



**TOWN OF LOS GATOS
COUNCIL MEETING AGENDA
MARCH 05, 2024
110 EAST MAIN STREET AND TELECONFERENCE
TOWN COUNCIL CHAMBERS
7:00 PM**

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

IMPORTANT NOTICE

This is a hybrid meeting and will be held in-person at the Town Council Chambers at 110 E. Main Street and virtually through Zoom Webinar (log-in information provided below). Members of the public may provide public comments for agenda items in-person or virtually through the Zoom Webinar by following the instructions listed below. The live stream of the meeting may be viewed on television and/or online at www.LosGatosCA.gov/TownYouTube.

HOW TO PARTICIPATE

The public is welcome to provide oral comments in real-time during the meeting in three ways:

- **Zoom Webinar (Online):** Join from a PC, Mac, iPad, iPhone or Android device. Please click this URL to join: https://losgatosca.gov.zoom.us/j/87990205790?pwd=dmpamPBcXdCETViBBFE2ye6LqQV3DA.AJrjhk5XGKkX_b2X
Passcode: 025968 You can also type in 87990205790 in the “Join a Meeting” page on the Zoom website at zoom.us/join and use passcode 025968.

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.

- **Telephone:** Please dial (877) 3361839 for US Toll-free or (636) 651-0008 for US Toll. (Conference code: 686100)
If you are participating by calling in, press #2 on your telephone keypad to raise your hand.
- **In-Person:** Please complete a “speaker’s card” located on the back of the chamber benches and return it to the Town Clerk before the meeting or when the Mayor announces the item for which you wish to speak.

- NOTES:** (1) Comments will be limited to three (3) minutes or less at the Mayor’s discretion.
(2) If you are unable to participate in real-time, you may email to Clerk@losgatosca.gov the subject line “Public Comment Item #__” (insert the item number relevant to your comment). All comments received will become part of the record.
(3) Deadlines to submit written comments are:
11:00 a.m. the Thursday before the Council meeting for inclusion in the agenda packet.
11:00 a.m. the Monday before the Council meeting for inclusion in an addendum.
11:00 a.m. on the day of the Council meeting for inclusion in a desk item.
(4) Persons wishing to make an audio/visual presentation must submit the presentation electronically to Clerk@losgatosca.gov no later than 3:00 p.m. on the day of the Council meeting.

CALL MEETING TO ORDER

ROLL CALL

APPROVE REMOTE PARTICIPATION *(This item is listed on the agenda in the event there is an emergency circumstance requiring a Council Member to participate remotely under AB 2449 (Government Code 54953)).*

PLEDGE OF ALLEGIANCE

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 1 of this agenda. If an item is removed, the Mayor has the sole discretion to determine when the item will be heard.)*

1. Approve Minutes of the February 20, 2024 Town Council Meeting.
2. Adopt an Ordinance Titled “An Ordinance of the Town Council of the Town of Los Gatos Amending Chapter 29, ‘Zoning Regulations,’ of the Town Code to Define ‘By Right Approvals’ and Amend the Housing Element Overlay Zone (HEOZ), Division 5 of Article VIII, ‘Overlay Zones and Historic Preservation,’” to Clarify Regulations Applicable to “By Right” and “Non By Right” Residential Development in the Housing Element Overlay Zone. An Environmental Impact Report (EIR) was Prepared and Certified for the 2040 General Plan Update on June 30, 2022. No further Environmental Analysis is Required. Zoning Code Amendment Application Z-24-001. APPLICANT: Town of Los Gatos. PROJECT PLANNERS: Jocelyn Shoopman and Erin Walters.
3. Adopt a Resolution Modifying the Diversity, Equity, and Inclusion (DEI) Commission Enabling Resolution as Recommended by the DEI Commission and Modify the Town Council Commission Appointment Policy 2-11 for Consistency.
4. Adopt an Ordinance Titled, “An Ordinance of the Town Council of the Town of Los Gatos Designating the Town Council to Hear Appeals from Decisions of the Building Official.”
5. Authorize Revenue and Expenditure Budget Adjustments in the Amount of \$5,531 to Recognize Receipt and Expenditure of Pacific Library Partnership Grant Funds.
6. Authorize the Town Manager to Execute a Second Amendment with Forbes Mill, LLC for 75 Church Street.
7. Authorize an Additional \$10,000 from the County of Santa Clara County Grant for Unhoused Los Gatos Residents to Be Used for the Hotel Program.
8. Adopt the Proposed Modification to the Commission Appointment Policy 2-11 as Recommended by the Council Policy Committee.

VERBAL COMMUNICATIONS *(Members of the public are welcome to address the Town Council on any matter that is not listed on the agenda and is within the subject matter jurisdiction of the Town Council. The law generally prohibits the Town Council from discussing or taking action on such items. However, the Council may instruct staff accordingly. To ensure all agenda items are heard, this portion of the agenda is limited to 30 minutes. 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. Each speaker is limited to*

no more than three (3) minutes or such time as authorized by the Mayor.)

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

9. Discuss and Provide Direction on the Proposed Revisions to the Draft Revised 2023-2031 Housing Element and Next Steps. Location: Town-Wide. General Plan Amendment Application GP-22-003.
10. Review Input on the Interim Community Center and Authorize the Town Manager to Issue a Request for Proposals for Potential Service Providers.
11. Parking Program (CIP No. 813-0242):
 - a. Authorize an Expenditure Budget Decrease Adjustment of Previously Allocated Funds in Program 5101 (PPW Administration) from \$200,000 to \$168,955;
 - b. Authorize a Budget Transfer of \$168,955 from the Previously Allocated Funds from Program 5101 (PPW Administration) to the Parking Program Implementation Project (CIP No. 411-813-0242); and
 - c. Authorize the Town Manager to Execute an Agreement with Dixon Resources Unlimited for Parking Program Management in the Amount of \$168,955.
12. Provide Direction Regarding the Development of a Labor Negotiations Policy Similar to the City of Menlo Park as Recommended by the Finance Commission.

PUBLIC HEARINGS *(Applicants/Appellants and their representatives may be allotted up to a total of five minutes maximum for opening statements. Members of the public may be allotted up to three minutes to comment on any public hearing item. Applicants/Appellants and their representatives may be allotted up to a total of three minutes maximum for closing statements. Items requested/recommended for continuance are subject to Council's consent at the meeting.)*

13. Consider the Adoption of a Resolution Denying an Appeal of a Planning Commission Decision that Approved the Demolition of an Existing Single-Family Residence and Construction of a New Single-Family Residence with Reduced Setbacks on a Non-Conforming Property Zoned R-1D. **Located at 212 Thurston Street.** APN 410-15-039. This Project is Categorically Exempt Pursuant to the California Environmental Quality Act (CEQA) Guidelines, Section 15303(a): New Construction or Conversion of Small Structures. PROPERTY OWNER/APPLICANT: Meleah Guillard. PROJECT PLANNER: Maria Chavarin.

OTHER BUSINESS

14. Authorize the Town Manager to Send a Letter to Tait Firehouse, LLC to Terminate the Lease for 4 Tait Avenue.

COUNCIL / MANAGER MATTERS

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

ADA NOTICE In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Clerk's Office at (408) 354- 6834. Notification at least two (2) business days prior to the meeting date will enable the Town to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR §35.102-35.104]



**DRAFT
Minutes of the Town Council Meeting
Tuesday, February 20, 2024**

The Town Council of the Town of Los Gatos conducted a regular meeting in-person and utilizing teleconferencing means on Tuesday, February 20, 2024, at 7:00 p.m.

MEETING CALLED TO ORDER AT 7:00 P.M.

ROLL CALL

Present: Mayor Mary Badame, Vice Mayor Matthew Hudes, Council Member Rob Moore, Council Member Rob Rennie, Council Member Maria Ristow.

Absent: None

PLEDGE OF ALLEGIANCE

Korwin Johnson led the Pledge of Allegiance. The audience was invited to participate.

CLOSED SESSION REPORT

Gabrielle Whelan, Town Attorney, stated the Town Council met in closed session last week to discuss real property negotiations pursuant to Government Code Section 54956.8 and stated the Town Council unanimously voted to authorize staff to terminate a master lease for the property located at 4 Tait Ave.

COUNCIL/TOWN MANAGER REPORTS

Council Matters

- Vice Mayor Hudes stated he participated in a Foundation for Older Adults to Thrive meeting, a Silicon Valley Regional Interoperability Authority meeting, Cities Association Selection Committee meeting, Cities Association Board meeting, an Emergency Radio Communications Planning Session; participated in the Los Gatos Foundation for Older Adults to Thrive Board meetings, a Finance Commission meeting; and attended a Community Health and Senior Services (CHSSC) special meeting.
- Council Member Rennie stated he met with Los Gatos-Saratoga Recreation Center Executive Director Nancy Rollett; attended the Silicon Valley Clean Energy Authority (SVCEA) CEO and Board meetings; and attended a Finance Commission meeting.
- Council Member Moore stated he met with many people including Chair Yamate of the Diversity, Equity, and Inclusion (DEI) Commission, with Campbell Council Member Sergio Lopez, San Jose Spotlight and Los Gatos Weekly Times/Mercury News reporters; spoke with CADRE (Collaborating Agencies' Disaster Relief Effort); hosted his Council Member Happy Hour and Community Coffee; attended the Los Gatos Anti-Racism Coalition Book Club; judged the Los Gatos Lions Club speech contest; chaired the West Valley Sanitation District Board meeting; and observed a Finance Commission meeting.

- Council Member Ristow stated she attended the Valley Transportation Authority (VTA) Policy Advisory Committee (PAC) meeting, and a Cities Association Board meeting; met with Nancy Rollett to discuss the Los Gatos-Saratoga Recreation Center; and attended the Live Oak Nutrition and Service Center's Lunar New Year Celebration, the State of the City Address for Cupertino, and a celebration of life for former Monte Sereno Mayor Jack Lucas.
- Mayor Badame stated she met with the CEO of Jewish Family Services, and with residents of the proposed Community Garden neighborhood; observed a Finance Commission meeting; met with the Chair of the Finance Commission; attended the Lunar New Year Celebration at Live Oak Senior Nutrition and Service Center; and performed a ribbon cutting at Breaking Dawn Brunch.

Manager Matters

- Announced the Community Police Academy applications are due on February 26, 2024, and more information can be found on the Police Department webpage.
- Announced a mid-cycle Board, Commission, and Committee recruitment is open and stated applications are due on March 4, 2024, at 4:00 p.m. and more information can be found on the Town Clerk webpage.
- Announced the Planning Commission will consider a draft Temporary Sign Ordinance on February 28, 2024, and invited the public to attend the meeting.

CONSENT ITEMS (TO BE ACTED UPON BY A SINGLE MOTION)

1. Approve Minutes of the February 6, 2024 Closed Session Town Council Meeting.
2. Approve Minutes of the February 6, 2024 Town Council Meeting.
3. Approve Minutes of the February 13, 2024 Closed Session Town Council Meeting.
4. Approve Minutes of the February 13, 2024 Special Town Council Meeting.
5. Receive the Monthly Financial and Investment Report for December 2023.
6. Approve the Report Entitled "Vegetation Management Plan for the Town of Los Gatos, Santa Clara County, California" Dated June 2021.
7. Parking Program Implementation-Wayfinding and Signage (CIP No. 813-0242):
 - a. Reject All Bids Opened on January 19, 2024, and
 - b. Authorize Town Manager to Re-bid the Project.
8. Consider Approval of On-Call Consultants List for Engineering and Design Support Services.
9. Approve the Following Action for the Highway 17 Bicycle and Pedestrian Overcrossing (Project No. 818-0803):
 - a. Authorize the Town Manager to Execute a First Amendment to the Agreement for Consultant Services with BKF Engineers Inc. for Construction Phase Grant Writing Services, increasing the amount by \$48,735 for a Total Agreement Not to Exceed \$3,048,735.
10. Adopt a Resolution to Designate the Town's Agents By Title to Obtain Federal and/or State Financial Assistance Through the California Governor's Office of Emergency Services (Cal OES). **RESOLUTION 2024-008**

Mayor Badame opened public comment.

No one spoke.

Mayor Badame closed public comment.

MOTION: Motion by Council Member Ristow to approve consent items 1-10. Seconded by Council Member Moore.

VOTE: Motion passed unanimously.

VERBAL COMMUNICATIONS

Patrick Kearns, Water Rate Advocates for Transparency Equity & Sustainability (WRATES)

- Requested Council consider submitting a written comment regarding the Town's experience with a severed water main on Villa Avenue to the California Public Utilities Commission (CPUC) as part of its consideration of the application by San Jose Water.

Lynley,

- Commented on censorship.

OTHER BUSINESS

11. Review and Discuss the Proposed Revisions to the Draft Revised 2023-2031 Housing Element. Location: Town-Wide. General Plan Amendment Application GP-22-003.

Jocelyn Shoopman, Associate Planner, presented the staff report.

Council asked preliminary questions.

Mayor Badame opened public comment.

Iddo Hadar

- Commented on concerns with proposed residential projects.

Lisa Harris

- Commented in support of the proposed language for Programs J and AY made at the previous meeting.

Kerri Dunlay

- Commented on concerns with the State mandates.

Richard Kananen

- Commented on the intent of a motion made at the prior meeting.

Lee Quintana

- Commented on having a full analysis, finding agreeable solutions, and using positive criteria.

Susan Burnett

- Commented on the wording of a previous motion related to Programs AY and J.

Lynley

- Commented on challenging the State housing mandates.

Ron

- Commented on challenging the State housing mandates.

Bill Highstreet

- Commented on State requirements and balancing the needs of the community.

Eric Beckstrom

- Commented on differing viewpoints and speaking with compassion.

Pat Kearns

- Commented on unity and speaking with respect.

Mayor Badame closed public comment.

Council discussed the item.

MOTION: Motion by Vice Mayor Hudes to include the language that HCD included in their letter, to add the words “including the combination of small multi-unit housing, religious institutions, Junior Accessory Dwelling Units (JADU) and SB10” to Program J. **Seconded by Mayor Badame.**

Vice Mayor Hudes clarified the motion is to modify the language listed in the Quantified Objective (bottom of the first page of Attachment 15) starting with the words “Increase the number small multi-unit housing developments.” He stated the intent of the motion was to increase the number of units including a combination of small multi-unit housing, religious institutions, Junior Accessory Dwelling Units (JADU) and SB10. He further clarified the intent is to change the words “small multi-unit housing developments” to “the combination of small multi-unit housing, religious institutions, Junior Accessory Dwelling Units (JADU) and SB10” and the rest of the language would remain with the 50 to 150.

VOTE: Motion passed unanimously.

MOTION: Motion by Vice Mayor Hudes to ask the Town Manager to share any information regarding the Housing Element with the Council that has been provided to HCD or received from HCD whether written or oral with 24 hours of receipt. **Seconded by Mayor Badame.**

VOTE: Motion passed unanimously.

MOTION: Motion by Vice Mayor Hudes to include the Mayor or their Council Member designee in a listening only mode on all discussions with HCD regarding the Housing Element. **Seconded by Mayor Badame.**

VOTE: Motion fails by a 2-3 vote. Council Members Rennie, Moore, and Ristow voted no.

MOTION: Motion by Council Member Moore to strike the approved language from the previous Council Meeting and replace it with the original language that reads "expand housing in a variety of neighborhoods." **Seconded by Council Member Ristow.**

Council Member Moore clarified his motion is to strike the second paragraph (on the second page of Attachment 15) that starts with the language "modify the zoning code to facilitate..." and replace it with "update the zoning code to facilitate small multi-unit housing in the low to medium residential density designation."

SUBSTITUTE MOTION: Motion by Vice Mayor Hudes to replace the language at the bottom of the gray paragraph (on the second page of Attachment 15) that starts with the words "This zoning will occur in a variety of areas throughout the town..." with the following language: "The modification of the zoning code to facilitate small multi-unit housing will occur in a variety of areas throughout the Town but in no event in any of the following areas or locations: Very High Fire Hazard Severity Zones (VHFHSZ), historic districts, adjacent to homes in our historic inventory (currently pre-1941 homes), hillside residential zones, within 500 feet of an evacuation route or farther than one half mile of a transit stop." **Seconded by Mayor Badame.**

VOTE: Motion passed by a 3-2 vote. Council Members Moore and Ristow voted no.

Council Member Moore withdrew his original motion.

Recess 9:24 p.m.

Reconvene 9:33 p.m.

The Council discussed the Housing Element further.

MOTION: Motion by Mayor Badame to continue this item to allow staff the opportunity to evaluate the reviewer's comments and bring it back at the next Council meeting if not sooner. **Seconded by Council Member Ristow.**

VOTE: Motion passed unanimously.

PUBLIC HEARINGS

12. Approve a Recommendation of the Planning Commission to Introduce an Ordinance Titled "An Ordinance of the Town Council of the Town of Los Gatos Amending Chapter 29, 'Zoning Regulations,' of the Town Code to Define 'By Right Approvals' and Amend the Housing Element Overlay Zone (HEOZ), Division 5 of Article VIII, 'Overlay Zones and Historic Preservation,'" to Clarify Regulations Applicable to "By Right" and "Non By Right" Residential Development in the Housing Element Overlay Zone. An Environmental Impact Report (EIR) was Prepared and Certified for the 2040 General Plan Update on June 30, 2022. No further Environmental Analysis is Required. Zoning Code Amendment Application Z-24-001. APPLICANT: Town of Los Gatos. PROJECT PLANNERS: Jocelyn Shoopman and Erin Walters.

Erin Walters, Associate Planner, presented the staff report.

Mayor Badame opened public comment.

Lee Quintana

- Commented on adding the definition of "by right" development and asked some clarifying questions.

Mayor Badame closed public comment.

MOTION: Motion by Council Member Ristow to approve the recommendation of the Planning Commission to introduce an ordinance titled "An Ordinance of the Town Council of the Town of Los Gatos Amending Chapter 29, 'Zoning Regulations,' of the Town Code to Define 'By Right Approvals' and Amend the Housing Element Overlay Zone (HEOZ), Division 5 of Article VIII, 'Overlay Zones and Historic Preservation,' to clarify regulations applicable to 'By Right' and 'Non By Right' residential development in the Housing Element Overlay Zone" as presented in the Desk Item, Attachment 6. **Seconded by Council Member Moore.**

VOTE: Motion passed unanimously.

OTHER BUSINESS

13. Mid-Year Budget Report - July 1 - December 31, 2023:

- a. Receive the FY 2023/24 Mid-Year Budget Report; and
- b. Authorize Budget Adjustments as Recommended in the Mid-Year Budget Report.

Gitta Ungvari, Finance Director, presented the staff report.

Mayor Badame opened public comment.

No one spoke.

Mayor Badame closed public comment.

Council discussed the item.

MOTION: Motion by Mayor Badame to receive the FY 2023/24 Mid-Year Budget Report in Attachment 1 and authorize budget adjustments as recommended in the Mid-Year Budget Report. **Seconded by Council Member Moore.**

VOTE: Motion passed unanimously.

14. Review the Five-Year Forecast (Fiscal Year 2024/25 -FY 2028/29) and the Finance Commission Recommendations, Determine Key Assumptions for the Five- Year Forecast, and Provide Direction for the Preparation of the FY 2024/25 Operating Budget.

Gitta Ungvari, Finance Director, presented the staff report.

Mayor Badame opened public comment.

No one spoke.

Mayor Badame closed public comment.

Council discussed the item.

MOTION: Motion by Vice Mayor Hudes to use the table on the bottom of page 6 of the staff report [Alternative Scenario Selecting 70% of the Excess ERAF, and Secured Property Tax Option C (6.6% growth rate), and Motor Vehicle In-Lieu Fee (VLF) Option C (6.1% growth rate)] as the basis for the five-year operating model. **Seconded by Council Member Moore.**

VOTE: Motion passed unanimously.

15. Provide Direction on Any Ballot Measures to Consider for Polling.

Katy Nomura, Assistant Town Manager, presented the staff report.

Mayor Badame opened public comment.

No one spoke.

Mayor Badame closed public comment.

Council discussed the item.

MOTION: Motion by Council Member Moore to direct staff to work with NBS the consultant to poll for a sales tax. **Seconded by Council Member Rennie.**

VOTE: Motion passed by a 3-2 vote. Vice Mayor Hudes and Mayor Badame voted no.

PUBLIC HEARINGS

16. Hear Protests and Adopt a Resolution Making Determinations and Approving the Reorganization of an Uninhabited Area Designated as Blackberry Hill Road No. 06, Approximately 2.1 Acres on Property Pre-Zoned HR-2½. APN 532-25-011. Annexation Application AN23-001. Project Location: 15405 Blackberry Hill Road. Property Owner/Applicant: Maurice Brewster. **RESOLUTION 2024-009**

Joel Paulson, Community Development Director, presented the staff report.

Mayor Badame opened public comment.

No one spoke.

Mayor Badame closed public comment.

Council discussed the item.

MOTION: Motion by Council Member Rennie to adopt the resolution in Attachment 1 making determinations and approving the reorganization of an uninhabited area designated as Blackberry Hill Road No. 06, Approximately 2.1 Acres on Property Pre-Zoned HR-2½. APN 532-25-011. **Seconded by Vice Mayor Hudes.**

VOTE: Motion passed unanimously.

17. Adopt Resolution Repealing the Building Board of Appeals (BBA) Enabling Resolutions and Introduce “An Ordinance of the Town Council of the Town of Los Gatos Designating the Town Council to Hear Appeals from Decisions of the Building Official.” **RESOLUTION 2024-010**

Gabreille Whelan, Town Attorney, presented the staff report.

Mayor Badame opened public comment.

No one spoke.

Mayor Badame closed public comment.

Council discussed the item.

MOTION: Motion by Council Member Ristow to adopt the resolution in Attachment 1 repealing the Building Board of Appeals enabling resolutions and introduce “An Ordinance of the Town Council of the Town of Los Gatos Designating the Town Council to Hear Appeals from Decisions of the Building Official.” **Seconded by Council Vice Mayor Hudes.**

VOTE: Motion passed unanimously.

ADJOURNMENT

The meeting adjourned at 11:33 p.m.

Respectfully Submitted:

Jenna De Long, Deputy Town Clerk



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 03/05/2024

ITEM NO: 2

DATE: February 29, 2024
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Adopt an Ordinance Titled “An Ordinance of the Town Council of the Town of Los Gatos Amending Chapter 29, ‘Zoning Regulations,’ of the Town Code to Define ‘By Right Approvals’ and Amend the Housing Element Overlay Zone (HEOZ), Division 5 of Article VIII, ‘Overlay Zones and Historic Preservation,’” to Clarify Regulations Applicable to “By Right” and “Non By Right” Residential Development in the Housing Element Overlay Zone. An Environmental Impact Report (EIR) was Prepared and Certified for the 2040 General Plan Update on June 30, 2022. No further Environmental Analysis is Required. Zoning Code Amendment Application Z-24-001. APPLICANT: Town of Los Gatos. PROJECT PLANNERS: Jocelyn Shoopman and Erin Walters.

RECOMMENDATION:

Adopt an Ordinance titled “An Ordinance of the Town Council of the Town of Los Gatos Amending Chapter 29, ‘Zoning Regulations,’ of the Town Code to define ‘By Right Approvals’ and amend the Housing Element Overlay Zone (HEOZ), Division 5 of Article VIII, ‘Overlay Zones and Historic Preservation,’” to clarify regulations applicable to “by right” and “non by right” residential development in the Housing Element Overlay Zone.

REMARKS:

On February 20, 2024, the Council considered and voted to introduce an Ordinance to effect an amendment to Chapter 29, ‘Zoning Regulations,’ of the Town Code to define ‘By Right Approvals’ and amend the Housing Element Overlay Zone (HEOZ), Division 5 of Article VIII, ‘Overlay Zones and Historic Preservation,’” to clarify regulations applicable to “by right” and “non by right” residential development in the Housing Element Overlay Zone. The proposed ordinance includes the language recommended by HCD regarding subdivisions as well as a severability clause. Once adopted, the Ordinance (Attachment 1) will take effect in 30 days.

PREPARED BY: Jocelyn Shoopman, Associate Planner and
Erin Walters, Associate Planner

Reviewed by: Town Manager, Community Development Director, Planning Manager, and Town Attorney

PAGE 2 of 2

SUBJECT: Housing Element Overlay Zone/Z-24-001

DATE: February 29, 2024

ENVIRONMENTAL ASSESSMENT:

An Environmental Analysis was prepared for the Housing Element update and available on the Town's Housing Element website at:

<https://www.losgatosca.gov/DocumentCenter/View/32424/Housing-Element-Final-Environmental-Analysis-PDF>. All potentially significant effects have been analyzed adequately in the Town of Los Gatos 2040 General Plan Environmental Impact Report (EIR), pursuant to applicable standards including CEQA Guidelines Section 15168(c)2, because the Housing Element update is consistent with the growth projections evaluated in the General Plan EIR. The HEOZ is an implementation of the Housing Element, and no additional Environmental Analysis is required.

Attachment:

1. Draft Ordinance

DRAFT ORDINANCE

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS AMENDING CHAPTER 29, "ZONING REGULATIONS," OF THE TOWN CODE TO DEFINE "BY RIGHT APPROVALS" AND AMEND THE HOUSING ELEMENT OVERLAY ZONE (HEOZ), DIVISION 5 OF ARTICLE VIII, "OVERLAY ZONES AND HISTORIC PRESERVATION"

ZONING CODE AMENDMENT APPLICATION Z-24-001

**PROPERTY LOCATION: TOWN WIDE
APPLICANT: TOWN OF LOS GATOS**

WHEREAS, the Town of Los Gatos 2023-2031 Housing Element identifies amending the Town Code to create the Housing Element Overlay Zone as a strategy to accommodate the Town's Regional Housing Needs Allocation (RHNA); and

WHEREAS, the Planning Commission at its meeting on August 23, 2023, reviewed the proposed Town Code amendments, held a public hearing, and forwarded a recommendation of approval to the Town Council; and

WHEREAS, on October 3, 2023, the Town Council accepted the report of the Planning Commission's recommendation of approval for the proposed Town Code amendment, held a public hearing, and continued to the matter to November 7, 2023; and

WHEREAS, on November 7, 2023, the Town Council reviewed the proposed Town Code amendments, held a public hearing, and introduced the ordinance to amend the Town Code to modify the Affordable Housing Overlay Zone to be the Housing Element Overlay Zone; and

WHEREAS, on November 21, 2023, the Town Council adopted Ordinance No. 2347 to enact the proposed Town Code amendments; and

WHEREAS, on December 1, 2023, the Town received comments from the State Housing and Community Development Department (HCD) regarding the adopted Housing Element Overlay Zone ordinance; and

WHEREAS, staff has prepared a revised ordinance to address HCD's comments; and

WHEREAS, the Planning Commission at its meeting on January 24, 2024, reviewed proposed Town Code amendments, held a public hearing, and forwarded a recommendation of approval to the Town Council; and

WHEREAS, this matter was regularly noticed in conformance with State and Town law

ATTACHMENT 1

and came before the Town Council on February 20, 2024; and

WHEREAS, on February 20, 2024, the Town Council accepted the report of the Planning Commission’s recommendation of approval for the proposed Town Code amendments, held a public hearing, and introduced an ordinance to add a definition of “by right approval” and modify the HEOZ Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Los Gatos as follows:

SECTION I. Section 29.10.020, “Definitions,” of Chapter 29, “Zoning Regulations,” of the Town Code is amended to add the following between the definitions of “*Business or commerce*” and “*Carport*” to read as follows:

By right approval shall have the meaning set forth in Government Code Section 65583.2 (i).

SECTION II. Division 5 of Article VIII, “Overlay Zones and Historic Preservation,” of Chapter 29, “Zoning Regulations,” is amended to read as follows:

ARTICLE VIII. OVERLAY ZONES AND HISTORIC PRESERVATION

...

DIVISION 5. HOUSING ELEMENT OVERLAY ZONE

Sec. 29.80.505. Intent.

The Housing Element Overlay Zone (HEOZ) ordinance in this division is intended to increase the supply and the mix of housing types, tenure, and affordability within the Town of Los Gatos. Through appropriate densities, concessions, and fee deferrals or waivers, the HEOZ encourages the development of housing affordable to all income levels on sites within the Town that are deemed to be most appropriate for such uses. The Housing Element lists sites within the Town of Los Gatos as key housing opportunities. The designation of these sites will assist the Town in meeting its Regional Housing Needs Allocation (RHNA), as required by the State.

Sec. 29.80.510. HEOZ and underlying zoning.

- (a) “By right” residential developments on sites with underlying zoning of RM, CH, or NF-SP (Table 1A below). Pursuant to Government Code Section 65583.2, subsections (h) and (i), in the HEOZ, residential developments with at least 20 percent of the units proposed for “low income” households are subject to “by right approval.” These developments are subject to the following:

1. The developments must be developed within the density ranges specified in Table 1A below and in no event shall any residential development projects be developed below the minimum density of 30 units per acre.
2. The developments shall be subject to non-discretionary design review based on objective development standards in accordance with the procedures specified in Article II, "Administration and Enforcement," of Chapter 29, "Zoning Regulations," of the Town Code.
3. No California Environmental Quality Act review shall be required.
4. Any subdivision of sites in the HEOZ shall be subject to all laws, including, but not limited to, Chapter 24, "Subdivision Regulations," and Sections 29.10.067-29.10.087 of the Town Code implementing the Subdivision Map Act.
5. Residential units shall occupy at least 50 percent of the floor area in all mixed-use projects.
6. For residential developments and mixed-use projects, the standards set forth in Table 1A shall apply.

Table 1A HEOZ Development Standards for "By Right" Residential Development

General Plan Land Use Designation	Zoning	Minimum Yards	Maximum Lot Coverage	Maximum Floor Area Ratio (FAR)	Maximum Height Limit (ft)	Density Units Per Acre
High Density Residential	R-M	As authorized by Section 29.40.645	75%	N/A	45 feet	30-40
Mixed-Use	CH	As authorized by Section 29.60.435	N/A	3.0	45 feet	30-40
North Forty Specific Plan	NF-SP	As defined in Specific Plan	As defined in Specific Plan	As defined in Specific Plan	As defined in Specific Plan	30-40

(b) For all other residential developments other than those described in subsection (a), the standards set forth in Table 1B below shall apply.

Table 1B HEOZ Development Standards for Other Residential Development

General Plan Land Use Designation	Zoning	Minimum Yards	Maximum Lot Coverage	Maximum Floor Area Ratio (FAR)	Maximum Height Limit (ft)	Density Units Per Acre
Low Density Residential	R-1	As authorized by Section 29.40.405	50%	N/A	30 feet	0-5
Medium Density Residential	R-1D, R-D, and R-M	As authorized by Section 29.40.405, 29.40.530, and 29.40.645	75%	N/A	35 feet	14-22 or 5-12 in Very High Fire Hazard Severity Zones
Neighborhood	C-1	As authorized by	N/A	1.0	35 feet	10-20

Commercial		Section 29.60.225				
Central Business District	C-2	As authorized by Section 29.60.335	N/A	2.0	45 feet	20-30
Office Professional	O	As authorized by Section 29.60.100	N/A	1.0	35 feet	10-20

- (c) The underlying zoning development standards will remain in effect for all other development without a residential component.
- (d) Regardless of the underlying zoning designation, no residential use may be developed that does not meet the applicable HEOZ development standards.
- (e) Where standards are not specified, the development standards provided in the underlying zoning district shall apply.

SECTION III. CEQA.

The Town Council finds as follows:

- A. No further Environmental Analysis is required as an Environmental Impact Report (EIR) was prepared and certified for the 2040 General Plan Update on June 30, 2022, which included the proposed Town Code amendments; and
- B. The Town Code amendments are consistent with the General Plan and its elements; and
- C. That all proceedings have been conducted in compliance with the provisions of Government Code Section 65850 et seq.

SECTION IV. EFFECTIVE DATE AND PUBLICATION.

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the 20th day of February 2024, and adopted by the following vote as an ordinance of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on the 5th day of March 2024. This ordinance shall take effect 30 days after the date it is adopted. The Town Clerk shall cause this ordinance or a summary thereof to be published in accordance with Section 36933 of the California Government Code.

SECTION V. SEVERABILITY.

In the event that a court of competent jurisdiction holds any Section, subsection, paragraph, sentence, clause, or phrase in this Ordinance unconstitutional, preempted, or otherwise invalid, the invalid portion shall be severed from this Ordinance and shall not affect the validity of the remaining portions of this Ordinance. The Town hereby declares that it would have adopted each Section, subsection, paragraph, sentence, clause, or phrase in this Ordinance irrespective of the fact that any one or more Sections, subsections, paragraphs,

sentences, clauses, or phrases in this Ordinance might be declared unconstitutional, preempted, or otherwise invalid.

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

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**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 03/05/2024

ITEM NO: 3

DATE: February 21, 2024
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Adopt a Resolution Modifying the Diversity, Equity, and Inclusion (DEI) Commission Enabling Resolution as Recommended by the DEI Commission and Modify the Town Council Commission Appointment Policy 2-11 for Consistency.

RECOMMENDATION:

Adopt a Resolution modifying the Diversity, Equity, and Inclusion (DEI) Commission Enabling Resolution as recommended by the DEI Commission (Attachment 3) and modify the Town Council Commission Appointment Policy 2-11 for consistency (Attachment 5).

BACKGROUND:

In October 2023, the Town Council approved the Enabling Resolution for the DEI Commission (Attachment 1). The Resolution sets forth the membership of the Commission as well as its duties and other parameters. Ten of the 11 seats are filled, and the Commission began meeting in January 2024.

