhibit B
FLOOR PLAN





**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/28/2022

ITEM NO: 2

DATE: June 23, 2022
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize the Town Manager to Execute a Second Amendment to the Lease Agreement with Los Gatos Museum Association (LGMA) to Extend the Council Consideration Date in Section 7.2 of the First Amendment.

RECOMMENDATION:

Authorize the Town Manager to execute a second amendment to the lease agreement with Los Gatos Museum Association (LGMA) to extend the Council consideration date in Section 7.2 of the First Amendment.

BACKGROUND:

On April 21, 2020, the Town Council approved a First Amendment to the Lease Agreement with LGMA (Attachment 1), also known as New Museum Los Gatos (NUMU), to minimize and/or eliminate utility and rent obligations. In exchange for the elimination of utility payments and outstanding obligations, NUMU was willing to accelerate rent payments, provide in-kind services for residents of Los Gatos, and reconfigure the lower level of their staff office area for use by Town employees.

DISCUSSION:

The First Amendment included the following stipulation in Section 7.2 of the Agreement:

7.2 Past Utilities Due. Lessee acknowledges that pursuant to the terms of the Lease before this Amendment, that there is due and owing to the Town the sum of \$24,417.58 for utilities and operating expenses under this Paragraph. If Lessee performs satisfactorily pursuant to the Agreement and this Amendment, Town Council, in its own and sole discretion, shall consider, prior to July 2022, whether to waive the amount past due. Until such time as Council makes a determination, no amount shall be due from the

PREPARED BY: Arn Andrews
Assistant Town Manager

Reviewed by: Town Manager, Town Attorney, and Finance Director

PAGE 2 OF 2

SUBJECT: 2nd Amendment NUMU Lease Agreement

DATE: June 23, 2022

DISCUSSION (continued):

Lessee to the Town for the above referenced amount.

Due to the adverse effects on NUMU's operations associated with COVID-19 health mitigation restrictions, it is not practical at this time for Council to ascertain "If Lessee performs satisfactorily" under this Section. As such, staff recommends amending the agreement and extending the consideration period to prior to July 2024 (Attachment 2).

CONCLUSION:

Execution of the Second Amendment will provide Council sufficient time to determine if NUMU has met its obligations under Section 7.2 and if the outstanding sum of \$24,417.58 should be waived.

FISCAL IMPACT:

None.

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.

Attachments:

1. First Amendment
2. Draft Second Amendment

**FIRST AMENDMENT TO LEASE AGREEMENT BETWEEN TOWN OF LOS GATOS
AND THE LOS GATOS MUSEUM ASSOCIATION**

This FIRST AMENDMENT to LEASE AGREEMENT is effective on April 21, 2020 and amends the Lease Agreement between the Town of Los Gatos, a California Municipal Corporation (herein "Town") and Los Gatos Museum Association, a California Nonprofit Corporation (herein "Lessee") entered into on December 9, 2013.

RECITALS

- A. Town and Lessee entered into a Lease Agreement ("Agreement"), executed by the Town Manager on December 9, 2013, a copy of which is attached hereto and incorporated by reference as Attachment 1 to this Amendment.
- B. Town and Lessee desire to amend certain terms and conditions of the Lease Agreement. Therefore, the following paragraphs are deleted in their entirety and replaced as set forth herein as follows:

AMENDMENT

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 Exhibits A and B attached hereto and incorporated herein by reference. The Premises consists of approximately Ten thousand six hundred and thirty (10,630) square feet of space for museum exhibits, staff offices, storage, art studio, MakerSpace classroom areas, lounge and meeting area, visitor reception areas, Collection room, educational program room/spaces, kitchen facilities, restrooms, elevators and an attached outside 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 commencing on January 1, 2016 and ending on December 31, 2026. Lessee shall, at the expiration of the term of this Lease, or the end of any option period set forth in Paragraph 2.2, 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.

3. **RENT and MONETARY and PERFORMANCE OBLIGATIONS.**

3.1 **Base Rent.** The rent to be paid by Lessee shall be in the amount of twenty-five thousand dollars (\$25,000.00) per year payable in monthly installments of \$ 2,083.33.

3.2 **Payment Date.** Rent shall be payable on the first day of each month commencing on July 1, 2020 and thereafter during the term of the Lease and any Lease extension at Town Hall Finance Department.

Prior to the extension of the Lease under the Option Periods of this Lease, Paragraph 2.2, if an option is exercised, the Town reserves the right to review the accounts and financial records of the Lessee and open negotiations for an adjustment in rent or performance obligations under Paragraph 3.6.

3.6 Lessee Programs & Services to Town Residents & Non-Profit Organizations. Lessee shall provide the following services and programs to Los Gatos Residents:

1. Free museum admission to art and history exhibitions, opening receptions, and select events and programs.
2. Priority Registration/Admission for select programs and events.
3. Facility Rental Discounts (meetings, private events, fundraisers).
 - a. 10 % discount for private rentals.
 - b. 15 % discount for non-profits rentals.
4. Curate and install one Art in the Council Chambers exhibition.
5. Curate one Council Chambers display case per year.
6. Support Arts & Culture Commission in efforts to fund public projects through fiscal agency and curatorial support.
7. Support Los Gatos Town Events at request of organizers, based upon Museum capacity and resources.
8. Host GBAO/Los Gatos Art Association biennial exhibition (excludes soliciting exhibition sponsors, exhibition installation and and deinstallation exhibition management).
9. Continue to source funding and volunteer support for Los Gatos History Project (archiving collection, programming).

3.7 **Annual Statements.** On or before September 1, of each calendar year, beginning in 2021, Lessee shall furnish to the Town a statement (the "Annual Report"), setting forth in reasonable detail a listed of completed or in progress milestones ; attendance report (residents and non-residents) ; the current budget; a financial statement (revenues, expenses and endowment) for the prior year; provide a collections management report and a listing of the Lessee's Board of Directors.

3.8 **Books and Records.** Lessee shall keep and maintains full, complete and appropriate books, records and accounts relating to the Premises, including all such books, records and

accounts necessary or prudent to evidence and substantiate in full all revenues and expenses incurred in the performance of this Agreement. All such books, records and accounts shall be open to and available for inspection by the Town, its auditors or other authorized representatives at reasonable intervals during normal business hours.

3.9 Sponsorship. Lessee acknowledge Town as a major sponsor on all press releases and other written materials available to the public. Such acknowledgement will substantially read: "Major funding for this program is made possible in part by the Town of Los Gatos." Said language will be in proportional type size to the total advertisement area.

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

5. 1. 2 4,335 square feet of space on the upper level and 6295 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 and Exhibit B. Exhibit B is detailed plan of the new configuration on the lower level. The Town will be responsible for all costs associated with the new configuration on the lower level.

5. 2 **Hours of Operations.**

5. 2. 1 **Public Hours.** Public hours shall not exceed Monday through Sunday from 9: 00 A.M. to 9: 0 P.M. Additional hours are allowed for special events, programs, private events receptions, and Board /Committee meetings so long as no Town meeting or event is scheduled. 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. 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.

5. 7 **Use of Alcohol.** Any use of alcohol will be subject to approval and conditions contained in any Conditional Use Permit obtained by Lessee. 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.

7. **UTILITIES AND OPERATING EXPENSES.**

7. 1 **Lessee Obligations.** Town is responsible for all expenses associated with the furnishing of gas, water, sewer, electricity, garbage pickup and disposal that relate to the Premises. 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 **Past Utilities Due.** Lessee acknowledges that pursuant to the terms of the Lease before this Amendment, that there is due and owing to the Town the sum \$ \$24,417.58 for utilities and operating expenses under this Paragraph. If Lessee performs satisfactorily pursuant to

the Agreement and this Amendment, Town Council, in its own and sole discretion, shall consider, prior to July 2022, whether to waive the amount past due. Until such time as Council makes a determination, no amount shall be due from the Lessee to the Town for the above referenced amount.

All other terms and conditions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the TOWN and LOS GATOS MUSEUM ASSOCIATION have executed this Amendment.

TOWN OF LOS GATOS

DocuSigned by:
By: Laurel Piretti
853F6EA7EB39476
Laurel Piretti
Town Manager

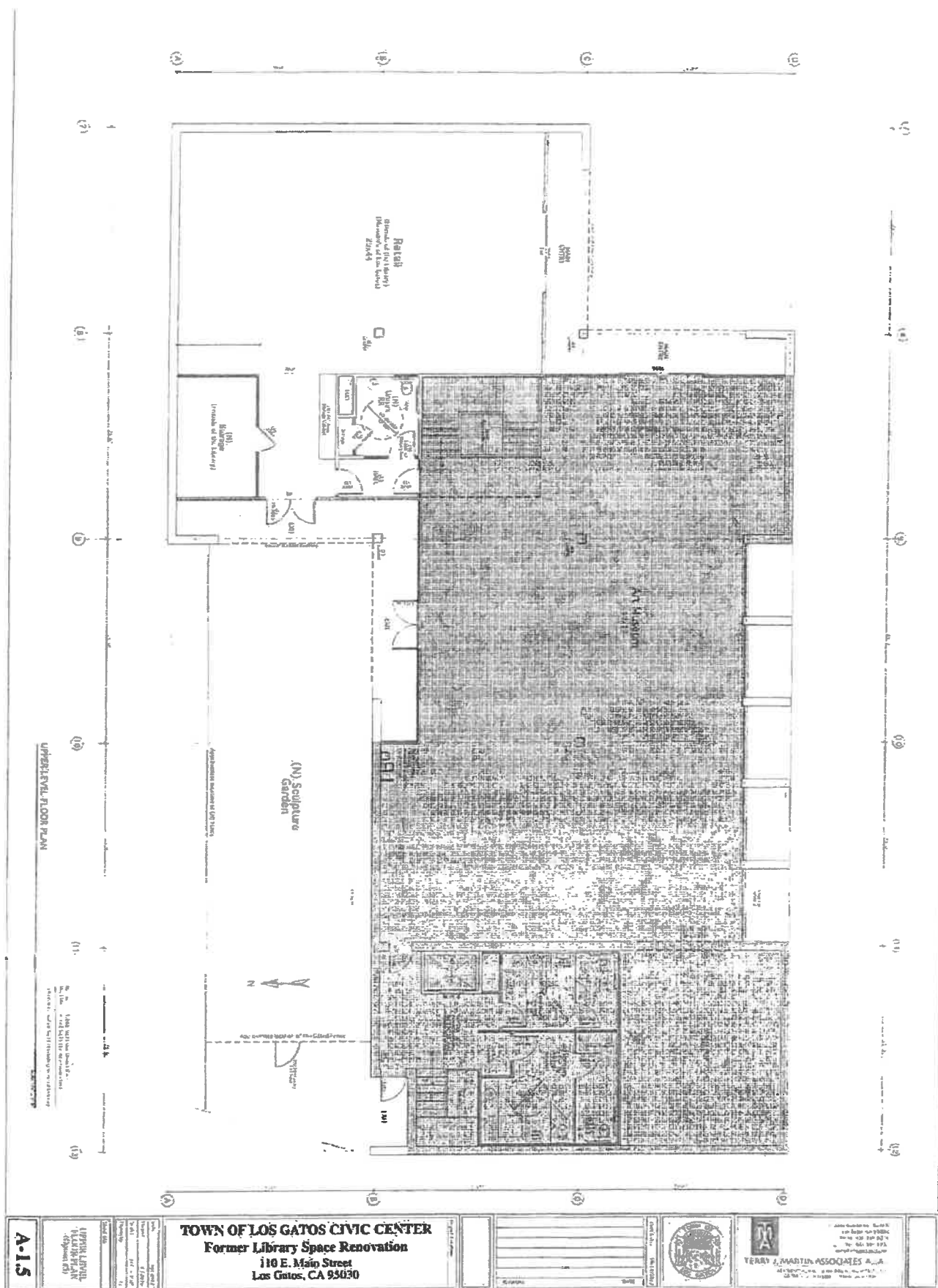
LOS GATOS MUSEUM ASSOCIATION

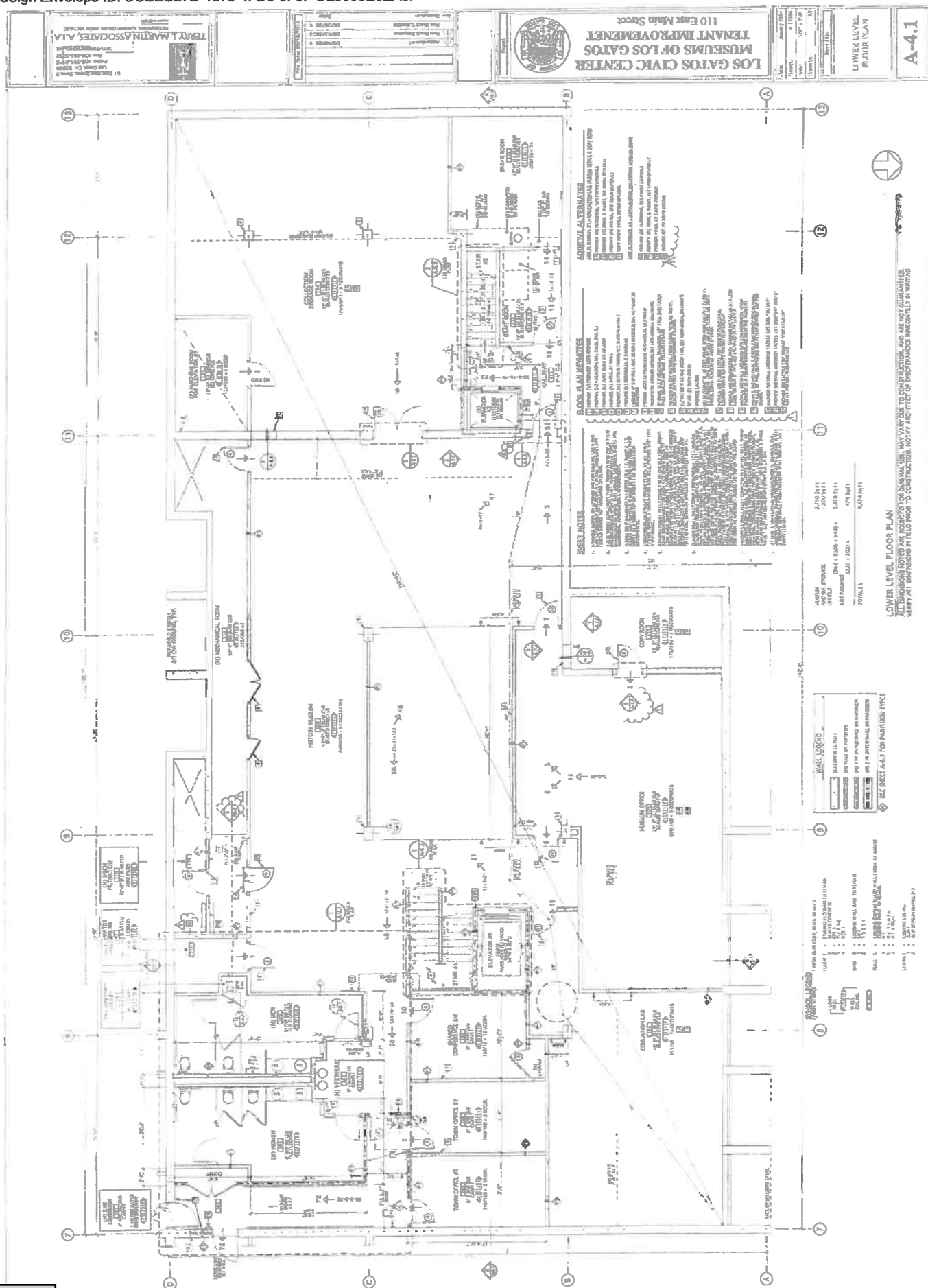
DocuSigned by:
By: Maureen Cappon-Javey
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Maureen Cappon-Javey
Executive Director