DISCUSSION:

At its February meeting, the DEI Commission discussed its name and other aspects of the Enabling Resolution. After considering public testimony and concluding its deliberations, the Commission decided to retain its name as the Diversity, Equity, and Inclusion Commission.

The Commission did express concern about the difficulty of filling the remaining seat which is intended for a business owner and resident of Los Gatos. As a result, the Commission unanimously recommended to the Town Council that this position be modified to a Los Gatos business owner who may or may not reside in Town (see Attachment 2 redlined and Attachment 3 clean)

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

PAGE 2 OF 2

SUBJECT: Adopt a Resolution Modifying the Diversity, Equity, and Inclusion (DEI)
Commission Enabling Resolution as Recommended by the DEI Commission

DATE: February 21, 2024

DISCUSSION (continued):

The Town Council Commission Appointment Policy 2-11 contains a section regarding residency requirements. If the Town Council changes the DEI Commission Enabling Resolution, then the Commission Appointment Policy needs to be modified to acknowledge the additional seat on the DEI Commission that could be filled by a resident or non-resident of Los Gatos (see Attachment 4 redlined and Attachment 5 clean).

CONCLUSION:

The Commission appreciates the Town Council's consideration of its recommendation.

COORDINATION:

This report was coordinated with the Town Attorney.

FISCAL IMPACT:

The Council's consideration and action on this item has no fiscal impact.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. DEIC Enabling Resolution
2. Redlined DEIC Enabling Resolution with Modifications Recommended by the DEIC
3. Clean Updated DEIC Enabling Resolution
4. Redlined Commission Appointment Policy
5. Clean Updated Commission Appointment Policy

RESOLUTION 2023-053

RESCIND RESOLUTION 2023-051 AND ADOPT A REVISED ENABLING RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS ESTABLISHING THE DIVERSITY, EQUITY, AND INCLUSION COMMISSION

WHEREAS, the Town Council of the Town of Los Gatos does hereby formally establish the Diversity, Equity, and Inclusion Commission (DEIC).

WHEREAS, the Town is working to institutionalize Justice, Equity, Diversity, and Inclusion in the Town's ethos, the role of DEIC is to support and foster new opportunities for marginalized groups in the Town.

WHEREAS, the DEIC will be committed to Justice, Equity, Diversity, and Inclusion across all sectors within the Town of Los Gatos and the purpose of DEIC is to work to create more equitable opportunities and increase a sense of belonging for all Los Gatos community members and visitors through community engagement and collaborative activities.

NOW, THEREFORE, BE IT RESOLVED:

1. Resolution 2023-051 is rescinded and replaced by this Enabling Resolution.
2. The DEIC is hereby established as an advisory committee to the Los Gatos Town Council and shall operate in the manner hereinafter prescribed.
3. Membership/Organization
 - a. The Town is seeking a diversity of members that includes but is not limited to: youth; seniors; Black, Indigenous, and People of Color (BIPOC); Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, and Asexual (LGBTQIA+); those that are disabled; and religious diversity. The Commission shall consist of eleven (11) members. Membership composition shall be:
 - i. Two (2) Youth Commissioners as voting members, whose term of office shall be for one (1) year with no limitations on reappointments, appointed by the Youth Commission;
 - ii. One (1) Arts and Culture Commissioner as a voting member, whose term of office shall be for one (1) year with no limitations on reappointments, appointed by the Arts and Culture Commission;
 - iii. One (1) Community Health and Senior Services Commissioner as a voting member, whose term of office shall be for one (1) year with no limitations on reappointments, appointed by the Community Health and Senior Services Commission;
 - iv. One (1) Town of Los Gatos business owner and resident as a voting member, whose term of office shall be for three (3) years, appointed by the Town Council;

- v. One (1) Town of Los Gatos business owner or employee, who may or may not reside in Los Gatos, as a voting member, whose term of office shall be for three (3) years, appointed by the Town Council;
 - vi. One (1) Town of Los Gatos faith leader who leads a congregation in Los Gatos, who may or may not reside in Los Gatos, as a voting member, whose term of office shall be for three (3) years, appointed by the Town Council;
 - vii. One (1) Town of Los Gatos non-profit employee, who may or may not reside in Los Gatos, as a voting member, whose term of office shall be for three (3) years, appointed by the Town Council; and
 - viii. Three (3) Town of Los Gatos residents as voting members, whose term of office shall be for three (3) years, appointed by the Town Council.
- b. The three-year terms will be staggered.
 - c. Commission members is expected to report back to the Board, Committee, Commission, or organization the Commissioner represents (i.e., Arts and Culture Commission, faith community, etc.).
 - d. The Commission shall appoint a Chair and Vice Chair.
 - e. Commission members shall serve without compensation.
 - f. The Commission shall hold regular monthly meetings.
 - g. The Commission shall establish a regular time and location for its meetings and shall otherwise call and conduct its meetings in compliance with the provisions of the Ralph M. Brown Act.
 - h. Meeting attendance requirements will conform with all current Town Resolutions and Policies.
 - i. A record of all meeting minutes and resolutions of the Commission shall be kept and shall be a public record.

4. Powers and Duties

- a. The duties of DEIC shall be to:
 - i. Act in an advisory capacity to the Town Council in matters pertaining to creating equitable opportunities and a sense of belonging within Town. The DEIC's scope of work may include the following items:
 - 1. Community Based Programming**
 - a. Develop new and promote current programs/events that foster unity and diversity within the Town.
 - b. Identify Equity Training opportunities for Town Council, staff, residents, business owners/employees, students, and/or Commission/community members.
 - c. Incorporate community feedback into programming and training.
 - 2. Collaborative Efforts**
 - a. Foster stronger collaborations between current Town Boards, Commissions, and Committees and community-based organizations to integrate equity practices and principles.
 - b. Build relationships with local public and private school

systems in order to provide support and resources for Equity work.

- c. Build collaborative processes with other Town Boards, Committees, and Commissions to ensure integration of Equity practices into the Town community grant program.

3. Policy Recommendations

- a. Make policy recommendations to the Town Council regarding Justice, Equity, Diversity, Inclusion, and Unity issues.

4. Communications

- a. Create a communications campaign centered around equity education and promotion of Town events.
- ii. Not to affect powers of the Town Council. Nothing in this resolution shall be construed as restricting or curtailing any of the powers of the Town Council, or as a delegation to DEIC of any of the authority or discretionary powers vested and imposed by law in such Council.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 3rd day of October 2023 by the following vote:

COUNCIL MEMBERS:

AYES: Matthew Hudes, Rob Moore, Rob Rennie, Mayor Maria Ristow

NAYS: Mary Badame

ABSENT: None

ABSTAIN: None


SIGNED:



MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: 10-4-23

ATTEST:


TOWN CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: 10-5-23

DRAFT RESOLUTION 2024-

RESCIND RESOLUTION 2023-053 AND ADOPT A REVISED ENABLING RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS ESTABLISHING THE DIVERSITY, EQUITY, AND INCLUSION COMMISSION

WHEREAS, the Town Council of the Town of Los Gatos does hereby formally establish the Diversity, Equity, and Inclusion Commission (DEIC).

WHEREAS, the Town is working to institutionalize Justice, Equity, Diversity, and Inclusion in the Town’s ethos, the role of DEIC is to support and foster new opportunities for marginalized groups in the Town.

WHEREAS, the DEIC will be committed to Justice, Equity, Diversity, and Inclusion across all sectors within the Town of Los Gatos and the purpose of DEIC is to work to create more equitable opportunities and increase a sense of belonging for all Los Gatos community members and visitors through community engagement and collaborative activities.

NOW, THEREFORE, BE IT RESOLVED:

1. Resolution 2023-053 is rescinded and replaced by this Enabling Resolution.
2. The DEIC is hereby established as an advisory committee to the Los Gatos Town Council and shall operate in the manner hereinafter prescribed.
3. Membership/Organization
 - a. The Town is seeking a diversity of members that includes but is not limited to: youth; seniors; Black, Indigenous, and People of Color (BIPOC); Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, and Asexual (LGBTQIA+); those that are disabled; and religious diversity. The Commission shall consist of eleven (11) members. Membership composition shall be:
 - i. Two (2) Youth Commissioners as voting members, whose term of office shall be for one (1) year with no limitations on reappointments, appointed by the Youth Commission;
 - ii. One (1) Arts and Culture Commissioner as a voting member, whose term of office shall be for one (1) year with no limitations on reappointments, appointed by the Arts and Culture Commission;
 - iii. One (1) Community Health and Senior Services Commissioner as a voting member, whose term of office shall be for one (1) year with no limitations on reappointments, appointed by the Community Health and Senior Services Commission;
 - iv. One (1) Town of Los Gatos business owner ~~and resident~~, who may or may not reside in Los Gatos, as a voting member, whose term of office shall be for three (3) years with a two- term limit, appointed by the Town Council;

ATTACHMENT 2

- v. One (1) Town of Los Gatos business owner or employee, who may or may not reside in Los Gatos, as a voting member, whose term of office shall be for three (3) years with a two-term limit, appointed by the Town Council;
 - vi. One (1) Town of Los Gatos faith leader who leads a congregation in Los Gatos, who may or may not reside in Los Gatos, as a voting member, whose term of office shall be for three (3) years with a two-term limit, appointed by the Town Council;
 - vii. One (1) Town of Los Gatos non-profit employee, who may or may not reside in Los Gatos, as a voting member, whose term of office shall be for three (3) years with a two-term limit, appointed by the Town Council; and
 - viii. Three (3) Town of Los Gatos residents as voting members, whose term of office shall be for three (3) years with a two-term limit, appointed by the Town Council.
- b. The three-year terms will be staggered.
 - c. Commission members is expected to report back to the Board, Committee, Commission, or organization the Commissioner represents (i.e., Arts and Culture Commission, faith community, etc.).
 - d. The Commission shall appoint a Chair and Vice Chair.
 - e. Commission members shall serve without compensation.
 - f. The Commission shall hold regular monthly meetings.
 - g. The Commission shall establish a regular time and location for its meetings and shall otherwise call and conduct its meetings in compliance with the provisions of the Ralph M. Brown Act.
 - h. Meeting attendance requirements will conform with all current Town Resolutions and Policies.
 - i. A record of all meeting minutes and resolutions of the Commission shall be kept and shall be a public record.

4. Powers and Duties

- a. The duties of DEIC shall be to:
 - i. Act in an advisory capacity to the Town Council in matters pertaining to creating equitable opportunities and a sense of belonging within Town. The DEIC's scope of work may include the following items:

1. Community Based Programming

- a. Develop new and promote current programs/events that foster unity and diversity within the Town.
- b. Identify Equity Training opportunities for Town Council, staff, residents, business owners/employees, students, and/or Commission/community members.
- c. Incorporate community feedback into programming and training.

2. Collaborative Efforts

- a. Foster stronger collaborations between current Town Boards, Commissions, and Committees and community-

based organizations to integrate equity practices and principles.

- b. Build relationships with local public and private school systems in order to provide support and resources for Equity work.
- c. Build collaborative processes with other Town Boards, Committees, and Commissions to ensure integration of Equity practices into the Town community grant program.

3. Policy Recommendations

- a. Make policy recommendations to the Town Council regarding Justice, Equity, Diversity, Inclusion, and Unity issues.

4. Communications

- a. Create a communications campaign centered around equity education and promotion of Town events.
- ii. Not to affect powers of the Town Council. Nothing in this resolution shall be construed as restricting or curtailing any of the powers of the Town Council, or as a delegation to DEIC of any of the authority or discretionary powers vested and imposed by law in such Council.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 5th day of March 2024 by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

DRAFT

DRAFT RESOLUTION 2024-

**RESCIND RESOLUTION 2023-053 AND ADOPT A REVISED ENABLING RESOLUTION OF
THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
ESTABLISHING THE DIVERSITY, EQUITY, AND INCLUSION COMMISSION**

WHEREAS, the Town Council of the Town of Los Gatos does hereby formally establish the Diversity, Equity, and Inclusion Commission (DEIC).

WHEREAS, the Town is working to institutionalize Justice, Equity, Diversity, and Inclusion in the Town’s ethos, the role of DEIC is to support and foster new opportunities for marginalized groups in the Town.

WHEREAS, the DEIC will be committed to Justice, Equity, Diversity, and Inclusion across all sectors within the Town of Los Gatos and the purpose of DEIC is to work to create more equitable opportunities and increase a sense of belonging for all Los Gatos community members and visitors through community engagement and collaborative activities.

NOW, THEREFORE, BE IT RESOLVED:

1. Resolution 2023-053 is rescinded and replaced by this Enabling Resolution.
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3. Membership/Organization
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 - iv. One (1) Town of Los Gatos business owner, who may or may not reside in Los Gatos, as a voting member, whose term of office shall be for three (3) years with a two- term limit, appointed by the Town Council;

ATTACHMENT 3

- v. One (1) Town of Los Gatos business owner or employee, who may or may not reside in Los Gatos, as a voting member, whose term of office shall be for three (3) years with a two-term limit, appointed by the Town Council;
 - vi. One (1) Town of Los Gatos faith leader who leads a congregation in Los Gatos, who may or may not reside in Los Gatos, as a voting member, whose term of office shall be for three (3) years with a two-term limit, appointed by the Town Council;
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- b. The three-year terms will be staggered.
 - c. Commission members is expected to report back to the Board, Committee, Commission, or organization the Commissioner represents (i.e., Arts and Culture Commission, faith community, etc.).
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 - g. The Commission shall establish a regular time and location for its meetings and shall otherwise call and conduct its meetings in compliance with the provisions of the Ralph M. Brown Act.
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 - b. Identify Equity Training opportunities for Town Council, staff, residents, business owners/employees, students, and/or Commission/community members.
 - c. Incorporate community feedback into programming and training.
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 - a. Foster stronger collaborations between current Town Boards, Commissions, and Committees and community-

based organizations to integrate equity practices and principles.

- b. Build relationships with local public and private school systems in order to provide support and resources for Equity work.
- c. Build collaborative processes with other Town Boards, Committees, and Commissions to ensure integration of Equity practices into the Town community grant program.

3. Policy Recommendations

- a. Make policy recommendations to the Town Council regarding Justice, Equity, Diversity, Inclusion, and Unity issues.

4. Communications

- a. Create a communications campaign centered around equity education and promotion of Town events.
- ii. Not to affect powers of the Town Council. Nothing in this resolution shall be construed as restricting or curtailing any of the powers of the Town Council, or as a delegation to DEIC of any of the authority or discretionary powers vested and imposed by law in such Council.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 5th day of March 2024 by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

DRAFT



TITLE: Commission Appointments, Residency and Attendance Requirements, and Establishing a Quorum

POLICY NUMBER: 2-11

EFFECTIVE DATE: 2/28/1990

PAGES: 7

ENABLING ACTIONS:

REVISED DATES: 6/13/1994; 6/16/2014; 4/7/2015; 10/18/2016; 2/21/2017; 2/6/2018; 3/19/19; 9/3/2019; 6/1/2021; 12/7/21, 3/15/22, 8/2/22; 9/20/22; 10/03/23; 11/21/23

APPROVED:

PURPOSE

To establish a policy to encourage participation by the Town’s residents on Town Boards, Commissions and Committees (hereinafter referred to as "Commissions"). The Town of Los Gatos is committed to inclusivity. We value all our community members, regardless of religion, immigration status, ethnicity, race, disability, gender, sexual orientation, or gender identity. The Town will encourage residents to participate on Commissions by advertising vacancies on Commissions for at least 30 days, preparing easily understood applications, maintaining clear descriptions of the role of each Board, Commission, and Committee and its respective members, providing current meeting schedules, and conducting public interviews of all Commission applicants, except as provided by this Policy.

SCOPE

This Policy applies to all applicants to Town Boards, Commissions and Committees.

POLICY

The Town Council encourages public participation in all decision-making and to be successful residents must be assured both that the participation is meaningful and that their input will be valued. The widest representation from the community can only be achieved if vacancies are well advertised so that anyone interested will have the opportunity to apply. Interviews of the applicants conducted in public by the Town Council demonstrates that it values these appointments and that all have an equal opportunity to be appointed. Applicants may apply to more than one Commission, and shall rank their choices in their preferred order, during each recruitment cycle.

ATTACHMENT 4

TITLE: Commission Appointments, Residency and Attendance Requirements, and Establishing a Quorum	PAGE: 2 of 7	POLICY NUMBER: 2-11
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To ensure the greatest possible participation by the public, it is the Town's policy that no person shall be appointed to more than one Commission except in those cases where they are ex-officio members of other Boards, Commissions and Committees. This Policy does not apply to Commission members serving as representatives of their Commission who have been appointed by the Town Council.

RESIDENCY REQUIREMENTS

Residency within the incorporated municipal limits of the Town of Los Gatos, California is required for appointment and continued membership on all Town of Los Gatos Boards, Commissions, and Committees, with the exception of the Youth Commission and the Diversity, Equity, and Inclusion Commission.

Youth Commission:

The members shall be students who are entering grades 8 through 12 in the fall. Membership for the students requires either residency in the incorporated limits of the Town of Los Gatos or residency in the unincorporated areas of the County of Santa Clara, which have a Los Gatos mailing address.

Diversity, Equity, and Inclusion Commission:

Membership composition shall be as outlined in the Commission's enabling resolution and includes a Los Gatos business owner, ~~an~~ employee of a Los Gatos business, faith leader who leads a congregation in Los Gatos, and Los Gatos non-profit employee all of whom may or may not reside in Los Gatos.

ATTENDANCE REQUIREMENTS

1. All members of all appointive Town Advisory Bodies should attend all regular and special meetings of said Advisory Bodies.
2. Any member not in attendance at a regular meeting of said Advisory Body for at least 70% of the meeting shall be considered absent.
3. Any member of an appointive Town Advisory Body who is absent from the number of regular meetings listed below appropriate to his or her Advisory Body shall, as a result, surrender his or her office on the Advisory Body and the office shall be considered vacant.
 - a. For an Advisory Body which holds six (6) or more regular meetings per a consecutive twelve (12) month period: three (3) regular meetings.
 - b. For an Advisory Body which holds five (5) or fewer regular meetings per a consecutive twelve (12) month period: two (2) regular meetings.
 - c. For an Advisory Body which holds sixteen (16) or more regular meetings per a consecutive twelve (12) month period: eight (8) regular meetings.
4. Consistent with the Family Medical Leave Act and the California Family Rights Act, absences of up to 12 weeks due to parental leave constitute excused absences.

TITLE: Commission Appointments, Residency and Attendance Requirements, and Establishing a Quorum	PAGE: 3 of 7	POLICY NUMBER: 2-11
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5. The vacant position shall be filled by appointment by a majority vote of the Town Council, for a term equal to the unexpired portion of the office vacated. Any member removed from office due to non-attendance may re-apply to serve on a Town Advisory Body but will not be treated as an incumbent in any subsequent application to the same Advisory Body.
6. If a Youth Commissioner liaison misses three meetings of a liaison Commission during a consecutive twelve (12) month period*, the Youth Commission shall appoint a different Youth Commissioner as liaison.

*Consecutive twelve (12) month period is defined as any consecutive twelve-month period beginning with the first absence. A regular meeting shall not be cancelled and replaced with a special meeting in order to alleviate an absence by an advisory body member.

QUORUM REQUIREMENTS

The number of members needed to constitute a quorum on any Town Advisory Body shall be a majority of the total number of filled seats.

PROCEDURES

The following procedures will be followed by the applicant, the Town Clerk, and the Town Council for the appointment of applicants to Town Commissions:

Responsibility and Actions: Town Clerk

A. Annual Recruitments

Adult Commission members' terms begin on January 1st and end December 31st, Youth Commissioners' terms follow the academic year and begin on August 1st and end on June 30th. The Town Clerk shall perform the following duties in conducting an annual recruitment for Commission members:

1. Notify Town Council of vacancies on Commissions by indicating the names of the Commissions, the number of terms expiring or being vacated, names of individual(s) with expiring terms or vacating seats, advertising periods (at least 30 days) and the date of interview.
2. Advertise the vacancies, including the application deadline and the interview date. Interviews and appointments for Adult Commissioners shall occur after annual Mayor and Vice Mayor selection, and in the case of election years, after new Council Members have been seated. Interviews and appointments for Youth Commissioners shall occur by the fourth Wednesday in May, no earlier than 4:00 p.m.
3. Prepare and maintain easily understood applications for appointment to Commissions. Applications shall include the following policy information:

TITLE: Commission Appointments, Residency and Attendance Requirements, and Establishing a Quorum	PAGE: 4 of 7	POLICY NUMBER: 2-11
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- a. Prior to initial appointment to any Commission, non-incumbent applicants must be interviewed by the Town Council. The applications of those not appearing will be held for the next recruitment.
 - b. If an incumbent Commissioner is requesting reappointment to the same Commission, the incumbent may submit a request to be interviewed by telephone, with their application, instead of attending the interview or must submit a letter prior to the interviews, describing the reason why the applicant cannot be present telephonically or in person for the interview, and why the applicant should be reappointed to the Commission.
 - c. Submissions deadlines are mandatory; no exceptions are permitted.
4. Applications:
- a. *For adult applicants* — Accept applications, verify eligibility, and distribute copies of the applications of eligible applicants to the Town Council prior to the interviews for appointment.
 - b. *For student applicants* — Accept applications, verify eligibility, and distribute copies of the applications of eligible applicants to the Town Council Selection Committee, consisting of the Mayor, Vice Mayor, Police Chief, and Youth Commission Chair (if not reapplying), prior to the interviews for appointment.
5. Notify the applicant by letter or email as to the date and time of the interview and provide the option for an in person or teleconference interview.
6. Facilitate the Council voting process set forth below by informing Council as to how many votes are possible on each Commission, calling out applicants' names, and identifying the applicants receiving sufficient votes for appointment. This process does not apply to student applicants.
7. Applicants:
- a. *For adult applicants* — After the interviews and Council vote are completed, notify all applicants of the Council's action, and explain Town policy of keeping application active for one year with notification of subsequent openings on that Commission to the interested applicants.
 - b. *For student applicants* — After the interviews are completed, notify all applicants of the Council Committee's action, and prepare a staff report for the Town Council to ratify the Committee's appointment at the first Town Council meeting in June.

Interview Process

To ensure the interview process is consistent, fair, and equitable, each applicant shall be asked the same standard questions, as provided below. Notwithstanding, no Council Member shall be prevented from asking appropriate questions of applicants.

1. If appointed, what ideas would you like to see the Commission explore?
2. Please expand beyond the written response on your application: your experience, interest, and/or expertise that you feel would be most useful to the Commission.

TITLE: Commission Appointments, Residency and Attendance Requirements, and Establishing a Quorum	PAGE: 5 of 7	POLICY NUMBER: 2-11
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3. Please elaborate on any written response provided in the application to assist the Council learn more about you.
4. If you did not answer any of the questions on the application, please explain why.

The standard questions are limited in number to allow an applicant sufficient time to respond. While the intent is for each Council Member to be able to ask one question of each applicant, the Council may decide not to ask all of the provided questions, change the order of the questions, or rotate which Council member asks a specific question.

Balloting Process

Unless determined otherwise, the Council shall conduct a ballot vote for the appointment of individuals to fill the vacancies for each Commission. Such ballot vote may be conducted at either a regular, adjourned, or special meeting of the Town Council. The ballot vote process shall be conducted as follows:

1. The Town Clerk shall provide a ballot to each Town Council member listing the names of all applicants and "None of the above" for each respective Commission. Prior to the vote, the Town Clerk shall publicly announce the position vacancy and all applicant names that are listed on the ballot.
2. Each Council member may vote for the same number of applicants as there are current vacancies on the respective Commission. In no case, can a Council Member cast more votes than there are vacancies; or vote for the same candidate more than once on each ballot (i.e. cumulative voting -- e.g. where there are three vacancies, a Council member may not give all three votes to the same candidate). A Council Member is not required to vote for any of the candidates or for the total number of vacancies available.
3. The Town Clerk shall collect all ballots and shall publicly announce the name of each Town Council member and how that Council member cast his or her vote. In the case of a tie vote, the Town Clerk will announce that there is a tie and that a run-off vote shall be conducted but will not announce the names of the applicants in the run-off. Once all voting is concluded and a decision made, the votes will be made public. The run-off ballot will also include a "None of the above" option.
4. Applicants receiving a majority number of votes shall be deemed appointed to the Commission. In the event of a tie, a run-off vote shall be conducted among the applicants receiving the highest number of votes from the previous round. This shall continue until a majority consensus on an applicant(s) is reached for the number of vacancies to be filled. In the event of an unbreakable tie, the Council may determine an alternative method for selecting the appointee(s) or direct the Town Clerk to re-advertise the vacancy.
5. If an applicant(s) is appointed to an Advisory Body which has vacancies for both full and partial, unexpired terms, the length of the appointee's term will be determined by the Mayor.

TITLE: Commission Appointments, Residency and Attendance Requirements, and Establishing a Quorum	PAGE: 6 of 7	POLICY NUMBER: 2-11
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B. Mid-Term Recruitments

During the year, Commissions may experience vacancies that drop the number of filled seats to a number of members that is not sufficient to conduct Commission business. The Commission may request the Council to conduct a mid-term recruitment to fill seats. To the extent possible, the Town Clerk will consolidate mid-term recruitments to minimize the number of recruitments occurring throughout the year. In the event of a vacancy on the Planning Commission, the Town will automatically conduct a mid-term recruitment. Mid-term recruitments will not be conducted for Youth Commissioners. The Town Clerk shall advertise mid-term vacancies on Commissions for at least 15 days.

Responsibility and Action: Applicant

1. Read the Commission Appointments, Residency and Attendance Requirements, and Establishing a Quorum Policy, complete and submit to the Town Clerk the application for appointment to a Town Commission by the advertised deadline date and time.
2. *For adult applicants:* Attend the Council meeting to be interviewed for Commission appointment. The applicant is required to notify the Town Clerk no later than 4:00 p.m. the Friday before the scheduled interview date whether they will attend in person or via teleconference.
3. *For student applicants:* Attend the Council Selection Committee interview session. The applicant is required to notify the Town Clerk no later than 4:00 p.m. the Friday before the scheduled interview date whether they will attend in person or via teleconference.
4. If an incumbent Commission member is requesting reappointment to the same Commission and is not available on the date of the interview, the incumbent must submit a letter by 4:00 p.m. the Friday prior to the interviews, describing the reason why the applicant cannot be present telephonically or in person for the interview, and why the applicant should be reappointed to the Commission.
5. If appointed, prior to starting the Commission term, appointees are required to attend a Commissioner Orientation and take the "Oath of Office."
6. Attend Advisory Body meetings once term begins.
7. Read the Commissioners' Handbook. Hard copies of the Handbook are to be returned to the Town Clerk when the term is complete.

Responsibility and Action: Town Council

1. Review applications.
2. *For adult applicants* – Interview applicants individually by Commission at a public meeting with all applicants present.
For student applicants – Town Council Selection Committee interviews applicants.
3. Determine if the incumbents not in attendance and having submitted a letter pursuant to this Policy should be considered for reappointment.

TITLE: Commission Appointments, Residency and Attendance Requirements, and Establishing a Quorum	PAGE: 7 of 7	POLICY NUMBER: 2-11
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4. If there are limited applications for any vacancy to a Commission, the Mayor, on behalf of the Council, may request that the Town Clerk re-advertise the vacancy, reschedule the interviews, and notify all applicants of the new interview date.

COMPLIANCE - GROUNDS FOR DISMISSAL

A member may be removed from the Advisory Body prior to the end of his or her term by a three-fifths (3/5) vote of the Town Council and may not be reappointed for the following reasons:

1. Failure to attend Advisory Body meetings.
2. Failure to file the following documents required by the Fair Political Practices Commission (Adult Commissioners):
 - a. Form 700 – Assuming Office, Annual, and Leaving Office when term is complete.
 - b. Planning Commissioners are also required to complete AB 1234 Ethics Training and file the original certificate with the Town Clerk every two years.
3. Failure to comply with all Town Policies, Guidelines, and Handbooks.

CONFLICT OF INTEREST

Under the Fair Political Practice Act, an advisory board member has a disqualifying conflict of interest in a governmental decision if it is foreseeable that the decision will have a financial impact on his or her personal finances or other financial interests. In such cases, there is a risk of biased decision-making that could sacrifice the public’s interest in favor of the official’s private financial interests. To avoid actual bias or the appearance of possible improprieties, the public official is prohibited from participating in the decision.

The Fair Political Practice Act does not prohibit an advisory board member from participating in a decision simply by virtue of holding a position as a board member, director, officer, or employment with a nonprofit corporation. However, the Town strongly encourages that in the event that a decision concerns a nonprofit corporation for which an advisory board member is a board member, director, officer, or employed with that nonprofit corporation, the person should recuse him or herself and at a minimum shall disclose the potential conflict of interest before any discussion and decision.

APPROVED AS TO FORM:

Gabrielle Whelan, Town Attorney



TITLE: Commission Appointments, Residency and Attendance Requirements, and Establishing a Quorum

POLICY NUMBER: 2-11

EFFECTIVE DATE: 2/28/1990

PAGES: 7

ENABLING ACTIONS:

REVISED DATES: 6/13/1994; 6/16/2014; 4/7/2015; 10/18/2016; 2/21/2017; 2/6/2018; 3/19/19; 9/3/2019; 6/1/2021; 12/7/21, 3/15/22, 8/2/22; 9/20/22; 10/03/23; 11/21/23

APPROVED:

PURPOSE

To establish a policy to encourage participation by the Town’s residents on Town Boards, Commissions and Committees (hereinafter referred to as "Commissions"). The Town of Los Gatos is committed to inclusivity. We value all our community members, regardless of religion, immigration status, ethnicity, race, disability, gender, sexual orientation, or gender identity. The Town will encourage residents to participate on Commissions by advertising vacancies on Commissions for at least 30 days, preparing easily understood applications, maintaining clear descriptions of the role of each Board, Commission, and Committee and its respective members, providing current meeting schedules, and conducting public interviews of all Commission applicants, except as provided by this Policy.

SCOPE

This Policy applies to all applicants to Town Boards, Commissions and Committees.

POLICY

The Town Council encourages public participation in all decision-making and to be successful residents must be assured both that the participation is meaningful and that their input will be valued. The widest representation from the community can only be achieved if vacancies are well advertised so that anyone interested will have the opportunity to apply. Interviews of the applicants conducted in public by the Town Council demonstrates that it values these appointments and that all have an equal opportunity to be appointed. Applicants may apply to more than one Commission, and shall rank their choices in their preferred order, during each recruitment cycle.

ATTACHMENT 5

TITLE: Commission Appointments, Residency and Attendance Requirements, and Establishing a Quorum	PAGE: 2 of 7	POLICY NUMBER: 2-11
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To ensure the greatest possible participation by the public, it is the Town's policy that no person shall be appointed to more than one Commission except in those cases where they are ex-officio members of other Boards, Commissions and Committees. This Policy does not apply to Commission members serving as representatives of their Commission who have been appointed by the Town Council.

RESIDENCY REQUIREMENTS

Residency within the incorporated municipal limits of the Town of Los Gatos, California is required for appointment and continued membership on all Town of Los Gatos Boards, Commissions, and Committees, with the exception of the Youth Commission and the Diversity, Equity, and Inclusion Commission.

Youth Commission:

The members shall be students who are entering grades 8 through 12 in the fall. Membership for the students requires either residency in the incorporated limits of the Town of Los Gatos or residency in the unincorporated areas of the County of Santa Clara, which have a Los Gatos mailing address.

Diversity, Equity, and Inclusion Commission:

Membership composition shall be as outlined in the Commission's enabling resolution and includes a Los Gatos business owner, employee of a Los Gatos business, faith leader who leads a congregation in Los Gatos, and Los Gatos non-profit employee all of whom may or may not reside in Los Gatos.

ATTENDANCE REQUIREMENTS

1. All members of all appointive Town Advisory Bodies should attend all regular and special meetings of said Advisory Bodies.
2. Any member not in attendance at a regular meeting of said Advisory Body for at least 70% of the meeting shall be considered absent.
3. Any member of an appointive Town Advisory Body who is absent from the number of regular meetings listed below appropriate to his or her Advisory Body shall, as a result, surrender his or her office on the Advisory Body and the office shall be considered vacant.
 - a. For an Advisory Body which holds six (6) or more regular meetings per a consecutive twelve (12) month period: three (3) regular meetings.
 - b. For an Advisory Body which holds five (5) or fewer regular meetings per a consecutive twelve (12) month period: two (2) regular meetings.
 - c. For an Advisory Body which holds sixteen (16) or more regular meetings per a consecutive twelve (12) month period: eight (8) regular meetings.
4. Consistent with the Family Medical Leave Act and the California Family Rights Act, absences of up to 12 weeks due to parental leave constitute excused absences.

TITLE: Commission Appointments, Residency and Attendance Requirements, and Establishing a Quorum	PAGE: 3 of 7	POLICY NUMBER: 2-11
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5. The vacant position shall be filled by appointment by a majority vote of the Town Council, for a term equal to the unexpired portion of the office vacated. Any member removed from office due to non-attendance may re-apply to serve on a Town Advisory Body but will not be treated as an incumbent in any subsequent application to the same Advisory Body.
6. If a Youth Commissioner liaison misses three meetings of a liaison Commission during a consecutive twelve (12) month period*, the Youth Commission shall appoint a different Youth Commissioner as liaison.

*Consecutive twelve (12) month period is defined as any consecutive twelve-month period beginning with the first absence. A regular meeting shall not be cancelled and replaced with a special meeting in order to alleviate an absence by an advisory body member.

QUORUM REQUIREMENTS

The number of members needed to constitute a quorum on any Town Advisory Body shall be a majority of the total number of filled seats.

PROCEDURES

The following procedures will be followed by the applicant, the Town Clerk, and the Town Council for the appointment of applicants to Town Commissions:

Responsibility and Actions: Town Clerk

A. Annual Recruitments

Adult Commission members' terms begin on January 1st and end December 31st, Youth Commissioners' terms follow the academic year and begin on August 1st and end on June 30th. The Town Clerk shall perform the following duties in conducting an annual recruitment for Commission members:

1. Notify Town Council of vacancies on Commissions by indicating the names of the Commissions, the number of terms expiring or being vacated, names of individual(s) with expiring terms or vacating seats, advertising periods (at least 30 days) and the date of interview.
2. Advertise the vacancies, including the application deadline and the interview date. Interviews and appointments for Adult Commissioners shall occur after annual Mayor and Vice Mayor selection, and in the case of election years, after new Council Members have been seated. Interviews and appointments for Youth Commissioners shall occur by the fourth Wednesday in May, no earlier than 4:00 p.m.
3. Prepare and maintain easily understood applications for appointment to Commissions. Applications shall include the following policy information:

TITLE: Commission Appointments, Residency and Attendance Requirements, and Establishing a Quorum	PAGE: 4 of 7	POLICY NUMBER: 2-11
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- a. Prior to initial appointment to any Commission, non-incumbent applicants must be interviewed by the Town Council. The applications of those not appearing will be held for the next recruitment.
 - b. If an incumbent Commissioner is requesting reappointment to the same Commission, the incumbent may submit a request to be interviewed by telephone, with their application, instead of attending the interview or must submit a letter prior to the interviews, describing the reason why the applicant cannot be present telephonically or in person for the interview, and why the applicant should be reappointed to the Commission.
 - c. Submissions deadlines are mandatory; no exceptions are permitted.
4. Applications:
- a. *For adult applicants* — Accept applications, verify eligibility, and distribute copies of the applications of eligible applicants to the Town Council prior to the interviews for appointment.
 - b. *For student applicants* — Accept applications, verify eligibility, and distribute copies of the applications of eligible applicants to the Town Council Selection Committee, consisting of the Mayor, Vice Mayor, Police Chief, and Youth Commission Chair (if not reapplying), prior to the interviews for appointment.
5. Notify the applicant by letter or email as to the date and time of the interview and provide the option for an in person or teleconference interview.
6. Facilitate the Council voting process set forth below by informing Council as to how many votes are possible on each Commission, calling out applicants' names, and identifying the applicants receiving sufficient votes for appointment. This process does not apply to student applicants.
7. Applicants:
- a. *For adult applicants* — After the interviews and Council vote are completed, notify all applicants of the Council's action, and explain Town policy of keeping application active for one year with notification of subsequent openings on that Commission to the interested applicants.
 - b. *For student applicants* — After the interviews are completed, notify all applicants of the Council Committee's action, and prepare a staff report for the Town Council to ratify the Committee's appointment at the first Town Council meeting in June.

Interview Process

To ensure the interview process is consistent, fair, and equitable, each applicant shall be asked the same standard questions, as provided below. Notwithstanding, no Council Member shall be prevented from asking appropriate questions of applicants.

1. If appointed, what ideas would you like to see the Commission explore?
2. Please expand beyond the written response on your application: your experience, interest, and/or expertise that you feel would be most useful to the Commission.

TITLE: Commission Appointments, Residency and Attendance Requirements, and Establishing a Quorum	PAGE: 5 of 7	POLICY NUMBER: 2-11
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3. Please elaborate on any written response provided in the application to assist the Council learn more about you.
4. If you did not answer any of the questions on the application, please explain why.

The standard questions are limited in number to allow an applicant sufficient time to respond. While the intent is for each Council Member to be able to ask one question of each applicant, the Council may decide not to ask all of the provided questions, change the order of the questions, or rotate which Council member asks a specific question.

Balloting Process

Unless determined otherwise, the Council shall conduct a ballot vote for the appointment of individuals to fill the vacancies for each Commission. Such ballot vote may be conducted at either a regular, adjourned, or special meeting of the Town Council. The ballot vote process shall be conducted as follows:

1. The Town Clerk shall provide a ballot to each Town Council member listing the names of all applicants and “None of the above” for each respective Commission. Prior to the vote, the Town Clerk shall publicly announce the position vacancy and all applicant names that are listed on the ballot.
2. Each Council member may vote for the same number of applicants as there are current vacancies on the respective Commission. In no case, can a Council Member cast more votes than there are vacancies; or vote for the same candidate more than once on each ballot (i.e. cumulative voting -- e.g. where there are three vacancies, a Council member may not give all three votes to the same candidate). A Council Member is not required to vote for any of the candidates or for the total number of vacancies available.
3. The Town Clerk shall collect all ballots and shall publicly announce the name of each Town Council member and how that Council member cast his or her vote. In the case of a tie vote, the Town Clerk will announce that there is a tie and that a run-off vote shall be conducted but will not announce the names of the applicants in the run-off. Once all voting is concluded and a decision made, the votes will be made public. The run-off ballot will also include a “None of the above” option.
4. Applicants receiving a majority number of votes shall be deemed appointed to the Commission. In the event of a tie, a run-off vote shall be conducted among the applicants receiving the highest number of votes from the previous round. This shall continue until a majority consensus on an applicant(s) is reached for the number of vacancies to be filled. In the event of an unbreakable tie, the Council may determine an alternative method for selecting the appointee(s) or direct the Town Clerk to re-advertise the vacancy.
5. If an applicant(s) is appointed to an Advisory Body which has vacancies for both full and partial, unexpired terms, the length of the appointee’s term will be determined by the Mayor.

B. Mid-Term Recruitments

TITLE: Commission Appointments, Residency and Attendance Requirements, and Establishing a Quorum	PAGE: 6 of 7	POLICY NUMBER: 2-11
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During the year, Commissions may experience vacancies that drop the number of filled seats to a number of members that is not sufficient to conduct Commission business. The Commission may request the Council to conduct a mid-term recruitment to fill seats. To the extent possible, the Town Clerk will consolidate mid-term recruitments to minimize the number of recruitments occurring throughout the year. In the event of a vacancy on the Planning Commission, the Town will automatically conduct a mid-term recruitment. Mid-term recruitments will not be conducted for Youth Commissioners. The Town Clerk shall advertise mid-term vacancies on Commissions for at least 15 days.

Responsibility and Action: Applicant

1. Read the Commission Appointments, Residency and Attendance Requirements, and Establishing a Quorum Policy, complete and submit to the Town Clerk the application for appointment to a Town Commission by the advertised deadline date and time.
2. *For adult applicants:* Attend the Council meeting to be interviewed for Commission appointment. The applicant is required to notify the Town Clerk no later than 4:00 p.m. the Friday before the scheduled interview date whether they will attend in person or via teleconference.
3. *For student applicants:* Attend the Council Selection Committee interview session. The applicant is required to notify the Town Clerk no later than 4:00 p.m. the Friday before the scheduled interview date whether they will attend in person or via teleconference.
4. If an incumbent Commission member is requesting reappointment to the same Commission and is not available on the date of the interview, the incumbent must submit a letter by 4:00 p.m. the Friday prior to the interviews, describing the reason why the applicant cannot be present telephonically or in person for the interview, and why the applicant should be reappointed to the Commission.
5. If appointed, prior to starting the Commission term, appointees are required to attend a Commissioner Orientation and take the "Oath of Office."
6. Attend Advisory Body meetings once term begins.
7. Read the Commissioners' Handbook. Hard copies of the Handbook are to be returned to the Town Clerk when the term is complete.

Responsibility and Action: Town Council

1. Review applications.
2. *For adult applicants* – Interview applicants individually by Commission at a public meeting with all applicants present.
For student applicants – Town Council Selection Committee interviews applicants.
3. Determine if the incumbents not in attendance and having submitted a letter pursuant to this Policy should be considered for reappointment.
4. If there are limited applications for any vacancy to a Commission, the Mayor, on behalf of the Council, may request that the Town Clerk re-advertise the vacancy, reschedule the interviews, and notify all applicants of the new interview date.

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COMPLIANCE - GROUNDS FOR DISMISSAL

A member may be removed from the Advisory Body prior to the end of his or her term by a three-fifths (3/5) vote of the Town Council and may not be reappointed for the following reasons:

1. Failure to attend Advisory Body meetings.
2. Failure to file the following documents required by the Fair Political Practices Commission (Adult Commissioners):
 - a. Form 700 – Assuming Office, Annual, and Leaving Office when term is complete.
 - b. Planning Commissioners are also required to complete AB 1234 Ethics Training and file the original certificate with the Town Clerk every two years.
3. Failure to comply with all Town Policies, Guidelines, and Handbooks.

CONFLICT OF INTEREST

Under the Fair Political Practice Act, an advisory board member has a disqualifying conflict of interest in a governmental decision if it is foreseeable that the decision will have a financial impact on his or her personal finances or other financial interests. In such cases, there is a risk of biased decision-making that could sacrifice the public's interest in favor of the official's private financial interests. To avoid actual bias or the appearance of possible improprieties, the public official is prohibited from participating in the decision.

The Fair Political Practice Act does not prohibit an advisory board member from participating in a decision simply by virtue of holding a position as a board member, director, officer, or employment with a nonprofit corporation. However, the Town strongly encourages that in the event that a decision concerns a nonprofit corporation for which an advisory board member is a board member, director, officer, or employed with that nonprofit corporation, the person should recuse him or herself and at a minimum shall disclose the potential conflict of interest before any discussion and decision.

APPROVED AS TO FORM:

Gabrielle Whelan, Town Attorney



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 03/05/2024

ITEM NO: 4

DATE: February 26, 2024
TO: Mayor and Town Council
FROM: Gabrielle Whelan, Town Attorney
SUBJECT: Adopt an Ordinance Titled, "An Ordinance of the Town Council of the Town of Los Gatos Designating the Town Council to Hear Appeals from Decisions of the Building Official"

RECOMMENDATION:

Adopt an ordinance titled, "An Ordinance of the Town Council of the Town of Los Gatos Designating the Town Council to Hear Appeals from Decisions of the Building Official" (Attachment 1).

BACKGROUND:

At its meeting of January 16, 2024, the Town Council voted to disband the existing Building Board of Appeals (BOA) and assume the duties of the Building Board of Appeals in accordance with Section 1.8.8 of the California Building Code.

On February 5, 2024, the Town Council voted to adopt a resolution rescinding the enabling resolutions of the BOA and introduce an ordinance titled, "An Ordinance of the Town Council of the Town of Los Gatos Designating the Town Council to Hear Appeals from Decisions of the Building Official."

DISCUSSION:

Adoption of this ordinance will amend Town Code Section 29.50.755, which lists the duties of the Town Council, to include hearing appeals from the decisions of the Building Official. The draft ordinance (Attachment 1) is attached for the Town Council's consideration.

PREPARED BY: Jenna De Long
Deputy Town Clerk

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

PAGE 2 OF 2

SUBJECT: Building Board of Appeals

DATE: February 26, 2024

COORDINATION:

This report was coordinated with the Town Attorney's Office, Community Development Department, and Building Official.

FISCAL IMPACT:

Adoption includes codification of the ordinance which is budgeted.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. Proposed Ordinance

DRAFT ORDINANCE

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
DESIGNATING THE TOWN COUNCIL TO HEAR APPEALS FROM DECISIONS OF THE
BUILDING OFFICIAL**

WHEREAS, the Town is required to designate an appeal body to hear appeals from decisions of the Building Official;

WHEREAS, in 1991, the Town established a Building Board of Appeals;

WHEREAS, due to a lack of appeals since the Building Board of Appeals was established, the Town Council has rescinded the enabling resolutions establishing a Building Board of Appeals;

WHEREAS, California Building Code Section 1.8.8 authorizes city councils to assume the duties of a Building Board of Appeals;

WHEREAS, the Town Council has opted to assume the duties of a Building Board of Appeals; and

WHEREAS, Town Code Section 29.50.755 lists the Town Council duties;

WHEREAS, the proposed ordinance will revised the listed duties of the Town Council to add hearing appeals from decisions of the Building Official;

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Los Gatos as follows:

SECTION I. Section 29.20.755, "Town Council," of the Town Code is hereby amended to read as follows:

Sec. 29.20.755. Town Council.

The Town Council:

- (1) May initiate and refer general plan amendments and specific plans or amendments to the Planning Commission for recommendation.
- (2) Hears and determines Planning Commission recommendations for the adoption or amendment of the general plan or any specific plans and conditional use permits for establishments selling alcoholic beverages for on premises consumption (excluding restaurants) and for retail sales of firearms, ammunition and/or destructive devices.
- (3) Adopts ordinances.

- (4) May initiate and refer zone changes and amendments to this chapter to the Planning Commission for recommendation. Nonsubstantive ordinance amendments may, but need not be, referred to the Planning Commission.
- (5) Hears appeals from decisions of the Building Official.
- (6) Hears appeals from decisions of the Planning Commission.
- (7) Determines whether to extend suspension under section 29.80.285.
- (8) Determines applications for permits for signs on public property, including but not limited to community-oriented bulletin boards and kiosks.
- (9) Determines mobile home park conversion permit applications.
- (10) Appoints Historic Preservation Committee members.
- (11) Determines requests for reasonable accommodation when action is not required of the Planning Commission, Development Review Committee, or the Planning Director.

(Ord. No. 1316, § 5.60.300, 6-7-76; Ord. No. 1328, 8-2-76; Ord. No. 1375, 11-21-77; Ord. No. 1758, § VIII, 8-1-88; Ord. No. 1762, § II, 9-19-88; Ord. No. 2220, § I(Exh. A), 10-7-13; Ord. No. 2222, § II(Exh. A), 10-21-13; Ord. No. 2304, § II, 2-18-20)

SECTION II. Severability.

In the event that a court of competent jurisdiction holds any Section, subsection, paragraph, sentence, clause, or phrase in this Ordinance unconstitutional, preempted, or otherwise invalid, the invalid portion shall be severed from this Section and shall not affect the validity of the remaining portions of this Section. The Town hereby declares that it would have adopted each Section, subsection, paragraph, sentence, clause, or phrase in this Section irrespective of the fact that any one or more Sections, subsections, paragraphs, sentences, clauses or phrases in this Section might be declared unconstitutional, preempted, or otherwise invalid.

SECTION III. CEQA.

Adopting this Ordinance is not a project subject to CEQA because it can be seen with certainty that it will not impact the environment (CEQA Guidelines Section 15378).

SECTION IV. Publication.

In accordance with Section 63937 of the Government Code of the State of California, this Ordinance takes effect 30 days from the date of its passage. The Town Council hereby directs the City Clerk to cause this Ordinance or a summary thereof to be published or posted in accordance with Section 36933 of the Government Code of the State of California.

SECTION V. Effective Date.

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the ___ day of _____ 20 , and adopted by the Town Council of the Town of Los Gatos at its regular meeting on the ___ day of _____ 20 , by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 03/05/2024

ITEM NO: 5

DATE: February 20, 2024
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize Revenue and Expenditure Budget Adjustments in the Amount of \$5,531 to Recognize Receipt and Expenditure of Pacific Library Partnership Grant Funds

RECOMMENDATION:

Authorize revenue and expenditure budget adjustments in the amount of \$5,531 to recognize receipt and expenditure of Pacific Library Partnership grant funds.

BACKGROUND:

The Library has been successful in obtaining a grant in the amount of \$5,531 from the Pacific Library Partnership. Grant funds will be used to purchase e-books.

FISCAL IMPACT:

Grant revenues totaling \$5,531 will be recorded to account 7801-43343 and be expended from account 7801-61172.

ENVIRONMENTAL ASSESSMENT:

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

PREPARED BY: Ryan Baker
Library Director

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



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 03/05/2024

ITEM NO: 6

DATE: February 21, 2024
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize the Town Manager to Execute a Second Amendment with Forbes Mill, LLC for 75 Church Street.

RECOMMENDATION:

Authorize the Town Manager to execute a Second Amendment to the Master Lease with Forbes Mill, LLC for 75 Church Street (Attachment 3) in substantially the form presented.

BACKGROUND:

In March 2019, the Town Council authorized an Exclusive Negotiating Agreement with Imwalle Asset Management, LLC, to help guide the negotiations of a Master Lease Agreement. On August 4, 2020, the Town Council authorized the Town Manager to execute a long term lease agreement with Forbes Mill, LLC for the property located at 75 Church Street (Attachment 1). While Forbes Mill, LLC is a unique entity, Imwalle Asset Management, LLC is the master tenant.

The decision to enter into long term leases was predicated on the fact that the approach would allow the property to remain in Town control, maintain the historic value of the property, require no monetary resources from the Town, and ultimately provide an annual revenue stream to the Town.

On February 7, 2023, the Town Council authorized a First Amendment (Attachment 2) to the lease to modify the provisions which stipulate that if lease up has not occurred within certain time periods, either party can terminate the leases. The modification extended the deadline for the master tenant to find a subtenant to January 1, 2024.

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

PAGE 2 OF 2

SUBJECT: Authorize the Town Manager to Execute a Second Amendment with Forbes Mill, LLC for 75 Church Street

DATE: February 21, 2024

DISCUSSION:

On December 22, 2023, Jim Foley (on behalf of Forbes Mill, LLC) contacted the Town to request an additional six-month extension to secure tenants. He explained that he has been trying to secure tenants in a challenging economic environment and expects to find a subtenant acceptable to the Town in the next six months.

Attachment 3 contains a draft Second Amendment to provide a six-month extension as of the date of Council action (March 5, 2024). This would give Forbes Mill, LLC until early September to secure a subtenant.

CONCLUSION:

Staff recommends that the Council authorize the Town Manager to execute a Second Amendment with Forbes Mill, LLC for 75 Church Street in substantially the form presented.

COORDINATION:

The preparation of this report and the draft Second Amendment were coordinated with the Town Attorney.

FISCAL IMPACT:

There is no fiscal impact with this Council action. Should Forbes Mill be successfully occupied consistent with the Master Lease, the Town would realize financial benefits as stated in the Master Lease.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. Master Lease
2. First Amendment
3. Draft Second Amendment with Exhibit C Insurance Requirements

LEASE AGREEMENT

MASTER LEASE

by and between

**TOWN OF LOS GATOS, a California municipal corporation
("Landlord")**

and

**Forbes Mill, LLC, a California limited liability company
("Master Tenant")**

Los Gatos, California

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<u>Exhibit A</u>	Description and Site Plan Showing Location of Premises
<u>Exhibit B</u>	Form of Notice of Lease Term Dates
<u>Exhibit C</u>	Insurance Requirements for Master Tenant and Subtenants
<u>Exhibit D</u>	Memorandum of Lease Agreement

MASTER LEASE

This Master Lease ("Lease") is made and effective as of this ____ day of _____, 2020 ("Effective Date"), by and between THE TOWN OF LOS GATOS, a California municipal corporation (hereinafter "Landlord" or the "Town"), and Forbes Mill, LLC, a California limited liability company ("Master Tenant").

RECITALS

A. The Town owns certain improved real property, commonly referred to as the Forbes Mill Property, located at 75 Church Street, APN: 529-54-050, and as shown and described on Exhibit A attached hereto and made a part hereof, suitable for residential, office, restaurant, retail and other commercial operations (the "Property"). The building situated on such real property shall be referred to as the "Forbes Mill Building."

B. The Town has solicited proposals to develop the Forbes Mill Building and the future development of the Property will require significant capital improvements to make the area usable for commercial operators.

C. Master Tenant has been selected by the Town to develop the Forbes Mill Building and to sublease space within the Property to subtenant(s) consented to by the Town.

Now therefore, in consideration of their mutual promises as set forth in this Lease, the Town and Master Tenant agree as follows:

SECTION 1. BASIC LEASE PROVISIONS AND DEFINITIONS.

1.1 Master Tenant's Managing Member. Imwalle Asset Management, LLC, a California Limited Liability Company.

1.2 Premises and Address of Premises: The Premises consist of the Property and the Forbes Mill Building situated thereon. The address of the Premises is as follows:

75 Church Street,
Los Gatos, CA 95030

1.3 Rentable Area of Forbes Mill Building. As depicted in Exhibit A, the Rentable Area of the Forbes Mill Building is approximately 2450 square feet.

1.4 Lease Term. As provided in Section 3 below, the Term of the Lease commences on the Commencement Date and terminates, unless earlier terminated 34 years and 11 months from the Commencement Date as provided in Section 3.1 below.

1.5 Lease Contingency. This Lease is contingent on the Master Tenant submitting the necessary applications and documents to the Town for approval of the improvements and use of the property, such as, but not limited to, general plan amendment, a proposed site plan, concept drawings for the site plan, massing diagrams, and renderings identifying the location, general configuration, and proposed design characteristics of the buildings, parking spaces, landscaping, property subdivision, and other aspects of the improvement and uses. The Master Tenant acknowledges that the Project Proposal requires approvals and entitlements from the Town and shall submit a formal application for the Planning Approvals. Costs and fees associated with the Planning Approvals review shall be borne by the Master Tenant. Nothing in this Agreement shall be construed to compel the Town to approve or make any findings with respect to Planning Approvals. If Master tenant is unable to obtain Planning Approvals, either Landlord or Master Tenant may terminate this Lease by giving written notice of termination to the

other party Upon the giving of such notice of termination, this Lease shall terminate without liability of either party to the other.

This Lease is also contingent on Master Tenant and a Subtenant having executed a binding initial Sublease for any portion of the Premises and occupancy by Subtenants (the "Contingency"). If the Contingency has not been satisfied or waived by Landlord on or before the date twelve (12) months following the Effective Date, either Landlord or Master Tenant may terminate this Lease by giving written notice of termination to the other party Upon the giving of such notice of termination, this Lease shall terminate without liability of either party to the other.

1.6 Minimum Monthly Rent. The Minimum Monthly Rent shall be \$0.40 per Rentable Area of Forbes Mill Building (which equates to \$980 per month) payable to Landlord as provided in Section 4 below.

1.7 Percentage Rent. The Percentage Rent shall be that Rent specified in Section 4.3 below.

1.8 Capital Reserve Fund. For each month that Master Tenant pays to Landlord the Minimum Monthly Rent, Landlord shall deposit on a monthly basis to the account described in Section 8.6 below, the Minimum Monthly Rent received by Landlord.

1.9 Maintenance of Premises. The Master Tenant's obligations for Maintenance of the Premises are as set forth in Section 8 below.

1.10 Rent Commencement Date. The Rent Commencement Date shall be the date the first Subtenant opens for business on the Premises. The Rent Commencement Date shall be memorialized between Landlord and Master Tenant as set forth in Exhibit B (Form of Notice of Lease Terms).

1.11 Subtenant. The individual commercial operator(s) physically occupying the Premises to provide the services required under this Lease, as selected by Master Tenant and accepted by the Town (subject to Section 7.2 and Section 14.2 below). The Master Tenant cannot also be a Subtenant.

1.12 Permitted Uses. The operation of businesses providing residential, office, retail, restaurant, and other services approved by Master Tenant and Town, and any other lawful use, except as otherwise prohibited under this Lease pursuant to Section 5.2.

1.13 Town Manager. The Town Manager of the Town ("Town Manager") or his or her designated representative, shall serve as the Town's principal contact and liaison for coordinating all Town requests of Master Tenant and responses to Master Tenant's requests, and shall assist in the implementation of the Town's obligations hereunder, during the term of this Lease. The Town Manager may change his or her authorized representative at any time by giving written notice of the change to Master Tenant.

1.14 Master Tenant's Work and Tenant Improvement Loan Amortization. "Master Tenant's Work" is defined in Section 6.2. "Tenant Improvement Loan Amortization" is defined in Section 6.3.

SECTION 2. LEASED AREA.

2.1 Premises. Landlord hereby leases to Master Tenant, and Master Tenant hereby leases from Landlord the Premises referred to in Section 1.2 above, located at 75 Church Street, Los Gatos, California 90530, as depicted on Exhibit A.

SECTION 3. TERM.

3.1 Term. The "Term" of this Lease shall commence as of the Effective Date ("Commencement Date") and shall end, unless earlier terminated or extended pursuant to the terms and conditions of this Lease, on the date 34 years and 11 months after the Commencement Date ("Termination Date").

SECTION 4. RENT.

4.1 General. From and after the Rent Commencement Date, Master Tenant agrees to pay Landlord as rent for the Premises, in the manner and at the times set forth in this Lease, the Minimum Monthly Rent and the Percentage Rent, as further described in this Section 4.

4.1.1 All rent payments shall be sent to the Landlord's address in Section 21.1 and shall be addressed to the attention of the Town Finance Department, and shall be free from all credits, claims, demands, off-sets or counterclaims of any kind against the Town.

4.1.2 Minimum Monthly Rent shall be paid by Master Tenant to Landlord on a monthly basis in advance on or before the first day of each month during the Term.

4.1.3 Percentage Rent shall be paid in arrears on or before April 15 each calendar year for the amount due and owing for the preceding calendar year (or 90 days after any Termination Date).

4.2 Minimum Monthly Rent. The Minimum Monthly Rent shall be the amount indicated in Section 1.6. Minimum Monthly Rent shall be paid in advance on or before the first day of each calendar month during the Lease Term.

4.3 Percentage Rent.

4.3.1 Manner and Time of Payment. Percentage Rent shall equal 60% of the Sublease Income received by Master Tenant during each calendar year, remaining after Distribution of Sublease Income in accordance with Section 4.3.4(a) through Section 4.3.4(d) below.

4.3.2 Definition of Sublease Income. "Sublease Income" shall mean the sum of (a) all base rents actually received by Master Tenant from its Subtenants of the Premises (excluding reimbursements from Subtenants for any operating costs such as, but not limited to, taxes, insurance, utilities, and maintenance and repair costs, to the extent such reimbursements do not exceed Master Tenant's actual costs of such operating costs), (b) any interest earned on security deposits of Subtenants, (c) security deposits forfeited by Subtenants (to the extent applied to delinquent rentals owing by such applicable Subtenant) and any fees paid by Subtenants to Master Tenant for cancellation of their subleases; and (d) proceeds of business interruption or rental loss insurance actually collected by Master Tenant as a result of loss of sublease income. Sublease Income shall not include (i) the proceeds of any casualty insurance or condemnation awards, (ii) any management fee reimbursements received by Master Tenant from a Subtenant of the Premises, or (iii) the proceeds from any financing of any interest in the Premises or any Improvements. Sublease Income shall be determined on a cash basis for each calendar year.

4.3.3 Definition of Sublease Expenses. "Sublease Expenses" shall be determined on a cash basis for each calendar year and shall mean the sum of:

(a) all tenant improvement and remodeling costs paid by Master Tenant (other than costs of Master Tenant's Work or other Improvements, which will be repaid to Master Tenant through Tenant Improvement Loan Amortization Amounts);

(b) all leasing commissions paid by Master Tenant (excluding leasing commissions paid to Master Tenant or to persons or entities affiliated with Master Tenant);

(c) all legal and accounting expenses incurred and paid by Master Tenant in connection with the Premises and/or any Subleases;

(d) all possessory interest taxes and other property taxes paid by Master Tenant (to the extent not reimbursed to Master Tenant by Subtenants);

(e) all insurance costs paid by Master Tenant in connection with the Premises (to the extent not reimbursed to Master Tenant by Subtenants);

(f) all other costs incurred and paid by Master Tenant in connection with operating, maintaining, repairing, replacing, and subleasing the Premises, or applicable portion thereof, including, without limitation, costs incurred and paid by Master Tenant pursuant to Section 20.1 and/or Section 20.2(b) of this Lease (to the extent not reimbursed to Master Tenant by Subtenants).

Sublease Expenses shall not include any management fee of Master Tenant; however, Master Tenant may, through its agent or otherwise, collect a management fee on any sublease.

4.3.4 Distribution of Sublease Income. All Sublease Income shall be used by Master Tenant for the following uses and shall be distributed by Master Tenant in the following priority:

(a) First, to pay to Landlord the Minimum Monthly Rent as set forth in Section 4.2 above, which sum is payable by Master Tenant to Landlord whether or not Master Tenant collects and receives Sublease Income;

(b) Second, to pay Master Tenant its Sublease Expenses as defined in Section 4.3.3 above;

(c) Third, to pay Master Tenant funded Master Tenant Work Improvement Loans as provided by Section 6.3 below.

(d) Forth, to pay to Master Tenant the amount of Minimum Monthly Rent paid in that calendar year.

(e) Fifth, as provided by Section 4.3.1 above, to pay Percentage Rent to Landlord and the balance to Master Tenant.

4.3.5 Annual Statements. On or before April 15 of each calendar year, with the payment of Percentage Rent, Master Tenant shall furnish to the Town a statement (the "Annual Statement") duly certified by the Chief Financial Officer or the Managing Member or the equivalent of the Master Tenant, setting forth in reasonable detail the Sublease Income from the Premises and the amount of the Percentage Rent which was required to be paid to the Town during the preceding calendar year in accordance with the provisions of this Lease. The Annual Statement shall also contain a detailed breakdown showing how Master Tenant calculated Sublease Income and Sublease Expenses. In addition, Master Tenant shall provide to Landlord a copy of Master Tenant's federal income tax return promptly following filing same with the Internal Revenue Service. The amounts reported to Landlord by Master Tenant for Sublease Income and Sublease Expenses shall conform to the amounts reported on Master Tenant's federal income tax return filed with the Internal Revenue Service. Master Tenant's federal income tax return shall cover only income and expenses from the Premises and shall not include income and expenses from any other property.

4.3.6 Books and Records. Master Tenant shall keep and maintain at its headquarters 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 detail Master Tenant's calculation of the Percentage Rent. Books, records and accounts relating to Master Tenant's compliance with the terms, provisions, covenants and conditions of this Lease shall be kept and maintained on a cash basis (except as otherwise expressly provided herein), in accordance with generally accepted accounting principles consistently applied, and shall be consistent with the requirements of this Lease which provide for the calculation of Percentage Rent. 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. Copies of all tax returns and other reports that Master Tenant may be required to furnish any governmental agency which would evidence or substantiate Master Tenant's calculation of the Percentage Rent shall at all reasonable times be open for inspection by the Town at the place that the books, records and accounts of Master Tenant are kept. Master Tenant shall preserve records on which any statement of Percentage Rent is based for a period of not less than four years after such statement is rendered, and for any period during which there is an audit undertaken pursuant to Subsection 4.3.6 hereof then pending.

4.3.7 Town Audits. The receipt by the Town of any statement pursuant to Subsection 4.3.5 above, or any payment by Master Tenant or acceptance by the Town of any Percentage Rent for any period shall not bind the Town as to the correctness of such statement or such payment; provided, however, the Town shall accept the correctness of such statement if it conforms to the amounts shown on Master Tenant's federal income tax return for the period covered by such statement. Within four years after the receipt of any such statement, the Town or any designated agent or employee of the Town at any time and at the Town's cost (except as provided below) shall be entitled to audit the books, records and accounts pertaining to the Premises and the operation thereof. Such audit shall be conducted during normal business hours at the principal place of business of Master Tenant and other places where records are kept. Provided that Master Tenant has fully cooperated, any audit undertaken pursuant to this Subsection shall be completed within 180 days of the commencement thereof, subject to extensions of time for any periods of delay by any third party due to no fault of the Town or its auditors, and in no event later than four years after the Town's receipt of the statement or statements being audited. Immediately after the completion of an audit, the Town shall deliver a copy of the results of such audit to Master Tenant. The Town shall not be entitled to more than one audit for any particular year, unless it shall appear from a subsequent audit that fraud or concealment may have occurred with respect to the Sublease Income of a previously audited year. If it shall be determined as a result of such audit that there has been a deficiency in any Percentage Rent, then such deficiency shall become immediately due and payable with interest at the legal rate of 10% per annum, such payment to be determined as of and accruing from the date that said payment should have been made. In addition, if Master Tenant's statement for any calendar year shall be found to have intentionally understated Sublease Income by more than five percent and the Town is entitled to a supplementary payment as a result of said understatement, then Master Tenant shall pay, in addition to the interest charges referenced hereinabove, all of the Town's reasonable costs and expenses connected with any audit or review of Master Tenant's accounts and records.

4.4 Late Payment Fees. Any rentals, fees or charges required to be paid by Master Tenant pursuant to the terms of this Lease shall be paid on or before the dates specified in Subsection 4.1 above ("due date") without any requirement of notice from the Town and without deduction or offset. Master Tenant hereby acknowledges that late payment to the Town of any fee, charge or other sum due hereunder will cause the Town to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. If any such fee, charge or other sum due from Master Tenant is not received by the Town within 30 days after its due date (10 days for Minimum Monthly Rent), then Master Tenant shall pay to the Town a late payment fee equal to one percent per month of the amount not paid, calculated, for each day or portion thereof, from the due date until the date that payment is received by Town. The parties hereby agree that such late fee represents a fair and reasonable estimate of the cost that the Town will incur by reason of Master Tenant's late payment. The Town's acceptance of such late fees shall not constitute a waiver of Master Tenant's default with respect to such overdue amount or stop the Town from exercising any of the other rights and remedies granted hereunder or at law or in equity. A failure to pay any fee on the due date shall constitute an event of default under this Lease.