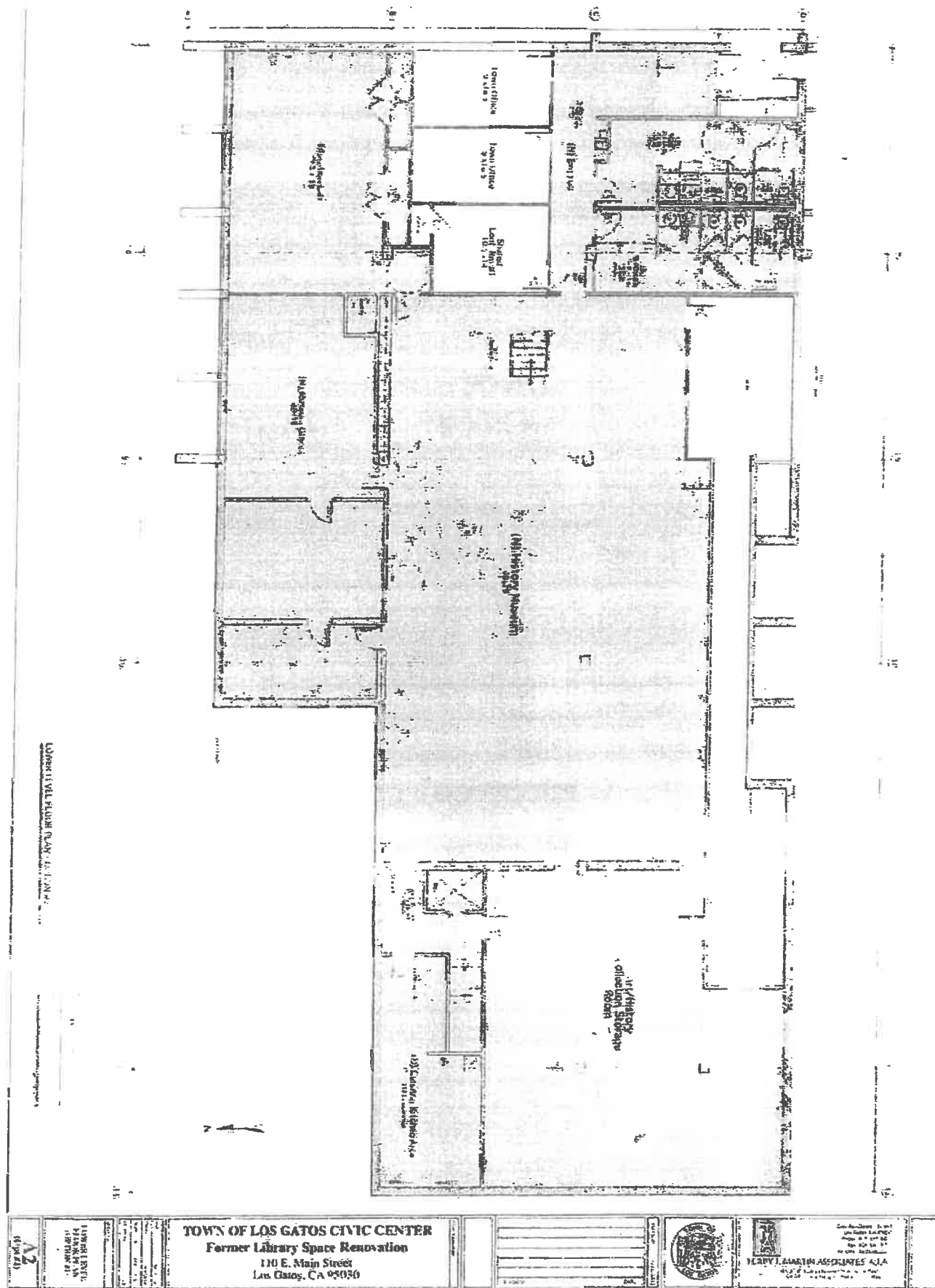
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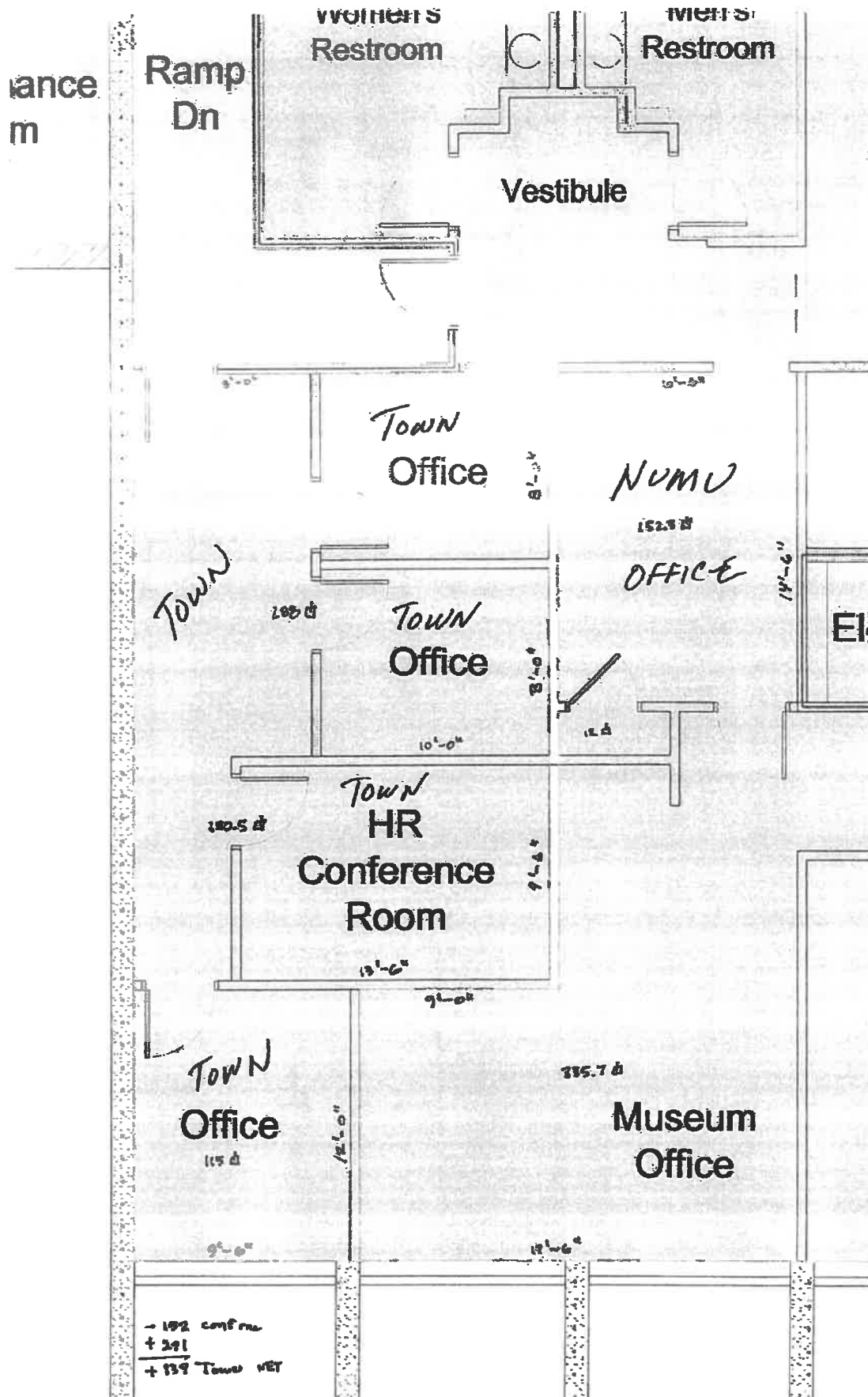
DocuSigned by:
Robert W. Schultz
2FE0938559B744C
Robert Schultz
Town Attorney











SECOND AMENDMENT TO LEASE AGREEMENT BETWEEN TOWN OF LOS GATOS AND THE LOS GATOS MUSEUM ASSOCIATION

This SECOND AMENDMENT to LEASE AGREEMENT is effective on June 28, 2022 and amends the Lease Agreement between the Town of Los Gatos, a California Municipal Corporation (herein "Town") and Los Gatos Museum Association, a California Nonprofit Corporation (herein "Lessee") entered into on December 9, 2013, and amended on April 21, 2020.

RECITALS

- A. Town and Lessee entered into a Lease Agreement ("Agreement"), executed by the Town Manager on December 9, 2013, a copy of which is attached hereto and incorporated by reference as Attachment 1 to this Amendment.
- B. Town and Lessee entered into a First Amendment to the Lease Agreement ("Agreement"), on April 21, 2020, a copy of which is attached hereto and incorporated by reference as Attachment 2 to this Amendment.
- C. Town and Lessee desire to amend certain terms and conditions of the Lease Agreement. Therefore, the following paragraphs are deleted in their entirety and replaced as set forth herein as follows:

AMENDMENT

7. UTILITIES AND OPERATING EXPENSES.

7.2 Past Utilities Due. Lessee acknowledges that pursuant to the terms of the Lease before this Amendment, that there is due and owing to the Town the sum\$ \$24,417.58 for utilities and operating expenses under this Paragraph. If Lessee performs satisfactorily pursuant to the Agreement and this Amendment, Town Council, in its own and sole discretion, shall consider, prior to July 2024, whether to waive the amount past due. Until such time as Council makes a determination, no amount shall be due from the Lessee to the Town for the above referenced amount.

All other terms and conditions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the TOWN and LOS GATOS MUSEUM ASSOCIATION have executed this Second Amendment.

TOWN OF LOS GATOS

By: _____

Laurel Prevetti
Town Manger

APPROVED AS TO FORM:

Gabrielle Whelan
Town Attorney

LOS GATOS MUSEUM ASSOCIATION

By: _____

Ami Davis
Executive Director



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/28/2022

ITEM NO: 3

DATE: June 21, 2022
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize the Town Manager to Negotiate and Execute a Lease Agreement with CineLux Theatres Co. LLC for the Operation and Program Management of the Los Gatos Theatre in Substantially the Form Presented

RECOMMENDATION:

Authorize the Town Manager to negotiate and execute a Lease Agreement with CineLux Theatres Co. LLC for the operation and program management of the Los Gatos Theatre in substantially the form presented.

BACKGROUND:

On November 16, 2021, the Town Council authorized the Town Manager to negotiate and execute a Donation Agreement for the Los Gatos Theatre Donation Property and issue a Request for Proposals (RFP) for the management and programming of the theatre. On December 30, 2021, the Town completed the transfer of the Los Gatos Theatre property to the Town's ownership.

On February 4, 2022, staff released a RFP for the Operation and Program Management of the Los Gatos Theatre (Attachment 1). The RFP sought qualified individuals or firms to operate and manage the Los Gatos Theatre (Theatre) on behalf of the Town. The RFP stressed that respondents should advance the theatre's long-term financial viability while advancing the following goals:

1. Preservation of the Theatre as one of the most significant historical, cultural and architectural resources in the Town of Los Gatos;
2. Enrichment of the community through the promotion and presentation of high-quality entertainment, cultural events, and community education programs of interest to all segments of the community;

PREPARED BY: Arn Andrews
Assistant Town Manager

Reviewed by: Town Manager, Town Attorney, Economic Vitality Manager, and Finance Director

BACKGROUND (continued):

3. Identification of the Theatre as a central destination point for cinematic and performing arts which drives economic activity in downtown Los Gatos and the broader region; and
4. Long-term financial sustainability.

By the March 4, 2022 RFP submission deadline, staff received proposals from the following three respondents:

- Guggenheim Entertainment
- Pruneyard Cinemas LLC
- CineLux Theatres Co. LLC

The RFP review panel consisted of the Assistant Town Manager, Economic Vitality Manager, and Director of Parks and Public Works. After careful consideration of the RFP responses, the review panel selected CineLux Theatres Co. LLC as the best option for the management and operation of the Theatre. CineLux has over 55 years of theatre experience and is the largest independent regional theatre operator in the South Bay. CineLux currently operates seven locations with 53 screens. In addition, CineLux has demonstrated the successful acquisition and operation of seven previously closed or failed motion picture theatres.

DISCUSSION:

Provided below are the salient elements of the draft Lease Agreement (Agreement) staff is utilizing as the basis of agreement between the Town of Los Gatos and CineLux Theatres Co. LLC (Attachment 2).

Agreement Elements	Comments
Term	Five (5) year initial agreement with two (2) five-year options.
Theatre Management	CineLux would operate and manage the Theatre independently of Town in compliance with agreed upon performance expectations and Town, state, and federal rules, regulations, and laws. The nature of this relationship is that of an independent contractor.
Theatre Programming	Professional film programming shall be a prioritized use in the Theatre.
Profit Sharing	Town shall receive 5% of the Theatre's gross revenue annually.

DISCUSSION (continued):

Agreement Elements	Comments
Monthly Rent	- For the first (1) year after the Delivery Date, Cinelux shall pay no Rent for the Premises. The Delivery Date is the date that CineLux assumes responsibility for the Theatre under the Agreement. - For the second (2) year after the Delivery Date, Cinelux will pay base rent of \$5,000 per month. - In year three (3) after the Delivery Date, Cinelux will pay monthly rent of \$10,000 per month.
Annual Reporting	- An annual financial report for Cinelux's previous fiscal year. - An annual narrative report on the operations of the Theatre for the previous fiscal year. - A report assessing the status of physical condition of the Theatre, preventive maintenance activities completed, and any needed Capital Replacements. - Cinelux's proposed budget for the Theatre operations and maintenance for the current fiscal year.
Town, Non-profit, and Community-Based Organization Theatre Use	- Not less than 6 times per year, Cinelux shall make the Theatre available for rental to Los Gatos community-based organizations and non-profit organizations at no cost. - Cinelux shall maintain a tiered fee structure that includes discounted rates with specified eligibility criteria for Los Gatos community-based organizations and non-profit organizations. - Not less than 2 times per year, Cinelux shall make the Theatre available to the Town at no cost.
Maintenance & Repairs	- Cinelux shall be responsible for all routine daily maintenance of the interior shell of Theatre Facility. - Cinelux shall be responsible for the routine and preventive maintenance services of all building systems. - As stated in Exhibit D, Maintenance Matrix, to the Draft Agreement (Attachment 2), Town shall be responsible for the structural foundation, bearing and exterior walls, and subflooring among other items

PAGE 4 OF 4

SUBJECT: Los Gatos Theatre Lease Agreement

DATE: June 21, 2022

CONCLUSION:

Staff recommends that the Council authorize the Town Manager to negotiate and execute a Lease Agreement with CineLux Theatres Co. LLC for the operation and program management of the Los Gatos Theatre.

COORDINATION:

This staff report was coordinated with the Town Manager, Town Attorney, Economic Vitality Manager, Director of Parks and Public Works, and Finance Director.

FISCAL IMPACT:

Income derived from this agreement will be deposited to a Special Revenue Fund and would be utilized for the ongoing capital needs of the Theatre.

ENVIRONMENTAL ASSESSMENT:

In accordance with CEQA Guidelines Section 15301, this lease is categorically exempt from CEQA because it is a lease of an existing structure and will involve negligible expansion of an existing structure.

Attachments:

1. Los Gatos Theatre RFP
2. Draft Lease Agreement



Town of Los Gatos
Theatre Operation and Program Management Services

REQUEST FOR PROPOSALS (RFP)

Operation and Program Management of the Los Gatos Theatre



Proposals Due:

March 4, 2022 by 5:00 p.m.

RFP Contact:

Arn Andrews

Assistant Town Manager

aandrews@losgatosca.gov

408-354-6836

Deliver To:

Town of Los Gatos

Town Manager's Office

110 E. Main Street

Los Gatos, CA 95030

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2. TOWN OVERVIEW
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7. SUBMITTAL INSTRUCTIONS
8. PROPOSAL FORMAT REQUIREMENTS
9. REVIEW AND SELECTION PROCESS
10. ATTACHMENTS

1. INTRODUCTION

The Town of Los Gatos Town Manager's Office, ("Town") is pleased to offer an exciting opportunity for a well-qualified individual(s) or company ("Proposer") to operate and manage the Los Gatos Theatre ("Theatre") on behalf of the Town.

This Request for Proposals (RFP) is an invitation for qualified vendors to submit proposals to operate the Theatre on an exclusive basis. The Town envisions an initial period of three (3) years with the potential of two (2) additional consecutive five-year periods if mutually agreeable. The Town is open to various options but expects the Proposer to detail and justify any alternative contract term.

The successful Proposer shall demonstrate the ability to perform in this type of business and clearly articulate financially sustainable plans for operation of the Theatre. The Town's preferred operational model is a blend of presenting films and other cultural programming combined with facility rentals which results in the theatre's long-term financial viability and advances the following goals:

1. Preservation of the Theatre as one of the most significant historical, cultural and architectural resources in the Town of Los Gatos;
2. Enrichment of the community through the promotion and presentation of high-quality entertainment, cultural events, and community education programs of interest to all segments of the community;
3. Identification of the Theatre as a central destination point for cinematic and performing arts which drives economic activity in downtown Los Gatos and the broader region; and
4. Long-term financial sustainability.

2. TOWN OVERVIEW

The Town of Los Gatos is a small community nestled at the base of the Santa Cruz Mountains, approximately 60 miles south of San Francisco. The Town of Los Gatos is guided by the principles of Small Town Service, Community Stewardship, and Future Focus. The Town government is fiscally healthy, and focuses on teamwork, collaboration, and civic engagement. Los Gatos is a General Law Town with a five-member Council and an annually rotating Mayor's position. The Town Council sets the policies for which the Town employees implement under the leadership of the Town Manager.

The Town operates one Civic Center, one Police Operations building, one Service Center, and one Library and employs approximately 150 personnel.

3. THEATRE BACKGROUND

The Los Gatos Theatre has been a fixture in Los Gatos since 1915, the dawn of the age of motion picture exhibition. Opening as the Strand Theatre it was remodeled after a 1929 fire. The remodel included a new Art Deco look, complete with marquee and murals. It became the Gatos Theatre in the 1940s, and then in the late 1980s the original “single” was turned into a “twin” with a modest interior renovation, at which time Camera Cinemas was brought in to operate the facility.

The Goetz family purchased the building in 2011 as a philanthropic project. A key priority of the Goetz family was to reinvigorate the building, which had fallen into disrepair. The theatre underwent a complete restoration between 2012 to 2014 which returned the building to its Art Deco glory days. The Goetz family ran the theatre until their recent donation of the theatre to the Town with the understanding that the Town would carefully steward this Los Gatos treasure.

4. THE FACILITY

The Los Gatos Theatre is located in the heart of downtown Los Gatos. The Theatre is considered to be an important contributor to the economic and social fabric of the Los Gatos community.

Main Theatre: The main theatre has inclined stadium-style seating for up to 244 in rocking, leather-covered loungers rising up 14 rows. At the top, an intimate balcony offers two additional rows of premium seating for 21 in oversized velour-upholstered rocking chairs and loveseats. A state-of-the-art Barco 4K digital cinema projector, with 3D capability, can show films and presentations on a 38-by-19 foot screen.

Lounge Theatre: The lounge theatre is located on the second floor and offers an 18’ x 10’ screen. The smaller theatre, while more intimate with leather reclining and other seating for 38, has a total room capacity of 100, creating an ideal venue for both business and personal gatherings. The space also offers an outdoor balcony and a full caterer’s kitchen.

Green Room: A green room is located near the main stage of the Main Theatre with its own private entrance and is provided for artists and guests to wait before being called for their appearance, or to wait between appearances.

Restrooms: One restroom core is located on each floor.

5. SCOPE OF SERVICES

At the conclusion of the process outlined in this RFP, the Town intends to enter into a contract for services to operate and manage the Los Gatos Theatre described herein. The Town intends to retain ownership of the Theatre and will maintain a close working

relationship with the chosen operator. The Town contemplates quarterly meetings to review theatre operations, event scheduling and content, resource development and community relations as well as other relevant issues.

The scope that will be incorporated into the contract may include but not be limited to the following items:

1. Proposer shall be responsible for all day-to-day functions and operations of the Los Gatos Theatre in accordance with the highest professional and ethical standards.
2. The expectation that the Proposer will strive for the maximum utilization of the venue to ensure its financial sustainability.
3. Proposer shall negotiate and execute all agreements for use of the Theatre space for events.
4. Proposer shall be responsible for recommending for Town approval all rental rates, fees, and charges for services provided through the agreement.
5. Proposer will have oversight responsibility over any and all subcontractors associated with theatre programming.
6. Proposer shall prepare and submit annual budgets for the operation of the Theatre. The Proposer shall also establish a system of internal controls to provide reasonable assurance that the Town's/Theatre's resources are used in an effective and efficient manner. The Proposer shall keep full and accurate accounting records relating to its activities at the Theatre in accordance with generally accepted accounting principles.
7. Proposer shall be considered an independent contractor and consequently, shall be considered responsible for all employment and payroll functions related to their operation of the Los Gatos Theatre.
8. Proposer shall thoroughly train and closely supervise all employees so that they provide high standards of service to patrons.
9. Proposer shall maintain administrative and operating policies and procedures to ensure the efficient and effective management of the Theatre.
10. Proposer shall abide by all applicable local, state, county, state, and federal laws pertaining to its operation and shall secure all licenses and permits necessary for the operation of the Theatre. The successful Proposer shall be responsible for, and pay all federal, county, Town, and state taxes arising as a result of managing theater operations.
11. Proposer shall be responsible for possessory interest tax through the County of Santa Clara.
12. Proposer shall be responsible for returning the Theatre and all Furniture, Fixtures and Equipment (FFE) to the Town in the same condition in which they were provided except for normal wear and tear.
13. Proposer will ensure the Theatre shall be kept clean, orderly, attractive, and sanitary at all times and in strict accordance with the applicable laws, ordinances, rules, and regulations as well as the standards of the Town.
14. Proposer shall constantly endeavor to improve the operation of the Theatre with a view toward developing the most efficient and highest quality of service to the

- customers, minimizing operating costs, increasing the quality of maintenance, and maximizing gross receipts without negatively impacting costs.
15. The Town has a preference for a triple net lease with structured oversight of financial operations, maintenance, and capital replacement.
 16. Roles and responsibilities regarding execution of routine maintenance issues versus larger construction projects.
 17. Town has a preference to be able to use the Los Gatos Theatre on occasion for specified Town events subject to Proposer's previously booked events.
 18. Town has a preference for the Proposer to establish and maintain a consistent policy regarding discounts or subsidies that would be offered to nonprofits, community groups, or other designated categories subject to Proposer's previously booked events.

6. PROPOSED TENTATIVE TIMELINE

Pre-proposal Meeting Date and Time (voluntary, but highly recommended): February 10, 2022 at 10:00 a.m. at the Los Gatos Theatre.

Timeline	
Distribution of RFP	02/04/2022
Deadline for Questions	02/18/2022
Proposals Due to the Town	03/04/2022
Selection Panel Review of Proposals	Weeks of March 7 & 14, 2022
Vendor Presentations/Interviews	Week of March 21, 2022
Council Consideration of RFP Award	04/5/2022

7. SUBMITTAL INSTRUCTIONS

The Town of Los Gatos invites qualified firms to submit proposals to provide operation and program management of the Los Gatos Theatre. Proposals must be received by 5:00 p.m. on Friday March 4, 2022 to the address indicated on the cover of this RFP.

The submittal package shall include the following:

- One executed original and four printed copies of the proposal
- One electronic copy (sent via email)

8. PROPOSAL FORMAT REQUIREMENTS

Each Proposer must carefully examine the requirements contained herein. Upon receipt of responses hereunder, each Proposer shall be thoroughly familiar with all requirements contained herein. The failure or omission to examine any form or document shall in no way relieve a Proposer from any obligation in respect to this proposal submitted. Any misinterpretation of the requirements is solely that of the Proposer.

In addition, any material that will add to the persuasiveness of your proposal may be included. However, if the materials do not directly address the stated requirements, please include them in an appendix or separate volume. The Town will review and consider all material submitted but will concentrate on the material that directly addresses the Town's stated needs.

Proposals must include in the following, specified order:

A. COVER LETTER

The cover letter should include the title of this RFP; name and mailing address of firm; contact person, telephone number, fax number and email address.

B. PROGRAM APPROACH

Provide a detailed description of how the Proposer will achieve the objectives outlined in the RFP, which illustrates the Proposer's ability to ensure the financial stability and sustainability of the Theatre, ensure the Theatre will continue to serve as a cultural resource for the community that attracts quality entertainment clients and audiences, and ensure the Theatre will act as an economic catalyst for the downtown.

The description should include, but is not limited to, providing the following:

Management Terms

Town Responsibilities: Proposers must detail what the Town will be expected to provide in terms of the Town's financial contribution; expected role in building operations, maintenance, and capital projects; and/or other parameters. The Town is open to various options but expects the Proposer to detail and justify these expectations.

Operator Responsibilities: Proposers must detail what the Operator's role will be in terms of building operations, maintenance, and capital projects. The Town is open to various options but expect the Proposer to detail and articulate these responsibilities.

Programming

Describe your view of a representative mix of high-quality events, such as film, music, comedy, community events, lectures, private and commercial events, etc. and how you will achieve it. This list of genres is exemplary, not mandatory. Include your view on the Town's role in determining the appropriateness of recommended content. Give examples of specific productions, artists, events, etc. previously programmed by your organization that demonstrate this targeted quality and variety.

Include a description of capital investments that would be necessary to successfully meet the programming goals.

Operations

Describe your approach to the following significant components of managing a theatre facility specific to the Los Gatos Theatre:

- Staffing plan;
- Marketing, community outreach, and audience development;
- Concessions;
- Ticket/Event/Rental pricing;
- Event management and accounting systems;
- Operating policies and procedures;
- Routine and capital maintenance;
- Relationship to building retail tenants; and
- Strategies to build and maintain a strong working relationship with the Town's program liaison(s). Include your expectations in working with Town program liaison(s).

C. FIRM PROFILE AND EXPERIENCE

Include a profile of the firm including firm history, stability, and organizational structure; additional firm locations; and profiles of representative projects/locations that best demonstrate the firm's qualifications and experience maintaining, operating, and programming film and other cultural events.

The firm's profiles of the representative projects will be used as references and therefore shall identify the client contact persons with telephone numbers, and services provided by the firm.

D. FINANCIAL PROPOSAL

One of the goals of this RFP is to select an operator that can establish consistent financial stability and sustainability for Los Gatos Theatre operations, while minimizing the financial contribution provided by the Town, if any. The Town has not determined a set financial or payment structure for the successful Operator but favors a lease arrangement. Town is open to various options and expects Proposers to detail their expectations.

Provide a pro forma projection detailing all anticipated sources of revenue and all expenses by category, including proposed lease payments to the Town for the initial three-year term. Based on projected net income (if positive) after taxes, describe potential revenue sharing arrangements with the Town. The Town has no specific pre-formulated requirements for lease payments or revenue sharing.

Provide any information regarding the financial capacity of the organization which demonstrates the organizations' ability to meet the obligations of the proposal [e.g., current financial statements (balance sheet and income statement), bank account

statements and/or letters from bank reporting on deposit, and/or federal tax returns for most recent year)).

E. CONFLICT OF INTEREST

The proposal must include the name of entities associated with the firm and any associated service provider who may have a conflict of interest with any activity of this RFP. Provide details and reasons. Firms/service providers are subject to disqualification based on conflict of interest as determined by the Town of Los Gatos.

F. EXCEPTIONS

Describe all proposed exceptions, alterations, or amendments to the scope of services or other requirements of this RFP. The nature and scope of the proposed exceptions may negatively affect the evaluation of the submittal and the Town's determination of whether it is possible to successfully negotiate a contract with the firm.

9. REVIEW AND SELECTION PROCESS

Award of the Theatre operations shall be made to the responsible and responsive Proposer whose proposal is determined, through a formal evaluation process, to be the most advantageous to the Town.

The successful Proposer will enter a contract with the Town incorporating all prescribed requirements and conditions of this request for proposal. If the successful Proposer refuses or fails to execute the contract, the Town may consider the next most qualified Proposer. The Town shall be the sole judge as to the successful Proposer.

The Town reserves the right to reject any or all responses to this RFP and to waive any informality or irregularity in this RFP or in responses, to negotiate with all qualified sources, or to cancel, in part or in its entirety, this RFP, in the best interest of the Town. This RFP does not commit the Town to award a contract, or to procure or contract for services or goods.

Before award, Proposers may be required to furnish evidence of capability and financial resources to adequately perform the job as specified above.

SELECTION PANEL

A Selection Panel comprised of Town staff will be established for this project by the Town. The Panel will review and rank the proposals and negotiate with qualified firms based on the content of the proposals relative to firm experience, qualifications, and past record of performance. The Town may request an interview and/or site visit from any or all the qualified firms to further assist in the selection process.

SPECIAL CONSIDERATIONS

- **Public Records:** All proposals submitted in response to the RFP become the property of the Town and are subject to release under the California Public Records Act and may be subject to public review.
- **Right to Cancel:** The Town reserves the right to cancel, in part or in its entirety, this RFP. If the Town cancels or revises this RFP, the Town will notify all proposers in writing.
- **Additional Information:** The Town reserves the right to request additional information and/or clarifications from any or all proposers to this RFP.
- **Insurance Requirements, Permits, Licenses, Agreement:** The successful firm shall always maintain in force at its own cost during the performance of the assignment insurance. If the firm cannot or will not provide insurance as identified, the Town will not contract with the firm
- **Contractual Requirements:** The successful firm will be required to enter a contract with the Town using the Town's Standard Agreement for Services. Provisions include, but are not limited to, indemnification, insurance requirements, applicable compliance to ordinances, laws, regulations, and licenses, Town business tax licenses and other terms and conditions. If a firm is not prepared to accept the terms of this Agreement, the firm should not submit a proposal. No changes will be made to the general contract requirements.
- **Waiver:** By submitting a response to this RFP, each proposer expressly waives any and all rights it may have to object to, protest, or seek legal remedies whatsoever related to any aspects of this RFP, Town's selection of consultant or rejection of any or all responses.
- **Preparation of Proposals:** The Town will not reimburse the costs to prepare a response to this RFP.

10. ATTACHMENTS

The following attachments are incorporated into the Request for Qualifications and are required to be completed to be considered a complete proposal:

ATTACHMENT 1 – CONFLICT OF INTEREST STATEMENT (FOR SUBMITTAL)

ATTACHMENT 2 – NON-COLLUSION DECLARATION (FOR SUBMITTAL)

ATTACHMENT 3 – REFERENCES (FOR SUBMITTAL)

ATTACHMENT 4 – STATEMENT REGARDING INSURANCE COVERAGE AND WORKER'S COMPENSATION INSURANCE ACKNOWLEDGMENT CERTIFICATE (FOR SUBMITTAL)

ATTACHMENT 1 - CONFLICT OF INTEREST STATEMENT

THIS FORM MUST BE PRINTED OUT, COMPLETED AND SUBMITTED WITH THE PROPOSAL

PROFESSIONAL AUDITING SERVICES

The undersigned declares:

I/We _____ (Insert Name) have the following financial, business, or other relationship with Town of Los Gatos that may have an impact upon the outcome of the contract. If none, please specify that no other relationships may have an impact on this contract or Project.

I/We _____ (Insert Name) have the following current clients who may have a financial interest in the outcome of this contract. If none, please specify that no other clients may have a financial interest with an impact on this contract or Project.

Pursuant to Government Code section 1090 and any other laws, rules and regulations that may apply, the Proposer covenants that neither it, its subcontractors nor employees presently have an interest, and shall not acquire any interest, direct or indirect, financial or otherwise that would conflict in any manner or degree with contract awarded from this RFP. Proposer certifies that to the best of its knowledge, no one

who has or will have any financial interest in the contract awarded from this RFP is an officer or employee of the Town. Through its submittal of a proposal, Proposer acknowledges that it is familiar with Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California and will immediately notify the Town if it becomes aware of any facts concerning the contract to be awarded that constitute a violation of said provisions.

Furthermore, if there is reason to believe that collusion exists among the Proposers, the Town may refuse to consider proposals from participants in such collusion. No person, firm, or corporation under the same or different name, shall make, file, or be interested in more than one proposal for the same work unless alternate proposals are called for. A person, firm, or corporation who has submitted a sub-proposal to a Proposer, or who has quoted prices on materials to a Proposer, is not thereby disqualified from submitting a sub-proposal or quoting prices to other Proposers. Reasonable ground for believing that any Proposer is interested in more than one proposal for the same work will cause the rejection of all proposals for the work in which a Proposer is interested. If there is reason to believe that collusion exists among the Proposers, the Town may refuse to consider proposals from participants in such collusion. Proposers shall submit as part of their proposals documents the completed Non-Collusion Declaration provided herein.

I, on behalf of the Proposer, declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____ [date], at _____ [city], _____ [state].

Proposer Name (Person, Firm, Corp.)

Title of Authorized Representative

Address

Name of Authorized Representative

City, State, Zip

Date

Signed

ATTACHMENT 2 – NON-COLLUSION DECLARATION

THIS FORM MUST BE PRINTED OUT, COMPLETED AND SUBMITTED WITH THE PROPOSAL

PROFESSIONAL AUDITING SERVICES

The undersigned declares:

I am the _____ [Insert Title] of _____, [Insert name of company, corporation, LLC, partnership or joint venture] the party making the foregoing proposal.

The proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The proposal is genuine and not collusive or sham. The Respondent has not directly or indirectly induced or solicited any other respondent to put in a false or sham proposal. The Respondent has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham proposal, or to refrain from responding. All statements contained in the proposal are true.

Any person executing this declaration on behalf of a respondent that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the respondent.

ATTACHMENT 3 - REFERENCES

THIS FORM MUST BE PRINTED OUT, COMPLETED AND SUBMITTED WITH THE PROPOSAL

PROFESSIONAL AUDITING SERVICES

**List three (3) references for work of a similar nature to the Services performed within the last five (5) years.
Use additional sheets as necessary.**

1.

_____	_____
Name of Agency	Agency Address
_____	_____
Contact Name	Contact Title
_____	_____
Contact Telephone	Contact Email Address
_____	_____
Contract Period	Contract Amount
_____	_____
_____	_____

Description of services performed including costs.

2.

_____	_____
Name of Agency	Agency Address
_____	_____
Contact Name	Contact Title
_____	_____
Contact Telephone	Contact Email Address
_____	_____
Contract Period	Contract Amount

Description of services performed including costs.

3.

Name of Agency	Agency Address
Contact Name	Contact Title
Contact Telephone	Contact Email Address
Contract Period	Contract Amount

Description of services performed including costs.

I hereby certify that the Proposer performed the work listed above.

Signature of Proposer	Name	Date

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____[date], at _____[city], ____[state].