Notwithstanding any right or remedy of the Town on account of any nonpayment by Master Tenant, the obligation to pay the outstanding amounts due shall survive termination of this Lease.

SECTION 5. USE OF PREMISES.

5.1 Restricted Use. The Premises shall be used and occupied by Master Tenant, and any Subtenants approved by Town in accordance with Section 14 below only for Permitted Uses, and for no other purpose.

5.2 Prohibited Uses. Master Tenant shall not:

5.2.1 use or knowingly allow the use of the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees for any unlawful purpose; or

5.2.2 cause, maintain, or knowingly permit any nuisance in, on, or about the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees; commit or suffer to be committed any physical waste in or upon the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees; or

5.2.3 display or sell merchandise outside the defined exterior walls and doorways of the Forbes Mill Building; however, said restriction shall not apply to outside seating for a restaurant or other permitted use; or

5.2.4 cause or knowingly permit the undue accumulation of garbage, trash, rubbish or any other refuse in or about the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees; or

5.2.5 use or knowingly permit the use of any advertising such as, without limitation, loudspeakers, phonographs, public address systems, sound amplifiers, radio or broadcast within the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees in such a manner that any sounds reproduced, transmitted or produced shall be directed primarily beyond the interior of the Tati Building, and will keep all mechanical apparatus free of objectionable vibration and noise which may be transmitted beyond the interior of the Premises; or

5.2.6 Cause or knowingly permit obnoxious odors to emanate or be dispelled from the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees; or

5.2.7 Cause or knowingly permit any use of the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees which violates any Town zoning code applicable to the Premises; or

The preceding notwithstanding, Landlord agrees that if any Subtenant or any of Subtenant's agents, employees, contractors, other representatives or invitee acts or fails to act in any manner that causes Master Tenant to be in violation of any of the provisions of Section 5.2.1 through Section 5.2.7 above, then Master Tenant shall not be in breach or default under this Lease due to such act(s) or failure(s) to act by such applicable Subtenant or any of its agents, employees, contractors, other representatives or invitees so long as Master Tenant exercises commercially reasonable efforts to prevent such violation(s) from occurring and shall have taken steps in good faith within thirty (30) days after receipt of written notice from Landlord to remedy such failure and is continuing to so act with diligence and continuity and further, where possession of the Premises or portion thereof is necessary to cure a default under this Lease, Master Tenant will not be considered to be in default under this Lease as

a result of a breach by a Subtenant or any of Subtenant's agents, employees, contractors, other representatives or invitee under its sublease so long as Master Tenant has sent notice of default to, and commenced legal action against the Subtenant and is diligently and continuously pursuing an unlawful detainer action or other legal proceedings required to regain possession of the Premises or portion thereof from such Subtenant.

As used in the provisions of Section 5.2.1 through Section 5.2.7, the term "knowingly" includes what Master Tenant reasonably should have known with the exercise of reasonable inquiry and investigation.

5.3 Compliance with Laws. Master Tenant shall carry out, or cause to be carried out, all obligations under this Lease, including without limitation Master Tenant's Work, in conformity with all applicable state, federal, and local laws and regulations, including all applicable state labor laws and standards; Town zoning and development standards; building, plumbing, mechanical and electrical codes; all other provisions of the Town of Los Gatos Municipal Code; and all applicable disabled and handicapped access requirements, including the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.* ("Applicable Laws"). Master Tenant's obligations under this Section 5.3 shall include the obligation to undertake all appropriate inquiries with state and federal governmental enforcement and regulatory agencies as necessary to fully comply with all Applicable Laws, including any applicable prevailing wage requirements in connection with the construction of the Master Tenant's Work. Master Tenant also shall require that its Subtenants (to the extent expressly made applicable to such Subtenants) and their respective agents, employees, contractors and subcontractors, comply with all Applicable Laws in connection with the construction of the Subtenant's Work and Improvements.

SECTION 6. LEASEHOLD IMPROVEMENTS.

6.1 Condition of the Premises. Landlord shall deliver the Premises to Master Tenant on the Effective Date clean and free of debris.

6.2 Leasehold Improvements. Master Tenant agrees to install, or cause to be installed, in the Premises all improvements, fixtures, furniture and equipment within the Premises, as reasonably necessary for Master Tenant to attract and retain high quality Subtenants. Within one hundred eighty (180) calendar days after the Effective Date, Master Tenant shall provide Landlord a detailed description of work it proposes to undertake to ready the Premises for initial lease up to Subtenants ("Initial Master Tenant's Work"). In addition to providing Landlord all relevant information regarding a proposed Subtenant necessary for Landlord to evaluate and provide its consent to a proposed Subtenant pursuant to Section 14.2, Master Tenant shall provide Landlord a detailed description of the additional work, if any, to be undertaken by Master Tenant ("Additional Master Tenant's Work") as well as the work to be undertaken by a Subtenant ("Subtenant's Work") in connection with said applicable sublease.

The Initial Master Tenant's Work and all Additional Master Tenant's Work undertaken in connection with a sublease consented to by Landlord in accordance with 14.2 below, shall collectively be referred to herein as the "Master Tenant's Work". The term "Master Tenant's Work" does not include "Subtenant's Work" to be performed by Subtenants. It is acknowledged and agreed that the Subtenants of Master Tenant will install additional improvements, fixtures, furniture, and equipment as necessary for conduct of their operations, and shall all be responsible for complying with all applicable federal, state, and local statutes, laws, ordinances, rules, and regulations, and obtaining all necessary permits, to perform such work.

6.3 Master Tenant Work Improvement Loans.

6.3.1 As provided in Section 4.3.4 above, Master Tenant may utilize Sublease Income to repay itself for funds it advances or borrows from a third party lender for Master Tenant's Work,

and any subsequent Improvements within the Premises that are neither Subtenant's Work nor funded by the Town's Capital Reserve Fund ("Master Tenant Work Improvement Loans"), on the following basis:

(a) Interest. Interest shall be on the basis of actual days elapsed, at a fixed rate of 3% per annum if funded by Master Tenant, or at the actual rate of interest charged by Master Tenant's lender if funded by an independent, arm-lengths third-party lender, as of the date of each advance.

(b) Repayment Term. Whether funded by Master Tenant or a third-party lender, the repayment term shall be no greater than the Lease Term.

(c) Amortization. For each Master Tenant Work Improvement Loan funded by Master Tenant, interest only payments until the later of (i) first day of the month following the final advance under the loan, or (ii) the date subrent is due, and thereafter equal monthly payments of combined principal and interest necessary to fully amortize the loan over the remaining repayment term. If funded by a third-party lender, the loan shall be fully amortized in accordance with the terms of the loan.

6.4 Liens. All Master Tenant's Work and Subtenant's Work shall be completed free of mechanic's liens, with first-class materials and workmanship, and in compliance with all applicable rules, regulations, and laws applicable to the Premises.

6.5 Letter of Credit (LOC). All Master Tenant's Work or Subtenant's Work shall be approved by Landlord (which consent shall not be unreasonably withheld, conditioned or delayed). Such consent shall be deemed given if not denied in writing to Master Tenant within ten (10) business days following Landlord's receipt of such information required for Landlord to evaluate such applicable Master Tenant's Work or Subtenants Work. Master Tenant shall furnish to Town, at no cost or expense to the Town, a letter of credit ("LOC") in the amount not less than the sum of One Hundred Percent of the cost estimate of the Master Tenant's Work, in a form subject to the review and approval by the Town Manager or his or her designee (which approval shall not be unreasonably withheld, conditioned or delayed), which LOC shall secure Master Tenant's obligation to complete, and pay for the cost of completion of, the construction of the Master Tenant's Work within the time reasonably fixed by the Landlord, or such extension thereof as may be allowed. Master Tenant shall refrain from performing, or causing the performance of, any work related to the construction of Master Tenant's Work until Master Tenant furnishes a LOC satisfying this Section 6.5.

In the event Master Tenant fails to complete the Master Tenant's Work within the time fixed by Landlord or such extension period as determined by Landlord, and following Master Tenant's receipt of written notice of such failure from Landlord, Master Tenant fails to promptly commence action to complete the Master Tenant's Work within ten (10) calendar days of receipt of such notice, then Landlord may terminate this Lease for cause as specified in this Lease and Landlord shall be entitled to call on such LOC to the extent necessary to pay or reimburse Landlord for costs reasonably incurred by Landlord to complete the Master Tenant's Work (and the balance of such LOC proceeds or the LOC itself after payment or reimbursement to Landlord as provided immediately above shall be paid or returned to Master Tenant). In the event that Master Tenant fails to complete the Master tenant's Work within the time fixed by Landlord or such extension period as determined by Landlord, and following Master Tenant's receipt of written notice of such failure from Landlord, Master Tenant commences action to complete Master Tenant's Work within ten (10) calendar days of receipt of such notice but thereafter fails to diligently process such cure to completion, then, Landlord shall give a second, written notice to Master Tenant and if Master Tenant does not commence action to complete the Master tenant's Work within fifteen (15) days following Master Tenant's receipt of such second, written notice or thereafter diligently process such cure to completion, then Landlord may terminate this Lease for cause as specified in this Lease and Landlord shall be entitled to call on such LOC to the extent necessary to pay or reimburse Landlord for costs reasonably incurred by Landlord to complete Master Tenant's work (and the balance of such LOC proceeds or the LOC itself after payment or reimbursement to Landlord as provided immediately above shall be paid or returned to Master Tenant).

6.6 Ownership and Removal. All personal property not affixed in any way to the Premises including inventory, kitchen equipment, those nonstructural alterations as the Town approves for removal as were installed under this Lease and do not affect the structure of the Forbes Mill Building or the Premises, together with Master Tenant's Trade Fixtures, (collectively, "Master Tenant's Property") shall remain the property of Master Tenant. Upon the termination or expiration of the Lease Term, if Master Tenant is not then in default under the Lease, Master Tenant may remove Master Tenant's Property from the Premises no later than the termination or expiration date. In addition, Master Tenant may remove from the Premises all items and Alterations installed by Master Tenant that are indicative of Master Tenant's business and may otherwise "de-identify" the Premises, as Master Tenant reasonably believes necessary or appropriate for the protection of Master Tenant's interest in Master Tenant's trademarks, trade names or copyrights. Master Tenant shall repair any damage to the Premises caused by such removal, including patching and filling holes. In no event shall Master Tenant remove or be required to remove any restrooms, flooring, ceilings, utility or electrical components located inside the walls or HVAC systems. All other utility systems will be capped and returned to a condition compatible with code requirements.

6.6.1 Subtenant's Personal Property. Landlord waives any statutory liens and rights of distress with respect to the personal property (non-affixed trade fixtures, equipment, inventory and merchandise) of each Subtenant from time to time located with the Premises, or applicable part thereof ("Subtenant's Personal Property"). This Lease (and each sublease entered into between Master Tenant and a Subtenant) does not grant a contractual lien or any other security interest to Landlord or in favor of Landlord with respect to Subtenant's Personal Property. In the event Landlord becomes the direct sublessor or landlord of a Subtenant, then, respecting any lender of any Subtenant having a security interest in any Subtenant's Personal Property ("Subtenant's Lender"), Landlord agrees: (i) to provide such Subtenant's Lender, upon written request of a Subtenant (accompanied by the name and address of Subtenant's Lender), with a copy of any default notice given to Subtenant under its sublease, concurrently with delivery of such default notice to Subtenant, and (ii) to allow Subtenant's Lender, prior to any termination of the sublease or repossession by Landlord of the applicable premises subleased by such Subtenant, the same period of time, after its receipt of such copy of default notice, to cure such default as is allowed the Subtenant under its sublease, and (iii) to permit Subtenant's Lender to enter the subleased premises for the purpose of removing Subtenant's Personal Property anytime within thirty (30) days after the effective date of any termination of the applicable sublease or any repossession of the subleased premises by Landlord (with Landlord having given Subtenant's Lender prior written notice of such date of termination or possession). Landlord will not be required to allow Subtenant's Lender to enter the subleased premises after entry of judgment in a forcible entry and detainer action, but agree to delay the filing of any such forcible entry and detainer action for thirty (30) days after delivery of written notice of such action to Subtenant's Lender, and will permit Subtenant's Lender to enter the subleased premises for the purpose of removing Subtenant's Personal Property any time within such thirty (30) days. Landlord further agrees to execute and deliver such instruments reasonably requested by Subtenant's Lender from time to time to evidence and effect this waiver and agreement of Landlord.

6.7 Abandonment. Any of Master Tenant's Property not removed from the Premises within sixty (60) business days of the date the Lease terminates or expires shall be deemed abandoned and shall thereupon become the property of Landlord. Landlord may possess and dispose of such property provided that Landlord shall not use or permit anyone holding under Landlord to use on the Premises (a) any trademark, trade name, millwork, copyrighted floor plan, copyrighted color palette, or sign used by Master Tenant in the Premises; or (b) any item similar to any other item protected by Master Tenant's intellectual property rights. This provision shall apply under all circumstances, including default by Master Tenant under this Lease.

SECTION 7. MASTER TENANT OBLIGATIONS – OPERATION OF PREMISES.

7.1 Responsibility of Master Tenant. Master Tenant shall serve as the master developer and sublandlord for the Subtenants and shall be obligated to ensure that the Premises are properly and fully operated, in good condition, for the approved commercial uses. Master Tenant shall be the primary point

of contact for the Town with regard to all operational, administrative, and compliance issues under this Lease.

7.2 Leasing Standards. Subject to the provisions of Section 14.1 and 14.2 below, Master Tenant shall use its commercially reasonable efforts, consistent with good property management practices, to obtain first class commercial Subtenants for the Premises. However, if after reasonable effort, Master Tenant is unable to attract Subtenants of similar type and quality on terms and conditions satisfactory to Master Tenant, Master Tenant may, subject to Section 14.2 below, sublease to Subtenants who may be considered less desirable in terms commercial type and quality. Landlord shall not unreasonably withhold its approval of any potential Subtenant who Master Tenant reasonably determines is the best available Subtenant on terms and conditions satisfactory to Master tenant.

7.3 Continuous Operations. Master Tenant shall use its commercially reasonable efforts, subject to the provisions of Section 7.2 above, to continuously sublet the Premises to approved Subtenants for commercial purposes during the term of this lease. If, for any reason, a Subtenant quits its business operations on the Premises, Master Tenant shall use its commercially reasonable efforts, in accordance with the provisions of Section 7.2 above, to promptly secure another Subtenant reasonably acceptable to Master Tenant and Landlord.

If for any reason during the first three (3) years after the Commencement Date the Premises in their entirety are left unleased for a continuous period of eighteen (18) months or more, then either the Landlord or Master Tenant may terminate this Lease by giving written notice of termination to the other, in which case, upon the giving of such notice of termination, each party shall be released of any future liability to the other, except as provided herein.

If for any reason after the first three (3) years following the Rent Commencement Date the Premises are more than fifty percent (50%) unleased for six (6) consecutive months, then Landlord may require Master Tenant to prepare and provide to Landlord, for its review and approval, a marketing plan to lease said unleased space. Master Tenant shall prepare and provide said marketing plan to Landlord within thirty (30) calendar days following written notice from Landlord to prepare said marketing plan. Landlord shall complete its review and approval of the marketing plan within thirty (30) calendar days following its submission by Master Tenant to Landlord. If for any reason the Premises remain more than fifty percent (50%) unleased for six (6) consecutive months following Landlord's approval of the marketing plan, and Master Tenant can document to Landlord's reasonable satisfaction that Master Tenant has diligently, and in good faith, pursued the lease of said unleased space in accordance with the approved marketing plan, then Landlord shall provide Master Tenant no less than an additional six (6) month period of time to lease the unleased space. If following said additional period of time granted by Landlord, the Premises are more than fifty percent (50%) unleased, then either the Landlord or Master tenant may terminate this Lease by giving written notice of termination to the other, in which case, upon the giving of such notice of termination, each party shall be released of any future liability to the other, except as provided herein.

If Landlord terminates the Lease pursuant to this Section 7.3, then Landlord shall assume the repayment of all outstanding Master Tenant Work Improvement Loans with the right to prepay such loans at Landlord's election without penalty. However, the Town's general fund shall assume no obligation for repayment of the Master Tenant Work Improvement Loans, which shall be repaid solely from future Sublease Income generated from the future operation of the Premises. Landlord's obligations under the immediately preceding sentence shall survive the termination of this Lease pursuant to this Section 7.3. If Master Tenant terminates the Lease pursuant to this Section 7.3, then Master Tenant shall assume the repayment of all outstanding Master Tenant Work Improvement Loans and no portion of Sublease Income or any other revenue generated by the Premises shall be obligated or utilized for repayment of said outstanding.

7.4 Signage and Displays. With respect to signage on the Premises, Landlord and Master Tenant agree as follows:

7.4.1 Landlord may allow Master Tenant may place a sign(s) on the exterior of the Forbes Mill Building to the extent such signage is allowed by law, provided that (i) the design and location of any such sign is approved in advance in writing by Landlord, and (ii) Master Tenant secures all necessary permits and approvals from the Town and/or any other applicable governmental authority. Any such signage shall be designed and installed in a manner that maintains the existing building system warranties, if any, applicable to the Forbes Mill Building. Upon expiration or earlier termination of this Lease, Master Tenant shall remove Master Tenant's sign(s) from the exterior of the Forbes Mill Building, if applicable, and restore the exterior of the Forbes Mill Building to condition existing prior to the placement of such sign(s) on the exterior of the Forbes Mill Building, unless otherwise approved by Landlord.

7.5 Utilities. Master Tenant shall pay, or cause to be paid, for any and all costs, fees and expenses of water, gas, electricity, telephone, trash collection and recycling used by Master Tenant or any Subtenant in connection with the Premises during the Term of this Lease.

7.6 Deliveries. All deliveries shall be made at the hours not in violation of municipal ordinances.

7.7 Wireless Communications Equipment or Devices. The location of any equipment or device for the purpose of telecommunication or wireless access to services over the internet, by any party or for Master Tenant's or any Subtenants business operations, shall be coordinated with the Town and shall be subject to Town's reasonable approval.

7.8 PBID. Master Tenant will exercise commercially reasonable efforts to encourage its Subtenants to pay, if applicable, all Los Gatos Downtown Property Based Improvement District ("PBID") assessments for the Premises, which accrue during the term of this lease.

SECTION 8. MAINTENANCE, REPAIRS, AND ALTERATIONS.

8.1 Master Tenant's Obligations. Subject to the provisions of Section 8.2 below, and except for damage caused by fire or other casualty, whether or not insured or insurable, Master Tenant, at Master Tenant's sole cost and expense, shall keep, or cause to be kept, the Premises, in good condition and repair, including maintaining and repairing, or causing to be maintained or repaired, as necessary, all Master Tenant's Work, and all plumbing, HVAC, electrical and lighting facilities and equipment within the Premises, and any Master Tenant signage, and all doors and plate glass windows (both interior and exterior), interior walls, and flooring in the Premises. Master Tenant shall provide a contract for regular maintenance of the HVAC with an HVAC company reasonably approved by Landlord. Master Tenant shall be required to implement a program, reasonably acceptable to Landlord, for control and elimination of rodents and vermin on or around the Premises. Master Tenant shall be required to maintain any Outdoor Use Areas located on the Premises. Master Tenant shall remove graffiti from the exterior of the Premises within a reasonable time and shall always otherwise keep the exterior of the Premises in a clean and well-maintained condition. Notwithstanding any provision to the contrary, Master Tenant's obligations under this Section 8.1 shall not include making (a) any repair or improvement necessitated by the negligence or willful misconduct of Landlord, its agents, employees or servants; (b) any repair or improvement caused by Landlord's failure to perform its obligations hereunder or under any other agreement between Landlord and Master Tenant or (c) any capital repairs or capital improvements not funded by the Capital Reserve Fund.

8.2 Landlord's Obligations.

8.2.1 Except for repairs and maintenance to the Premises that Master Tenant must make under Section 8.1 above, Landlord shall be responsible, at its sole cost and expense, for the remediation of any Hazardous Materials discovered in, on, or about the Premises during the work performed under Section 6 above or discovered thereafter, provided, said discovery and presence of Hazardous Materials are not directly arising out of or attributable to Master Tenant or any subtenants use and/or occupancy of the Premises. Further, Landlord shall be responsible for, at its sole cost and expenses, the roof structure, roof membrane and supports, HVAC (excluding Master Tenant's

maintenance contract), sprinkler system, foundation, exterior walls, and all structural components of the Forbes Mill Building. In the event of an emergency, Master Tenant may give Landlord such notice as is practicable under the circumstances (if any), and if Landlord fails to make such repairs immediately, Master Tenant may immediately undertake such repairs and submit an invoice for the reasonable costs thereof to Landlord for reimbursement. Notwithstanding any provision to the contrary, Landlord's obligations under this Section 8.2.1 shall not include making (a) any repair or improvement necessitated by the negligence or willful misconduct of Master Tenant, Subtenants, or their agents, employees or servants; or (b) any repair or improvement caused by Master Tenant's failure to perform its obligations (including obligations which a Sublease obligates a Sublessee) hereunder or under any other agreement between Landlord and Master Tenant.

8.3 Surrender. Upon the expiration or termination of this Lease, Master Tenant shall surrender the Premises to Landlord in good order and condition, except for ordinary wear and tear, condemnation, and damage caused by fire or other casualty, whether or not insured or insurable, alterations and leasehold improvements made by Master Tenant and Subtenants, and in a broom clean condition.

8.4 Landlord's Rights. If Master Tenant fails to perform Master Tenant's obligations under Section 8.1 above, Landlord may, but shall not be required to, enter upon the Premises, after twenty (20) calendar days prior written notice to Master Tenant, and put the same in good order, condition and repair, and the actual costs thereof and an administrative fee of not more than 10% of the actual costs thereof, shall become due and payable as additional rent to Landlord together with Master Tenant's next Minimum Monthly Rent installment payment falling due after Master Tenant's receipt of an invoice for such costs; provided, however, Landlord shall not be able to exercise such remedies so long as Master Tenant commences to cure its failure within said twenty (20) day period and diligently pursues the cure to completion.

8.5 Improvements. The installation of the leasehold improvements necessary for Master Tenant's operation of its business in the Premises shall be performed in accordance with Section 6. Once such improvements are completed, Master Tenant shall not thereafter make any alterations, improvements, additions, upgrades or utility installations in, on or about the Premises, or install any further fixtures, furniture, or equipment therein (together, "Improvements") without Landlord's consent, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that minor interior Improvements that do not exceed the amount of \$50,000, and do not otherwise require permits under Applicable Laws ("Minor Improvements"), shall not require Landlord's consent under this Lease. All other Improvements exceeding \$50,000 for construction, or which require permits under Applicable Laws, or involve alterations to the exterior of the Premises ("Major Improvements") shall be subject to Landlord's review and approval under this Lease. Landlord may review all proposed Improvements for their consistency with the final as-built plans for the Forbes Mill Building and may approve variations from such drawings in its reasonable discretion. Town Manager is authorized to make such determination to approve Major Improvements which otherwise comply with Applicable Laws under this Lease. Notwithstanding Landlord's approval of Major Improvements under this Lease, Master Tenant shall be required to obtain all required permits for such Major Improvements under Applicable Law.

8.6 Capital Reserve Fund. On or before the fifteenth day following Landlord's receipt of the Minimum Monthly Rent, Landlord shall deposit the Minimum Monthly Rent to the account described in this Section 8.6 ("Capital Reserve Fund").

8.6.1 Maintenance of Capital Reserve Fund. The Capital Reserve Fund shall be maintained in a state or nationally chartered bank, the Local Agency Investment Fund Pooled Money Investment Account, or other such institution acceptable to Landlord.

8.6.2 Use of Capital Reserve Fund. Landlord may use monies in the Capital Reserve Fund to fund capital improvements to maintain the quality of the Premises or other purposes reasonably related to this Lease, subject to the reasonable consent of Master Tenant. The use of monies in the Capital Reserve Fund shall be controlled and directed by Landlord in its sole discretion, with input

by Master Tenant, but will be used primarily for capital improvements to the Premises. Unused amounts in the Capital Reserve Fund on the Termination Date will be retained by the Town.

8.6.3 Master Tenant shall utilize Sublease Income to repay Landlord for funds it advances from the Capital Reserve Fund for uses identified in Section 8.6.2 above ("Capital Reserve Fund Improvement Loans"), on the following basis:

(a) Interest. Interest shall be on the basis of actual days elapsed, at a fixed rate of 4% per annum, as of the date of each advance.

(b) Repayment Term. The repayment term shall be the lesser of ten years or the initial term of the applicable Sublease if the Capital Reserve Fund Improvement Loan is related to Subtenant Work.

(c) Amortization. For each Capital Reserve Fund Improvement Loan, interest only payments until the later of (i) first day of the month following the final advance under the loan, or (ii) the date subrent is due if the Capital Reserve Fund Improvement Loan is related to Subtenant Work, and thereafter equal monthly payments of combined principal and interest necessary to fully amortize the loan over the remaining repayment term.

SECTION 9. INSURANCE.

9.1 General. Prior to commencing any work or operations under this Lease, and for the full term of this Lease and any extensions thereof, Master Tenant and any Subtenants, at each parties' sole cost and expense, shall obtain and maintain or shall cause to be obtained and maintained insurance against claims for injuries to persons or damages to property which may arise from or in connection with the activities of Master Tenant and its Subtenants, agents, employees and contractors, meeting at least the minimum insurance requirements set forth in Exhibit C on terms and conditions and in amounts as reasonably required by Town from time to time and with insurers reasonably acceptable to the Town and within commonly applicable industry standards for the type of operation. The Town shall not be obligated to take out insurance on Master Tenant's or Subtenant's property, including the Master Tenant's Work. Master Tenant shall be responsible for obtaining property insurance to cover the cost of repair or replacement of the Master Tenant's Work. Master Tenant and its Subtenants shall provide the Town with certificates of insurance or copies of all policies and such endorsements as may be reasonably required by the Town. These requirements are subject to reasonable amendment or waiver if so approved in writing by the Town Manager. From time to time at the request of the Finance Department of the Town of Los Gatos, Master Tenant shall provide a written statement of the replacement cost of the Master Tenant's Work.

During the term of the Lease, Landlord shall maintain general liability insurance in an amount of no less than \$2,000,000 per occurrence for bodily injury, property damage and personal injury, as well as property insurance covering the cost of repair or replacement of the Premises (excluding therefrom the Master Tenant's Work).

SECTION 10. INDEMNIFICATION BY MASTER TENANT.

10.1 General. Master Tenant shall defend, indemnify, and hold Landlord and Landlord's agent, officers, directors, employees, and contractors harmless against and from any and all injuries, costs, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties, and demands of any kind or nature (including reasonable attorneys' fees) in connection with any and all third party claims to the extent arising out of Master Tenant's use of the Premises ("Claims"), including, but not limited to: (a) injuries occurring within the Premises; (b) any intentional acts or negligence of Master Tenant or Master Tenant's officers, agents, employees, subtenants, or contractors; (c) any breach or default in the performance of any obligation on Master Tenant's part to be performed under this Lease; (d) any violation by Master Tenant or any of its officers, agents, employees, subtenants or contractors of any law,

ordinance or regulation governing the use of the Premises, (e) any injuries (including death of any person), claims, or causes of action relating to or involving the sale of alcoholic beverages on the Premises; or (f) the failure of any representation or warranty made by Master Tenant herein to be true when made. This indemnity does not include any Claims caused by or arising out of the intentional or negligent acts or omissions of Landlord or its agents, officers, contractors or employees. This indemnity shall survive termination of this Lease only as to claims arising out of events that occur prior to termination of the Lease.

SECTION 11. ENVIRONMENTAL LIABILITY.

11.1 Environmental Law. The term "Environmental Law" means collectively: (i) the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601, *et seq.*, (ii) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801, *et seq.*, (iii) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, *et seq.*, (iv) the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, *et seq.*, (v) the Clean Air Act, as amended, 42 U.S.C. § 7401, *et seq.*, (vi) the Toxic Substances Control Act, as amended, 15 U.S.C. § 2601, *et seq.*, (vii) the Clean Water Act, as amended, 33 U.S. Code § 1251, *et seq.*, (viii) the Oil Pollution Act, as amended, 33 U.S.C. § 2701, *et seq.*, (ix) California Health & Safety Code § 25100, *et seq.* (Hazardous Waste Control), (x) the Hazardous Substance Account Act, as amended, Health & Safety Code § 25300, *et seq.*, (xi) the Unified Hazardous Waste and Hazardous Materials Management Regulatory Program, as amended, Health & Safety Code § 25404, *et seq.*, (xii) Health & Safety Code § 25531, *et seq.* (Hazardous Materials Management), (xiii) the California Safe Drinking Water and Toxic Enforcement Act, as amended, Health & Safety Code § 25249.5, *et seq.*, (xiv) Health & Safety Code § 25280, *et seq.* (Underground Storage of Hazardous Substances), (xv) the California Hazardous Waste Management Act, as amended, Health & Safety Code § 25170.1, *et seq.*, (xvi) Health & Safety Code § 25501, *et seq.*, (Hazardous Materials Response Plans and Inventory), (xvii) Health & Safety Code § 18901, *et seq.* (California Building Standards), (xviii) the Porter-Cologne Water Quality Control Act, as amended, California Water Code § 13000, *et seq.*, (xix) California Fish and Game Code §§ 5650-5656, (xx) the Polanco Redevelopment Act, as amended, Health & Safety Code § 33459, *et seq.*, (xxi) Health & Safety Code § 25403, *et seq.* (Hazardous Materials Release Cleanup), and (xxii) any other federal, state or local laws, ordinances, rules, regulations, court orders or common law related in any way to the protection of the environment, health or safety, or industrial hygiene.

11.2 Hazardous Materials. "Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government under any Environmental Laws, including any material or substance which is defined as "hazardous," "extremely hazardous," "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "hazardous substance" or "hazardous material" under any Environmental Laws, including, without limitation, chlorinated solvents, petroleum, or any fraction thereof, friable asbestos, and polychlorinated biphenyls.

11.3 Release of Hazardous Materials. Except as provided below in Section 11.4, Master Tenant shall not store, dispose of, transport, generate or otherwise introduce any Hazardous Material in, on or around the Premises. If any Hazardous Material is deposited, released, stored, disposed, transported, generated or otherwise introduced by Master Tenant in, on, or around the Premises, Master Tenant, at Master Tenant's sole cost and expense, shall comply with all applicable laws, rules, regulations and policies of any governmental body with jurisdiction over the same, to remove, transport and dispose of such substances and perform all remediation and cleanup necessary or advisable to remediate any damage to persons, property or the environment as a result of the presence of such Hazardous Materials.

11.4 Master Tenant's Use of Hazardous Materials. Notwithstanding the above and provided that Master Tenant complies with all Applicable Laws and Environmental Laws, Master Tenant shall have the right to use Hazardous Materials on the Premises to the extent such Hazardous Materials (i) are contained in restaurant and/or household products, office supply products or janitorial products customarily used in the maintenance, rehabilitation, operation or management of facilities similar to the Premises; or (ii)

are commonly used by a significant portion of the population living within the region of the Premises, including, but not limited to, alcoholic beverages, aspirin, tobacco products, NutraSweet and saccharine, so long as Master Tenant provides the appropriate warning, if required to do so under any Applicable Law or Environmental Law.

11.5 Environmental Indemnity. Master Tenant shall protect, indemnify, and hold harmless Landlord and Landlord's officer's employees, agents, representatives, contractors, and subcontractors from and against any and all loss, damage, cost, expense, or liability (including attorneys' fees), and the costs of repairs and improvements necessary to return the Premises to the physical condition existing prior to Master Tenant's undertaking any activity related to any Hazardous Substance, directly arising out of or attributable to Master Tenant's or Master Tenant's agents', contractors', employees' or Subtenants' use, manufacture, storage, release, or disposal of a Hazardous Substance on the Premises. Landlord shall protect, indemnify, and hold harmless Master Tenant and Master Tenant's employees, agents, parents, representatives, subtenants, contractors, subcontractors and subsidiaries from and against any and all loss, damage, cost, expense, or liability (including attorneys' fees) and the costs of repairs and improvements necessary to return the Premises, or applicable portion thereof, to the physical condition existing prior to undertaking any activity related to any Hazardous Substance directly arising out of or attributable to Landlord's or Landlord's agents', contractors', or employees' use, manufacture, storage, release, or disposal of a Hazardous Substance on the Premises. The provisions of this Section 11.5 shall survive the termination of this Lease.

SECTION 12. TAXES AND ASSESSMENTS/ POSSESSORY INTEREST TAX.

12.1 General. Master Tenant acknowledges and agrees that this Lease will create a possessory interest subject to property taxation. Master Tenant agrees to pay and discharge, as additional rent for the Premises during the term of this Lease, before delinquency, all taxes (including, without limitation, possessory interest taxes associated with the Premises, this Lease and any so-called value added tax), assessments (including, without limitation, all assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the term of this Lease), fees, levies, water and sewer rents, rates and charges, vault license fees or rentals, license and permit fees and other governmental charges of any kind or nature whatsoever, general and special, ordinary and extraordinary, foreseen and unforeseen, or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing (all of the foregoing collectively called "taxes") which are or may be at any time or from time to time during the term of this Lease levied, charged, assessed or imposed upon or against the Premises or any improvements which are now or hereafter located thereon, or against any of Master Tenant's personal property now or hereafter located thereon, or which may be levied, charged, assessed or imposed upon or against the leasehold estate created hereby or which may be imposed upon any taxable interest of Master Tenant acquired pursuant to this Lease on account of any taxable possessory right which Master Tenant may have acquired pursuant to this Lease. Master Tenant shall pay or reimburse Landlord, as the case may be, for any fines, penalties, interest or costs which may be added by the collecting authority for the late payment or nonpayment of any taxes required to be paid by Master Tenant hereunder.