By: _____

Name: _____

Title: _____

**ATTACHMENT 4 - STATEMENT REGARDING INSURANCE COVERAGE AND WORKER'S COMPENSATION
INSURANCE ACKNOWLEDGMENT CERTIFICATE**

THIS FORM MUST BE PRINTED OUT, COMPLETED AND SUBMITTED WITH THE PROPOSAL

PROFESSIONAL AUDITING SERVICES

PROPOSER HEREBY CERTIFIES that the Proposer has reviewed and understands the insurance coverage requirements specified in the RFP. Should the Proposer be awarded a contract for Services, Proposer further certifies that the Proposer can meet the specified requirements for insurance, including insurance coverage of any subcontractors, and agrees to name the Town as additional insured for the Services specified.

By certifying this form, the Proposer also understands the Worker's Compensation insurance requirement per the California Labor Code, Sections 1860 and 1861:

I am aware of the provisions of Section 3700 of the Labor Code, which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

Name of Proposer (Person, Firm, or Corporation)

Signature of Proposer's Authorized Representative

Name & Title of Authorized Representative

**LEASE AGREEMENT
BETWEEN
TOWN OF LOS GATOS
AND
CINELUX THEATRES CO. LLC**

THIS AGREEMENT ("Use Agreement") is made and entered into this ____ day of ____, 2022, by and between the TOWN OF LOS GATOS, a California municipal corporation (herein "Town") and CINELUX THEATRES CO. LLC, a California limited liability company (herein "Cinelux"). Town and Cinelux may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Lease Agreement." The Town Manager serves as Contract Administrator for this Lease Agreement ("Agreement") on behalf of the Town Council.

RECITALS

- A. **Whereas**, The Goetz family purchased the Los Gatos Theatre ("Theatre") in 2011 as a philanthropic project and completely renovated the Theatre between 2012 and 2014; and
- B. **Whereas**, on April 18, 2021, the Goetz family provided the Town with a proposal for the donation of the Theatre to the Town; and
- C. **Whereas**, on November 16, 2021, the Town Council formerly accepted the donation and directed staff to negotiate and execute a donation agreement and issue a Request for Proposal ("RFP") for the management and programming of the Theatre; and
- D. **Whereas**, on December 30, 2021, the property transfer was recorded with Santa Clara County and the Town became the sole owner of the Theatre; and
- E. **Whereas**, on February 4, 2022, the Town released an RFP seeking qualified vendors to submit proposals to operate the Theatre on an exclusive basis; and
- F. **Whereas**, on March 4, 2022, the Town received three (3) submissions and after extensive review deemed the Cinelux proposal worthy of award; and
- F. **Whereas**, the Town and Cinelux now wish to enter into this Agreement which meets or exceeds the objectives stipulated in the RFP.

In consideration of the above recitals, the parties mutually agree as follows:

SECTION 1. Definitions.

Except as otherwise provided in this Agreement, the terms set forth below have the following meanings, unless the context clearly otherwise requires.

- A. "Cinelux" means Cinelux Theatre Co. LLC whose President is Paul Gundy.

ATTACHMENT 2

B. "Capital Repair" means the repair of items which is made necessary either by some unusual or unforeseen occurrence which renders the item unsuitable for its intended use or causes it to perform in an inadequate manner.

C. "Capital Replacement" means the full replacement of building system assets or its components, such as HVAC systems, that have reached the end of their useful life.

D. "Capital Replacement and Repair Plan" is defined in Section 10.3.C.

E. "FF&E" means furniture, fixtures and equipment furnished by Town or Cinelux for installation or use in the Theatre and any replacement furniture, fixtures and equipment required due to obsolescence or normal wear and tear.

F. "Material Alterations" is defined in Section 11(A).

G. "Ordinary Maintenance and Repairs" means the work that is required to keep the Theatre in a safe, clean, and sanitary condition and which is made necessary due to the day to day operation of the Theatre, as determined by the Town's Director of Parks and Public Works or designee.

H. "Permanent Improvement" means any building, monument, or statue that is installed at the Theatre. The term "Permanent Improvement" also includes any other structure constructed or installed at the Theatre in such a manner that it is affixed to the real property.

I. "Replacement Cost" means the cost to replace property at its then current price, without deduction for depreciation.

J. "Term" is defined in Section 3.

K. "Theatre" is defined in Section 2. B.

SECTION 2. Location and Description of the Los Gatos Theatre.

A. The Theatre is located at 43 North Santa Cruz Avenue, Los Gatos, CA 95030. As shown in Exhibit A, the leased Premises consists of approximately eleven thousand six hundred and four (11,604) square feet of space for the screening of films (the "Premises"). Cinelux accepts the Premises "as-is" on the date of execution of this Use Agreement.

C. The Theatre was fully reconstructed during 2012-2014 and is comprised of the following improvements:

- (1) The main theatre has inclined stadium-style seating for up to 244 in rocking, leather-covered loungers rising up 14 rows. At the top, an intimate balcony offers two additional rows of premium seating for 21 in oversized velour-upholstered rocking chairs and loveseats. A state-of-the-art Barco 4K digital cinema projector, with 3D capability, can show films and presentations on a 38-by-19 foot screen;
- (2) Downstairs lobby/reception area, administrative office area, food and beverage area, green room, and storage areas;
- (3) The lounge theatre is located on the second floor and offers an 18' x 10' screen. The smaller

- theatre, while more intimate with leather reclining and other seating for 38, has a total room capacity of 100. The space also offers an outdoor balcony and a full caterer's kitchen;
- (4) One restroom core is located on each floor;
 - (5) Town-owned furniture, fixtures, and equipment as described in Exhibit B.

SECTION 3. Term.

3.1 Original Term. The term of this Agreement will commence as of Jun 28, 2022, regardless of the date of execution ("Commencement Date") and will expire on June 30, 2027 ("Expiration Date"), unless sooner terminated as provided elsewhere in this Agreement. Cinelux shall, at the expiration of the term of this Agreement, or upon its earlier termination, surrender the Premises in as good condition as it is now at the date of this Agreement. The Parties expect reasonable wear and tear.

3.2 Option to Extend. Provided Cinelux is not in default hereunder, either at the time of exercise or at the time the extended term commences, Town and Cinelux may elect to extend the term of this Agreement for two (2) additional terms ("Extended Terms") of five (5) years each. No Extended Term shall commence unless an Extended Term is requested by either party by providing a written notice of the party's intent to extend the term, delivered not less than twelve (12) months prior to the expiration of the initial term or any Extended Term, and an agreement is executed by both parties.

3.3 Delivery Date. The Town and Cinelux will undertake initial improvements to the Theatre as determined by mutual agreement. At the completion of those improvements, the Town will establish a delivery date of the Premises to Cinelux on which the Term, and rent and monetary obligations of this Agreement will begin ("Delivery Date").

This Agreement will not be amended, changed, or extended except by written agreement signed by both parties hereto.

SECTION 4. Facility Operations.

Cinelux shall operate the Theatre in accordance with the Town's Request for Proposals distributed on February 4, 2022 and incorporated by reference into this Agreement and the following objectives and parameters:

1. Cinelux, in conjunction with the Town, shall preserve the Theatre as one of the most significant historical, cultural and architectural resources in the Town of Los Gatos.
2. Cinelux, with input from the Town as necessary, will enrich the community through the promotion and presentation of high-quality cinematic entertainment, cultural events, and community education programs of interest to all segments of the community.
3. Cinelux recognizes the Theatre is a central destination point for cinematic and performing arts which drives economic activity in downtown Los Gatos and the broader region, and as such will maintain an evolving and sustainable programming and operational model that emphasizes the cinematic arts.
4. Cinelux understands that the long-term financial sustainability of the Theatre is paramount to the Town and as such programming and the operational model will be developed along the following elements: financial sustainability, robust programming, full facility activation, and a management system for facility maintenance.
5. Cinelux understands that Town's continued ownership of the Theatre is contingent upon availability, as scheduling permits, for use by community-based organizations at preferential rental rates.
6. Cinelux understands that long-term financial sustainability will be dependent on building and maintaining a pipeline of future audiences and future facility rentals.

SECTION 5. Cinelux's Responsibilities to Operate the Theatre

5.1. Theatre Uses.

- A. Town and Cinelux agree that Cinelux will operate and manage the Theatre independently of Town in compliance with agreed upon performance expectations and Town, state and federal rules, regulations, and laws. The nature of this relationship is that of an independent contractor and shall not be considered to be an agency, joint venture, partnership, or subsidiary relationship. Town and Cinelux agree further that Cinelux shall not hold itself out as, act as, or be the agent of Town without Town's express written authority. It is the intent of the parties that Cinelux will be delegated actual authority by Town over the day-to-day operation of the Theatre.
- B. Cinelux shall have the obligation and the exclusive right to provide the programs and services at the Theatre in general accordance with this Agreement.
- C. Cinelux shall have full responsibility for managing, monitoring and supervising all use of the Theatre pursuant to this Section 5.
- D. All use of the Theatre shall be subject to the terms and conditions of this Agreement.
- E. Cinelux shall have exclusive right to operate the Theatre and to conduct activities at the Theatre in accordance with this Agreement in a prudent and business-like manner, with due concern for the safety of the public, and in compliance with all applicable laws, governmental regulations and the terms and conditions of this Agreement. Without limiting the generality of the foregoing, Cinelux shall comply with all laws related to Hazardous Materials utilized by or under the direction, control or management of Cinelux in the operation of the Theatre, including without limitation, laws related to the disposal of Hazardous Materials. As used in this Agreement, "Hazardous Materials" shall include, but not be limited to, hazardous, toxic, and radioactive materials and those substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or other similar designations in any local, state, or federal regulation.
- F. Cinelux shall have exclusive right to operate the Theatre so as to provide the fullest use of the Theatre over the widest time period consistent with good administrative practices for like facilities and within its available resources.

5.2. Community Use of Theatre Facility and Fee Schedules.

- A. Professional film programming shall be a prioritized use in the Theater.
- B. When not utilizing the Theatre for core programming needs, but not less than 6 times per year, Cinelux shall make the Theatre available for rental to Los Gatos community-based organizations (Lions, Rotary, Kiwanis, etc.) and non-profit organizations at no cost.
- C. Cinelux shall maintain a tiered fee structure that includes discounted rates with specified eligibility criteria for Los Gatos community-based organizations (Lions, Rotary, Kiwanis, etc.) and non-profit organizations.
- D. Cinelux shall be responsible for and shall manage and supervise all use of the Theatre pursuant to this Section 5.2. Without limiting the generality of the foregoing, Cinelux expressly agrees and acknowledges that Cinelux shall bear the sole and

full responsibility for monitoring and supervising all use of the Theatre pursuant to this Section 5.2, and that its indemnification set forth at Section 14 hereof and its maintenance obligation set forth at Section 10 hereof include indemnification for and maintenance related to such community use of the Theatre.

- E. All use shall be subject to the terms and conditions of this Agreement including without limitation Section 14.

5.3. Town Use of Theatre

- A. Professional film programming shall be a prioritized use in the Theater.
- B. When not utilizing the Theatre for core programming needs, but not less than 2 times per year, Cinelux shall make the Theatre available to the Town at no cost.

5.4. Operating Procedures.

Cinelux will establish such reasonable rules and regulations to govern the public's use of the Theatre in order to assure the level, quality and character of the Theatre operations as required by this Agreement ("Theatre Rules).

SECTION 6. Rent and Monetary Obligations.

- 6.1 Monthly Rent. For the first (1) year after the Delivery Date, Cinelux shall pay no Rent for the Premises. For the second (2) year after the Delivery Date, Cinelux will pay base rent of \$5,000 per month. In year three (3) after the Delivery Date, Cinelux will pay monthly rent of \$10,000 per month. In no event shall rent exceed Ten Thousand Dollars (\$10,000) per month during the initial 5-year period. Prior to any extension of the Term of this Agreement, if an Extended Term is sought by the Parties, the Town reserves the right to review the accounts and financial records of Cinelux and open negotiations for a potential increase in rent.
- 6.2 Profit Sharing. The Town shall receive 5% of the Theatre's gross revenue annually. Gross revenue includes, but is not limited to, revenue from ticket sales, event rentals, concession sales of food and alcohol, and other sources.
- 6.3 Revenue and Taxation Code Section 107.6. Cinelux specifically acknowledges that, in accordance with Revenue and Taxation Code Section 107.6, the Premises may be subject to possessory interest tax and that Cinelux is responsible for any possessory interest tax levied on Cinelux's leasehold interest in the Premises.
- 6.4 Personal Property Taxes. Cinelux 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. Cinelux 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 Cinelux.

6.5 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. Cinelux acknowledges late payment of rent may cause Town to incur costs not contemplated by this Agreement, 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 Cinelux within ten (10) days after the date such rent is due, Cinelux 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 Cinelux. Acceptance of any late charge shall not constitute a waiver of Cinelux's default with respect to the overdue amount, nor prevent Town from extending any of the other rights and remedies available to Town.

6.6 Payment Procedures. Cinelux's obligation to pay rent shall commence one year from 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 Agreement shall be prorated based on a 30-day month. Payments shall be effective upon receipt. Town may apply any payment received from Cinelux at any time against any obligation due and owing by Cinelux under this Agreement regardless of any statement appearing on or referred to in any remittance from Cinelux or any prior application of such payments.

6.7 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. Cinelux'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.

6.8. Utilities at the Theatre.

Cinelux shall be responsible for the cost of all utilities at the Theatre, including but not limited to:

- (1) Electrical and gas services
- (2) Telephone services
- (3) Water services
- (4) Trash services
- (5) Data and internet services.

Town shall be responsible for the utility costs associated with the retail tenants based on a pro rata proportion of square footage to be deducted from the Town's annual profit share.

SECTION 7. Books, Records and Accounts.

- A. Cinelux shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the operation of the Theatre ("Theatre Records") for a minimum period of three (3) years, throughout the Term of this Agreement.
- B. Cinelux shall maintain all Theatre Records which demonstrate performance under this Use Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.
- C. Any Theatre Records required to be maintained pursuant to this Agreement shall be made available for inspection or audit at no cost to Town, at any time during regular business hours, upon written request by the Town Attorney, Town Manager, or their designees. Copies of such documents shall be provided to Town for inspection at Town Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Cinelux's address indicated for receipt of notices in this Agreement.
- D. Where Town has reason to believe that Theatre Records may be lost or discarded due to dissolution, disbandment or termination of Cinelux's business, Town may, by written request by any of the above-named officials, require that custody of the records be given to Town and that the records and documents be maintained by the Town. Access to such Theatre Records shall be granted to any party authorized by Cinelux, or Cinelux's representatives.

SECTION 8. Budgets, Audits and Reporting Requirements.

8.1 Budget Review.

Both parties acknowledge the need and the intent to work together in a cooperative and supportive manner in Town's budgetary processes. Cinelux shall provide to Town, upon Town's request, timely and accurate information to support estimated and actual profit share revenues under this Agreement. Such information may include draft budgets, revenue projections, proposed fee schedules, capital and special funding needs and any other information that Town deems useful. Town will likewise provide Cinelux with timely and accurate information on Town's budgetary schedule and processes and other information that Cinelux can show is relevant to carry out this Agreement.

8.2. Annual Reporting.

Within ninety (90) days following the end of Cinelux's fiscal year during the Term, Cinelux shall provide Town with the following:

- A. An annual financial report for Cinelux's previous fiscal year.

- B. An annual narrative report on the operations of the Theatre for the previous fiscal year. The report shall also contain milestones and metrics achieved relative to the Principles set forth in Section 4 of this Agreement. Such milestones and metrics shall include, but not be limited to, the following:
1. Number of cinematic and other cultural offerings provided;
 2. Number of rentals by community groups and other Non-profit organizations, including number of days facility was rented by community groups and other organizations at discounted rates;
 3. Number of outside corporate/private organizations that accessed the Theatre;
 4. Total audience in Theatre for all ticketed events;
 5. Total income and expenses from Theatre operations; and
- C. A report assessing the status of physical condition of the Theatre, preventive maintenance activities completed, and any needed Capital Replacements.
- D. Cinelux's proposed budget for the Theatre operations and maintenance for the current fiscal year.
- E. Anticipated program outreach and event schedule to the extent available for the current fiscal year.

8.3. Additional Reporting Requirements.

Cinelux shall also furnish to the Town Manager any additional financial statements, reports, documents, and other information as the Town Manager may reasonably require for the development of an annual presentation to the Town Council or a subcommittee thereof regarding the progress of the development of the financially sustainable and diverse programming model for the Theatre. If requested, Cinelux shall send a representative to the annual presentation to assist in responding to questions from Town Council or a subcommittee thereof.

Furthermore, during the Term of this Agreement, Cinelux shall make available its financial information provided to the Town for inclusion with similar Town reports. The financial information submitted to Town by Cinelux is submitted for purposes of this Agreement only and does not alter or change any other Town requirement to which Cinelux is subject that is not directly required by this Agreement. Furthermore, review by Town of Cinelux's financial information shall be for the purpose of protecting Town's interest as owner of the Theatre. Cinelux is solely responsible for management of its own fiscal resources, and any indebtedness incurred by Cinelux to a third party shall be the responsibility of Cinelux. Nothing in this Agreement shall be construed so as to render Town responsible for any debts, liabilities or obligations of Cinelux.

8.4. City's Right to Audit.

Town reserves the right at its own expense to conduct audits of Cinelux's operations under this Agreement. All accounting records, basic or secondary, used in the ordinary course of business and all banking deposit tickets, statements and any other banking records, purchase invoices, and all records of sales, excise or other taxes paid or payable by Cinelux for sales, fees and charges from the operation of the Theatre shall be made available to Town's Manager, Town's Attorney, Town's Director of Finance, and/or the Town's Director for inspection and/or auditing purposes upon Town's request.

SECTION 9. Ownership of Furniture, Fixtures and Equipment.

- A. All furniture, fixtures, and equipment purchased by Town or by Cinelux with Town funding ("Town FF&E") shall be and remain the property of Town, which shall have sole right to possession upon expiration or sooner termination of this Agreement. Cinelux shall have the right to use Town FF&E during the term of this Agreement at no charge.
- B. The Town owns FF&E that is sited throughout the Theatre. Town-owned FF&E is listed in Exhibit B and includes furniture, theatre equipment, furnishings, electronics, and stages. The Town acknowledges that the FF&E will depreciate over time and need replacement.
- C. As part of the annual facility assessment and prioritization of capital maintenance, Cinelux and the Town will prioritize the repairs to fixed assets over the replacement of equipment. Cinelux is encouraged to develop an FF&E replacement plan.
- D. Cinelux will perform an initial inventory of all Cinelux FF&E in the Theatre and an annual inventory thereafter. It is the responsibility of Cinelux to track new FF&E purchased by Cinelux. Surplus Town-owned FF&E is to be returned to the Town and disposed of according to Town policy. Town FF&E shall remain in the Theatre at all times and may not be used in other Cinelux facilities. If Town FF&E items are not in the Theatre at the time of expiration or sooner termination of this Agreement, Cinelux shall reimburse the Town for the missing items at the then fair market value.
- E. FF&E that is affixed to the Theatre, including theatrical lighting, sound, stage rigging and associated control panels, becomes property of the Town upon expiration or sooner termination of this Agreement. For FF&E that is not fixed to the Theatre, upon expiration or sooner termination of this Agreement, Town shall have the right to purchase at the then fair market value, all FF&E purchased by Cinelux from sources other than Town ("Cinelux FF&E") that is essential to the operations or programming of the Theatre. If Town and Cinelux are unable to agree on the fair market value of the Theatre FF&E, Cinelux shall be allowed to remove the Theatre FF&E from the Theatre. Cinelux will perform an annual inventory of all Cinelux FF&E in the Theatre and shall provide the Town with an accounting of all Town and Cinelux FF&E at the end of this Agreement.

SECTION 10. Maintenance, Repair and Security of the Theatre.

10.1. Ordinary Maintenance and Repairs.

- A. Cinelux agrees to maintain the Theatre at a high level of quality, at or above the level received, acknowledging that the maintenance level shall be significantly higher than that of a typical municipal facility. This shall include maintaining interior wall and window surfaces, flooring, and paint, in an excellent condition, as determined in the reasonable discretion of the Town's Director of Parks and Public Works. All damages shall be promptly repaired such that the repairs are indistinguishable from adjacent like finishes in material type, texture, color, and quality. Maintenance activities shall retain all facility elements in their existing style and quantity in order to continue to enhance the cultural aspects of the Theatre.

- B. As stated in Exhibit D, Maintenance Matrix, Town shall be responsible for the structural foundation, bearing and exterior walls, and subflooring among other items. With the exception of new or replacement signage, Town shall also be responsible for exterior shell including roofing, external wall assemblies, and exterior doors.
- C. Cinelux shall be responsible for all routine daily maintenance of the interior shell of Theatre Facility. Cinelux shall keep the Theatre in a neat, clean and orderly condition at all times during the term hereof and shall not permit refuse or debris to accumulate at any time nor commit, suffer or permit any destruction of any portion of the Theatre Facility.
- D. Cinelux shall be responsible for the routine and preventive maintenance services of all building systems to include, Custodial, Fire Life Safety, Elevator, Electrical, HVAC, Plumbing, and other building systems such as rigging and stage equipment and provide reports of its annual preventive maintenance activity to the Town as requested. Preventive maintenance activities of the Theater shall be in accordance with all local, State or Federal regulations, equipment manufacturer recommendations and industry standards. The Town, through a preventive maintenance oversight program, will monitor the performance of preventive maintenance work.
- E. Should the Town determine, at its reasonable discretion, that ordinary maintenance and/or repairs are not being performed as required by this Agreement, Town shall promptly notify Cinelux in writing and if no action is taken within thirty (30) days, the Town may cause the maintenance and/or repairs to be completed and shall be reimbursed by Cinelux.

10.2. Janitorial Services/Maintenance of FF&E.

Cinelux shall provide at its sole cost and expense janitorial services to the Theatre necessary to maintain the Theatre in a clean, safe and serviceable condition for the public and staff. Cinelux shall maintain all FF&E in use at the Theatre in accordance with any applicable manufacturer's warranty requirements, manuals and records. Cinelux shall promptly notify City's Director of Parks and Public Works in the event that any of the Town FF&E is lost, stolen or damaged.

10.3 Capital Repairs and Capital Replacements.

- A. Cinelux and Town shall be responsible for the cost of Capital Repairs and Replacements as specified in Exhibit D, Maintenance Matrix. All work performed in connection with Capital Repair shall be authorized by the Town, and supervised by Cinelux and performed by duly licensed, qualified, contractors agreed to by Town and Cinelux. To the extent that any of the work to be performed with Town Funds constitutes a "public works project," Town shall observe all public bidding requirements associated with such projects as prescribed in Town's Purchasing Policy and the Town's Municipal Code, and all applicable local, state, and federal laws, rules and regulations, and policies regarding public works construction shall be adhered to, including but not limited to the payment of prevailing wages.
- B. Only where reasonable, Cinelux and the Town will prioritize the repairs to fixed assets over the replacement of assets. Cinelux and Town's Department of Parks and

Public Works staff shall meet to discuss and monitor the Theatre's Capital Replacement and Repair Plan.

C. The Town shall coordinate the development of a Capital Replacement and Repair Plan in the following manner:

- (1) Prior to January 15 of each year, Cinelux shall submit to Town's Director a proposed Capital Repair and Replacement Plan for the Town's next fiscal year which shall describe the work anticipated to be performed and projected costs.
- (2) Town shall review the proposed Capital Repair and Replacement Plan in order to determine whether public bidding will be required, to determine the reliability of cost estimates, to review the budget in the proposed Capital Repair and Replacement Plan in light of available funding, and to prioritize proposed expenditures. Town may make any revision to such Capital Repair and Replacement Plan as Town, in its sole reasonable discretion, deems is consistent with both Cinelux's duties and the Applicable Standard and, prior to the start of that next fiscal year, shall approve a Capital Repair and Replacement Plan for that next fiscal year.
- (3) Once the Capital Repair and Replacement Plan is approved, Cinelux shall inform Town in writing of any work of Capital Repair or Capital Replacement to be performed during that fiscal year which is contained in the approved Capital Repair and Replacement Plan prior to commencing such work but in such event no further approvals of such work are required from Town.
- (4) For items of Capital Repair and Capital Replacement which are not included in the approved Capital Repair and Replacement Plan and do not involve any emergency work, Cinelux shall first request Town approval from the Assistant Town Manager or designee for such work prior to commencing such work. The request shall be in writing, describe the work, the justification for it and the projected costs thereof. Within sixty (60) days of the request, Assistant Town Manager or designee shall either approve such request, as may be modified or shall provide a written statement in reasonable detail describing why such request has been denied. Town may make emergency capital repairs and replacements consistent with established Town procedures for handling emergencies. Town shall provide Cinelux with the names and telephone numbers of the Town Manager's Office to contact in the event of an emergency involving the Theatre. If Cinelux reasonably determines that any delay would present a material risk to human life or the structural integrity of the Theatre, or would prevent the holding of a scheduled event, Cinelux may immediately commence emergency capital repairs and replacements. In all other events, Cinelux shall notify the Town Manager's Office at the emergency number provided to Cinelux, and shall either receive the Assistant Town Manager or designee's prior approval or wait 48 hours without receiving a response before commencing emergency capital repairs and replacements. The Maintenance Matrix, Exhibit D, shall indicate the responsible party for the costs of repairs.

10.4. Security.

Cinelux shall maintain at its sole cost and expense the monthly costs associated with a security system, electronic fire protection, and security services at the Theatre. Cinelux shall have sole responsibility and bear all expense related to the system and responding to any and all alarm calls from the electronic system and from security services. Cinelux shall provide the Town's Parks and Public Works Director or his or her designee, the current access code.

Cinelux shall also provide Town a copy of all exterior and interior keys for the Theatre.

The Town's Police Department is solely responsible for responding to any Police incidents at the Theatre.

SECTION 11. Alterations to the Theatre.

A. "Material Alterations" shall mean any Permanent Improvement at the Theatre; structural changes; changes to the exterior appearance of the Theatre, including signage referring to the name or branding of the Theatre; changes in permanent floor and wall surfaces; changes in the interior of Theatre structures (excluding changes in exhibits); and changes in major components of electrical, HVAC and other building systems.

B. Cinelux shall not make any Material Alterations to the Theatre without the prior written consent of Town. The approval of the Town Manager is required for Material Alterations covered by Section 10, and the approval of Town's Parks and Public Works Director is required in all other instances. Any alteration to the Theatre approved by Town shall be done with materials of an equal quality and durability to those in which the Theatre was originally constructed or renovated, shall be consistent with the design of the Theatre as originally constructed or renovated and shall be accomplished in accordance with any reasonable conditions imposed upon Town's consent.

C. Notwithstanding Subsection B, Cinelux may make nonstructural alterations for exhibits or programs so long as such alterations are temporary in nature and reviewed in advance by the Town's Chief Building Official or designee. Cinelux shall give Town thirty (30) days advance notice before commencing such alterations, unless it is impossible to foresee the need for the alteration thirty (30) days in advance, in which case Cinelux shall give Town notice as soon as practically possible. Town has the right to require Cinelux to repair and take all actions to return the Theatre to substantially its pre-existing condition at the end of such temporary period.

D. Cinelux acknowledges and agrees that all Material Alterations constructed by Cinelux shall become the property of Town upon installation at the Theatre.

E. Cinelux shall not alter the marquee signage of the Theatre, which identifies the Theatre as the "Los Gatos Theatre." Cinelux may use other corporate branding for other elements of the Theatre.

SECTION 12. Alteration and Construction Requirements.

12.1. Application.

The provisions of this Section are in addition to any requirements for alterations or construction set forth elsewhere in this Agreement.

12.2. Plans and Specifications.

A. The plans and specifications (the "Plans") for any Material Alteration to the Theatre (collectively, "Construction Work") shall be in conformance with Town's Standard Specifications then in effect. The Plans must set forth Cinelux's proposed schedule for completion of the Construction Work.

B. The Plans for the Construction Work shall be subject to the prior review and approval of the Town's Community Development Director. Town's approval of the Plans shall not release Cinelux of the responsibility for the correction of mistakes, errors or omissions contained in the Plans, including any mistakes, errors or omissions which may be the result of circumstances unforeseen at the time the Plans were developed or approved. If, during the course of construction of the Construction Work, the Town's Community Development Director determines in her/his sole discretion that the public safety requires modification of, or the departure from, the Plans, the Town's Community Development Director shall have the authority to stop the construction and to require such modification or departure and to specify the manner in which the same may be made. The parties acknowledge that the Plans, once approved by the Town's Community Development Director, shall be final and that, except as expressly provided in this subsection, no revisions to the Plans shall be permitted unless the Town's Community Development Director approves the proposed revision in writing.

12.3. Inspection of Construction Work.

The Town's Chief Building Official shall, at all times during the progress of work on the Construction Work, have free access to the Construction Work site for inspection purposes. If the Town's Chief Building Official determines that all or any portion of the work done on the Construction Work is not in compliance with the Plans, the Town's Community Development Director shall notify Cinelux of the same and Cinelux shall promptly cure such defect to the Town's Community Development Director's satisfaction.

12.4. Bidding Requirements.

In the event, and to the extent, that any of the Construction Work constitutes a "public works project," as defined in the Town Purchasing Policy or Municipal Code, Cinelux shall observe all public bidding requirements associated with such projects.

12.5. Approvals.

All applicable local, state, and federal laws, rules and regulations, and all necessary and required approvals of plans and specifications, including review by the Town Engineer of the Town's Parks and Public Works Department, permits and all other approvals and documents required, shall be fully applicable to, and

obtained by Cinelux for Construction Work carried out by Cinelux under this Use Agreement.

12.6. Prevailing Wages.

Cinelux acknowledges that laborers employed relative to any construction on the Premises must be paid the prevailing per diem wage rate for their labor classification, as determined by the State of California, pursuant to California Labor Code Sections 1720 et seq and agrees to comply with Labor Code Sections 1720 and following. Cinelux agrees with Town that Cinelux shall assume the responsibility and be solely responsible for determining whether or not laborers employed relative to an construction on the Premises undertaken by Cinelux must be paid the prevailing per diem wage rate for their labor classification as determined by the State of California, pursuant to California Labor Code Sections 1720 et seq. Town shall not be under any duty to monitor or ensure the compliance of Cinelux with any State of California labor laws, including, without limitation, prevailing wage laws. Cinelux shall indemnify Town against any claims pursuant to California Labor Code Section 1781 arising from Cinelux's construction of any improvements, work, or alterations on the Premises.

12.7. Costs.

All costs associated with Construction Work, including without limitation, Town's charges for Plan review and inspection, shall be the sole responsibility of Cinelux.

12.8. Bonding Requirements.

Cinelux shall comply with the bonding requirements as a condition of the Town's Parks and Public Works Director's approval of the Plans for any Construction Work.

12.9. Notice to Proceed.

Cinelux may not begin the Construction Work unless and until the Town's Community Development Director gives Cinelux a written notice to proceed ("Notice to Proceed"). The Notice to Proceed may specify additional conditions related to the prosecution of the Construction Work. The Notice to Proceed will not be issued unless and until the following conditions are met:

- A. The Town Manager is satisfied that Cinelux has or will have sufficient funds, donated services or both to complete the Construction Work in a timely manner.
- B. The Town's Community Development Director has issued a written notice to Cinelux approving the Plans for the Construction Work.
- C. The insurance requirements and bonding requirements have been met.

12.10 Alternative Procedures.

Notwithstanding Sections 12.2 and 12.3 and 12.9 above, with the prior approval of the Town's Community Development Director and the Department of Parks and Public Works Director, may review the Plans for the Construction Work where appropriate, provide any approvals related thereto as applicable, and inspect the finished Construction Work for State Building Code compliance. Cinelux shall submit all applications, Plans, and pay all fees required by Town as applicable. However, Cinelux

shall not commence Construction Work unless and until the Town's Community Development Director has issued the Notice to Proceed specified in Section 12.9. In such case, the parties agree that the provisions of Section 12.9B shall not apply.

SECTION 13. Pre-existing Theatre Tenants.

The parties acknowledge that the Theatre is adjacent to two retail tenants leasing space from the Town. The parties further acknowledge that Cinelux as the operator of the Theatre requires good relations with the adjoining tenants. As such, Cinelux agrees to maintain any day-to-day relations with the adjoining tenants necessary to maintain effective Theatre operations.

The Town is solely responsible for responding to any tenant requests. In addition, per Section 6.8 the Town will reimburse Cinelux for the pro rata share of tenant utility costs.

SECTION 14. Hold Harmless/Indemnification.

14.1 Indemnification.

Cinelux shall indemnify, protect, defend (at Cinelux's sole cost and with legal counsel acceptable to Town) and hold harmless, Town, its elected or appointed officials, employees, and agents, from and against any and all claims, judgments, causes of action, damages, penalties, costs, liabilities, and expenses, including all court costs and attorney fees, arising at any time during or after the Term, as a result (directly or indirectly) of or in connection with (i) default in the performance of any obligation on Cinelux's part to be performed under the terms of this Agreement, or (ii) Cinelux's use of the Premises, the conduct of Cinelux's business or any activity, work or things done, permitted or suffered by Cinelux or Cinelux's employees, agents, customers, visitors, invitees, licensees, contractors, assignees, or subtenants (individually, a "Tenant Party" and collectively, "Tenant's Parties") in or about the Premises, except as provided by law or for claims caused solely by Town's gross negligence or willful misconduct. Cinelux's indemnity is not intended to nor shall it relieve any insurance carrier of its obligations under policies required to be carried by Cinelux pursuant to the provisions of this Agreement to the extent such policies cover the results of negligent acts or omissions of Town, its elected or appointed officials, employees, and agents, or the failure of Town to perform any of its obligations under this Agreement. The obligations of Cinelux under this Section shall survive the termination or earlier expiration of this Agreement.

14.2 Waiver of Claims.

Cinelux waives any claims against Town for injury to Cinelux's business or any loss of income there from, for damage to Cinelux'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.