SECTION 13. PROHIBITION AGAINST CHANGE IN MASTER TENANT AND CONTROL OF MASTER TENANT AND THE PREMISES, AND TRANSFER OF MASTER TENANT'S RIGHTS UNDER THIS LEASE.

13.1 Qualifications of Master Tenant. Master Tenant acknowledges that the qualifications and identity of Master Tenant, including in particular Master Tenant's Managing Members, are of particular concern to the community and the town, in view of the following:

13.1.1 The importance of the proper subleasing of the Premises to the general welfare of the community;

13.1.2 The reliance by the Town upon Master Tenant to assure the quality of the Premises and its use, operation and maintenance;

13.1.3 The fact that a change in Master Tenant or control of all or a portion of Master Tenant, or any act or transaction involving or resulting in a change in Master Tenant is for practical purposes a Transfer or disposition of the Premises; and

13.1.4 The importance to the Town and the community of the standards for the use, operation and maintenance of the Premises and associated areas.

13.2 Acknowledgment of Importance of Qualifications. Master Tenant further recognizes that it is because of such qualifications and identity that the Landlord is entering into this Lease with Master Tenant. No voluntary or involuntary successor-in-interest of Master Tenant shall acquire any rights or powers under this Lease except as expressly set forth in this Lease.

13.3 Completion of Master Tenants Work. Prior to the completion of Master Tenant's Work, Master Tenant shall not (i) assign all or any part of its rights or obligations under this Lease, (ii) lease or sublease any portion of the Premises (other than subleases of portions of the Premises to permitted Subtenants as otherwise provided in the Lease), (iii) make or permit to be made any changes in the composition of Master Tenant's ownership, limited liability company status, or members, or (iv) effect any transaction which would in any way change the Master Tenant's ownership, management, control or obligations relating to the Premises.

13.4 Permitted Transfers. Following the period described in Section 13.3 above (i.e. completion of Master Tenant's Work), Master Tenant may, with the prior review and approval of the Town Manager (which shall not be unreasonably withheld, conditioned or delayed), make changes in the composition of Master tenant's ownership, corporate or other entity status, shareholders, members or partners (if applicable), provided that Master Tenant's managing Member, retains the power to control Master Tenant's active, day-to-day management responsibilities ("Day-to-Day management"). For purposes of the immediately preceding sentence, "control" shall mean the power to direct or cause the direction of the Day-to-Day Management of the Master tenant. Five years from the Commencement Date, provided Master Tenant has performed all of its obligations under this Lease, Master Tenant may appoint, with the consent of Landlord which shall not be unreasonably withheld, a new Master Tenant Managing Member.

13.5 Notification of Changes in Ownership or Control. During the term of this Lease, the Master Tenant shall promptly notify the Town of any and all changes whatsoever in the Master tenant's ownership, corporate or other status, management or control of the Master tenant and the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information.

13.6 Termination for Transfer. This Lease shall terminate pursuant to Section 18 if there is any voluntary or involuntary assignment or Transfer other than provided in in Section 13.4 or as otherwise expressly provided in this Lease.

SECTION 14. ASSIGNMENT AND SUBLETTING.

14.1 General. Except for those Subtenants approved by Town as provided herein, Master Tenant shall not assign, let or sublet the whole or any portion of the Premises.

14.2 Conditions for Landlord's Consent to Subtenants. Landlord's decision to grant or withhold its consent to a Subtenant may be based upon standards relevant to the type of subtenant and its proposed operation, including but not limited to: (i) experience or lack of experience in operating a retail establishment; (ii) the operating standards of such subtenant and whether it will provide the premium caliber of facilities and services acceptable to Landlord; (iii) the financial capacity to perform the provisions of this Lease and produce a fair return to Landlord; (iv) the experience of the proposed subtenant; (v) the ability of the Master Tenant and subtenants to perform the provisions of this Lease. However, Landlord shall not unreasonably withhold, condition or delay its approval of any potential Subtenant who Master tenant reasonably determines is the best available Subtenant on terms and

conditions satisfactory to Master tenant, so long as Master tenant has made reasonable efforts to attract the highest quality potential Subtenants available on terms and conditions satisfactory to Master tenant.

14.3 Conditions for Landlord's Consent to Assignment. Landlord's decision to grant or withhold its consent to any assignment of this Lease by Master tenant shall be at the Landlord's sole and exclusive discretion, but otherwise may be based upon standards of commercial reasonableness, including but not limited to the financial capacity, experience and ability of assignee to perform the provisions of the Lease.

14.4 Approval by Town Manager. Any such consent, if given by Landlord, shall be in writing and may be approved by the Town Manager on behalf of Landlord.

14.5 Recognition Agreement. In connection with each Sublease consented to by Landlord, Landlord shall agree in writing in favor of the applicable Subtenant that if this Lease terminates, then Landlord shall attorn to such applicable Subtenant on the terms and conditions of such Subtenant's sublease. In the event of such attornment, Landlord shall assume all of the Master Tenant's obligations under the applicable sublease accruing from and after the date the Master Lease terminates. Landlord shall indemnify, defend and hold Master Tenant harmless from and against any and all claims, damages, liabilities, demands, actions, causes of action, judgments, injuries, liens, costs and expenses (including, without limitation, reasonable attorneys' fees and costs of suit) arising from any breach or default by Landlord of any of its assumed obligations under the applicable sublease; however, such indemnification, defense and hold harmless obligation shall not be applicable to any claims, damages, liabilities, demands, actions, causes of action, judgments, injuries, liens, costs and expenses (including, without limitation, reasonable attorneys' fees and costs of suit) to the extent arising from any breach by Master Tenant of any obligations of the sublessor under the applicable sublease occurring prior to the date Landlord attorns to the applicable Subtenant under the terms of the applicable Subtenant's sublease. Landlord's obligations under this Section 14.5 shall survive the termination of this Lease.

SECTION 15. MORTGAGE OF LEASEHOLD.

15.1 Prohibited Encumbrances. Except as permitted in Section 0 below, Master Tenant shall not:

15.1.1 Engage in any financing or other transaction placing any mortgage or deed of trust upon the Property, or upon Master Tenant's leasehold estate therein or the improvements constructed thereon; or

15.1.2 Place or suffer to be placed upon Master Tenant's leasehold estate or the improvements thereon any lien, levy, attachment or other encumbrance (other than a lien upon said leasehold estate for taxes and assessments levied but not delinquent or payable with penalty); provided, however, the foregoing notwithstanding, Master Tenant shall have the right to contest or appeal the validity of any such lien, levy, encumbrance or attachment, provided that Master Tenant shall first furnish adequate security to the reasonable satisfaction of Landlord to protect the Premises during the pendency of such contest or appeal.

Any such mortgage, deed of trust, levy, attachment, encumbrance or lien (collectively, "encumbrance") not permitted pursuant to the terms of this Lease and caused or created by Master Tenant shall be deemed to be a violation of this covenant on the date of its execution or filing of record, regardless of whether or when it is foreclosed or otherwise enforced, unless Master Tenant shall, within twenty (20) days of such date of execution or filing of record, remove such encumbrance or provide adequate security to the reasonable satisfaction of Landlord to protect the Premises and the improvements thereon from such encumbrance.

15.2 Permissible Encumbrances.

15.2.1 Anything in this Lease to the contrary notwithstanding, with Landlord's prior written consent (which shall not be unreasonably withheld, conditioned or delayed), Master Tenant's Work may be funded by debt, and accordingly Master Tenant may assign or encumber the estate created by this Lease, by way of leasehold mortgages, leasehold deeds of trust, or otherwise.

15.2.2 With Landlord's prior written consent (which shall not be unreasonably withheld, conditioned or delayed), Master Tenant may assign or encumber the estate created by this Lease by way of not more than two leasehold mortgages and/or leasehold deeds of trusts at any one time encumbering Master Tenant's leasehold interests, provided that such leasehold mortgages and/or leasehold deeds of trusts comply with the requirements of this Section 15. Landlord shall have no obligation to make any changes to this Lease to accommodate any Permitted Mortgagee but agrees to work with Master Tenant in good faith in Master Tenant's efforts to obtain a Permitted Mortgage.

15.2.3 The fee title to the Premises cannot be encumbered pursuant to this Section 15; only the leasehold interest of the Master Tenant under this Lease (including, without limitation, Master Tenant's interest in the Premises, Master Tenant's Work, Subtenant's Work and Master Tenant's Property and any personal property of any Subtenant) may be so encumbered.

15.2.4 An encumbrance permitted by this Section 15 shall be referred to as a "Permitted Mortgage." The holder of a Permitted Mortgage is herein referred to as a "Permitted Mortgagee."

15.3 Notice to Landlord. Except when Landlord's prior approval or consent shall be required, Master Tenant shall notify Landlord within twenty (20) days of the time of creation of any lien or encumbrance which has been created on or attached to Master Tenant's leasehold estate therein or the Master Tenant improvements thereon, whether by act of Master Tenant or otherwise. If such lien or encumbrance is not created by an act of Master Tenant, Master Tenant shall notify Landlord of such creation as of the time Master Tenant first knows of such creation or attachment.

15.4 Mortgages Subordinate to Lease. Any mortgage permitted under Section 15 hereof shall be subject and subordinate to this Lease and, except as otherwise expressly provided herein or in any separate written agreement between Landlord and a Permitted Mortgagee, the rights of Landlord hereunder.

15.5 Extent of Encumbrance. A Permitted Mortgage shall encumber no interest in property other than Master Tenant's interest in the leasehold and improvements to the Premises, including without limitation, Master Tenant's interest in the Premises, Master Tenant's Work, Subtenant's Work and Master Tenant's Property, and any personal property of any Subtenant.

15.6 Disposition of Insurance Proceeds and Condemnation Awards. A Permitted Mortgage shall contain provisions permitting the disposition and application of the insurance proceeds and condemnation awards in the manner provided in this Lease. In the event that the Premises, or any portion thereof, are damaged or destroyed or condemned by power of eminent domain, in whole or in part, to the extent required by the provisions of the Permitted Mortgage, the proceeds therefrom shall be held by the Permitted Mortgagee, to be applied in the case of damage or destruction pursuant to the terms of the Permitted Mortgage with any excess to be paid to Landlord and Tenant as their interests may appear and to be applied in accordance with Section 17.3 hereof in the case of condemnation.

15.7 Permitted Mortgagee. Except as otherwise approved in writing by Landlord, a Permitted Mortgage may be given only to a responsible bona fide institutional lender. For the purposes hereof, the term "institutional lender" shall mean any one of the following lending institutions: a commercial or savings bank; a state bank or national bank, a trust company; an insurance company; a savings and loan association; a building and loan association; a credit union; an investment banking firm; an educational institution; a pension, retirement or welfare fund; a charity; a real estate investment trust ("REIT") but only if the REIT is publicly traded and registered with the U.S. Securities & Exchange Commission, and the amount of the Permitted Mortgage does not exceed two percent of the value of the REIT's assets; an

endowment fund or foundation authorized to make loans in the State of California; or any other responsible financial institution.

15.8 Continuing Terms and Covenants. Except as otherwise expressly provided in this Lease or in a separate document executed by Landlord, all rights acquired by said Permitted Mortgagee under said Permitted Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights of Landlord hereunder, none of which covenants, conditions and restrictions is or shall be waived by Landlord by reason of the giving of such Permitted Mortgage, except as expressly provided in this Lease or in a separate document executed by Landlord. Notwithstanding any foreclosure of any Permitted Mortgage and so long as this Lease has not been terminated, unless and until a Permitted Mortgagee takes possession of the Premises (subject to any Subleases then in existence, if applicable) and to the extent Master Tenant is receiving the revenues from the Premises, Master Tenant shall remain liable for the payment of Minimum Monthly Rent, Percentage Rent and all other payments payable pursuant to this Lease, and for the performance of all of the terms, covenants and conditions of this Lease which by the terms hereof are to be carried out and performed by Master Tenant.

15.9 Affirmation of Lease in Bankruptcy. In the event of the filing of a petition in bankruptcy by the Master Tenant, and the Master Tenant rejects this Lease under Section 365 of the Bankruptcy Code, the Landlord shall, upon the request of a Permitted Mortgagee, affirm this Lease, and the Landlord will enter into a new Lease on the same terms and conditions with the Permitted Mortgagee immediately upon Master Tenant's rejection of this Lease. In the event of the filing of a petition in bankruptcy by the Landlord, and the Landlord rejects this Lease and the Master Tenant does not affirm it, a Permitted Mortgagee will have the authority to affirm the Lease on behalf of the Master Tenant and to keep the Lease in full force and effect.

15.10 Notice Required. Master Tenant shall submit to Landlord within the times set forth in this Section 15 a written notice of its intention to enter into a Permitted Mortgage, and shall submit to Landlord such information and detail as will enable Landlord to determine the compliance of such intended Permitted Mortgage with the provisions of this Section 15 and this Lease. If Landlord has not objected to the intended Permitted Mortgage on the grounds of noncompliance with provisions of this Lease within 45 days of receipt by Landlord of such notice and information, the intended Permitted Mortgage shall be deemed to comply with the provisions of this Section 15 and this Lease and be deemed approved by Landlord, provided that in no event shall any such deemed approval act or operate to subordinate Landlord's fee title to the Property to the Permitted Mortgage. Master Tenant shall thereafter promptly submit to Landlord final documents in connection with such Permitted Mortgage upon their execution or receipt by Master Tenant, or upon the funding of the loan secured by the Permitted Mortgage, for review by Landlord for compliance with the provisions of this Section 15 and this Lease.

15.11 Landlord's Right to Cure Master Tenant's Defaults on Leasehold Mortgages. Master Tenant agrees that any Permitted Mortgage shall provide:

15.11.1 That the Permitted Mortgagee shall in writing by certified or registered mail (or recognized overnight courier service) give notice to Landlord of the occurrence of any event of default under said Permitted Mortgage; and

15.11.2 That Landlord shall be given at least 30 days' notice of default in debt service payments or any other obligation of Master Tenant under a Permitted Mortgage before such Permitted Mortgagee will initiate any mortgage foreclosure action or accelerate the indebtedness or exercise its power of sale. If any payments required to be made under the provisions of the Permitted Mortgage shall not be paid, or any other act or omission shall occur which constitutes a default under the terms of such Permitted Mortgage, Landlord may cure such default during any period that Master Tenant is in default thereunder, provided that Landlord shall comply with the provisions of Section 18 hereof calling for prior notice to Master Tenant except in cases of emergency where earlier action is required, notifying Master Tenant of Landlord's intention to cure such default on Master Tenant's behalf. Landlord shall not commence to cure such default if (a) Master Tenant shall have cured such default within said 30-day

period, or (b) except for defaults in the payment of money, Master Tenant shall have commenced to cure such default and is diligently pursuing such cure in full compliance with the terms of the Permitted Mortgage, or (c) Master Tenant shall have obtained from the Permitted Mortgagee a written extension of time in which to cure such default, together with a separate written extension of time granting Landlord reasonable additional time to cure said default if said default is not cured within said extended time, and executed copies thereof are delivered to Landlord. Any Permitted Mortgage shall further expressly provide that, in the event Master Tenant fails to cure any default thereunder, Landlord shall have a reasonable period of time (considering the nature of the default) to cure such default following the expiration of all periods (including any extensions of time and periods during which performance is waived) allowed for Master Tenant's cure of such default.

15.11.3 If Landlord shall elect to cure any default under a Permitted Mortgage, Master Tenant shall pay the costs reasonably incurred by Landlord in curing such default to Landlord, together with interest thereon at the "Reference Rate" of the Bank of America plus three percent and not to exceed the maximum rate for which the parties may lawfully contract, as Additional Rent. Master Tenant hereby authorizes Landlord, in Landlord's name, without any obligation or duty to do so, to do any act or thing required of or permitted to Master Tenant to prevent any default under said Permitted Mortgage or any acceleration thereof, or the taking of any portion of the security for the Permitted Mortgage by foreclosure or other action to enforce the collection of the indebtedness, and Master Tenant agrees to indemnify and hold Landlord harmless from any costs, damages, expenses or liabilities (including reasonable attorneys' fees) resulting from Landlord exercising its rights pursuant to this Section 15. Notwithstanding any provisions of this Lease to the contrary, if Landlord shall elect to cure any default under a Permitted Mortgage and such Permitted Mortgage is non-recourse to Master Tenant, Master Tenant shall not be obligated to reimburse Landlord for any costs incurred by Landlord, provided; however, any payments made by Landlord shall be payable to the extent Master Tenant is receiving rental payments under this Lease and such payments to Landlord shall be payable prior to any other payments.

15.12 Notice to Landlord. No Permitted Mortgagee shall have the rights or benefits mentioned in this Section 15 nor shall the provisions of this Section 15 be binding upon Landlord, unless and until the name and address of the Permitted Mortgagee shall have been delivered to Landlord, notwithstanding any other form of notice, actual or constructive.

15.13 Rights and Obligations of Permitted Mortgagees. If Master Tenant, or Master Tenant's successors or assigns, shall mortgage this Lease in compliance with the provisions of this Section 15, then, so long as any such Permitted Mortgage shall remain unsatisfied of record, the following provisions shall apply:

15.13.1 Landlord, upon serving upon Master Tenant any notice of default pursuant to the provisions of Section 18 hereof, or any other notice under the provisions of or with respect to this Lease, shall also serve a copy of such notice upon any Permitted Mortgagee at the address of such Permitted Mortgagee provided pursuant to Section 15.12 above, and no notice by Landlord to Master Tenant hereunder shall affect any rights of a Permitted Mortgagee unless and until thirty (30) days after a copy thereof has been so served to such Permitted Mortgagee. Notwithstanding any event of default by Master Tenant under this Lease, Landlord shall have no right to terminate this Lease unless Landlord shall have given the Permitted Mortgagee written notice of such default and Permitted Mortgagee shall have failed to remedy such default as provided below or acquire Master Tenant's estate created hereby or commence foreclosure or other appropriate proceedings in the nature thereof, as all set forth in, and within the time specified by this Section 15.13.

15.13.2 In case Master Tenant shall have failed to cure any default hereunder within the period provided for Master Tenant to cure such default, Landlord shall so notify any Permitted Mortgagee of such failure and any Permitted Mortgagee shall, within thirty (30) days of receipt of such notice have the right, but not the obligation, to remedy such default or cause the same to be remedied, and Landlord shall accept such performance by or at the instance of the Permitted Mortgagee as if the same had been made by Master Tenant; provided, however, that if the breach or default is with respect to the Master Tenant's Work, nothing contained in this Section or any other Section or provision of this

Lease shall be deemed to permit or authorize such Permitted Mortgagee, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the improvements beyond the extent necessary to conserve or protect the improvements or construction already made without first having expressly assumed the obligation to Landlord to complete, in the manner provided in this Lease, the improvements on the Premises or the part thereof to which the lien or title of such Permitted Mortgagee relates.

15.13.3 For the purposes of this Section 15 no event of default, other than an event of default due to a default in the payment of money, shall be deemed to exist under Section 18 hereof with respect to the performance of work required to be performed, or of acts to be done or of conditions to be remedied, if steps shall, in good faith, have been commenced by Master Tenant or a Permitted Mortgagee within the time permitted therefor to rectify the same and shall be prosecuted to completion with diligence and continuity as Section 18 hereof provides.

15.13.4 Anything herein contained to the contrary notwithstanding, upon the occurrence of an event of default, other than an event of default due to a default in the payment of money (for which the Permitted Mortgagee shall have no more than thirty (30) days following receipt of written notice from Landlord to cure such monetary default), Landlord shall take no action to effect a termination of this Lease without first giving to any Permitted Mortgagee written notice thereof and a reasonable time thereafter which shall not be less than ninety (90) days within which to either (a) obtain possession of the mortgaged property (including possession by a receiver), or (b) institute, prosecute and complete foreclosure proceedings or otherwise diligently acquire Master Tenant's interest under this Lease. A Permitted Mortgagee, upon acquiring Master Tenant's interest under this Lease, shall be required promptly to cure all defaults then reasonably susceptible to being cured by such Permitted Mortgagee; provided, however, that: (1) such Permitted Mortgagee shall not be obligated to continue such possession or to continue such foreclosure proceedings after such defaults shall have been cured; (2) nothing herein contained shall preclude Landlord, subject to the provisions of this Section 15, from exercising any rights or remedies under this Lease with respect to any other default by Master Tenant (subject to Permitted Mortgagee's cure rights set forth in this Section 15), during the pendency of such foreclosure proceedings; and (3) such Permitted Mortgagee shall agree with Landlord, in writing, to comply during the period of such forbearance with such of the terms, conditions and covenants of this Lease as are reasonably susceptible to being complied with by such Permitted Mortgagee (however, consistent with the provisions of Section 15.13.10 below, the provisions of this clause (3) shall not obligate such Permitted Mortgagee to cure any defaults of the Master Tenant, or to expend any monies or to take any actions to comply with the terms, conditions or covenants of this Master Lease, prior to such Permitted Mortgagee acquiring Master Tenant's interest under this Lease). Any default by Master Tenant not reasonably susceptible to being cured by such Permitted Mortgagee, or the occurrence of any of the events specified in Section 18, shall be deemed waived by Landlord upon completion of such foreclosure proceedings or upon such acquisition of Master Tenant's interest in this Lease, except that any such events of default which are reasonably susceptible to being cured after such completion and acquisition shall then be cured with reasonable diligence. Such Permitted Mortgagee, or its designee or other purchaser in foreclosure proceedings, may become the legal owner of the leasehold estate of this Lease through such foreclosure proceedings or by assignment of this Lease in lieu of foreclosure. A Permitted Mortgagee or its designee or other party which becomes the legal owner of the leasehold estate of this Lease through foreclosure proceedings or by an assignment of this Lease in lieu of foreclosure shall be deemed by such acquisition to have assumed all of Master Tenant's rights and obligations under this Lease accruing during the period of such Permitted Mortgagee's or its designee's ownership of the leasehold estate of this Lease. If a Permitted Mortgagee is prohibited by any process or injunction, or any bankruptcy, insolvency or other judicial proceeding involving Master Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified for commencing or prosecuting such foreclosure or other proceedings in the nature thereof, the times specified for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; provided that the Permitted Mortgagee shall have fully cured any default in the monetary obligations of Master Tenant under this Lease and shall continue to pay currently such monetary obligations as and when the same fall due, and provided that the Permitted Mortgagee shall diligently attempt to remove any such prohibition.

15.13.5 In the event of the termination of this Lease prior to the natural expiration of the then current Term due to default of Master Tenant or operation of law (except by eminent domain) as provided in Section 18, including, without limitation, due to any rejection of this Lease in any bankruptcy, insolvency or other debtor relief proceeding, Landlord shall immediately serve upon the holder of the senior Permitted Mortgage written notice that the Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Landlord. The senior Permitted Mortgagee or its nominee, purchaser or assignee shall thereupon have the option to obtain a new lease in accordance with and upon the following terms and conditions:

(a) Upon the written request of said Permitted Mortgagee, within sixty (60) days after service of such notice that the Lease has been terminated, or within sixty (60) days after the expiration of this Lease if Master Tenant was unable to renew the Term hereof, Landlord shall enter into a new lease of the Property and improvements thereon with such holder, or its designee or assignee, as follows:

(i) Such new lease shall be the same priority as this Lease, shall be effective as of the date of termination of this Lease, and shall be for the remainder of the Term and at the rent and upon all the agreements, terms, covenants and conditions hereof, including any applicable rights of renewal and the use provisions for restaurant and food service purposes specified above. Such new lease shall require that the tenant perform any unfulfilled obligation of Master Tenant under this Lease which is reasonably susceptible to being performed by such tenant. Upon the execution of such new lease, the tenant named therein shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for such termination, and shall pay all expenses, including reasonable counsel fees, court costs and disbursements incurred by Landlord in connection with such defaults and termination, the recovery of possession of the Property, and the preparation, execution and delivery of such new lease. Upon the execution and delivery of the new lease, title to all leasehold improvements (including, without limitation, all of the Master Tenant's Work) as well as all Master Tenant's Property, shall automatically vest in the Permitted Mortgagee or its nominee as the new Master Tenant under this Lease until the expiration of the term or sooner termination of the new lease.

(ii) Effective upon the commencement of the term of any new lease executed pursuant to this Subsection 15.13.5, all subleases then in effect shall be assigned and transferred without recourse by Landlord to the tenant under such new lease, and all monies on deposit with Landlord which Master Tenant would have been entitled to use but for the termination or expiration of this Lease may be used by the tenant under such new lease for the purposes of and in accordance with the provisions of such new lease, unless credited against expenses in accordance with Subsection 15.13.5(a)(i) above.

15.13.6 Any notice or other communication which Landlord shall desire or is required to give to or serve upon the holder of a Permitted Mortgage under this Lease shall be in writing and shall be served by certified mail, return receipt requested, addressed to such holder at the address provided for pursuant to Section 15.12 hereof, or at such other address as shall be designated by such holder in writing given to Landlord by certified mail, return receipt requested. Any notice or other communication which the holder of a Permitted Mortgage under this Lease shall desire or is required to give to or serve upon Landlord shall be deemed to have been duly given or served if (a) sent by certified mail, return receipt requested, addressed to Landlord at Landlord's address as set forth in Subsection 21.1 of this Lease or at such other addresses as shall be designated by Landlord by notice in writing given to such holder by certified mail, return receipt requested, and (b) sent by certified mail, return receipt requested, to the Landlord's other mortgages, if any.

15.13.7 Anything herein contained to the contrary notwithstanding, the provisions of this Section 15 shall inure only to the benefit of the holders of Permitted Mortgages. Neither a Permitted Mortgagee nor any other holder or owner of the indebtedness secured by a leasehold mortgage or otherwise shall be liable upon the covenants, agreements or obligations of Master Tenant contained in

this Lease, unless and until such Permitted Mortgagee or that holder or owner acquires the interest of Master Tenant.

15.13.8 During such period of time that any Permitted Mortgage is in existence, Landlord shall not agree to any mutual termination or accept any surrender of this Lease (except upon the expiration of the term of this Lease, or upon the earlier termination of this Lease (x) in connection with a casualty or condemnation in accordance with the provisions of this Lease, or (y) by reason of a default by Master Tenant that is not cured or remedied within the applicable notice and cure period set forth in this Lease in accordance with the provisions of this Lease, in either case subject to the Permitted Mortgagee's rights under this Lease, including, without limitation, the provisions of this Section 15.13), nor shall Landlord consent to any amendment or modification of this Lease, without the prior consent of a Permitted Mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed and shall be given within ten (10) business days of written request therefor.

15.13.9 Landlord shall mail or deliver to Permitted Mortgagee at the address of Permitted Mortgagee provided to Landlord a duplicate copy of all notices which Landlord may from time to time give to Master Tenant pursuant to this Lease.

15.13.10 Foreclosure of a Permitted Mortgage or any sale thereunder, whether by judicial proceedings or by virtue of any power of sale contained in the Permitted Mortgage, or any conveyance of the leasehold estate created hereby from Master Tenant to Permitted Mortgagee by virtue or in lieu of foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Landlord or constitute a breach of any provision of or a default under this Lease. Upon such foreclosure, sale or conveyance, Landlord shall recognize the Permitted Mortgagee, or any other foreclosure sale purchaser, as Master Tenant hereunder and such party shall attorn to Landlord, be subject to the provisions regarding assignment set forth in Section 15.14 below and shall fully perform Master Tenant's obligations hereunder. The preceding notwithstanding, a Permitted Mortgagee shall have no liability for Master Tenant's obligations under this Lease unless and until it becomes the Master Tenant under this Lease by means of foreclosure or deed in lieu thereof or pursuant to any new lease obtained pursuant to the terms above, and thereafter the Permitted Mortgagee or its successor or assign or designee shall be liable under this Lease or such new lease only for the period of time that such Permitted Mortgagee or its successor, assign or designee remains tenant hereunder or thereunder. Nothing herein shall be construed to obligate any Permitted Mortgagee to remedy any default of Master Tenant, and any failure of a Permitted Mortgagee to complete any such cure after commencing the same shall not give rise to any liability of the Permitted Mortgagee to Landlord or Master Tenant.

15.14 Assignment by Mortgagee. If any Permitted Mortgagee shall acquire title to Master Tenant's interest in this Lease by foreclosure of a mortgage thereon, or by assignment in lieu of foreclosure or by an assignment from a designee or wholly-owned subsidiary corporation of such mortgagee, or under a new lease pursuant to this Section 15, such Permitted Mortgagee or its successor, assign or designee may assign such lease and shall thereupon be released from all liability for the performance or observance of the covenants and conditions in such lease contained on Master Tenant's part to be performed and observed from and after the date of such assignment, provided that Landlord shall receive an executed counterpart copy of such assignment, together with the name and address of the assignee.

SECTION 16. DAMAGE TO PREMISES.

16.1 Landlord's Obligation to Repair. If subsequent to completion of Master Tenant's Work, a material part of the Premises provided by Landlord in Exhibit A, shall, by reason of fire, earthquake, the elements, acts of God or other unavoidable casualty, be destroyed or so damaged as to become unusable in whole or in part and the damage can, by proceeding with reasonable diligence, be repaired within 365 days from the date of such destruction or damage, Landlord shall promptly and diligently repair the damage (subject to the limitations set forth in Section 20.2) and this Lease shall remain in full force and effect. If a material part of the Premises provided by Landlord in Exhibit A, are damaged, and the

damage cannot, by proceeding with reasonable diligence, be repaired within 365 days from the date of such destruction or damage, this Lease may be terminated by Landlord by written notice given to Master Tenant within thirty (30) days after the date of the casualty. Such notice shall terminate this Lease as of the date of the casualty.

16.2 Election to Terminate. If subsequent to completion of Master Tenant's Improvements a material part of the Premises provided by Landlord in Exhibit A, are damaged, and the damage cannot, by proceeding with reasonable diligence, be repaired within 365 days from the date of such destruction or damage, and Landlord has not terminated this Lease pursuant to Subsection 16.1 above, then this Lease may be terminated by Master Tenant by written notice given to Landlord within sixty (60) days after the date of the casualty. Such notice shall terminate this Lease as of the date of the casualty. If Master Tenant does not make the foregoing election within the required period and Landlord has not terminated the Lease, then Landlord shall promptly and diligently repair the damage and this Lease shall remain in full force and effect (subject to the provisions of Subsection 16.3 below regarding completion of Landlord's repairs). If Landlord is required or elects to repair the Premises under the provisions of Subsection 16.1 and fails to complete such repair within 365 days after the casualty described in Subsection 16.1 above (or at least to complete such repair, within such 365 day period, to the extent that permits substantial resumption of Master Tenant's business (and the businesses of the Subtenants in existence as of the date of the damage or destruction) in the Premises, provided that Landlord thereafter continuously and diligently pursues any remaining required repairs to completion), then thereafter Master Tenant, at Master Tenant's option, may terminate this Lease by giving Landlord written notice of Master Tenant's election to do so at any time prior to the substantial completion of such repair. In such event this Lease shall terminate as of the date of Master Tenant's notice.

16.3 Abatement of Rent. If a material part of the Premises provided by Landlord in Exhibit A is damaged, and Landlord is required or elects to repair them pursuant to the provisions of Subsection 16.1, the Minimum Monthly Rent and Percentage Rent payable pursuant to Section 4 shall be abated from the date of the casualty until such Premises is sufficiently restored to allow Master Tenant to occupy the Premises and operate within the same manner as existed immediately prior to such damage or destruction. If, however, Master Tenant is able to occupy and operate its business within a portion of the Premises, Minimum Monthly Rent or Percentage Rent shall be abated only for the portion of the Premises that Master Tenant cannot occupy and operate within in the same manner as existed immediately prior to such damage or destruction. Such partial abatement shall be calculated on a square foot basis. The abatement of Minimum Monthly Rent and Percentage Rent (and Master Tenant's right to terminate this Lease as provided in Subsection 16.2 above, shall be Master Tenant's sole remedies due to the occurrence of the casualty. Landlord shall not be liable to Master Tenant or any other person or entity for any direct, indirect or consequential damage due to or arising from the casualty.

16.4 Application of Insurance Proceeds. If any part of the Master Tenant's Work or any other leasehold improvements constructed by or on behalf of Master Tenant is damaged or destroyed, and at the time of such damage or destruction, the leasehold interest of the Master Tenant hereunder, or applicable portion thereof, was encumbered by a Permitted Mortgage, then the proceeds of insurance allocable to such Master Tenant's Work or other leasehold improvements constructed by or on behalf of Master Tenant first shall be applied to pay off or pay down the loan encumbered by the Permitted Mortgage unless the applicable Permitted Mortgagee allows such insurance proceeds to be used to restore such Master Tenant's Work or other leasehold improvements.

SECTION 17. CONDEMNATION.

17.1 Total Condemnation. If, during the term of this Lease, the whole of the Premises shall be taken pursuant to any condemnation proceeding or a part of the Premises is taken pursuant to any condemnation proceeding and the remaining portion is not suitable for the purposes for which Master Tenant was using the Premises prior to the taking, then this Lease shall terminate as of the date that actual physical possession of the Premises is taken, and after that date, both Landlord and Master Tenant shall be released from any future obligations arising under this Lease.