SECTION 15. Damage, Destruction and Termination.

15.1 Nontermination and Nonabatement.

Except as provided herein, no destruction or damage to the Premises by fire, flood or other casualty, whether insured or uninsured, shall entitle Cinelux to terminate this Agreement. Town and Cinelux 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 Agreement.

15.2 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 Cinelux (financial inability excepted), shall excuse the performance by Cinelux for a period equal to the prevention, delay, or stoppage, except the obligations imposed with regard to rent to be paid by Cinelux pursuant to this Agreement. In the event any work performed by Cinelux or Cinelux's contractors results in a strike, lockout, and/or labor dispute, the strike, lockout, and/or labor dispute shall not excuse the performance by Cinelux of the provisions of this Agreement.

15.3 Restoration of Premises by Lessee.

15.3.1 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, Cinelux 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 Agreement. 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.

15.3.2 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, Cinelux 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 Agreement. If the laws existing at that time do not permit the restoration, either party can terminate this Agreement 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, Cinelux can elect to terminate this Agreement by giving notice to Town within sixty (60) days after determining the restoration cost and replacement value. If Cinelux elects to terminate this Agreement, Town, within thirty (30) days after receiving Cinelux's notice to terminate, can elect to pay to Cinelux, at the time Town notifies Cinelux 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 Cinelux 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, Cinelux shall immediately deposit the cost of restoration with the Insurance Trustee. This Agreement shall terminate if Cinelux elects to terminate this Agreement 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 Cinelux has the obligation to restore the Premises as provided in subsection (8), 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 Cinelux 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 Cinelux 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 Cinelux, 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, Cinelux 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 Cinelux. All actual costs and charges of the Insurance Trustee shall be paid by Cinelux.

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.

15.3.3 Procedure for Restoring Premises. When Cinelux is obligated to restore the Premises, within sixty (60) days Cinelux 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 Cinelux. If Town disapproves the plans, specifications, and working drawings, Town shall notify Cinelux of its objections and Town's proposed solution to each objection. Cinelux 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. Cinelux 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 Cinelux's reasonable control).

B. Cinelux 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

Cinelux in accordance with the Provisions of Exhibit C.

C. Cinelux 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 Cinelux shall not commence construction until a performance bond and a labor and materials bond have been delivered to Town to insure completion of the construction.

D. Cinelux 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, Cinelux shall immediately record a notice of completion in the county in which the Premises are located. 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.

SECTION 16 Assignment and Subletting.

16.1 Town's Consent Required. Cinelux shall not assign this Agreement, 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 Agreement shall be binding upon any permitted assignee or successor of Cinelux. 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 Cinelux shall release it from or in any way alter any of Cinelux's obligations under this Agreement. Cinelux may have the Premises delivered to a subsidiary company of Cinelux, but such arrangement shall in no way alter Cinelux's responsibilities hereunder with respect to the Premises. Any assignment, subletting, encumbrances, occupation, or use contrary to the provisions of this Agreement shall be void and shall constitute breach of this Agreement. Town may assign any of its rights hereunder without notice to Cinelux.

16.2 No Release of Cinelux. No subletting or assignment as approved by Town shall release Cinelux of Cinelux's obligation or alter the primary liability of Cinelux to pay the rent and to perform all other obligations by Cinelux 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 Cinelux or any successor of Cinelux in the performance of any of the

terms hereof: Town may proceed directly against Cinelux without the necessity of exhausting remedies against said assignee.

SECTION 17 DEFAULTS; REMEDIES.

17.1 Defaults by Cinelux. The occurrence of any one or more of the following events shall constitute a material default, or breach of this Agreement, by Cinelux:

- 17.1.1 Abandonment of the Premises by Cinelux as defined by California Civil Code section 1951.3;
- 17.1.2 Failure by Cinelux to make any payment of rent or any other payment required to be made by Cinelux hereunder, as provided in this Agreement, where such failure shall continue for a period of ten (10) business days after written notice thereof from Town to Cinelux. In the event Town serves Cinelux 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;

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

- 17.1.3 Making by Cinelux of any general arrangement or assignment for the benefit of creditors; Cinelux'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 Cinelux, 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 Cinelux's assets located at or on the Premises or of Cinelux's interest in this Agreement where possession is not restored to Cinelux within thirty (30) days; or the attachment, execution or other judicial seizure of all or substantially all of Cinelux's assets located at or on the Premises or of Cinelux's interest in this Agreement, where such seizure is not discharged within thirty (30) days.

- 17.2 Remedies. In the event of any material default or breach by Cinelux,

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:

17.2.1 Terminate Cinelux's right to possession of the Premises by any lawful means, in which case this Agreement shall terminate and Cinelux shall immediately surrender possession of the Premises and Improvements to Town. In such event, Town shall be entitled to recover from Cinelux all damages incurred by Town by reason of Cinelux 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 Agreement 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 Cinelux proves could be reasonably avoided.

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

17.2.3 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.

18.3 No Relief from Forfeiture After Default. Cinelux 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 Cinelux is evicted or Town otherwise lawfully takes possession of the Premises by reason of any default or breach of this Agreement by Cinelux.

18.4 Disposition of Abandoned Personal Property. If Cinelux fails to remove any personal property belonging to Cinelux from the Premises after forty-five (45) days of the expiration or termination of this Agreement, 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 Cinelux or to any person claiming under Cinelux, and the Town shall have no need to account for such property.

SECTION 18 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.

SECTION 19 HOLDING OVER.

If Cinelux 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 Agreement applicable to Cinelux and at a monthly rental obligation of two (2) times the Base Rent in effect at the time of expiration. Nothing contained in this Agreement shall give to Cinelux the right to occupy the Premises after the expiration of the Term, or upon an earlier termination for breach.

SECTION 20 INSURANCE.

Cinelux's responsibility for the Premises begins immediately upon the Delivery Date and Cinelux, 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 Agreement 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 Cinelux's employees and contractors, 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. Cinelux also agrees to secure insurance coverage for the Premises, its contents, and personal property maintained on the Premises.

In the event that Cinelux opts to require its contractor to provide the insurance required by the Town for construction, the contractor will provide an endorsement or rider, in a form to be approved by the Town Attorney, stating that the insurance policy insures performance of this Agreement and that the Town is an additional insured.

Cinelux shall deposit with the Town Manager, on or before the effective date of this Agreement, certificates of insurance and endorsements in conformance with this Agreement and keep such insurance in effect and the certificates therefore on deposit with Town during the Term of this Agreement. Should Cinelux 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 Cinelux 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. It in the opinion of the Town's Risk Manager (or comparable official), the insurance provisions in this Agreement do not provide adequate protection for Town and for members of the public using the Premises, the Town Manager may require Cinelux 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 Cinelux in writing of changes in the insurance requirements. If Cinelux 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 Cinelux fails to maintain in effect any required insurance coverage, Cinelux shall be in default under this Agreement without further notice to Cinelux. Such failure shall constitute a material breach and shall be grounds for immediate termination of this Agreement at the option of Town.

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

SECTION 21 DISPUTE RESOLUTION.

- 21.1 Unless otherwise mutually agreed to, any controversies between Cinelux and Town regarding the construction or application of this Agreement, and claims arising out of this Agreement 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.
- 21.2 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 Agreement.
- 21.3 The costs of mediation shall be borne by the Parties equally.
- 21.4 Mediation under this section is a condition precedent to filing an action in any court.

SECTION 22 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.

SECTION 23 NON-DISCRIMINATION

23.1 Non-discrimination. Cinelux agrees that in the performance of this Agreement and in connection with all of the activities Cinelux 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. Cinelux acknowledges that is familiar with the provisions set forth in Section 2.30.985 of the Los Gatos Municipal Code relating to nondiscrimination in employment.

SECTION 24 INDEPENDENT CONTRACTOR.

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

SECTION 25 CONFLICT OF INTEREST.

Cinelux shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement. Cinelux 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, Cinelux upon request of Town shall immediately terminate such employment. Violation of this provision constitutes a serious breach of this Agreement and Town may terminate this Agreement as a result of such violation.

SECTION 26 MEMORANDUM OF AGREEMENT.

Following execution of this Agreement, Town shall be entitled to record a Memorandum of Agreement in the official records of Santa Clara County.

SECTION 27 ESTOPPEL CERTIFICATE.

Cinelux 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 Agreement is unmodified and in full force and effect, or, if modified, stating the nature of the modification and certifying that the Agreement, 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 Cinelux'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.

SECTION 28 LIENS.

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

SECTION 29 VACATING.

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

SECTION 30 ABANDONMENT.

Cinelux'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 Cinelux or its invitees without any liability whatsoever to Town.

SECTION 31 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

And to Cinelux addressed as follows:
CineLux Theatres Co. LLC
Attention: Paul Gunskey
P.O. Box 541000
San Jose, CA 95154
E-Mail: paul@cineluxmovies.com

Notices may be served upon Cinelux in person, by first class mail, or by certified mail whether or not said mailing is accepted by Cinelux. 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.

SECTION 32 TIME.

Time shall be of the essence in this Agreement.

SECTION 33 AMENDMENTS.

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

SECTION 34 INTEGRATED DOCUMENT.

This Agreement, including any exhibits attached hereto, embodies the entire agreement between Town and Cinelux. No other understanding, agreements, conversations or otherwise, with any elected or appointed official, agent or employee of Town prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. 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.

SECTION 35 WAIVER.

Waiver by Town of one or more conditions of performance or any breach of a condition under this Agreement 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 Agreement. 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.

SECTION 36 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.

SECTION 37 SEVERABILITY CLAUSE.

If any provision of this Agreement 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 Agreement shall not be affected thereby.

SECTION 38 GOVERNING LAW.

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

SECTION 39 VENUE.

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

SECTION 40 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 Agreement.

SECTION 41 BROKERS.

Each party represents that is has not had dealings with any real estate broker, finder, or other person, with respect to this Agreement 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.

ATTACHMENTS TO AGREEMENT.

The following exhibits are attached to and made a part of

this Agreement: "A" - Description of Subject

Premises

"B" - Town-Owned Furniture, Fixtures, and Equipment

"C" - Insurance Requirements

"D" - Maintenance Matrix

EXHIBIT A



The Los Gatos Theater

41 North Santa Cruz Avenue

[illegible]

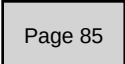




EXHIBIT B

FAIR MARKET VALUE **For the Purposes of Tax Donation**

LIMITING CONDITIONS

*Appraiser unable to view some items fully either being mounted to the ceiling or minimal lighting.

*Some information provided by asset remodel spreadsheet by client.

*All "Unknown Artist" Items are appraised as decorative items only.

*Measurements are estimations only.

#	Item	QTY	Description	Condition	FMV	Photo
UPSTAIRS BALCONY						
1	Bar Stools	4	42.5" high. Keilhauer, Flit. Nickel plated frame, black leather seat. Grey upholstered mesh back. ALL	(Fair -Poor, torn & weathered backs, minor rust spots)	\$75.00	
2	Bar Tables	4	41.5" high x 27.5" x 27.5". Ventana. Square tabletop with a straight edge. Set on a pedestal base. Grey powder coated bodies. \$200 ea., ALL	(Good - Fair, weathered)	\$800.00	
MOVIE THEATER #2						
3	Bar Stools	7	42.5" high. Keilhauer, Flit. Nickel plated metal frame, black leather seat. Black upholstered mesh back. \$365 ea., ALL	(Good)	\$2,555.00	

4	Bar Tables	4	42.25" high x 30" diameter. GAR Products, Art Deco style. Black circular laminate top. Set on nickel plated pedestal circular base. \$400 ea., ALL	(Good)	\$1,600.00	
5	End Tables	11	21" high x 15.75" x 21.75". Ekornes, Stressless Flexi Table. Semi-circular adjustable slant glass tabletop. Set on stainless steel pedestal body. Adjustable height. Swivel tabletop. \$450 ea., ALL	(Good)	\$4,950.00	
6	Ottomans	15	18" high x 23" x 23". Ekornes, Stressless Leather Storage Ottoman. Black leather upholstery. Lift up storage compartment. Set on casters. \$420 ea., ALL	(Good)	\$6,300.00	
7	Double Ottomans	3	45.5" x 23" x 16.5". Ekornes, Stressless Leather Storage Ottoman. Black leather upholstery. Lift up storage compartment. With removable bent wood tabletop. \$470 ea., ALL	(Good)	\$1,410.00	
8	Single Theater Seats	12	38" high x 32.25" wide. Ekornes Stressless high back armchair. Black leather upholstered body. Straight arms. Push-back reclining seats. Set on nickel plated metal legs ending in a plain foot. Some with removable bent wood arm tabletop. \$1100 ea., ALL	(Good)	\$13,200.00	
9	Angled Double Theater Seats	3	38" high x 64" wide. Ekornes Stressless high back armchair. Black leather upholstered body. Straight arms. Push-back reclining seats. Set on nickel plated metal legs ending in a plain foot. With pie wedge center table. \$1400 ea. ALL	(Good)	\$4,200.00	

10	Double Theater Seats	10	38" high x 53.5" wide. Ekornes Stressless high back double armchair. Black leather upholstered body. Straight arms. Push-back reclining seats. Set on nickel plated metal legs ending in a plain foot. Some with removable bent wood arm tabletop. \$1565 ea., ALL	(Good)	\$15,650.00	
11	Movie/Actor Prints	13	60" x 38". From C.J. Welsh (movie producer). Foam board with cloth digital print overlay. Subject: various movie actors and actresses. Including: Shirley Temple, Marilyn Monroe, James Dean & Natalie Wood, Greta Garbo, Ginger Rogers & Fred Astaire, and others. \$400 ea., ALL	(Good)	\$5,200.00	
12	Wall Speaker Surround Sound Speakers	14	15.5" x 13". JBL, model: unknown. *Note: appraiser unable to view fully, wall mounted. \$300 ea., ALL	(Good)	\$4,200.00	
13	Cinema Projector	1	DLP Barco Alchemy 4K cinema projector, model DP4K-23B. 24,500 lumens. 4,096 x 2,160 pixel resolution. PC touch panel control. Up to 75' screen size. *Note: appraiser unable to view attached to ceiling, assumed to match one in Projector Room.	(Good)	\$35,950.00	
14	Cinema Movie Screen	1	Estimated at: 11' x 18'. Assumed to be date: 2014. MDI Screens. Tag marked: unable to read. Includes custom fixed metal frame. *Note: appraised value based on depreciation, there is not a common secondary market.	(Good)	\$24,600.00	
15	Misc. Items Throughout Second Theater	LOT	Including: (2) 36" high x 18.5" metal trash cans, plastic tubs, (2) fire extinguishers, mic stand and etc. ALL	(Good)	\$225.00	

16	Under Counter Ice Machine	1	Manitowoc, model: SMS050A002.	(Good)	\$250.00	
17	Back Bar Refrigerator	1	37.5" high x 69" wide. Beverage-Air, model: BB68G-1-B. Rectangular metal tabletop with a straight edge. The body is composed of beverage refrigerator section with two glass panel doors. Lockable.	(Good)	\$1,100.00	
18	Commercial Refrigerator	1	85" high x 26" wide. Beverage-Air, Piedmont Line, model: PRF12-12-1HS02 dual temperature. Stainless steel.	(Good)	\$2,565.00	
19	Rapid Cook Oven	1	2010, Turbochef, Encore rapid cook oven.	(Good)	\$1,875.00	
20	Under Counter Hi-Temp Dishwasher	1	34" high x 24" wide. Champion, model: UH100B.	(Good)	\$1,500.00	
21	Peter Ruck Photograph	1	Image size: 15.75" x 15.75". Artist: Peter Ruck. Title: Shaken Not Stirred. Edition: 295/495. Subject: Roger Moore as James Bond drinking a martini. Framed.	(Good)	\$75.00	

22	Misc. Items in Kitchenette	LOT	Including: Rubbermaid metal demi-lune garbage can, approximately (12) stemless wine glasses, (3) stainless steel ice bucket, approximately (25) stemmed wine glasses, bar supplies, plastic ice chiller, (2) 20" high black rubber garbage can, 37" high x 24" long stainless steel kitchen prep table, Flatform folding 300lb dolly, Hoover Presto cordless vacuum, brooms, dust pans, carafes, plastic champagne buckets, Sony BDP-S5200 Blu-ray DVD player, Sewell HDMI switch, fire extinguisher, and etc. ALL	(Good)	\$515.00	
UPSTAIRS HALLWAY						
23	Movie/Actor Prints	2	60" x 38". Foam board with cloth print overlay. Subjects: different shots of movie actors and actresses. Including: Errol Flynn & Olivia de Havilland and Cary Grant & Joan Fontaine. \$400 ea., PAIR	(Good)	\$800.00	
24	Misc. Items in Hallway	LOT	Including: 33.5" high x 19" wide metal garbage can, (4) stanchions, (14) photocopy reproduction prints of actors & older photos of Los Gatos movie theater; glass flower vase, (2) coffee pot dispensers, and etc. ALL	(Good)	\$412.50	
25	Misc. Items in Janitor Closet	LOT	Including: (2) 6' folding tables, Eureka! mighty mite vacuum, 77" high x 47" wide adjustable metal shelf on castors, (2) 6' long Iceberg folding console tables, janitor's cart, mop buckets, brooms, dusters, 32-gallon garbage can, janitorial supplies, buckets and etc. ALL	(Good)	\$582.50	
PROJECTOR ROOM						
26	Cinema Projector	1	DLP Barco Alchemy 4K cinema projector, model DP4K-23B. 24,500 lumens. 4,096 x 2,160 pixel resolution. PC touch panel control. Up to 75' screen size.	(Good)	\$35,950.00	