17.2 Partial Condemnation. If, during the term of this Lease, only a part of the Premises is taken pursuant to any condemnation proceeding and the remaining portion is suitable for the purposes for which Master Tenant was using the Premises prior to the taking in the sole discretion of Master Tenant, then this Lease shall, as to the part so taken, terminate as of the date that actual physical possession of such portion of the Premises is taken, and after that date, both Landlord and Master Tenant shall be released from any future obligations under this Lease with respect to such portion of the Premises taken.

17.3 Condemnation Award. If the whole or any part of the Premises are taken pursuant to any condemnation proceeding, then Landlord shall be entitled to the entirety of any condemnation award except that portion allocable to the value of Master Tenant's leasehold interest of the unexpired term of this Lease, any Master Tenant's Property, Subtenant's Personal Property and/or any unsalvageable trade fixtures or furnishings owned by Master Tenant, any amounts specifically awarded or agreed upon by the Master Tenant and the condemning authority for the unamortized portion of Master Tenant's leasehold improvements and each Subtenant's leasehold improvements shall be the property of Master Tenant (except that the portion of the condemnation award allocable to each Subtenant's Personal Property and each Subtenant's leasehold improvements shall be awarded to Master Tenant or the applicable Subtenant(s), as their interests may appear, or as provided in the applicable Sublease) ("Master Tenant's Award"). The foregoing notwithstanding, if the whole or a portion of the Premises shall be taken pursuant to any condemnation proceeding and at that time the leasehold interest of the Master Tenant, or applicable portion thereof, was encumbered by a Permitted Mortgage, then Master Tenant's Award first shall be applied to pay off or pay down the loan encumbered by the Permitted Mortgage. Master Tenant shall require in any sublease of the Premises, that any Subtenant waive any and all rights against any public entity and/or the Landlord for any portion of the condemnation award relating to the Subtenant(s) value of the leasehold interest of any unexpired term.

17.4 Effect of Termination. In the event this Lease is canceled or terminated pursuant to any of the provisions of this Section 17 all rentals and other charges payable on the part of Master Tenant to Landlord hereunder shall be paid either as of the date upon which actual physical possession shall be taken by the condemner, or as of the date upon which Master Tenant ceases doing business in, upon or from the Premises, whichever first occurs; and the parties shall thereupon be released from all further liability hereunder, except for any liability arising prior to the date upon which actual physical possession shall be taken by the condemner.

SECTION 18. DEFAULT, REMEDIES, AND TERMINATION.

18.1 Master Tenant's Default. If: (i) Master Tenant shall fail to comply with any of the provisions herein providing for the construction of the Master Tenant's Work, and such failure shall continue for thirty (30) days after receipt of written notice thereof, unless Master Tenant shall have taken steps in good faith within such period to remedy such failure and is continuing to so act with diligence and continuity; or (ii) Master Tenant shall fail to pay any rent or other monies due under this Lease after the same are due, and such failure shall continue for ten (10) days after receipt of written notice thereof to Master Tenant, or (iii) Master Tenant shall fail to perform any other term, covenant, or condition herein contained, and such failure shall continue for thirty (30) days after receipt of written notice thereof, unless Master Tenant shall have taken steps in good faith within such period to remedy such failure and is continuing to so act with diligence and continuity and further, where possession of the Premises or portion thereof is necessary to cure a default under this Lease, Master Tenant will not be considered to be in default under this Lease as a result of a breach by a Subtenant under its sublease so long as Master Tenant has sent notice of default to, and commenced legal action against the Subtenant and is diligently and continuously pursuing an unlawful detainer action or other legal proceedings required to regain possession of the Premises or portion thereof from such Subtenant, or (iv) the Master Tenant's interest herein or any part thereof be assigned or transferred, either voluntarily or by operation of law, except pursuant to a Permitted Transfer or Section 14.2 or Section 15, whether by judgment, execution, death or any other means, or (v) the Master Tenant shall file any petition or institute any proceedings under any bankruptcy act, state or federal, or if such petition or proceeding be filed or be instituted or taken against the Master Tenant and such petition remains undischarged for a period of 90 days; or if any receiver of the business or of the property or assets of Master Tenant shall be appointed by any court (except a

receiver appointed at the instance or request of the Landlord) and Master Tenant fails to obtain dissolution of the receiver within 90 days after appointment of the receiver; or (vi) Master Tenant shall make a general or any assignment for the benefit of its creditors; or (vii) Master Tenant shall abandon (other than a temporary cessation of operations in connection with renovations of the Premises to which Master Tenant has obtained Landlord's approval, if applicable, as required by the terms hereof) the Premises; or (viii) Master Tenant has made any written or oral representation to the Landlord in connection with this Lease that Master Tenant knows was false in any material respect as of the date made or submitted, Master Tenant knew or should have known that the Landlord would rely on such false representation, and the Landlord relies on such false representation to its detriment in any material respect, then in any of such events Landlord shall have the following options, subject to the provisions of Section 15:

18.1.1 To collect, by suit or otherwise, each installment of rent or other sum as it becomes due hereunder, or to enforce by suit or otherwise, any other term or provision hereof on the part of Master Tenant required to be kept or performed; and/or

18.1.2 To reenter the Premises, remove all persons therefrom, take possession of the Premises and of all equipment, fixtures and personal property thereon or therein, and either with or without terminating this Lease to make commercially reasonable efforts to relet the Premises or any portion thereof (but nothing contained herein shall be construed as obligating Landlord to relet the whole or any portion of the Premises) for such term or terms (which may be for a term extending beyond the term of the Lease) and at such reasonable rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable. In addition to the foregoing, Landlord shall have the right, but not the obligation to, make such alterations and repairs to the Premises, or to divide or subdivide the Premises, as may be required or occasioned by any such reletting. Provided, however, Landlord's right to make alterations, repairs or improvements to the Premises after Master Tenant's default shall be limited to those alterations, repairs, and/or improvements necessary for the purpose of reletting the Premises. In the event Landlord relets the Premises, or any portion thereof, it shall execute any such lease in its own name, but the Master Tenant in such lease of reletting shall be under no obligation whatsoever to see to the application by Landlord of any rent collected by Landlord for the account of Master Tenant, nor shall Master Tenant hereunder have any right or authority whatsoever to collect any rent as the Master Tenant in the lease of reletting. Upon any such reletting, the rents received on any such reletting shall be applied first to the expenses of reletting and collecting, including necessary renovations and alterations of the Premises and reasonable attorneys' fees and any real estate commissions actually paid, and thereafter toward payment of all sums due or to become due to Landlord hereunder; if a sufficient sum shall not be thus realized to pay such rent and other charges, Master Tenant shall pay to Landlord monthly any deficiency, and Landlord may sue therefor as each such deficiency shall arise, but if the Premises are relet for an amount in excess of that necessary to pay such rent and other charges, Master Tenant shall not be entitled to any such excess; and/or

18.1.3 To terminate this Lease, in which event Master Tenant agrees immediately to surrender possession of the Premises and to pay to the Landlord as the amount of damage sustained by Landlord by reason of Master Tenant's breach of this Lease, the following:

(a) The worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus

(b) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss Master Tenant proves could have been reasonably avoided; plus

(c) 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 award exceeds the amount of such rental loss that Master Tenant proves could be reasonably avoided.

As used in Sections 18.1.3(a) and 18.1.3(a) above, the term "worth at the time of

award" is computed by allowing interest from the date such amount becomes due and payable at one percent (1%) per annum above the rate which the Bank of America announces publicly at its San Francisco or Los Angeles executive offices as its "Reference Rate" for unsecured commercial loans.

As used in Section 18.1.3(b) above, the term "worth at the time of the award" is computed by discounting the amount determined pursuant to Section 18.1.3(b) at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

18.1.4 Pursuant to its rights of re-entry, Landlord may remove all persons from the Premises (but not any Subtenants to which Landlord is obligated to attorn) using such force as may be reasonably necessary therefor and may, but shall not be obligated to, remove all property therefrom, including, but not limited to, Master Tenant's property (but not any Subtenant's Personal Property), and may, but shall not be obligated to, enforce any rights Landlord may have against said property, or store the same in any public or private warehouse or elsewhere at the cost and for the account of Master Tenant or the owners or owner thereof, or to treat all or portions of said property as having no value and to dispose of said property accordingly. Anything contained herein to the contrary notwithstanding, Landlord shall not be deemed to have terminated this Lease or the liability of Master Tenant to pay any rent or other sum of money thereafter to accrue hereunder, or Master Tenant's liability for damages under any of the provisions hereof, by any such re-entry, or by any action in unlawful detainer or otherwise to obtain possession of the Premises, unless Landlord shall have notified Master Tenant in writing that Landlord has so elected to terminate this Lease. Master Tenant covenants and agrees that the service by Landlord of any notice in unlawful detainer and the surrender of possession pursuant to such notice shall not (unless Landlord elects to the contrary at the time of, or at any time subsequent to, the service of such notice, and Landlord's election be evidenced by written notice thereof to Master Tenant) be deemed to be a termination of this Lease, or the termination of any liability of Master Tenant hereunder to Landlord.

18.2 Landlord's Default. If Landlord fails to comply with or defaults in the performance of any provision of the Lease, Master Tenant shall have the right (but not the obligation) in addition to any and all other rights and remedies available to Master Tenant at law or in equity, to cure such nonconformance or default on behalf of Landlord, upon 30 days prior written notice to Landlord and to any mortgagee of Landlord, if the name and address of such mortgagee has been previously provided to Master Tenant by Landlord, except in an emergency, Master Tenant may cure such nonconformance or default without such written notice so long as Master Tenant makes reasonable efforts to notify Landlord of such emergency. Upon receipt from Master Tenant of notice of such cure and demand for payment, Landlord shall repay any expenditure made by Master Tenant within 30 days of written request therefor. If Landlord fails to make such repayment within such 30 day period, then, anything herein to the contrary notwithstanding, Master Tenant may offset the amount owed it by Landlord pursuant to this Section 18.2 against the Minimum Monthly Rent and/or Percentage Rent payable by Master Tenant to Landlord hereunder until fully offset.

SECTION 19. TOWN REQUIREMENTS.

19.1 Non-discrimination. Master Tenant shall not restrict the rental, use, occupancy, tenure, or enjoyment of the Premises or any portion thereof, on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin of any person. During the term hereof, any contracts or subleases relating to the construction, use or occupancy of the Premises or any portion thereof, shall contain or be subject to substantially the following nondiscrimination and nonsegregation clauses:

"There shall be no discrimination against or segregation of, any person, or group of persons, on account of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in the sale, lease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee, himself or herself, 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, or vendees of the land."

19.2 Enforcement of Town Requirements. In enforcing Section 19.1, Landlord may require Master Tenant to terminate the sublease of any Subtenant that fails to comply with that Section. Failure of Master Tenant to commence actions to terminate the subleases of noncomplying Subtenants within 90 days of notice from Landlord shall constitute an event of default by the Master Tenant.

SECTION 20. COMPLIANCE WITH LAW.

20.1 General. During the Lease term, Master Tenant, at its sole cost and expense, shall comply promptly with all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances ("Laws") pertaining to Master Tenant's use of the Premises or the improvements thereon, including those which require the making of any structural, unforeseen or extraordinary changes to the Premises, whether or not any such Laws which may be hereafter enacted were within the contemplation of the parties at the time of execution of this Lease, or involve a change of policy on the part of the governmental body enacting the same. In connection with the foregoing, Master Tenant acknowledges that Landlord, acting not as Landlord but in its governmental capacity, has certain governmental regulatory authority over the Premises and agrees that "Law" as defined herein includes any legal requirement imposed by Landlord acting not as Landlord but in its capacity as a governmental regulatory body.

20.2 Regulations Requiring Modifications to Premises. If, under its regulatory authority, Town adopts new laws, rules or ordinances that are generally applicable to commercial buildings and which require upgrades, changes, or modifications to the Premises in order to comply with such Town-adopted laws, rules, or regulations, then the cost or expense of compliance shall be as follows:

(a) Town shall bear the cost or expense of compliance to the extent that such laws, rules or regulations require modifications to the structure or shell of the Premises in the condition delivered to Master Tenant in Exhibit A.

(b) During the first ten years following the Rent Commencement Date, Master Tenant shall bear the cost or expense of compliance to the extent that such new laws, rules, or regulations require modifications to Master Tenant's Work and any subsequent alterations thereto. After the tenth year following the Rent Commencement Date, Landlord and Master Tenant shall split equally all such costs.

SECTION 21. GENERAL PROVISIONS.

21.1 Notices, Demands, and Communications Between the Parties. All notices and other communications required or permitted to be given under this Agreement shall be in writing and may be delivered by hand, by facsimile transmission with verification of receipt, by email, by overnight courier service, or by United States mail, postage prepaid and return receipt requested, addressed to the respective parties as follows:

Town: Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030
Attention: Town Manager

Email: manager@losgatosca.gov

With copy to:

Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030
Attention: Town Attorney
Email: attorney@losgatosca.gov

To Tenant:

Forbes Mill, LLC

223 West Main Street Suite B
Los Gatos CA 95030
Attn: Donald Imwalle, Jr.
Email: don@imwalledev.com
CC: jimfoley@pennantproperties.com
Jason@farwellrashkis.com

or to such other address as any party may designate by notice in accordance with this Section.

A copy of any notice of a legal nature, including, but not limited to, any claims against Town, its officers or employees shall also be served in the manner specified above to the following address:

Town of Los Gatos
Town Attorney's Office
110 E. Main Street
Los Gatos, CA 95030

Notice shall be deemed effective on the date of personal delivery by hand or the date of receipt of facsimile transmission (with verification of receipt) or email, or if sent by overnight courier service, then one business day after delivery of such notice to such courier service or, if mailed, three days after deposit in the mail.

21.2 Warranty Against Payment of Consideration for Agreement. Master Tenant warrants that it has not paid or given, and will not pay or give, any third party (other than Colliers International who introduced Landlord and Master Tenant to one another) any money or other consideration for obtaining this Agreement.

21.3 Non-liability of Town Officials and Employees. No member, official, or employee of the Town shall be personally liable to Master Tenant or any successor in interest of Master Tenant, in the event of any default or breach by the Town or for any amount which may become due to Master Tenant or to its successor, or on any obligations under the terms of this Agreement.

21.4 Enforced Delay: Extension of Time of Performance. The specific provisions of this Agreement to the contrary notwithstanding, except for payment of any monetary payments required under this Agreement, neither party shall be in default under this Agreement if an obligation to perform is delayed due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; inability to obtain or delay in obtaining materials due to lack of supply; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or enjoining to the performance of the terms of this Agreement. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within ten days of the

commencement of the cause. The foregoing notwithstanding, the total time period excused under this Section shall not exceed two years.

21.5 Approvals and Town Manager's Authority. Approvals required of the Town (except for approvals expressly identified herein as being in the sole discretion of the Town) or Master Tenant shall not be unreasonably withheld, and approval or disapproval shall be given within a reasonable time. The Town Manager or his/her designee shall have the authority to act on behalf of the Town with regard to any and all actions required of the Town under this Lease. Such actions include but are not limited to the issuance of approvals and disapprovals and execution of all documents, including minor amendments to this Lease.

21.6 Holding Over. If Master Tenant shall hold over the term of this Lease, without Landlord's prior written consent, such holding over shall be construed as a tenancy from month to month, on the same terms and conditions as this Lease, and at 150% of the Minimum Monthly Rent or the monthly Percentage Rent, whichever is higher, in effect during the final full calendar of the term of this Lease.

21.7 Time of the Essence. Time is of the essence hereof, and waiver by the Landlord or Master Tenant of a breach of any term, covenant or condition herein contained, whether express or implied, shall not constitute a waiver of any subsequent breach thereof, or a breach of any other term, covenant, or condition herein contained, and acceptance of rent hereunder shall not be a waiver of any breach, except a breach of covenant to pay the rent so accepted. No acceptance by Landlord of any partial payment of any sum due hereunder shall be deemed an accord and satisfaction or otherwise bar Landlord from recovering the *full* amount due, even if such payment is designated "payment in full," bears any restrictive endorsement, or is otherwise conditionally tendered. The times for Master Tenant's performance of any obligations set forth in this Lease and the Exhibits may be extended by the Landlord's Town Manager, if he finds, at his sole discretion, that Master Tenant has been delayed for reasons not in Master Tenant's control. Any such extension shall be in writing.

21.8 Successors and Assigns. Subject to the provisions of Section 14 hereof, this Lease shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and permitted assigns of the parties hereto.

21.9 Landlord's Access. Landlord and its agents shall have the right, subject to the rights of the Subtenants then in effect, to enter the Premises upon 72 hours prior written notice for the purpose of inspecting the same, and making such alterations, repairs, improvements or additions to the Premises as are deemed necessary or desirable consistent with this Lease. Notwithstanding the foregoing, in the event of an emergency requiring Landlord's entry into the Premises, Landlord may give Master Tenant shorter notice in any manner that is practicable under the circumstances. When entering or performing any repair or other work in the Premises, Landlord, its agents, employees and/or contractors (a) shall identify themselves to Master Tenant's personnel immediately upon entering the Premises, and (b) shall not, in any way, materially or unreasonably affect, interrupt or interfere with Master Tenant's (or any of its Subtenants') use, business or operations on the Premises or obstruct the visibility of or access to the Premises.

21.10 Legal Relationship. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venturer or any association between Landlord and Master Tenant. Landlord and Master Tenant expressly agree that neither the method of computation of rent nor any act of the parties hereto shall be deemed to create any relationship between Landlord and Master Tenant other than the relationship of Landlord and Master Tenant.

21.11 Consents. Whenever the right of approval or consent is given to a party pursuant to this Lease, the party shall not unreasonably withhold, condition or delay its consent unless this Lease expressly provides otherwise. All approvals and reviews required of Landlord under this Lease may be undertaken and/or given by Landlord's Town Manager.

21.12 General. The terms "Landlord" and "Master Tenant" herein or any pronouns used in place thereof shall mean and include the masculine or feminine, the singular or plural number, and jointly and severally individuals, firms or corporations, and each of their respective heirs, executors, administrators, successors and permitted assigns, according to the context hereof. The headings of Sections herein are inserted only for convenience and reference and shall in no way define or limit the scope or intent of any provisions of this Lease. This Lease shall be construed under the laws of the State of California, and venue shall be in in the applicable courts located in Santa Clara County, California.

21.13 Quiet Enjoyment. Upon payment of the rent as aforesaid and upon the observance and performance by Master Tenant of all of the terms and provisions to be observed by Master Tenant under this Lease, Master Tenant shall peaceably hold and enjoy the Premises for the term hereof without hindrance or interruption by Landlord or any other person, except as herein expressly provided.

21.14 Regulatory Authority. Master Tenant acknowledges that, at any time when the Town is the Landlord hereunder, Landlord shall have certain governmental regulatory authority over the Premises. Master Tenant agrees and expressly acknowledges that any approval or consent required or permitted hereunder by the Town, acting in its capacity as Landlord under this Lease, (1) is distinct from any approval or consent of such entity acting in the capacity of governmental regulatory authority, whether or not related to the same matter, and (2) shall not compromise, diminish or in any way limit the authority of such entity to give, deny or condition its approval or consent when acting as a governmental regulatory authority.

21.15 Costs and Expenses. Whenever this Lease provides that either party shall be entitled to recover fees, costs or expenses from the other, such fees, costs or expenses shall be reasonable in nature.

21.16 Entire Agreement. This Lease and the exhibits attached hereto (which are incorporated herein by this reference) represent the entire agreement between the parties concerning the subject matter hereof and supersede any prior written or verbal agreements or understandings with respect thereto.

21.17 Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

21.18 Joint and Several. If Master Tenant is more than one party, then the parties and entities who comprise Master Tenant under this Agreement from time to time, are jointly and severally liable to the Town for the performance of all of the promises and obligations of Master Tenant under this Agreement. In the event of any default by Master Tenant hereunder, the Town may proceed against any one or more of the aforementioned parties who comprise Master Tenant without waiving its rights to proceed against any of the others.

21.19 Memorandum of Agreement. The parties hereto shall execute, acknowledge and record the Memorandum of Agreement, in the form attached hereto as Exhibit D, within ten days after the Rent Commencement Date.

21.20 CASp Inspection. Pursuant to California Civil Code Section 1938, Landlord hereby discloses, and Tenant hereby acknowledges, that the Premises has not been inspected by a Certified Access Specialist ("CASp"). California Civil Code Section 1938 also requires that this Lease contain the following statement:

"A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction related accessibility standards under

state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs to correct violations of the construction related accessibility standards within the premises.”

In accordance with the foregoing, Master Tenant, upon at least thirty (30) days' prior written notice to Landlord, shall have the right to require a CASp inspection of the Premises. If Master Tenant requires a CASp inspection of the Premises, then: (i) Landlord and Tenant shall mutually agree on the arrangements for the time and manner of the CASp inspection during such thirty (30) day period; (ii) Master Tenant shall be solely responsible to pay the cost of the CASp inspection as and when required by the CASp. It is understood by the parties that Landlord shall not be required to perform, or cause to be performed, any and all repairs needed to correct violations of the construction related accessibility standards within or relating to the Premises and Master Tenant can terminate this lease if it is determined, by Master Tenant that any repairs to correct violations would be too costly. .

21.21 First Right of Refusal. If Landlord receives from a third party a bona fide offer to purchase the Premises, before Landlord may accept such an offer, Landlord must first give written notice to Master Tenant of said offer. Master Tenant shall have thirty (30) days from the date of receipt of said offer, to provide Landlord with written acceptance of the offer, upon the same terms and conditions as set forth therein (but in addition thereto, such sale shall include all rights of Landlord in and to this Lease). If Master Tenant accepts said offer, closing shall take place within sixty (60) days from the date of acceptance. Master Tenant may elect to assign Master Tenant's rights to purchase the Premises to the parent of or a subsidiary of the Master Tenant, or other entity wholly owned by Master Tenant or its Managing Member. If Master Tenant fails to accept said offer within the thirty (30) days provided herein, Landlord may proceed to sell to said third party in accordance with the terms of the offer. If Landlord has not consummated a sale within one hundred eighty (180) days after the expiration of Master Tenant's option rights hereunder, the restrictions and options herein provided shall be restored and shall continue in full force and effect, and so long as these restrictions and options remain in effect the Landlord shall not thereafter sell or transfer the Premises without first giving Master Tenant notice as herein provided and otherwise complying with the foregoing provisions.

21.22 Force Majeure. This Lease and the obligations of the parties hereunder shall not be affected or impaired because a party is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, labor troubles, acts of God, epidemics, or any other cause beyond the reasonable control of such party. If Tenant is required to stop construction or is compelled to close its business or cease its business activities pursuant to a government order, recommendation or epidemic (or due to unavailability of labor or materials related to such epidemic), then Tenant shall not be required to pay Base Rent for the period of such closure; provided, however, that the Term of the Lease shall be extended by the number of days or months that Tenant's business is ordered closed and during such extended period Tenant's obligation to pay Base Rent shall continue (such Base Rent being suspended, such that Tenant receives the benefit of any rental abatement). If Tenant's occupancy is reduced by a government order then, for such period that Tenant's occupancy is reduced, the Base Rent shall be reduced pro rata. By way of example, if Tenant is required to limit occupancy to twenty-five percent (25%) pursuant to a government order then, for the period of time that such occupancy is limited to 25%, the Base Rent shall be reduced to 25%. As a condition precedent to availing itself of either a full or partial rental abatement as provided in this Section 21.22, Tenant must provide reasonable evidence to Landlord that Tenant has tendered a claim under all applicable insurance policies that Tenant is required to carry pursuant to Section 9 of this Lease and has pursued any and all state and federal financial assistance offered in response or relation to a government-imposed order to close or reduce occupancy, when and if such assistance is available. If Tenant receives any insurance proceeds or other financial assistance specified to cover any portion of its Base Rent or other monetary obligations under this Lease owed to Landlord (the "Rental Compensation"), then such Rental Compensation shall reduce any full or partial rental abatement that would otherwise be available to Tenant pursuant to this Section 21.22 in the amount of the Rental Compensation (provided that if the Rental Compensation

covers rent and other costs, Tenant may first apply the monies to other costs, and the balance to Base Rent, and the abated rent shall be reduced by the portion of the Rental Compensation attributable to Base Rent).

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

LANDLORD:

THE TOWN OF LOS GATOS

DocuSigned by:
By: Laurel Prevetti
Laurel Prevetti
Town Manager

Approved as to form:

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

Attest:

DocuSigned by:
Shelley Neis
Town Clerk
Shelley Neis

MASTER TENANT:

Forbes Mill, LLC,
a California Limited Liability Company

By: Imwalle Asset Management, LLC
a California Limited Liability Company

DocuSigned by:
By: Donald Imwalle
Don Imwalle, Jr., Managing Member

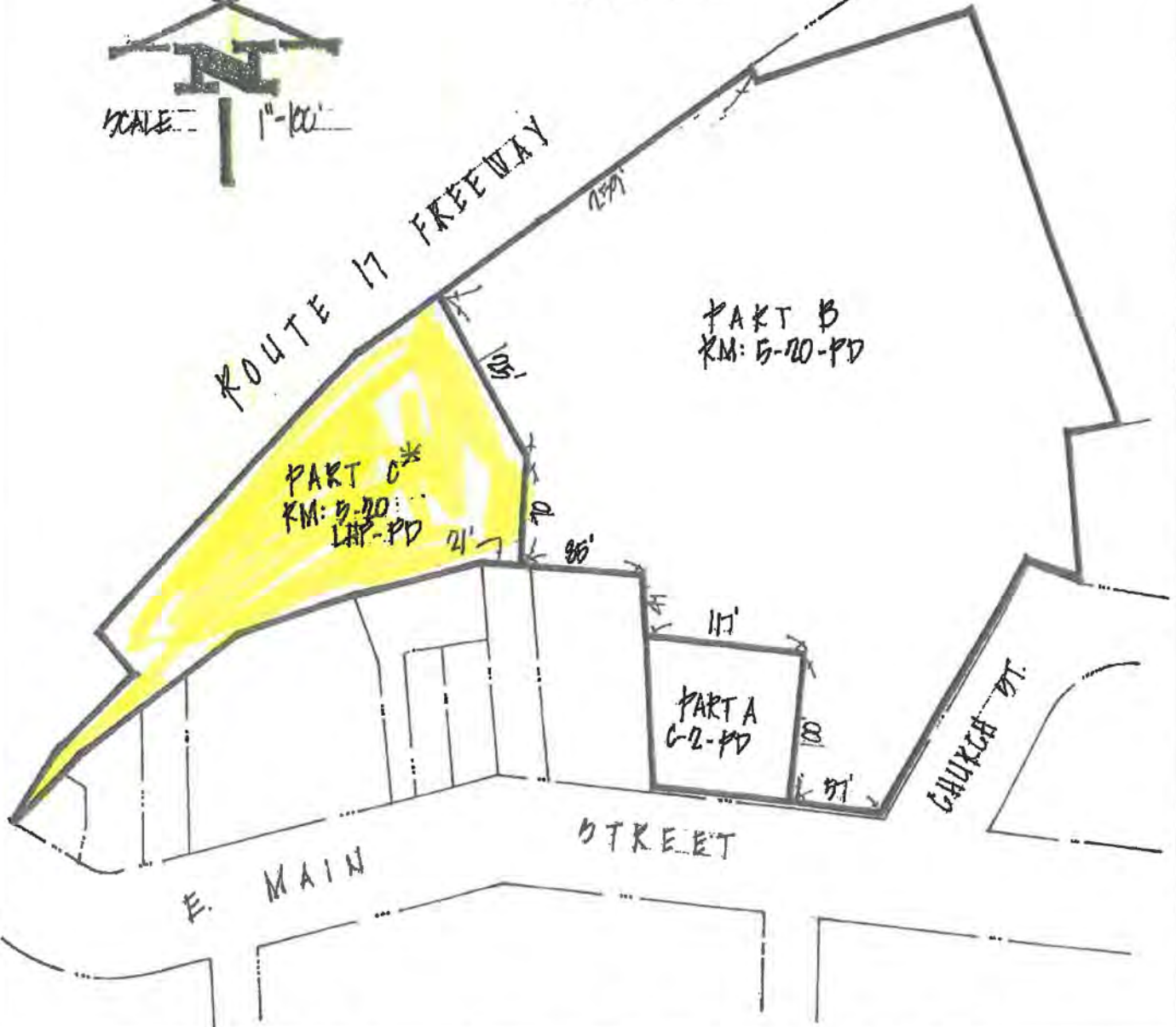
Exhibit A

Description and Site Plan Showing Location of Premises

(NEXT PAGE)



NOTE* THE DISTANCE BET IN THE NORTHEASTERLY WALL OF FORBES MILL AND THE PROPERTY LINE BETWEEN PART B AND C SHALL BE NOT LESS THAN 36 FEET.



TOWN OF LOS GATOS

Application No. Z-78-6 Change of zoning map
 Amending Town Zoning Ordinance
 Zone Change from C-2 & RM-5-20 & RM-5-20 LHP to C-2-PD & RM-5-20-PD
 Rezoning to & RM-5-20-LHP-PD

Approved by Planning Commission date _____
 Approved by Town Council date March 19, 1979 Ord. 1421
 Town Clerk Kate E. Alday Mayor George B. Lechner

EXHIBIT A

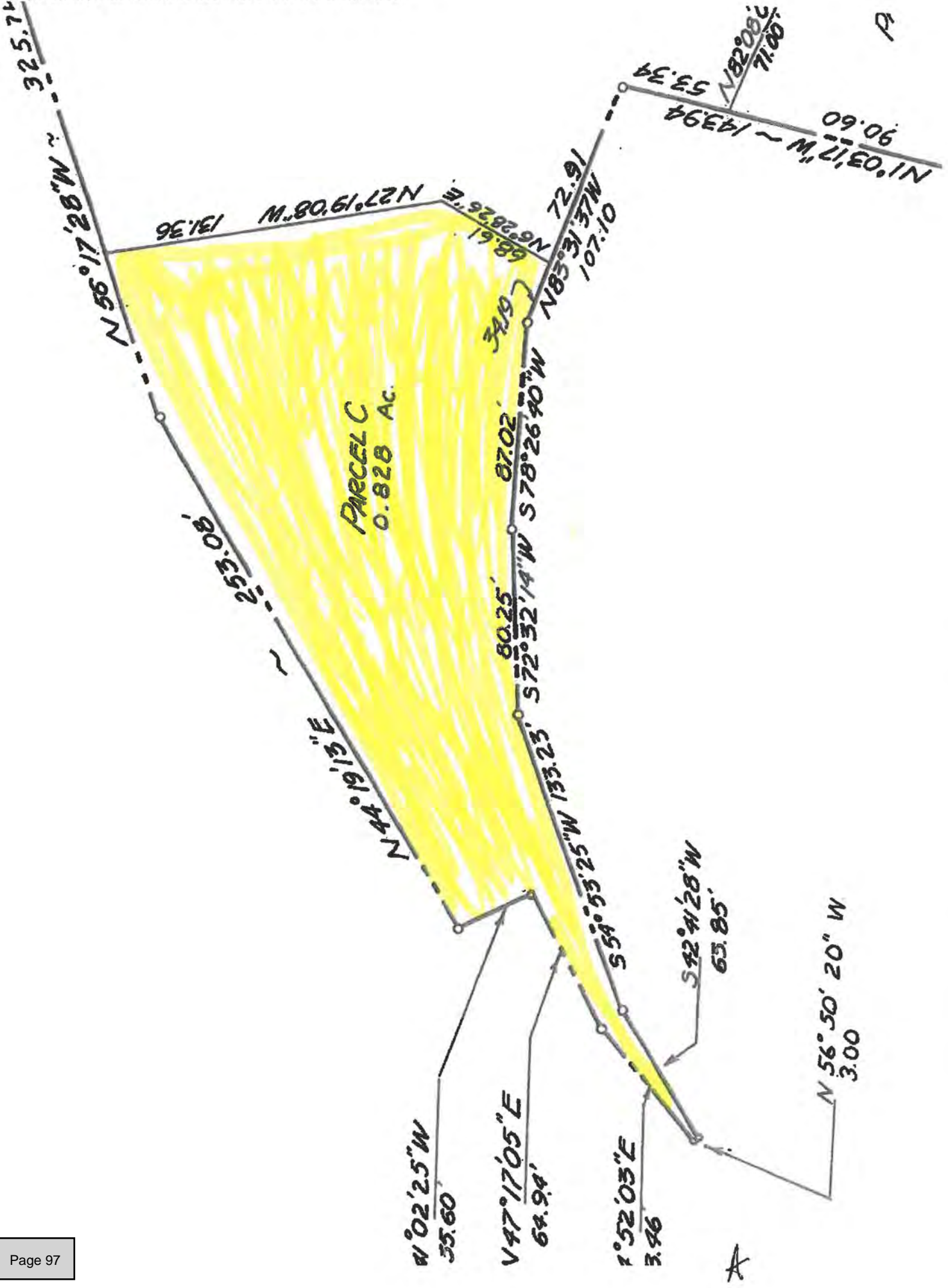


Exhibit B

Form of Notice of Lease Term Dates

[On Town Letterhead]

[Date]

Forbes Mill, LLC
223 West Main Street Suite B
Los Gatos, CA 95030
Attn: Donald Imwalle, Jr.
Email: don@imwalledev.com
CC: jimfoley@pennantproperties.com
Jason@farwellrashkis.com
Re: Master Lease – 75 Church Street, Los Gatos, CA 95030

Dear Mr. Imwalle:

In accordance with that certain Master Lease dated _____, 2020, by and between the Town of Los Gatos and Forbes Mill, LLC for the above referenced property, this letter is to confirm that the Rent Commencement Date as defined in Section 1.11 of the Master Lease is [insert date]. Please countersign this letter in the space below to acknowledge your agreement.