27	Server	1	Dell PowerEdge R210 II. 1TB hard drive. *Note: appraiser unable to view fully, server rack enclosed.	(Good)	\$150.00	
28	Video Processor	1	NEC TheaterSync video processor. Silicon Optix HQVTM (Hollywood Quality Video) technology. *Note: appraiser unable to view fully, server rack enclosed.	(Good)	\$2,650.00	
29	Amplifier	1	Furman 20-amp pro series, model: PL-PRO. *Note: appraiser unable to view fully, server rack enclosed.	(Good)	\$137.50	
30	Switch	1	Kramer 8x1 HDMI switcher, model: VS-81H. *Note: appraiser unable to view fully, server rack enclosed.	(Good)	\$35.00	
31	Keyboard & Server Monitor	2	Including: (1) Hanns-G monitor and (1) keyboard with pull-out drawer.	(Good)	\$45.00	
32	Server Rack	1	53" high x 32" wide. Moving Image Technologies. Set on castors.	(Good)	\$85.00	
33	Misc. Items in Projector Room	LOT	Including: roll-a-way side table, face shield, gloves, small amount of hand tools, folding chair, fire extinguisher, and etc. *Note: no value for used Xenon short arc lamps. ALL	(Good)	\$97.50	
THEATER #1						

34	Theater Seats	21	43.5" high x 64" wide. Purple velvet upholstery. Set with lift-up arm with drink holder. Rocker base. ALL	(Good)	\$5,250.00	
35	Line Mixer	1	Mackie 1642VLZ4 16-Channel 4-Bus compact mixer with onyx pre-amplifiers.	(Good)	\$450.00	
36	Lighting Control Console	1	Leprecon 624 lighting control console, model: LP-624. 24-channel.	(Good)	\$100.00	
37	Wall Speaker Surround Sound Speakers	20	15.5" x 13". JBL, model: unknown. *Note: appraiser unable to view fully, wall mounted. \$300 ea., ALL	(Good)	\$6,000.00	
38	Theater Seats	252	Each seat is 42" high x 26" wide. Make, model: unknown. Blue leatherette upholstery. Lift-up cup holder arm rests. Rocker base. ALL	(Good)	\$37,800.00	
39	Theater Spotlights	16	Altman Lighting Company. 6" diameter x 32" long. *Note: appraiser unable to view fully. \$70 ea., ALL	(Good)	\$1,220.00	

40	Cinema Movie Screen	1	Size: 19' high x 38' long. MDI Screens. Tag marked: Screen type: 1.8. S/N: 14524. PC #: 17584. Height: 19'. Width: 38'. Date: 2014. Includes custom fixed metal frame. *Note: appraised value based on depreciation, there is not a common secondary market.	(Good)	\$38,100.00	
41	Cinema Subwoofers	3	JBL Professional Low-frequency Subwoofer Speaker, model: 4739. 4 ohms. *Note: appraiser unable to view fully. \$375 ea., ALL	(Good)	\$750.00	
42	Professional Speakers	3	JBL Professional ScreenArray, model: 4732-M/HF. *Note: appraiser unable to view fully. \$600 ea., ALL	(Good)	\$1,800.00	
43	Cinema Dual Subwoofers	2	JBL Professional, model: 4642A. 2 x 8 ohms. *Note: appraiser unable to view fully. \$1000 ea., PAIR	(Good)	\$2,000.00	
44	Speaker Racks	2	76" high x 30" wide. Steel frame with plank board shelves. \$275 ea., PAIR	(Good)	\$550.00	
45	Speaker Rack	1	50" x 74". Steel frame with plank board shelves.	(Good)	\$275.00	

46	Bar Stools	6	42.5" high. Keilhauer, Flit. Nickel plated metal frame, black leather seat. Black upholstered mesh back. \$365 ea., ALL	(Good)	\$2,190.00	
47	Commercial Popcorn Machine	1	58.5" high x 36" wide. Cretors, model: unknown. *Note: appraiser unable to view fully. *Note: condition unknown.	(Fair, missing doors)	\$800.00	
48	Misc. Items Behind Cinema Movie Screen	LOT	Including: Pyle PDWM2000 wireless router, Electro Voice N/DYM Series UHF Wireless Clear Scan channel receiver, microphone stands, rollaway podium, 32-gallon blue rubber garbage can, Digital Watchdog camera on tripod, and misc. AV wires. ALL	(Good)	\$282.50	
49	Recycling & Trash Can Set	SET	36" high x 18" x 18". (2) trash and (1) recycling. SET	(Good)	\$255.00	
HIDDEN BACK ROOM						
50	Armchairs & Ottoman Set	SET	40" high x 42" wide. Blue upholstery with gold fringe. Down cushions. Includes: (2) armchairs and (1) ottoman. SET	(Good)	\$675.00	
51	Sofas & Ottoman Set	SET	80" long. DHP Furniture. Faux leather upholstery. Straight back and arms. Includes: (2) sofas and (1) 36" long ottoman. SET	(Good)	\$465.00	

52	Load Speakers	3	Load speaker with Altec 28816G horn drivers. \$815 ea., ALL	(Good)	\$2,445.00	
53	35mm Movie Film Rewinder	1	Circa 1930, Goldberg Brothers 35mm Movie Film Rewinder, model: B.	(Good)	\$250.00	
54	Misc. Items in Room	LOT	Including: (2) Alto TS110A Trusonic speakers, (2) trash cans, folding chairs, (2) small MDF side tables, 8' wood top folding table, (5) Bar Tables, white board, fire extinguisher, halogen double head work lamp, Halloween decorations, and etc. ALL	(Good, except Bar Tables in poor condition)	\$710.00	
STAIRWELL						
55	Oversized Gambling Gaming Wheel	1	Estimated at 6' diameter. 20th Century. Wood body with a polychrome finish. *Note: appraiser unable to view fully.	(Good)	\$2,000.00	
DOWNSTAIRS SERVER ROOM						
56	Light Dimming Control Unit	1	Strand Lighting portable performance light dimming control unit, model: CD80.	(Good)	\$85.00	
57	Media Unit	1	Cinespots Simply Cinema, BH11480368, N11360. *Note: claimed to be property of Cinespots, no value attributed.	(Good)	No Value	

58	Digital Cinema Processors	2	Dolby Digital Cinema Processor, model: CP750. \$800 ea., PAIR	(Good)	\$1,600.00	
59	Digital Cinema Booth Monitors	2	USL Inc. Monitor Crossover, model: CM-8. \$137.50 ea., PAIR	(Good)	\$275.00	
60	Professional Power Amplifiers	3	Crown Audio Dsi 2000 Professional Power Amplifier, JBL digital screen series. \$270 ea., ALL	(Good)	\$810.00	
61	Professional Power Amplifiers	2	Crown Audio Dsi 4000 Professional Power Amplifier, JBL digital screen series. \$375 ea., PAIR	(Good)	\$750.00	
62	Professional Power Amplifiers	5	Crown Audio Dsi 1000 Professional Power Amplifier, JBL digital screen series. \$185 ea., ALL	(Good)	\$925.00	
63	Uninterruptable Power Supply	2	Middle Atlantic Products energy saver, model: UPS-1000R-81P. \$230 ea., PAIR	(Good)	\$460.00	
64	Screen & Keyboard with Pull-Out Drawer	1	Including: (1) Hanns-G monitor and (1) keyboard with pull-out drawer.	(Good)	\$45.00	

65	Power Supply	1	Tripp-Lite. 6-outlet	(Good)	\$35.00	
66	Server	1	HP ProLiant custom server, model: DL380. Generation 7.	(Good)	\$55.00	
67	Storage Drive	1	Cru RAX Drive, model: RAX215DC.	(Good)	\$135.00	
68	Switches	2	Trendnet, model: TEG-424WS Web Smart Gigabit Switch. 24 port. \$30 ea., PAIR	(Good)	\$60.00	
69	Server Racks	2	74" x 22". Black powder coated metal body. \$80 ea., PAIR	(Good)	\$160.00	
70	Bar Stool	1	42.5" high, Keilhauer, Flit. Nickel plated metal frame, black leather seat. Black upholstered back chair.	(Fair, small hole to top of mesh back)	\$275.00	
71	Misc. Items in Room	LOT	Including: (2) chairs, light bulbs, (1) DVD shelf, approximately (119) DVDs, 4' folding table, small amount of books, Radio Boss walkie talkies, desk supplies, folding camping chair, and etc. ALL	(Good)	\$500.00	
BREAK ROOM						

72	Lockers	1	78" high x 36" wide. Global. Metal body with a blue painted finish. 18-lockers.	(Good)	\$125.00	
73	Diner Booth Set	SET	21st Century, 1950's style. Black and silver. Including: (1) 5' long bench, (1) 42" long x 29.5" high pedestal table and (1) 30" high armchair on swivel base. SET	(Good)	\$350.00	
74	Misc. Items in Lunchroom	LOT	Including: office chairs, plastic step stool, garbage can, white board, caulk board, fire extinguisher, and etc. ALL	(Good - Poor)	\$75.00	
STORAGE ROOM						
75	Popcorn Machine	1	Great Northern Popcorn Company, Skyline 800.	(Good)	\$257.50	
76	Metal Storage Racks	4	77" high x 47.5" wide. Six adjustable shelves. Set on castors. \$100 ea., ALL	(Good)	\$400.00	
77	Misc. Items	LOT	Including: (2) 30.5" x 23.5" wide adjustable metal storage racks, (1) 72" high x 35" adjustable metal storage rack, (2) 4' folding table, golf umbrellas, plastic garbage cans, folding card table, boxes of movie posters, marquee letters & numbers, plastic tool box, Rubbermaid ice chest, furniture dolly, 3D glasses, office supplies, concessions supplies, empty office & equipment boxes and etc. *Note: appraiser unable to view fully. ALL	(Good)	\$1,052.50	
KITCHEN						

78	Ice Maker	1	73" high x 30" wide. Manitowoc, model: B570.	(Good)	\$1,575.00	
79	Soda Syrup Dispenser Rack	1	75" high x 25" wide. Flojet, model: H5510001. 6-pumps. 4-rack shelves. Includes (3) carbonation tanks.	(Good)	\$225.00	
80	Rapid Cook Oven	1	2010, Turbochef, Encore rapid cook oven.	(Good - Fair)	\$1,700.00	
81	Hot Dog Bun Warmer	1	Cretors hot dog warmer. Stainless steel.	(Good)	\$350.00	
82	Misc. Items in Kitchen	LOT	Including: Emerson MW8998B microwave, buckets, drying racks, utensils, 13-gallon metal garbage can, and etc. ALL	(Good)	\$162.50	
CONSESSIONS						
83	POS Terminals	LOT	Par. Includes: (2) PAR, model unknown Touch Screen POS terminals, (2) Epson, model: M267A thermal receipt printers and (1) Honeywell, model: 1400g barcode scanner. ALL	(Good)	\$400.00	

84	Pretzel Machine	1	Cretors, model: 1100.	(Good)	\$200.00	
85	Commercial Popcorn Machine	1	52.5" high x 35" wide. Cretors, model: unknown.	(Good)	\$1,150.00	
86	Beverage Dispenser	1	25" wide x 54" high. Lancer, model: 2360. Stainless steel. Six valve. Ice bin.	(Good)	\$625.00	
87	Television / Monitor	1	Approximately 55", make and model: unknown.	(Good)	\$150.00	
88	Countertop Freezer	1	29" high x 24" wide. Beverage-Air countertop freezer, model: CF-3. Glass door.	(Good)	\$625.00	
89	Under Counter Refrigerator	1	34" high x 27" wide. Beverage-Air, model: UCR27A-25 under counter refrigerator. Glass door. Set on castors.	(Good)	\$865.00	

90	Misc. Items in Concession Area	LOT	Including: Keurig B145 Office Pro. Coffee maker, napkin dispensers, condiment racks, drink racks, popcorn scoop, anti-fatigue floor mats, (2) 10-gallon garbage cans, and etc. ALL	(Good)	\$225.00	
LOBBY						
91	Movie Poster Displays	4	59" high x 34.5" wide. Arched black plexi-top "COMING SOON". The body is composed of one double locking plexiglass door. Back lit. \$600 ea., ALL	(Good)	\$2,400.00	
92	Bench Seats	4	17" high x 68" wide. Assumed to be Keilhauer. Silver/blue tufted upholstered seat. Set on metal frame with a nickeled finish. \$750 ea., ALL	(Good)	\$2,250.00	
93	Bar Stools	2	42.5" high. Keilhauer, Flit. Nickel plated metal frame, black leather seat, and black upholstered mesh back. \$365 ea., PAIR	(Good)	\$730.00	
94	Bar Table	1	42.25" high x 30" diameter. GAR Products, Art Deco style. Black circular laminate top. Set on nickel plated pedestal circular base.	(Good)	\$400.00	
95	Movie Reel Wall Art	1	Overall size: 29" high x 35" wide. Composed of three movie reels: (1) 24" dia. and (2) 15" dia. Goldberg Bros Inc. E-Z-Hub.	(Good)	\$150.00	

96	Misc. Items in Lobby, Lobby Closet & Janitor's Closet	LOT	Including: stanchions, garbage cans, framed movie quote poster, 6' Werner aluminum A-frame ladder, 2-drawer horizontal file cabinet, brooms, janitorial supplies, collapsible bulk truck/cart, A-frame sidewalk sign, and etc. ALL	(Good)	\$515.00	
MANAGER'S OFFICE						
97	Commercial Refrigerators	2	84" high x 35" wide. Beverage-Air Horizon series, model: HFP1W-1S. Stainless steel. \$1950 ea., PAIR	(Good)	\$3,900.00	
98	Commercial Refrigerator	1	85" high x 26" wide. Stainless steel. *Note: appraiser unable to view fully, locked.	(Good)	\$1,400.00	
99	Apple Computer	1	Apple, model: A1419. Specifics unknown. Includes: 27" 5K monitor, keyboard, speakers, and accessories.	(Good)	\$550.00	
100	Television	1	LG, 47", model: unknown.	(Good)	\$125.00	
101	Security System	1	Digital Watchdog DW-BJCUBE6T-LX Linux Based Blackjack Cube NVR-6TB. *Note: appraiser unable to view fully.	(Good)	\$675.00	

102	Desk Set	SET	29.5" high x 47.5" wide. White Formica tabletop. Set on double pedestal base. Composed of (1) cavetto front edge tabletop desk and (1) rectangular tabletop desk. SET	(Good)	\$300.00	
103	All-in-One Printer	1	HP Officejet Pro 8600 Plus	(Good)	\$120.00	
104	Depository Safe	1	30" high x 20" wide. Mesa Safe Company, model: MFL142000279. Composed of top deposit drawer and two door with digital combination.	(Good)	\$100.00	
105	Misc. Items in Office	LOT	Including: Royal Sovereign RBC-3100 cash counter, Magnif Roll Master CLXX coin roller, 34" x 19" security system cage wall mounted, (2) office chairs, desk supplies, 4' Werner A frame aluminum ladder, plastic step stool, utility cart, fold-up dolly, and (2) Hon four drawer metal filing cabinets and etc. ALL	(Good)	\$805.00	
106	Decorative Lighting Throughout the Venue	LOT	21st Century, Vintage Hardware & Lighting, Art Deco style. Zinc or nickel-plated frames, frosted glass shades. Including: (6) 11.5" h x 7.5" w Manhattan sconces; (6) 16.5" dia. x 17" h Manhattan Close Ceiling Chandelier; (6) 50" l x 20" w Art Deco Energy Efficient Ceiling Light; (5) 26" dia. x 12.5" h French Slip Shade Marseilles Chandelier; (13) 12.5" h x 10" w Marseilles French Art Deco Slip Shade Sconce ; (8) 30" h x 2.5" w Art Deco Streamline Tubular LED Sconce; (2) 12.5" h x 6" w Vianne Patterned Art Deco Slip Shade sconces; (6) 25" h x 15" w Art Deco Wall Sconces Large Theater Light and (1) estimated 50" dia. 5-Layer Horizontal Prism Chandelier, make unknown. ALL	(Good)	\$17,000.00	

107	Historical Sign	1	Approximately 17' h. Circa 2012, Alpha Architectural, Art Deco style. Light-up sign with blue lettering. Marked: "Los Gatos Theater". "Gatos" in neon. *Note: The historic movie theater that's been a fixture on North Santa Cruz Avenue since 1915. The original sign and this updated replica have been in numerous notable artists' paintings and photographs. *Note: appraiser unable to view fully, attached to building.	(Good)	\$50,000.00	
				TOTAL	\$372,210.00	



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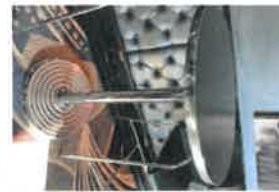
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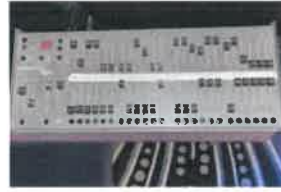
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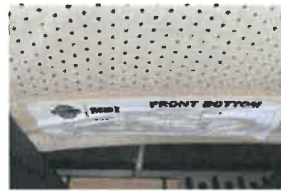
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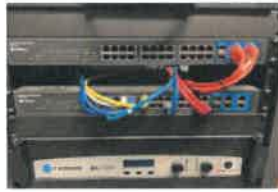
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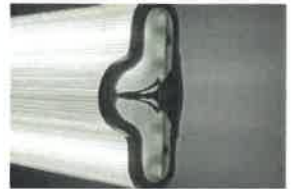
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EXHIBIT C



INTEGRATED INSURANCE & FINANCIAL SERVICES

Insurance Requirements for Lessees

(Not For Daily or Short Term Rentals)

Lessee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Lessee's operation and use of the leased premises. The cost of such insurance shall be borne by the Lessee.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than **\$1,000,000** per accident for bodily injury or disease. (This applies to lessees with employees).
3. **Property insurance** against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.