Please don't hesitate to contact me should you have any questions.

Sincerely yours,

_____, Town Manager

Acknowledged and Agreed this _____ day of _____, 202__

on behalf of

Forbes Mill, LLC,
a California Limited Liability Company

By: Imwalle Asset Management, LLC
a California Limited Liability Company

By: _____
Don Imwalle, Jr., Managing Member

Exhibit C

Insurance Requirements for Master Tenant and Subtenants

Master Tenant is required to procure and provide proof of the insurance coverage required by Master Tenant as outlined in this Exhibit in the form of certificates and endorsements. Master Tenant shall obtain and maintain insurance against claims which may arise from or in connection with the activities of Master Tenant and its Subtenants, including agents, invitees, employees, and contractors of Master Tenant and its Subtenants, and must remain in full force and effect at all times during the period covered by the Lease Agreement. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. If Master Tenant fails to provide any of the required coverage in full compliance with the requirements set forth herein, Town may, at its sole discretion, terminate the Lease for default. Master Tenant further understands that the Town reserves the right to reasonably modify the insurance requirements set forth herein, with thirty (30) days' notice provided to Master Tenant, at any time as deemed necessary to protect the interests of the Town.

(A) **Insurance Types and Limits.** The following insurance types and limits are required unless otherwise specified in the Lease Agreement:

- (1) **Commercial General Liability Insurance ("CGL"):** Master Tenant shall maintain CGL and shall include coverage for liability arising from Master Tenant and its Subtenants, including invitees, employees, agents, or contractors of Master Tenant and its Subtenants, against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least One Million Dollars (\$1,000,000.00) for property damage.
 - i. **Liquor Liability:** Master Tenant shall maintain Liquor Liability, either under its CGL policy or as a separate policy, providing protection in the minimum amount of One Million Dollars (\$1,000,000.00) each claim.
- (2) **Workers' Compensation Insurance and Employer's Liability:** Master Tenant shall maintain Workers Compensation coverage, as required by law. The policy must comply with the requirements of the California Workers' Compensation Insurance and Safety Act and provide protection in the minimum amount of One Million Dollars (\$1,000,000.00) for any one accident or occurrence. If Master Tenant is self-insured, Master Tenant must provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.
- (3) **Automobile Liability:** Master Tenant shall maintain Automobile Liability covering all owned, non-owned and hired automobiles, against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least One Million Dollars (\$1,000,000.00) for property damage.
- (4) **Property:** Master Tenant shall maintain All Risk Property coverage for the appropriate limit to cover all personal property of Master Tenant, in, on, or about the Premises, covering the full replacement cost of such personal property to include furniture, installed fixtures, improvements, equipment, inventory and any other personal property of the Master Tenant. Master Tenant, and not any of the Subtenants, also shall maintain All Risk Property coverage for the full replacement cost of the Master Tenant's Work.

- i. **Business Interruption:** Master Tenant shall maintain adequate protection against business interruption and loss of income, either as part of a comprehensive Business Owner's Policy or under its Property Insurance.

(B) **Required Endorsements.** Master Tenant shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

- (1) ALL Policies:

"Waiver of Subrogation" - Each required policy must include an endorsement providing that the carrier agrees to waive any right of subrogation it may have against the Town of Los Gatos and the Town's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

- (2) General Liability:

- a. "Additionally Insured" - The Town of Los Gatos, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds;
- b. "Primary and Non-Contributing" - Insurance shall be primary non-contributing;
- c. "Separation of Insureds" - The inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.

(C) **Subtenants.** Master Tenant must ensure that each Subtenant is required to maintain the equal or greater insurance coverages required in this Exhibit, including those requirements related to the additional insureds and waiver of subrogation. However, Subtenants which do not engage in the sale and/or serving of alcohol in, on, or about the Premises, are not required to maintain Liquor Liability. Also, Subtenants shall not be obligated to insure the Master Tenant's Work.

(D) **Qualification of Insurers.** All insurance required pursuant to this Lease Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of "A-" or better and a financial size rating of "VII" or better.

(E) **Certificates.** Master Tenant shall furnish the Town with copies of all policies or certificates maintained by Master Tenant as outlined herein, whether new or modified, promptly upon receipt. Further, upon request by the Town, Master Tenant shall furnish the Town with copies of all policies or certificates maintained by Subtenants as outlined herein, whether new or modified. No policy subject to the Master Tenant's Lease with the Town shall be reduced, canceled, allowed to expire, or materially changed except after thirty (30) days' notice by the insurer to Town, unless due to non-payment of premiums, in which case ten (10) days written notice must be made to Town. Certificates, including renewal certificates, may be mailed electronically to _____ or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

Town of Los Gatos
Attn: Risk Management
110 E. Main Street
Los Gatos, CA 95030

Exhibit D

Memorandum of Lease Agreement

RECORDING REQUESTED BY

AND WHEN RECORDED RETURN TO:

Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95037
Attn: Town Manager

THIS DOCUMENT IS EXEMPT FROM
RECORDING FEES PURSUANT TO CALIFORNIA
GOVERNMENT CODE §§ 6103, 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

MEMORANDUM OF LEASE AGREEMENT

This Memorandum of Lease Agreement (this "**Memorandum**") is dated as of _____, 202__, and is between the Town of Los Gatos, a California municipal corporation ("**Landlord**"), and Forbes Mill, LLC, a California limited liability company ("**Master Tenant**").

Recitals

A. Landlord and Master Tenant entered into that certain Lease Agreement, effective _____, 2020 ("**Lease**"), pursuant to which Landlord leased to Master Tenant and Master Tenant leased from Landlord the space located on the real property described in the attached Exhibit A (the "**Premises**").

B. Landlord and Master Tenant desire to execute this Memorandum to provide constructive notice of Master Tenant's rights under the Lease to all third parties.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

Agreement

1. Term. Landlord leases the Premises to Master Tenant for an initial term of thirty-four years and eleven months (34 years 11 months) commencing on the Commencement Date of _____, 202__, and expiring on _____, 205_.

2. Lease Terms. The lease of the Premises to Master Tenant is pursuant to the Lease, which is incorporated in this Memorandum by reference.

3. Assignment. Except as otherwise expressly provided in the Lease, Master Tenant's rights and obligations under the Lease may not be assigned without Landlord's prior written consent, which consent may be granted or withheld by Landlord in its sole and exclusive discretion, and any assignment without this consent will be void.

4. Successors and Assigns. This Memorandum and the Lease are binding and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject, however, to the provisions of the Lease on assignment.

5. Governing Law. This Memorandum and the Lease are governed by California law.

Executed as of the date first above written.

LANDLORD:

Town of Los Gatos,
a California municipal corporation

By: _____
Print Name: _____
Title: _____

MASTER TENANT:

Forbes Mill, LLC,
a California Limited Liability Company

By: Imwalle Asset Management, LLC
a California Limited Liability Company

By: _____
Don Imwalle, Jr., Managing Member

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____ ss.

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Signature) (Seal)

FIRST AMENDMENT TO AGREEMENT

This FIRST AMENDMENT TO AGREEMENT is dated for identification this 7th day of February 2023 and amends that certain Lease Agreement for Property Management Services dated October 29, 2020, made by and between the Town of Los Gatos ("Landlord" or the "Town"), and Forbes Mill, LLC, a California Limited Liability Company ("Master Tenant").

RECITALS

A. Town and Master Tenant entered into a Lease Agreement for Property Management Services for the management and leasing of the Forbes Mill Property, located at 75 Church Street, dated October 29, 2020 ("Agreement"), a copy of which is attached hereto and incorporated by reference as Attachment 1 to this Amendment.

Whereas, now the Town and Master Tenant mutually agree to amend the terms of the Agreement as follows:

FIRST AMENDMENT

1. The parties agree that the "Effective Date" referenced on Page 1 of the Master Lease ("Lease") shall be October 29th 2020.
2. **Section 1.4 Lease Term.** As provided in Section 3 below, the Term of the Lease commences on the ~~Commencement~~ **Effective** Date and terminates, unless earlier terminated 34 years and 11 months from the ~~Commencement~~ **Effective** Date as provided in Section 3.1 below.
3. **Section 1.5 Lease Contingency.** This Lease is contingent on the Master Tenant submitting the necessary applications and documents to the Town for approval of the improvements and use of the property, such as, but not limited to, general plan amendment, a proposed site plan, concept drawings for the site plan, massing diagrams, and renderings identifying the location, general configuration, and proposed design characteristics of the buildings, parking spaces, landscaping, property subdivision, and other aspects of the improvement and uses. The Master Tenant acknowledges that the Project Proposal requires approvals and entitlements from the Town and shall submit a formal application for the Planning Approvals. Costs and fees associated with the Planning Approvals review shall be borne by the Master tenant. Nothing in this Agreement shall be construed to compel the Town to approve or make any findings with respect to Planning Approvals. If Master Tenant is unable to obtain Planning Approvals, either Landlord or Master Tenant may terminate this Lease by giving written notice of termination to the other party. Upon the giving of such notice of termination, this Lease shall terminate without liability of either party to the other.

This Lease is also contingent on Master Tenant and a Subtenant having executed a binding initial Sublease for any portion of the Premises and occupancy by Subtenants (the "Contingency"). If the Contingency has not been satisfied or waived by Landlord on or before the date ~~twelve (12) months following the Effective Date~~ **January 1, 2024**, either

Landlord or Master Tenant may terminate this Lease by giving written notice of termination to the other party.

- 4. **Section 3.1 Term.** The "Term" of this Lease shall commence as of the Effective Date ("~~Commencement~~ Effective Date") and shall end, unless earlier terminated or extended pursuant to the terms and conditions of this Lease, on the date 34 years and 11 months after the ~~Commencement~~ Effective Date ("Termination Date").
- 5. **Section 7.3 Continuous Operations.** Master Tenant shall use its commercially reasonable efforts, subject to the provisions of Section 7.2 above, to continuously sublet the Premises to approved Subtenants for commercial purposes during the term of this lease. If, for any reason, a Subtenant quits its business operations on the Premises, Master Tenant shall use its commercially reasonable efforts, in accordance with the provisions of Section 7.2 above, to promptly secure another Subtenant reasonably acceptable to Master Tenant and Landlord.

If for any reason ~~during the first three (3) years following the Commencement Date~~ after **January 1, 2024**, the Premises in their entirety are left unleased for a continuous period of eighteen (18) months or more, then either the Landlord or Master Tenant may terminate this Lease by giving written notice of termination to the other, in which case, upon the giving of such notice of termination, each party shall be released of any future liability to the other, except as provided herein.

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

IN WITNESS WHEREOF, the Landlord and Master Tenant have executed this Amendment.

LANDLORD:

MASTER TENANT:

THE TOWN OF LOS GATOS

Tait Firehouse, LLC, a California Limited Liability Co.

By: Imwalle Asset Management, LLC
a California Limited Liability Co.

By: _____

By: _____

Laurel Prevetti, Town Manager

Don Imwalle, Jr., Managing Member

Approved as to Form:

Attest:

Gabrielle Whelan, Town Attorney

Wendy Wood, Town Clerk

SECOND AMENDMENT TO AGREEMENT

This SECOND AMENDMENT TO AGREEMENT is dated for identification this 5th day of March 2024 and amends that certain Lease Agreement for Property Management Services dated October 29, 2020, made by and between the Town of Los Gatos ("Landlord" or the "Town"), and Forbes Mill, LLC, a California Limited Liability Company ("Master Tenant").

RECITALS

- A. Town and Master Tenant entered into a Lease Agreement for Property Management Services for the management and leasing of the Forbes Mill Property, located at 75 Church Street, dated October 29, 2020 ("Agreement"), a copy of which is attached hereto and incorporated by reference as Attachment 1 to this Amendment.
- B. Whereas a First Amendment was authorized by the Town Council on February 7, 2023, it was not fully executed.

Whereas, now the Town and Master Tenant mutually agree to amend the terms of the Agreement as follows:

SECOND AMENDMENT

1. The parties agree that the "Effective Date" referenced on Page 1 of the Master Lease ("Lease") shall be October 29th 2020.
2. **Section 1.4, "Lease Term," is amended to read as follows:** "As provided in Section 3 below, the Term of the Lease commences on the Effective Date and terminates, unless earlier terminated 34 years and 11 months from the Effective Date as provided in Section 3.1 below."
3. **Section 1.5, "Lease Contingency," is amended to read as follows:** "This Lease is contingent on the Master Tenant submitting the necessary applications and documents to the Town for approval of the improvements and use of the property, such as, but not limited to, general plan amendment, a proposed site plan, concept drawings for the site plan, massing diagrams, and renderings identifying the location, general configuration, and proposed design characteristics of the buildings, parking spaces, landscaping, property subdivision, and other aspects of the improvement and uses. The Master Tenant acknowledges that the Project Proposal requires approvals and entitlements from the Town and shall submit a formal application for the Planning Approvals. Costs and fees associated with the Planning Approvals review shall be borne by the Master tenant. Nothing in this Agreement shall be construed to compel the Town to approve or make any findings with respect to Planning Approvals. If Master Tenant is unable to obtain Planning Approvals,

either Landlord or Master Tenant may terminate this Lease by giving written notice of termination to the other party. Upon the giving of such notice of termination, this Lease shall terminate without liability of either party to the other.

This Lease is also contingent on Master Tenant and a Subtenant having executed a binding initial Sublease for any portion of the Premises and occupancy by Subtenants (the "Contingency"). If the Contingency has not been satisfied or waived by Landlord on or before September 5, 2024, either Landlord or Master Tenant may terminate this Lease by giving written notice of termination to the other party."

4. **Section 3.1, "Term," is amended to read as follows:** The "Term" of this Lease shall commence as of the Effective Date ("Effective Date") and shall end, unless earlier terminated or extended pursuant to the terms and conditions of this Lease, on the date 34 years and 11 months after the Effective Date ("Termination Date").
5. **Section 7.3, "Continuous Operations," is amended to read as follows:** "Master Tenant shall use its commercially reasonable efforts, subject to the provisions of Section 7.2 above, to continuously sublet the Premises to approved Subtenants for commercial purposes during the term of this lease. If, for any reason, a Subtenant quits its business operations on the Premises, Master Tenant shall use its commercially reasonable efforts, in accordance with the provisions of Section 7.2 above, to promptly secure another Subtenant reasonably acceptable to Master Tenant and Landlord.

If for any reason after September 5, 2024, the Premises in their entirety are left unleased to a sublessee for a continuous period of eighteen (18) months or more, then either the Landlord or Master Tenant may terminate this Lease by giving written notice of termination to the other, in which case, upon the giving of such notice of termination, each party shall be released of any future liability to the other, except as provided herein."

6. In **Section 9.1, "General,"** related to insurance requirements, the second paragraph is removed.
7. Exhibit C, "Insurance Requirements for Master Tenant and Subtenants," is replaced with a new Exhibit C, attached to this Amendment.

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

IN WITNESS WHEREOF, the Landlord and Master Tenant have executed this Second Amendment.

LANDLORD:
THE TOWN OF LOS GATOS

MASTER TENANT:
Tait Firehouse, LLC, a California Limited Liability Co.

By: Imwalle Asset Management, LLC
a California Limited Liability Co.

By: _____
Laurel Prevetti, Town Manager

By: _____
Don Imwalle, Jr., Managing Member

Approved as to Form:

Attest:

Gabrielle Whelan, Town Attorney

Wendy Wood, CMC, Town Clerk

Exhibit C:
Insurance Requirements for Master Tenant and Subtenant

Master Tenant is required to procure and provide proof of the insurance coverage required by Master Tenant as outlined in this Exhibit in the form of certificates and endorsements. Master Tenant shall obtain and maintain insurance against claims which may arise from or in connection with the activities of Master Tenant and its Subtenants, including agents, invitees, employees, and contractors of Master Tenant and its Subtenants, which must remain in full force and effect at all times during the period covered by the Lease Agreement. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. If Master Tenant fails to provide any of the required coverage in full compliance with the requirements set forth herein, Town may, at its sole discretion, terminate the Lease for default.

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.
 - i. If liquor will be served, **Liquor Liability**, either under its CGL policy or as a separate policy, providing protection in the minimum amount of One Million Dollars (\$1,000,000.00) each claim.
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 Master Tenants 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.
4. **Automobile Liability** covering all owned, non-owned and hired automobiles, against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least One Million Dollars (\$1,000,000.00) for property damage.

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

Other Insurance Provisions

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

Additional Insured Status

The Town, its elected and appointed officials, employees, and agents 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 Master Tenant or any Subtenants 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 Master Tenant or any Subtenants 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 **Master Tenant ’s insurance coverage shall be primary and non-contributory** and at least as broad as ISO CG 20 01 04 13 as respects the Town, its elected and appointed officials, employees, and agents. Any insurance or self-insurance maintained by the Town, its elected and appointed officials, employees, or agents shall be excess of the Master Tennant’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 Master Tenant 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 Master Tennant’s primary and excess liability policies are exhausted.

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 Town.

Waiver of Subrogation

Master Tenant hereby grants to Town a waiver of any right to subrogation which any insurer of said Master Tenant may acquire against the Town by virtue of the payment of any loss under such insurance. Master Tenant 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 Town has received a waiver of subrogation endorsement from the insurer.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the Town. The Town may require the Master Tenant 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 Town. 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 unless approved in writing by Town. Any and all deductibles and SIRs shall be the sole responsibility of Master Tenant who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. Town may deduct from any amounts otherwise due Master Tenant 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. Town reserves the right to obtain a copy of any policies and endorsements for verification.

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 Town.

Verification of Coverage

Master Tenant shall furnish the Town 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 Town before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Master Tenant's obligation to provide them. The Town reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. Town 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

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



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 03/05/2024

ITEM NO: 7

DATE: February 28, 2024
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize an Additional \$10,000 from the County of Santa Clara County Grant for Unhoused Los Gatos Residents to Be Used for the Hotel Program

RECOMMENDATION:

Authorize an additional \$10,000 from the County of Santa Clara County grant for unhoused Los Gatos residents to be used for the Hotel Program.

BACKGROUND:

On January 24, 2023, the Town Council reaffirmed its Strategic Priorities and added a new one to support the unhoused residents of Los Gatos. This addition was reaffirmed on February 13, 2024.

On April 4, 2023, a majority of the Town Council allocated \$50,000 to support unhoused residents. Of those funds, \$10,000 was allocated to the Shower Ministry, \$20,000 was allocated to a temporary restroom, and \$20,000 was allocated to the Hotel Program to provide hotel rooms for unhoused residents during instances of extreme weather, unhealthy air quality, and certain medical needs.

In December 2023, the Town received a \$50,000 grant from Santa Clara County (County) to use towards support for unhoused Los Gatos residents. Supervisor Simitian worked with the Town Manager's Office to create the proposal in light of the Town's \$50,000 investment in services for unhoused residents. While initial discussions regarding the grant indicated the funds would be used for case management for the unhoused, the County has confirmed the funds can be used for any support services for residents experiencing homelessness. Grant funds must be expended by the Town by June 30, 2024 and are one-time funds.

PREPARED BY: Katy Nomura
Assistant Town Manager

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

BACKGROUND (continued):

On February 6, 2024, the Town Council authorized \$10,000 of the County grant to be used for the Hotel Program.

DISCUSSION:

The Hotel Program (Program) launched in December 2023. The Program is only available to regular members of our unhoused community who actively participate in the Food Pantry and Shower Ministries hosted by the faith community. Currently, there are 19 people that may participate and are on a pre-screened list that is managed by the faith community.

Since launching, the Program has activated for 19 nights due to weather related events and had two qualifying medical stays, resulting in 189 total rooms booked over the course of the program. Of the 19 individuals that may participate, 14 have utilized the Program. Participants have expressed sincere gratitude for the shelter provided during inclement weather. The Program has been a success in large part due to support from the Town Council, the faith community, dedicated Town staff, and our hotel partners which include the Los Gatos Lodge, the Garden Inn, and the Best Western.

While the Program has strict criteria to reserve a hotel room only for the most extreme conditions, the high utilization depleted the original \$20,000 allocated to the Program and has almost exhausted the \$10,000 from the County grant allocated on February 6, 2024. With approximately \$3,600 remaining, the Program would be able to support two additional nights of activation. With more rain on the way, staff anticipates these remaining nights will be used in the coming weeks and recommends allocating an additional \$10,000 from the County grant to the Hotel Program. The remaining \$30,000 in grant funds, and any unused funds from the Hotel Program, will still be used towards case management for unhoused residents. Staff is also pursuing the possibility of an additional \$5,000 in grant funding specifically for the Hotel Program. If staff is successful in securing this additional grant, the funds from the County grant will be replenished by \$5,000.

Staff will continue to monitor weather conditions and are handling funding requests incrementally, only when needed. An update to Council on the Hotel Program is tentatively scheduled for March 19, 2024 to allow for further discussion and direction.

CONCLUSION:

Staff recommends that the Council authorize an additional \$10,000 from the County of Santa Clara County grant for unhoused Los Gatos Residents to be used for the Hotel Program.

PAGE 3 OF 3

SUBJECT: Funding for Hotel Program for Unhoused Residents

DATE: February 28, 2024

COORDINATION:

The preparation of this report was coordinated between the Town Manager's Office and the Finance Department.

FISCAL IMPACT:

The \$50,000 for the County grant has already been received and no additional budget allocation is needed for this action.

ENVIRONMENTAL ASSESSMENT:

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



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 03/05/2024

ITEM NO: 8

DATE: February 28, 2024
TO: Council Policy Committee
FROM: Laurel Prevetti, Town Manager
SUBJECT: Adopt the Proposed Modification to the Commission Appointment Policy 2-11 as Recommended by the Council Policy Committee

RECOMMENDATION:

Adopt the proposed modification to the Commission Appointment Policy 2-11 as recommended by the Council Policy Committee (Attachment 2).

BACKGROUND:

The Town Council Commission Appointment Policy sets forth procedures for a consistent recruitment, interview, and selection process for all Town Boards, Commissions, and Committees (hereafter Commissions). There have been several revisions to this Policy in the past years to ensure consistency.

On June 1, 2021, the Town Council approved an amendment to the Policy to add language that each applicant will be asked the same core questions provided to the Council, and this would not prevent Council Members from asking appropriate questions or modifying the questions provided.

On December 7, 2021, the Town Council approved an amendment to the Policy to include a standard list of four questions to ensure consistency in the interview process. The standard questions were limited to allow an applicant sufficient time to respond; however, this did not prevent Council Members from asking appropriate questions of applicants.

On March 15, 2022, the Town Council approved two amendments to the Policy. The first amendment specified that interviews and appointments would occur after the annual Mayor and Vice Mayor selection, and in the case of election years, after new Council Members have

PREPARED BY: Wendy Wood
Town Clerk

Reviewed by: Town Manager

BACKGROUND (continued):

been seated. The second amendment added the option for applicants to participate in the interview via teleconference.

On August 2, 2022, the Town Council approved an amendment to the Policy to remove the reference to the length of time for each interview and add language to allow a change in the order of the questions and the ability to rotate which Council Member asks a specific question.

On September 20, 2022, the Town Council approved an amendment regarding attendance adding language allowing excused absences up to 12 weeks due to the birth of a child as consistent with the Family Medical Leave Act and the California Family Rights Act.

On October 3, 2023, the Town Council approved an amendment to the Policy to incorporate language stating the following Diversity, Equity, and Inclusion Commission membership seats may or may not reside in Los Gatos: Los Gatos business owner, Los Gatos employee, faith leader who leads a congregation in Los Gatos, and Los Gatos non-profit employee.

This Policy was most recently updated in November 2023 to remove the requirement for Council to review the interview questions annually given the broad discretion afforded to the Town Council in its use of the standard questions and the discretion of the Council to ask other appropriate questions of applicants.

On December 6, 2023, the Town Council conducted Commission interviews. After the interviews, there were concerns raised regarding the length of time allowed for applicant answers during the interview process.

At its January 23, 2024, meeting, the Committee directed staff to bring the Commission Appointment Policy 2-11 to the February meeting before the scheduled Commission interviews in March.

DISCUSSION:

After public testimony, the Committee discussed the interview process and potential recommendations for future interviews. The Committee suggested conducting future interviews with Council Members and applicants seated at the table in the Council Chambers. They also suggested having the applicants for each Commission interviewed as a group rather than individually and discussed implementing a time limit on answers for each question asked of a candidate. The Commission unanimously agreed to forward a recommendation to the Town Council to approve a policy modification to add a two-minute time limit for answers.

PAGE 3 OF 3

SUBJECT: Commission Appointment Policy

DATE: February 28, 2024

CONCLUSION:

Staff recommends the Council approve the proposed modification to the Commission Appointment Policy 2-11 to add a two-minute time limit for answers.

The March 5, 2024 Council agenda has two separate items recommending changes to the Commission Appointment Policy. If both are approved, a single update will be prepared incorporating both modifications.

COORDINATION:

This report was coordinated with the Town Clerk, Town Manager, and Town Attorney.

FISCAL IMPACT:

Amendments to the Town Council Commission Appointment Policy have no fiscal impact.

ENVIRONMENTAL ASSESSMENT:

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

Attachment:

1. Red-lined Commission Appointment Policy
2. Clean Commission Appointment Policy



TITLE: Commission Appointments, Residency and Attendance Requirements, and Establishing a Quorum

POLICY NUMBER: 2-11

EFFECTIVE DATE: 2/28/1990

PAGES: 7

ENABLING ACTIONS:

REVISED DATES: 6/13/1994; 6/16/2014; 4/7/2015; 10/18/2016; 2/21/2017; 2/6/2018; 3/19/19; 9/3/2019; 6/1/2021; 12/7/21, 3/15/22, 8/2/22; 9/20/22; 10/03/23; 11/21/23

APPROVED:

PURPOSE

To establish a policy to encourage participation by the Town’s residents on Town Boards, Commissions and Committees (hereinafter referred to as "Commissions"). The Town of Los Gatos is committed to inclusivity. We value all our community members, regardless of religion, immigration status, ethnicity, race, disability, gender, sexual orientation, or gender identity. The Town will encourage residents to participate on Commissions by advertising vacancies on Commissions for at least 30 days, preparing easily understood applications, maintaining clear descriptions of the role of each Board, Commission, and Committee and its respective members, providing current meeting schedules, and conducting public interviews of all Commission applicants, except as provided by this Policy.

SCOPE

This Policy applies to all applicants to Town Boards, Commissions and Committees.

POLICY

The Town Council encourages public participation in all decision-making and to be successful residents must be assured both that the participation is meaningful and that their input will be valued. The widest representation from the community can only be achieved if vacancies are well advertised so that anyone interested will have the opportunity to apply. Interviews of the applicants conducted in public by the Town Council demonstrates that it values these appointments and that all have an equal opportunity to be appointed. Applicants may apply to more than one Commission, and shall rank their choices in their preferred order, during each recruitment cycle.

ATTACHMENT 1

TITLE: Commission Appointments, Residency and Attendance Requirements, and Establishing a Quorum	PAGE: 2 of 7	POLICY NUMBER: 2-11
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To ensure the greatest possible participation by the public, it is the Town's policy that no person shall be appointed to more than one Commission except in those cases where they are ex-officio members of other Boards, Commissions and Committees. This Policy does not apply to Commission members serving as representatives of their Commission who have been appointed by the Town Council.

RESIDENCY REQUIREMENTS

Residency within the incorporated municipal limits of the Town of Los Gatos, California is required for appointment and continued membership on all Town of Los Gatos Boards, Commissions, and Committees, with the exception of the Youth Commission and the Diversity, Equity, and Inclusion Commission.

Youth Commission:

The members shall be students who are entering grades 8 through 12 in the fall. Membership for the students requires either residency in the incorporated limits of the Town of Los Gatos or residency in the unincorporated areas of the County of Santa Clara, which have a Los Gatos mailing address.

Diversity, Equity, and Inclusion Commission:

Membership composition shall be as outlined in the Commission’s enabling resolution and includes a Los Gatos business owner/employee, faith leader who leads a congregation in Los Gatos, and Los Gatos non-profit employee who may or may not reside in Los Gatos.

ATTENDANCE REQUIREMENTS

1. All members of all appointive Town Advisory Bodies should attend all regular and special meetings of said Advisory Bodies.
2. Any member not in attendance at a regular meeting of said Advisory Body for at least 70% of the meeting shall be considered absent.
3. Any member of an appointive Town Advisory Body who is absent from the number of regular meetings listed below appropriate to his or her Advisory Body shall, as a result, surrender his or her office on the Advisory Body and the office shall be considered vacant.
 - a. For an Advisory Body which holds six (6) or more regular meetings per a consecutive twelve (12) month period: three (3) regular meetings.
 - b. For an Advisory Body which holds five (5) or fewer regular meetings per a consecutive twelve (12) month period: two (2) regular meetings.
 - c. For an Advisory Body which holds sixteen (16) or more regular meetings per a consecutive twelve (12) month period: eight (8) regular meetings.
4. Consistent with the Family Medical Leave Act and the California Family Rights Act, absences of up to 12 weeks due to parental leave constitute excused absences.

TITLE: Commission Appointments, Residency and Attendance Requirements, and Establishing a Quorum	PAGE: 3 of 7	POLICY NUMBER: 2-11
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5. The vacant position shall be filled by appointment by a majority vote of the Town Council, for a term equal to the unexpired portion of the office vacated. Any member removed from office due to non-attendance may re-apply to serve on a Town Advisory Body but will not be treated as an incumbent in any subsequent application to the same Advisory Body.
6. If a Youth Commissioner liaison misses three meetings of a liaison Commission during a consecutive twelve (12) month period*, the Youth Commission shall appoint a different Youth Commissioner as liaison.

*Consecutive twelve (12) month period is defined as any consecutive twelve-month period beginning with the first absence. A regular meeting shall not be cancelled and replaced with a special meeting in order to alleviate an absence by an advisory body member.

QUORUM REQUIREMENTS

The number of members needed to constitute a quorum on any Town Advisory Body shall be a majority of the total number of filled seats.

PROCEDURES

The following procedures will be followed by the applicant, the Town Clerk, and the Town Council for the appointment of applicants to Town Commissions:

Responsibility and Actions: Town Clerk

A. Annual Recruitments

Adult Commission members' terms begin on January 1st and end December 31st, Youth Commissioners' terms follow the academic year and begin on August 1st and end on June 30th. The Town Clerk shall perform the following duties in conducting an annual recruitment for Commission members:

1. Notify Town Council of vacancies on Commissions by indicating the names of the Commissions, the number of terms expiring or being vacated, names of individual(s) with expiring terms or vacating seats, advertising periods (at least 30 days) and the date of interview.
2. Advertise the vacancies, including the application deadline and the interview date. Interviews and appointments for Adult Commissioners shall occur after annual Mayor and Vice Mayor selection, and in the case of election years, after new Council Members have been seated. Interviews and appointments for Youth Commissioners shall occur by the fourth Wednesday in May, no earlier than 4:00 p.m.
3. Prepare and maintain easily understood applications for appointment to Commissions. Applications shall include the following policy information:

TITLE: Commission Appointments, Residency and Attendance Requirements, and Establishing a Quorum	PAGE: 4 of 7	POLICY NUMBER: 2-11
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- a. Prior to initial appointment to any Commission, non-incumbent applicants must be interviewed by the Town Council. The applications of those not appearing will be held for the next recruitment.
 - b. If an incumbent Commissioner is requesting reappointment to the same Commission, the incumbent may submit a request to be interviewed by telephone, with their application, instead of attending the interview or must submit a letter prior to the interviews, describing the reason why the applicant cannot be present telephonically or in person for the interview, and why the applicant should be reappointed to the Commission.
 - c. Submissions deadlines are mandatory; no exceptions are permitted.
4. Applications:
- a. *For adult applicants* — Accept applications, verify eligibility, and distribute copies of the applications of eligible applicants to the Town Council prior to the interviews for appointment.
 - b. *For student applicants* — Accept applications, verify eligibility, and distribute copies of the applications of eligible applicants to the Town Council Selection Committee, consisting of the Mayor, Vice Mayor, Police Chief, and Youth Commission Chair (if not reapplying), prior to the interviews for appointment.
5. Notify the applicant by letter or email as to the date and time of the interview and provide the option for an in person or teleconference interview.
6. Facilitate the Council voting process set forth below by informing Council as to how many votes are possible on each Commission, calling out applicants' names, and identifying the applicants receiving sufficient votes for appointment. This process does not apply to student applicants.
7. Applicants:
- a. *For adult applicants* — After the interviews and Council vote are completed, notify all applicants of the Council's action, and explain Town policy of keeping application active for one year with notification of subsequent openings on that Commission to the interested applicants.
 - b. *For student applicants* — After the interviews are completed, notify all applicants of the Council Committee's action, and prepare a staff report for the Town Council to ratify the Committee's appointment at the first Town Council meeting in June.

Interview Process

To ensure the interview process is consistent, fair, and equitable, each applicant shall be asked the same standard questions, as provided below. Notwithstanding, no Council Member shall be prevented from asking appropriate questions of applicants.