If the Lessee maintains broader coverage and/or higher limits than the minimums shown above, the Entity requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Lessee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 if a later edition is used).

Primary Coverage

For any claims related to this contract, the **Lessee's insurance coverage shall be primary and non-contributory** and at least as broad as ISO CG 20 01 04 13 as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Lessee's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.

Umbrella or Excess Policy

The Lessee may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted.

NOTE to Agencies: Please see the section on The Myth of "Following Form" Excess Limits Insurance Policies for additional explanatory information on this very common Excess policy problem that needs to be verified and corrected.

Legal Liability Coverage

The property insurance is to be endorsed to include Legal Liability Coverage (ISO Form CP 00 40 04 02 or equivalent) with a limit equal to the replacement cost of the leased property.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Entity.

Waiver of Subrogation

Lessee hereby grants to Entity a waiver of any right to subrogation which any insurer of said Lessee may acquire against the Entity by virtue of the payment of any loss under such insurance. Lessee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the Entity. The Entity may require the Lessee to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Entity. The CGL and any policies, including Excess liability policies, may not be subject to a self-insured retention (SIR) or deductible that exceeds \$25,000 [fill in the amount for your comfort level for the specific Lessee and job – it could be much higher, or in the case of a very small Lessee, you might want it lower] unless approved in writing by Entity. Any and all deductibles and SIRs shall be the sole responsibility of Lessee who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. Entity may deduct from any amounts otherwise due Lessee to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. Entity reserves the right to obtain a copy of any policies and endorsements for verification.

Umbrella or Excess Policy

The Lessee may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted.

NOTE to Agencies: Please see the section on The Myth of "Following Form" Excess Limits Insurance Policies for additional explanatory information on this very common Excess policy problem that needs to be verified and corrected.

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Lessee hereby grants to Entity a waiver of any right to subrogation which any insurer of said Lessee may acquire against the Entity by virtue of the payment of any loss under such insurance. Lessee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the Entity. The Entity may require the Lessee to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Entity. The CGL and any policies, including Excess liability policies, may not be subject to a self-insured retention (SIR) or deductible that exceeds \$25,000 [fill in the amount for your comfort level for the specific Lessee and job – it could be much higher, or in the case of a very small Lessee, you might want it lower] unless approved in writing by Entity. Any and all deductibles and SIRs shall be the sole responsibility of Lessee who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. Entity may deduct from any amounts otherwise due Lessee to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. Entity reserves the right to obtain a copy of any policies and endorsements for verification.

NOTE to Agencies: If the SIR is not paid, there is NO COVERAGE for the Insured or you as the Additional Insured or Indemnified Party. Since there is usually a requirement in the SIR provisions on the Lessee's policy that the Named Insured (not the Agency as an Additional Insured) is the only party allowed to make the payment of the SIR in order to trigger coverage, it is necessary to include the Contract provision requirement above

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Entity.

Verification of Coverage

Lessee shall furnish the Entity with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause **and a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements.** All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the Entity before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Lessee's obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Special Risks or Circumstances

Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Insurance Requirements for Construction Contracts

Contractor shall procure and maintain for the duration of the contract, *and for x years thereafter*, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees, or subcontractors.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$5,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form CA 0001 covering Code 1 (any auto), with limits no less than **\$5,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employers' Liability insurance with a limit of no less than **\$1,000,000** per accident for bodily injury or disease.
4. **Builder's Risk** (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.
5. **Surety Bonds** as described below.
6. **Professional Liability** (if Design/Build), with limits no less than **\$2,000,000** per occurrence or claim, and **\$2,000,000** policy aggregate.
7. **Contractors' Pollution Legal Liability** and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than **\$1,000,000** per occurrence or claim, and **\$2,000,000** policy aggregate.

If the contractor maintains broader coverage and/or higher limits than the minimums shown above, the Entity requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the Entity. The Entity may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Entity. The CGL and any policies,

including Excess liability policies, may not be subject to a self-insured retention (SIR) or deductible that exceeds \$25,000 [fill in the amount for your comfort level for the specific Contractor and job – it could be much higher, or in the case of a very small Contractor, you might want it lower] unless approved in writing by Entity. Any and all deductibles and SIRs shall be the sole responsibility of Contractor or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. Entity may deduct from any amounts otherwise due Contractor to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named Insured. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. Entity reserves the right to obtain a copy of any policies and endorsements for verification.

NOTE to Agencies: If the SIR is not paid, there is NO COVERAGE for the Insured or you as the Additional Insured or Indemnified Party. Since there is usually a requirement in the SIR provisions on the Contractor's policy that the Named Insured Contractor (not the Agency as an Additional Insured) is the only party allowed to make the payment of the SIR

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds** on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38, and CG 20 37 forms if later revisions used).
2. For any claims related to this project, the **Contractor's insurance coverage shall be primary and non-contributory** insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.
3. Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to the Entity.

Builder's Risk (Course of Construction) Insurance

Contractor may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall **name the Entity as a loss payee** as their interest may appear.

If the project does not involve new or major reconstruction, at the option of the Entity, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building,

structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the Entity's site.

Claims Made Policies – (If at all possible avoid and require occurrence type CGL policies)

If any coverage required is written on a claims-made coverage form:

1. The retroactive date must be shown, and this date must be before the execution date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
3. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date, the Contractor must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work.
4. A copy of the claims reporting requirements must be submitted to the Entity for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractors Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Umbrella or Excess Policies

The Contractor may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted.

NOTE to Agencies: Please see the section on The Myth of "Following Form" Excess Limits Insurance Policies for additional explanatory information on this very common Excess policy problem that needs to be verified and corrected.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A: VII, unless otherwise acceptable to the Entity.

Waiver of Subrogation

Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the Entity for all work performed by the Contractor, its employees, agents and subcontractors.

Verification of Coverage

Contractor shall furnish the Entity with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause **and a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements**. All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the Entity before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all requirements stated herein, and Contractor shall ensure that Entity is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

Duration of Coverage

CGL & Excess liability policies for any construction related work, including, but not limited to, maintenance, service, or repair work, shall continue coverage for a minimum of 5 years for Completed Operations liability coverage. Such Insurance must be maintained and evidence of insurance must be provided *for at least five (5) years after completion of the contract of work*.

Surety Bonds

Contractor shall provide the following Surety Bonds:

1. Bid Bond
2. Performance Bond
3. Payment Bond
4. Maintenance Bond

The Payment Bond and the Performance Bond shall be in a sum equal to the contract price. If the Performance Bond provides for a one-year warranty a separate Maintenance Bond is not necessary. If the warranty period specified in the contract is for longer than one year a Maintenance Bond equal to 10% of the contract price is required. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

Special Risks or Circumstances

Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

EXHIBIT D

	Operation Servicing	Preventative Maintenance	Emergency Repairs	Unit Replacement	Minor Improvements (under \$5,000)
Structural					
Foundation	N/A	Town	Town	Town	Town
Bearing & Exterior Walls	N/A	Town	Town	Town	Town
Subflooring	N/A	Town	Town	Town	Town
Exterior Shell					
Roofing	N/A	Town	Town	Town	Town
Exterior Wall Assemblies	N/A	Town	Town	Town	Town
Windows & Hardware	N/A	CineLux	CineLux	Town	CineLux
Doors & Hardware	N/A	CineLux	CineLux	Town	CineLux
Marquee/Signage	Town	CineLux	CineLux	Town	CineLux
Interior Shell					
Ceiling Finishes	N/A	CineLux (custodial)	CineLux	Town	CineLux
Wall Surface Finishes	N/A	CineLux (custodial)	CineLux	CineLux	CineLux
Window Coverings	CineLux	CineLux (custodial)	CineLux	CineLux	CineLux
Doors & Hardware	CineLux	CineLux (custodial)	CineLux	Town	CineLux
Floor Coverings	N/A	CineLux (custodial)	CineLux	Town	CineLux
Nonbearing Walls	N/A	CineLux (custodial)	CineLux	Town	CineLux
HVAC/ Electrical System					
HVAC System	CineLux	CineLux	CineLux	Town	CineLux
Air Handling System	CineLux	CineLux	CineLux	Town	CineLux
Controls	CineLux	CineLux	CineLux	Town	CineLux
Electrical Panels	n/a	n/a	CineLux	Town	CineLux
Outlets & Switches	CineLux	CineLux	CineLux	CineLux	CineLux
Light Fixtures	CineLux	CineLux	CineLux	Town	CineLux
Lamps	CineLux	CineLux	CineLux	CineLux	CineLux
Cabling - Electrical	n/a	n/a	Town	Town	Town
Exterior Lighting	CineLux	CineLux	CineLux	Town	CineLux
Phone System	CineLux	CineLux	CineLux	CineLux	CineLux
Network Cabling	CineLux	CineLux	CineLux	CineLux	CineLux
Elevator	Town	Town	Town	Town	Town
Plumbing					
Water Heater	CineLux	CineLux	CineLux	Town	CineLux
Water Lines	n/a	n/a	Town	Town	Town
Sewer	CineLux	CineLux	CineLux	Town	CineLux

EXHIBIT D



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/28/2022

ITEM NO: 3

ADDENDUM

DATE: June 24, 2022
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize the Town Manager to Negotiate and Execute a Lease Agreement with CineLux Theatres Co. LLC for the Operation and Program Management of the Los Gatos Theatre in Substantially the Form Presented

REMARKS:

Attachment 3 contains public comments received through 11:00 a.m. on Friday, June 24, 2022.

Attachments Previously Received with the Staff Report:

1. Los Gatos Theatre RFP
2. Draft Lease Agreement

Attachment Received with this Addendum:

3. Public Comments received through 11:00 a.m. on Friday, June 24, 2022

PREPARED BY: Arn Andrews
Assistant Town Manager

Reviewed by: Town Manager, Town Attorney, Economic Vitality Manager, and Finance Director

Re: Los Gatos Theatre Business Manager Applicant, Gunsky - Letter of Support

Deborah Weinstein [REDACTED]

To: manager@losgatosca.gov, AAndrews@losgatosca.gov

Cc: Paul Gunsky [REDACTED], Selin Gur e Acar [REDACTED]

Hello Laurel and Arn,

Hope you are well! Thank you again for all you do on behalf of the Town of Los Gatos. I do hope that the Finance Committee is serving the Town well and that you were able to find another suitable candidate.

Wanted to reach out regarding the business management of the Los Gatos Theatre.

In particular, one of the applicants for the Business Management of the Theatre, is a family very well known to the Los Gato Education Foundation (LGEF) and the Los Gato community Paul Gunsky, who operate Cinelu Theatre on Winchester in Campbell, his children attended our local schools (Lexington Elementary and Fisher, and LGHS.). Paul Gunsky is very community spirited, and in fact approached the Los Gatos Education Foundation this past December 2021, once Covid regulations allowed their business to operate fully again, about doing a benefit film for our schools.

That one day Benefit Film event, Paul opened up his facility early at no cost to LGEF, covered the screening cost and provided the staff to cover the event -- the event raised over \$5,000 for our schools. In addition, it's a great, low cost way to bring our community together. The benefit film provided an opportunity for our families to attend a low-cost and fun way to support our schools. Having been in the fundraising business for many years, this kind of opportunity to engage families to participate at a low cost event, is not only a big community builder, but also it has a level of inclusivity that is very atypical -- as most events have large costs that prevent access to a greater community.

This kind of business owner, like Paul Gunsky, who reaches out directly to Los Gatos community organizations to show his support, and utilize his facilities to benefit our school, is truly one of the reasons why Los Gato is such a wonderful and strong community. As our local families do appreciate supporting locally owned, family businesses, it is a cycle that benefits the larger community. Local support by families to our Los Gatos owned businesses, then leads those businesses to lend their support of our Los Gatos community organizations.

For many years, the Goetz family had a tradition of hosting benefit films at the Los Gatos Theatre, for LGEF and other community organizations. An iconic location in the Town of Los Gatos, there is much opportunity for that space. It is my hope, as the Executive Director of LGEF, that the management of the Los Gatos Theatre ends up in the hands of a business person who fully supports our community organization. Paul Gunsky is an example of that kind of business person, and in fact, he has already offered his help to LGEF, if allowed the opportunity to manage the Los Gatos Theatre.

Lastly, I should mention that working with Paul's staff planning the benefit film was a pleasure. His staff was very attentive to making the benefit a success for LGEF. It is clear from my interactions with his staff, that Paul is able to run his business both efficiently and in a very approachable and kind way. Which, having a business so completely affected by the Pandemic, is saying a lot about his business acumen and overall approach to business.

It is with my highest recommendation, that I write this letter of support for Paul Gunsky's application to be business manager of the Los Gatos Theatre.

If you have any additional questions, please contact me!

Thank you,
Deborah Weinstein, Executive Director
Los Gatos Education Foundation
[REDACTED]

Re: Los Gatos Theater

Alicia Goetz [REDACTED]

To: Arn Andrews <aandrews@losgatosca.gov>

Cc: Paul Gunsky [REDACTED]

Good Sunday Evening Arn,

I am aware that the RFP presentations are happening tomorrow for the potential operators of the theater.

I wanted to give you my experience and high recommendation for Paul Gunsky and his Cinelux theaters. Being the operator of the theater since 2014, I had a lot to learn and get up to speed on. Paul was instrumental in this process and was always willing to help and assist in any way we needed. He has always been transparent and professional with any question and issue I have dealt with along the way. I have relied on him tremendously over the year and he understands and knows this business inside out.

There were many times I wanted to get out of the theater operation business and would have gladly turned it over to Paul if I actually went through with that desire.

I do not know who the other potential operators are, but I can highly recommend Paul to run the Los Gatos theater with great care, professionalism and efficiency. He has always shown tremendous interest in the Los Gatos Theater and would take great pride in continuing its operation with utmost professionalism and dedication for its success.

Good luck with the process tomorrow. It will be nice to see it back up and running!

Alicia Goetz

Sent from my iPhone



March 16, 2022

Dear Town of Los Gatos, City Manager's Office,

It is with great pleasure that I write this letter in support of Cinelux Theaters and Paul Gunsky. Paul has been a tireless advocate for Jacob's Heart Children's Cancer Support Services. Not only does Paul invite our families and their children to the theaters his team currently operates on a regular basis, as well as promote our work on the screen, he has also successfully petitioned the National Association of Theater Owners to donate more than \$55,000 to support the important and necessary work we do for families whose children have cancer or are bereaved by the loss of a child from cancer.

I can not speak highly enough of Paul, he not only says he wants to give back to the community, he actually does it. He is a fierce advocate for us and other causes he cares about. He and his team go above and beyond. For example the team at Cinelux Capitola regularly hosts our teen group, made up of young adults who have cancer, are the siblings of a child who has cancer or are siblings bereaved by the loss of their brother and sister. Paul gives our teens private screenings as well as treats them to concessions, this not only makes the kids feel like rockstars but it also gives them a very needed and important time to connect and feel "normal", a hard thing to come by when living with childhood cancer.

The town of Los Gatos will benefit by having Paul and his team operate the Los Gatos Theater, not only will they have a great experience at the theater, they will also reap the benefits of Cinelux supporting their community in really tangible ways.

Please do not hesitate to reach out for additional information on the great ways Paul and his team make our job of caring for children with cancer and their families easier through the theater.

Respectfully,

A handwritten signature in black ink that reads "Heidi Boynton".

Heidi Boynton

Executive Director

Directora Ejecutiva



Jacob's Heart Children's Cancer Support Services

680 West Beach Street, Watsonville CA 95076 (831) 724-9100