1. If appointed, what ideas would you like to see the Commission explore?
2. Please expand beyond the written response on your application: your experience, interest, and/or expertise that you feel would be most useful to the Commission.

TITLE: Commission Appointments, Residency and Attendance Requirements, and Establishing a Quorum	PAGE: 5 of 7	POLICY NUMBER: 2-11
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3. Please elaborate on any written response provided in the application to assist the Council learn more about you.
4. If you did not answer any of the questions on the application, please explain why.

The standard questions are limited in number to allow an applicant sufficient time to respond. While the intent is for each Council Member to be able to ask one question of each applicant, the Council may decide not to ask all of the provided questions, change the order of the questions, or rotate which Council member asks a specific question. **Applicants will be given a two-minute time limit to answer each question.**

Balloting Process

Unless determined otherwise, the Council shall conduct a ballot vote for the appointment of individuals to fill the vacancies for each Commission. Such ballot vote may be conducted at either a regular, adjourned, or special meeting of the Town Council. The ballot vote process shall be conducted as follows:

1. The Town Clerk shall provide a ballot to each Town Council member listing the names of all applicants and “None of the above” for each respective Commission. Prior to the vote, the Town Clerk shall publicly announce the position vacancy and all applicant names that are listed on the ballot.
2. Each Council member may vote for the same number of applicants as there are current vacancies on the respective Commission. In no case, can a Council Member cast more votes than there are vacancies; or vote for the same candidate more than once on each ballot (i.e. cumulative voting -- e.g. where there are three vacancies, a Council member may not give all three votes to the same candidate). A Council Member is not required to vote for any of the candidates or for the total number of vacancies available.
3. The Town Clerk shall collect all ballots and shall publicly announce the name of each Town Council member and how that Council member cast his or her vote. In the case of a tie vote, the Town Clerk will announce that there is a tie and that a run-off vote shall be conducted but will not announce the names of the applicants in the run-off. Once all voting is concluded and a decision made, the votes will be made public. The run-off ballot will also include a “None of the above” option.
4. Applicants receiving a majority number of votes shall be deemed appointed to the Commission. In the event of a tie, a run-off vote shall be conducted among the applicants receiving the highest number of votes from the previous round. This shall continue until a majority consensus on an applicant(s) is reached for the number of vacancies to be filled. In the event of an unbreakable tie, the Council may determine an alternative method for selecting the appointee(s) or direct the Town Clerk to re-advertise the vacancy.
5. If an applicant(s) is appointed to an Advisory Body which has vacancies for both full and partial, unexpired terms, the length of the appointee’s term will be determined by the Mayor.

B. Mid-Term Recruitments

TITLE: Commission Appointments, Residency and Attendance Requirements, and Establishing a Quorum	PAGE: 6 of 7	POLICY NUMBER: 2-11
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During the year, Commissions may experience vacancies that drop the number of filled seats to a number of members that is not sufficient to conduct Commission business. The Commission may request the Council to conduct a mid-term recruitment to fill seats. To the extent possible, the Town Clerk will consolidate mid-term recruitments to minimize the number of recruitments occurring throughout the year. In the event of a vacancy on the Planning Commission, the Town will automatically conduct a mid-term recruitment. Mid-term recruitments will not be conducted for Youth Commissioners. The Town Clerk shall advertise mid-term vacancies on Commissions for at least 15 days.

Responsibility and Action: Applicant

1. Read the Commission Appointments, Residency and Attendance Requirements, and Establishing a Quorum Policy, complete and submit to the Town Clerk the application for appointment to a Town Commission by the advertised deadline date and time.
2. *For adult applicants:* Attend the Council meeting to be interviewed for Commission appointment. The applicant is required to notify the Town Clerk no later than 4:00 p.m. the Friday before the scheduled interview date whether they will attend in person or via teleconference.
3. *For student applicants:* Attend the Council Selection Committee interview session. The applicant is required to notify the Town Clerk no later than 4:00 p.m. the Friday before the scheduled interview date whether they will attend in person or via teleconference.
4. If an incumbent Commission member is requesting reappointment to the same Commission and is not available on the date of the interview, the incumbent must submit a letter by 4:00 p.m. the Friday prior to the interviews, describing the reason why the applicant cannot be present telephonically or in person for the interview, and why the applicant should be reappointed to the Commission.
5. If appointed, prior to starting the Commission term, appointees are required to attend a Commissioner Orientation and take the "Oath of Office."
6. Attend Advisory Body meetings once term begins.
7. Read the Commissioners' Handbook. Hard copies of the Handbook are to be returned to the Town Clerk when the term is complete.

Responsibility and Action: Town Council

1. Review applications.
2. *For adult applicants* – Interview applicants individually by Commission at a public meeting with all applicants present.
For student applicants – Town Council Selection Committee interviews applicants.
3. Determine if the incumbents not in attendance and having submitted a letter pursuant to this Policy should be considered for reappointment.
4. If there are limited applications for any vacancy to a Commission, the Mayor, on behalf of the Council, may request that the Town Clerk re-advertise the vacancy, reschedule the interviews, and notify all applicants of the new interview date.

TITLE: Commission Appointments, Residency and Attendance Requirements, and Establishing a Quorum	PAGE: 7 of 7	POLICY NUMBER: 2-11
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COMPLIANCE - GROUNDS FOR DISMISSAL

A member may be removed from the Advisory Body prior to the end of his or her term by a three-fifths (3/5) vote of the Town Council and may not be reappointed for the following reasons:

1. Failure to attend Advisory Body meetings.
2. Failure to file the following documents required by the Fair Political Practices Commission (Adult Commissioners):
 - a. Form 700 – Assuming Office, Annual, and Leaving Office when term is complete.
 - b. Planning Commissioners are also required to complete AB 1234 Ethics Training and file the original certificate with the Town Clerk every two years.
3. Failure to comply with all Town Policies, Guidelines, and Handbooks.

CONFLICT OF INTEREST

Under the Fair Political Practice Act, an advisory board member has a disqualifying conflict of interest in a governmental decision if it is foreseeable that the decision will have a financial impact on his or her personal finances or other financial interests. In such cases, there is a risk of biased decision-making that could sacrifice the public's interest in favor of the official's private financial interests. To avoid actual bias or the appearance of possible improprieties, the public official is prohibited from participating in the decision.

The Fair Political Practice Act does not prohibit an advisory board member from participating in a decision simply by virtue of holding a position as a board member, director, officer, or employment with a nonprofit corporation. However, the Town strongly encourages that in the event that a decision concerns a nonprofit corporation for which an advisory board member is a board member, director, officer, or employed with that nonprofit corporation, the person should recuse him or herself and at a minimum shall disclose the potential conflict of interest before any discussion and decision.

APPROVED AS TO FORM:

Gabrielle Whelan, Town Attorney



TITLE: Commission Appointments, Residency and Attendance Requirements, and Establishing a Quorum

POLICY NUMBER: 2-11

EFFECTIVE DATE: 2/28/1990

PAGES: 7

ENABLING ACTIONS:

REVISED DATES: 6/13/1994; 6/16/2014; 4/7/2015; 10/18/2016; 2/21/2017; 2/6/2018; 3/19/19; 9/3/2019; 6/1/2021; 12/7/21, 3/15/22, 8/2/22; 9/20/22; 10/03/23; 11/21/23

APPROVED:

PURPOSE

To establish a policy to encourage participation by the Town’s residents on Town Boards, Commissions and Committees (hereinafter referred to as "Commissions"). The Town of Los Gatos is committed to inclusivity. We value all our community members, regardless of religion, immigration status, ethnicity, race, disability, gender, sexual orientation, or gender identity. The Town will encourage residents to participate on Commissions by advertising vacancies on Commissions for at least 30 days, preparing easily understood applications, maintaining clear descriptions of the role of each Board, Commission, and Committee and its respective members, providing current meeting schedules, and conducting public interviews of all Commission applicants, except as provided by this Policy.

SCOPE

This Policy applies to all applicants to Town Boards, Commissions and Committees.

POLICY

The Town Council encourages public participation in all decision-making and to be successful residents must be assured both that the participation is meaningful and that their input will be valued. The widest representation from the community can only be achieved if vacancies are well advertised so that anyone interested will have the opportunity to apply. Interviews of the applicants conducted in public by the Town Council demonstrates that it values these appointments and that all have an equal opportunity to be appointed. Applicants may apply to more than one Commission, and shall rank their choices in their preferred order, during each recruitment cycle.

ATTACHMENT 2

TITLE: Commission Appointments, Residency and Attendance Requirements, and Establishing a Quorum	PAGE: 2 of 7	POLICY NUMBER: 2-11
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To ensure the greatest possible participation by the public, it is the Town's policy that no person shall be appointed to more than one Commission except in those cases where they are ex-officio members of other Boards, Commissions and Committees. This Policy does not apply to Commission members serving as representatives of their Commission who have been appointed by the Town Council.

RESIDENCY REQUIREMENTS

Residency within the incorporated municipal limits of the Town of Los Gatos, California is required for appointment and continued membership on all Town of Los Gatos Boards, Commissions, and Committees, with the exception of the Youth Commission and the Diversity, Equity, and Inclusion Commission.

Youth Commission:

The members shall be students who are entering grades 8 through 12 in the fall. Membership for the students requires either residency in the incorporated limits of the Town of Los Gatos or residency in the unincorporated areas of the County of Santa Clara, which have a Los Gatos mailing address.

Diversity, Equity, and Inclusion Commission:

Membership composition shall be as outlined in the Commission’s enabling resolution and includes a Los Gatos business owner/employee, faith leader who leads a congregation in Los Gatos, and Los Gatos non-profit employee who may or may not reside in Los Gatos.

ATTENDANCE REQUIREMENTS

1. All members of all appointive Town Advisory Bodies should attend all regular and special meetings of said Advisory Bodies.
2. Any member not in attendance at a regular meeting of said Advisory Body for at least 70% of the meeting shall be considered absent.
3. Any member of an appointive Town Advisory Body who is absent from the number of regular meetings listed below appropriate to his or her Advisory Body shall, as a result, surrender his or her office on the Advisory Body and the office shall be considered vacant.
 - a. For an Advisory Body which holds six (6) or more regular meetings per a consecutive twelve (12) month period: three (3) regular meetings.
 - b. For an Advisory Body which holds five (5) or fewer regular meetings per a consecutive twelve (12) month period: two (2) regular meetings.
 - c. For an Advisory Body which holds sixteen (16) or more regular meetings per a consecutive twelve (12) month period: eight (8) regular meetings.
4. Consistent with the Family Medical Leave Act and the California Family Rights Act, absences of up to 12 weeks due to parental leave constitute excused absences.

TITLE: Commission Appointments, Residency and Attendance Requirements, and Establishing a Quorum	PAGE: 3 of 7	POLICY NUMBER: 2-11
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5. The vacant position shall be filled by appointment by a majority vote of the Town Council, for a term equal to the unexpired portion of the office vacated. Any member removed from office due to non-attendance may re-apply to serve on a Town Advisory Body but will not be treated as an incumbent in any subsequent application to the same Advisory Body.
6. If a Youth Commissioner liaison misses three meetings of a liaison Commission during a consecutive twelve (12) month period*, the Youth Commission shall appoint a different Youth Commissioner as liaison.

*Consecutive twelve (12) month period is defined as any consecutive twelve-month period beginning with the first absence. A regular meeting shall not be cancelled and replaced with a special meeting in order to alleviate an absence by an advisory body member.

QUORUM REQUIREMENTS

The number of members needed to constitute a quorum on any Town Advisory Body shall be a majority of the total number of filled seats.

PROCEDURES

The following procedures will be followed by the applicant, the Town Clerk, and the Town Council for the appointment of applicants to Town Commissions:

Responsibility and Actions: Town Clerk

A. Annual Recruitments

Adult Commission members' terms begin on January 1st and end December 31st, Youth Commissioners' terms follow the academic year and begin on August 1st and end on June 30th. The Town Clerk shall perform the following duties in conducting an annual recruitment for Commission members:

1. Notify Town Council of vacancies on Commissions by indicating the names of the Commissions, the number of terms expiring or being vacated, names of individual(s) with expiring terms or vacating seats, advertising periods (at least 30 days) and the date of interview.
2. Advertise the vacancies, including the application deadline and the interview date. Interviews and appointments for Adult Commissioners shall occur after annual Mayor and Vice Mayor selection, and in the case of election years, after new Council Members have been seated. Interviews and appointments for Youth Commissioners shall occur by the fourth Wednesday in May, no earlier than 4:00 p.m.
3. Prepare and maintain easily understood applications for appointment to Commissions. Applications shall include the following policy information:

TITLE: Commission Appointments, Residency and Attendance Requirements, and Establishing a Quorum	PAGE: 4 of 7	POLICY NUMBER: 2-11
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- a. Prior to initial appointment to any Commission, non-incumbent applicants must be interviewed by the Town Council. The applications of those not appearing will be held for the next recruitment.
 - b. If an incumbent Commissioner is requesting reappointment to the same Commission, the incumbent may submit a request to be interviewed by telephone, with their application, instead of attending the interview or must submit a letter prior to the interviews, describing the reason why the applicant cannot be present telephonically or in person for the interview, and why the applicant should be reappointed to the Commission.
 - c. Submissions deadlines are mandatory; no exceptions are permitted.
4. Applications:
- a. *For adult applicants* — Accept applications, verify eligibility, and distribute copies of the applications of eligible applicants to the Town Council prior to the interviews for appointment.
 - b. *For student applicants* — Accept applications, verify eligibility, and distribute copies of the applications of eligible applicants to the Town Council Selection Committee, consisting of the Mayor, Vice Mayor, Police Chief, and Youth Commission Chair (if not reapplying), prior to the interviews for appointment.
5. Notify the applicant by letter or email as to the date and time of the interview and provide the option for an in person or teleconference interview.
6. Facilitate the Council voting process set forth below by informing Council as to how many votes are possible on each Commission, calling out applicants' names, and identifying the applicants receiving sufficient votes for appointment. This process does not apply to student applicants.
7. Applicants:
- a. *For adult applicants* — After the interviews and Council vote are completed, notify all applicants of the Council's action, and explain Town policy of keeping application active for one year with notification of subsequent openings on that Commission to the interested applicants.
 - b. *For student applicants* — After the interviews are completed, notify all applicants of the Council Committee's action, and prepare a staff report for the Town Council to ratify the Committee's appointment at the first Town Council meeting in June.

Interview Process

To ensure the interview process is consistent, fair, and equitable, each applicant shall be asked the same standard questions, as provided below. Notwithstanding, no Council Member shall be prevented from asking appropriate questions of applicants.

1. If appointed, what ideas would you like to see the Commission explore?
2. Please expand beyond the written response on your application: your experience, interest, and/or expertise that you feel would be most useful to the Commission.

TITLE: Commission Appointments, Residency and Attendance Requirements, and Establishing a Quorum	PAGE: 5 of 7	POLICY NUMBER: 2-11
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3. Please elaborate on any written response provided in the application to assist the Council learn more about you.
4. If you did not answer any of the questions on the application, please explain why.

The standard questions are limited in number to allow an applicant sufficient time to respond. While the intent is for each Council Member to be able to ask one question of each applicant, the Council may decide not to ask all of the provided questions, change the order of the questions, or rotate which Council member asks a specific question. Applicants will be given a two-minute time limit to answer each question.

Balloting Process

Unless determined otherwise, the Council shall conduct a ballot vote for the appointment of individuals to fill the vacancies for each Commission. Such ballot vote may be conducted at either a regular, adjourned, or special meeting of the Town Council. The ballot vote process shall be conducted as follows:

1. The Town Clerk shall provide a ballot to each Town Council member listing the names of all applicants and “None of the above” for each respective Commission. Prior to the vote, the Town Clerk shall publicly announce the position vacancy and all applicant names that are listed on the ballot.
2. Each Council member may vote for the same number of applicants as there are current vacancies on the respective Commission. In no case, can a Council Member cast more votes than there are vacancies; or vote for the same candidate more than once on each ballot (i.e. cumulative voting -- e.g. where there are three vacancies, a Council member may not give all three votes to the same candidate). A Council Member is not required to vote for any of the candidates or for the total number of vacancies available.
3. The Town Clerk shall collect all ballots and shall publicly announce the name of each Town Council member and how that Council member cast his or her vote. In the case of a tie vote, the Town Clerk will announce that there is a tie and that a run-off vote shall be conducted but will not announce the names of the applicants in the run-off. Once all voting is concluded and a decision made, the votes will be made public. The run-off ballot will also include a “None of the above” option.
4. Applicants receiving a majority number of votes shall be deemed appointed to the Commission. In the event of a tie, a run-off vote shall be conducted among the applicants receiving the highest number of votes from the previous round. This shall continue until a majority consensus on an applicant(s) is reached for the number of vacancies to be filled. In the event of an unbreakable tie, the Council may determine an alternative method for selecting the appointee(s) or direct the Town Clerk to re-advertise the vacancy.
5. If an applicant(s) is appointed to an Advisory Body which has vacancies for both full and partial, unexpired terms, the length of the appointee’s term will be determined by the Mayor.

B. Mid-Term Recruitments

TITLE: Commission Appointments, Residency and Attendance Requirements, and Establishing a Quorum	PAGE: 6 of 7	POLICY NUMBER: 2-11
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During the year, Commissions may experience vacancies that drop the number of filled seats to a number of members that is not sufficient to conduct Commission business. The Commission may request the Council to conduct a mid-term recruitment to fill seats. To the extent possible, the Town Clerk will consolidate mid-term recruitments to minimize the number of recruitments occurring throughout the year. In the event of a vacancy on the Planning Commission, the Town will automatically conduct a mid-term recruitment. Mid-term recruitments will not be conducted for Youth Commissioners. The Town Clerk shall advertise mid-term vacancies on Commissions for at least 15 days.

Responsibility and Action: Applicant

1. Read the Commission Appointments, Residency and Attendance Requirements, and Establishing a Quorum Policy, complete and submit to the Town Clerk the application for appointment to a Town Commission by the advertised deadline date and time.
2. *For adult applicants:* Attend the Council meeting to be interviewed for Commission appointment. The applicant is required to notify the Town Clerk no later than 4:00 p.m. the Friday before the scheduled interview date whether they will attend in person or via teleconference.
3. *For student applicants:* Attend the Council Selection Committee interview session. The applicant is required to notify the Town Clerk no later than 4:00 p.m. the Friday before the scheduled interview date whether they will attend in person or via teleconference.
4. If an incumbent Commission member is requesting reappointment to the same Commission and is not available on the date of the interview, the incumbent must submit a letter by 4:00 p.m. the Friday prior to the interviews, describing the reason why the applicant cannot be present telephonically or in person for the interview, and why the applicant should be reappointed to the Commission.
5. If appointed, prior to starting the Commission term, appointees are required to attend a Commissioner Orientation and take the "Oath of Office."
6. Attend Advisory Body meetings once term begins.
7. Read the Commissioners' Handbook. Hard copies of the Handbook are to be returned to the Town Clerk when the term is complete.

Responsibility and Action: Town Council

1. Review applications.
2. *For adult applicants* – Interview applicants individually by Commission at a public meeting with all applicants present.
For student applicants – Town Council Selection Committee interviews applicants.
3. Determine if the incumbents not in attendance and having submitted a letter pursuant to this Policy should be considered for reappointment.
4. If there are limited applications for any vacancy to a Commission, the Mayor, on behalf of the Council, may request that the Town Clerk re-advertise the vacancy, reschedule the interviews, and notify all applicants of the new interview date.

TITLE: Commission Appointments, Residency and Attendance Requirements, and Establishing a Quorum	PAGE: 7 of 7	POLICY NUMBER: 2-11
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COMPLIANCE - GROUNDS FOR DISMISSAL

A member may be removed from the Advisory Body prior to the end of his or her term by a three-fifths (3/5) vote of the Town Council and may not be reappointed for the following reasons:

1. Failure to attend Advisory Body meetings.
2. Failure to file the following documents required by the Fair Political Practices Commission (Adult Commissioners):
 - a. Form 700 – Assuming Office, Annual, and Leaving Office when term is complete.
 - b. Planning Commissioners are also required to complete AB 1234 Ethics Training and file the original certificate with the Town Clerk every two years.
3. Failure to comply with all Town Policies, Guidelines, and Handbooks.

CONFLICT OF INTEREST

Under the Fair Political Practice Act, an advisory board member has a disqualifying conflict of interest in a governmental decision if it is foreseeable that the decision will have a financial impact on his or her personal finances or other financial interests. In such cases, there is a risk of biased decision-making that could sacrifice the public's interest in favor of the official's private financial interests. To avoid actual bias or the appearance of possible improprieties, the public official is prohibited from participating in the decision.

The Fair Political Practice Act does not prohibit an advisory board member from participating in a decision simply by virtue of holding a position as a board member, director, officer, or employment with a nonprofit corporation. However, the Town strongly encourages that in the event that a decision concerns a nonprofit corporation for which an advisory board member is a board member, director, officer, or employed with that nonprofit corporation, the person should recuse him or herself and at a minimum shall disclose the potential conflict of interest before any discussion and decision.

APPROVED AS TO FORM:

Gabrielle Whelan, Town Attorney



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 03/05/2024

ITEM NO: 9

DATE: February 29, 2024
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Discuss and Provide Direction on the Proposed Revisions to the Draft Revised 2023-2031 Housing Element and Next Steps. Location: Town-Wide. General Plan Amendment Application GP-22-003.

RECOMMENDATION:

Discuss and provide direction to staff on the proposed revisions to the Draft Revised 2023-2031 Housing Element and next steps.

BACKGROUND:

On December 1, 2023, the Town received the California Department of Housing and Community Development's (HCD) findings/comment letter, previously provided as Attachment 3 to the January 16, 2024 Town Council staff report. A link to past staff reports and attachments can be viewed on the Town's website at: <https://losgatos-ca.municodemeetings.com>.

On December 19, 2023, the Town Council unanimously voted to follow the following process regarding the 2023-2031 Housing Element update, which includes the following actions:

1. Prioritizing the comments from the December 1, 2023 HCD comment letter;
2. Addressing the most challenging comments first and presenting the draft text of the Draft Revised Housing Element to the Town Council for review, including examples from two to three certified Housing Elements. Additionally, the Town Council hearing will provide the public with an opportunity to comment on the draft text with staff addressing the public comments in subsequent meetings, as needed;
3. Scheduling Town Council meetings with staff and the Housing Element consultant on a regular basis to complete the edits;
4. Reviewing the proposed edits with HCD, as frequently as HCD is able to meet with Town staff, and the Housing Element consultant and providing written feedback to the Council about HCD's responses; and

PREPARED BY: Erin Walters, Associate Planner and
Jocelyn Shoopman, Associate Planner

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and the Community Development Director

BACKGROUND (continued):

The Town Council also unanimously voted to review the Draft Revised Housing Element prior to a resubmittal to HCD.

On January 16, 2024, the Town Council met to review and discuss the proposed revisions to the Draft Revised Housing Element in response to the December 1, 2023 HCD comment letter. The Town Council provided direction for each HCD comment.

On January 18, 2024, staff and the Town's Housing consultant met with the Town's HCD reviewer and received an informal preliminary review matrix. A copy of this informal preliminary review matrix was previously provided as Attachment 9 to the January 16, 2024 Town Council staff report, available online on the Town's agenda website at: <https://logatos-ca.municodemeetings.com>. The informal preliminary comments are based on the proposed edits made to the Draft Revised Housing Element and provided to the Town's HCD reviewer for initial feedback on December 24, 2023.

On January 18, 2024, the Housing Element Advisory Board (HEAB) met to review and discuss the proposed revisions to the Draft Revised Housing Element in response to the December 1, 2023 HCD comment letter; Town Council direction provided on January 16, 2024; and HCD's informal preliminary review matrix provided on January 18, 2024.

On February 6, 2024, the Town Council met to review and discuss the proposed revisions to the Draft Revised Housing Element. The Town Council voted to modify the language of Program J and Program AY. The Town Council also approved a motion to confirm that the work of the HEAB is complete.

On February 20, 2024, the Town's HCD reviewer provided a second informal preliminary review matrix based on revisions made to the Draft Revised Housing Element and informally provided to the Town's HCD reviewer on February 1, 2024 and February 9, 2024 (Attachment 21).

On February 20, 2024, the Town Council met to review and discuss the proposed revisions to the Draft Revised Housing Element made at the February 6, 2024 Town Council meeting, as summarized below in Section A of this report.

DISCUSSION:

The primary purpose of this agenda item is for the Town Council to review and discuss the proposed revisions to the Draft Revised Housing Element. Staff is also seeking direction from Town Council on the timing of next steps, including the required seven-day public review period and the resubmittal to HCD for the formal 60-day review.

DISCUSSION (continued):

A. Town Council Meeting – February 20, 2024

The Draft Revised Housing Element was reviewed by Town Council on February 6, 2024, and February 20, 2024. The Town Council staff reports and attachments can be viewed online at: <https://losgatos-ca.municodemeetings.com>.

The revisions made to the various iterations of the Draft Revised Housing Element are color coded as follows:

- **Blue** highlighting denotes revisions reviewed by Town Council at the January 16, 2024 Town Council meeting.
- **Green** highlighting denotes revisions reviewed by the Town Council at the February 6, 2024 Town Council meeting.
- **Grey** highlighting denotes revisions made at the February 6, 2024, and February 20, 2024 Town Council meetings.

On February 20, 2024, the Town Council approved the following motions:

1. Include the language that HCD included in their letter, to add the words “including the combination of small multi-unit housing, religious institutions, Junior Accessory Dwelling Units (JADU) and SB10” to Program J.
2. To modify language to Program J and Program AY to the following:

Modify the Zoning Code to facilitate small multi-unit housing in certain low and medium density designations. This includes creating mixed residential neighborhoods through new and innovative housing types that meet the changing needs of Los Gatos households and expand housing choices in a variety of neighborhoods. Housing types include, but are not limited to single dwelling units, multifamily dwelling units, accessory dwelling units, small and micro units, use of prefabricated homes, and clustered/cottage housing. ~~This zoning will occur in a variety of areas throughout the Town but NOT in areas which are in Very High Fire Hazard Severity Zones, historic districts, adjacent to home in our historic inventory (currently pre-1941) homes, in hillside residential zones, within 500 feet of an evacuation route and within a half mile of a transit stop.~~ The modification of the zoning code to facilitate small multi-unit housing will occur in a variety of areas throughout the Town, but in no event in any of the following areas or locations: Very High Fire Hazard Severity Zones, historic districts, adjacent to homes in our historic inventory (currently pre-1941 homes), hillside residential zones, within 500 feet of an evacuation route, or farther than one half mile of a transit stop.

DISCUSSION (continued):

The following revisions were made to the Draft Revised Housing Element based on Town Council's motions:

1. Modified language for the qualified objective for Program J on Page 10-46 of Chapter 10.
2. Modified language for Program J on Page 10-47 and Program AY on Pages 10-77 and 10-48 in Chapter 10.

Extracted pages from the Draft Revised Housing Element to illustrate these proposed revisions in grey highlighting have been provided as Attachment 20.

On February 20, 2024, the Town Council unanimously approved a motion asking the Town Manager to share with the Council any information regarding the Housing Element that has been provided to HCD or received from HCD whether written or oral with 24 hours of receipt. Communications with HCD are further described in Section B below.

B. HCD Communications

On February 20, 2024, shortly before the Town Council meeting, the Town's HCD reviewer provided a second informal preliminary review matrix (Attachment 17) based on revisions made to the Draft Revised Housing Element and informally provided to the Town's HCD reviewer on February 1, 2024, and February 9, 2024.

On February 22, 2024, staff requested a meeting with the Town's HCD reviewer and HCD's Senior Program Manager to discuss the second informal preliminary review matrix prior to the March 5, 2024 Town Council meeting (Attachment 21).

On February 26, 2024, the HCD reviewer responded with availability to meet on Friday, March 1, 2024. Staff has scheduled a Zoom meeting on Friday, March 1, 2024 with Town staff, the Town's Housing Element consultant, the Town's HCD reviewer, and HCD's Senior Program Manager to conduct a live editing meeting where staff and the Housing Element consultant can share the Town's draft approach in addressing the preliminary review matrix comments.

Attachment 19 provides the HCD second informal preliminary review matrix with staff's draft responses. Town staff and the Housing Element consultant will be meeting with HCD on Friday, March 1, 2024 to verify the Town's draft approach to responding the comments.

An Addendum will be provided to Town Council on Monday, March 4, 2024, summarizing the results of the meeting with the HCD.

DISCUSSION (continued):

C. Next Steps

This agenda item provides the Town Council an opportunity to discuss the proposed revisions to the Draft Revised Housing Element and provide direction to staff on the next steps. The Town's Housing consultant and Town's outside legal counsel will be available to answer Council Member questions. As required by AB 215, revisions to the Draft Revised Housing Element must be made available to the public for a seven-day review period prior to a formal resubmittal to HCD.

Should the Town Council be satisfied with the proposed revisions to the Draft Revised Housing Element, the seven-day review period could be started on Thursday, March 7, 2024, ending on Thursday, March 14, 2024, with a formal resubmittal to HCD by Monday March 18, 2024. Subsequent review by HCD will take up to 60 days.

CONCLUSION:

Staff looks forward to the Town Council's discussion and direction.

PUBLIC COMMENTS:

The meeting has been publicized on the Town's website and through the Town's social media platforms. As of the drafting of this report, no comments from the public have been received.

COORDINATION:

The Community Development Department coordinated with the offices of the Town Attorney and Town Manager in the preparation of this report.

ENVIRONMENTAL ASSESSMENT:

An Environmental Analysis was prepared for the Housing Element update and available on the Town's Housing Element website at: <https://www.losgatosca.gov/EnvironmentalAnalysis>. All potentially significant effects have been analyzed adequately in the Town of Los Gatos 2040 General Plan Environmental Impact Report (EIR), pursuant to applicable standards including CEQA Guidelines Section 15168(c)2, because the Housing Element update is consistent with the growth projections evaluated in the General Plan EIR.

ATTACHMENTS:

Previously Received with the January 16, 2024 Staff Report:

1. Draft Revised Housing Element, Track Changes Copy
2. Draft Response Table
3. December 1, 2023 HCD's Findings Comment Letter
4. Public Comments Received Between 11:01 a.m., Tuesday, December 19, 2023, and 11:00 a.m., Thursday, January 11, 2024

Previously Received with the January 16, 2024 Desk Item:

5. Comments from the Vice Mayor
6. Public Comments Received Between 11:01 a.m., Thursday, January 11, 2024, and 11:00 a.m., Tuesday, January 16, 2024

Previously Received with the February 6, 2024 Staff Report:

7. Draft Revised Housing Element, Track Changes – January 2024
8. Draft Response Table – January 2024
9. HCD Informal Preliminary Review Matrix with Staff's Responses
10. Goldfarb & Lipman, LLP Feedback Table with Staff's Responses
11. Track Changes and Clean Version of Program AY Housing Mobility
12. Public Comments Received Between 11:01 a.m., Tuesday, January 16, 2024, and 11:00 a.m., Thursday, February 1, 2024

Previously Received with the February 5, 2024 Addendum:

13. Pages from the Draft Revised Housing Element Without the Recommendations Made by the Housing Element Advisory Board
14. Correspondence with HCD

Previously Received with the February 20, 2024 Staff Report:

15. Extracted Pages from the Draft Revised Housing Element with Revisions

Previously Received with the February 20, 2024 Desk Item:

16. Correspondence with HCD
17. HCD Second Informal Preliminary Review Matrix
18. Public Comment Received Between 11:01 a.m., Thursday, February 15, 2024, and 11:00 a.m., Tuesday, February 20, 2024

Attachments Received with this Report:

19. HCD Second Informal Preliminary Review Matrix with Staff's Responses
20. Extracted Pages from the Draft Revised Housing Element with Revisions
21. Correspondence with HCD

Town of Los Gatos Informal 2 Preliminary Review

Received 12/24/2023

Subsequent Informal 2: 2/01/24

*Green highlighting denotes HCD's Second Informal Preliminary Review Comments

Prior Review: 12/01/2023

Prior HCD Finding	Page #	Prelim Rev 1	Page#	Prelim Rev 2	HCD Feedback Summary	Staff's Draft Responses as of 02/29/2024
Affirmatively Furthering Fair Housing						
<u>Income and Racial Concentration Area of Affluence (RCAA):</u> The element now includes actions to promote an inclusive community; however, the element must provide specific analysis of income and RCAA at a regional level (town compared to the broader region) to better formulate appropriate policies and programs. The analysis should at least address trends, conditions, coincidence with other fair housing factors (e.g., race, highest resource, overpayment), effectiveness or absence of past strategies (e.g., lack of publicly assisted housing and lack of multifamily zoning), local data and knowledge and other relevant factors.	A-69	~/No	A-71	Yes/~	Minimal revision. Prior Review: Minimal analysis added; should address trends, coincidence with other factors (e.g., income, TCAC), past strategies and effectiveness such as result of North 40 in the prior planning period, zoning, land use and other factors. These analyses should be incorporated into contributing factors	New language discussing the past effectiveness of diversifying the Town's housing stock was added in a grey highlight to Appendix A on Page A-19. Town staff and the Housing Element consultant will be meeting with HCD on Friday, March 1, 2024, to verify the Town's draft approach to responding to this comment.
<u>Contributing Factors to Fair Housing Issues:</u> Based on a complete analysis, the element should re-assess and prioritize contributing factors to fair housing issues. For example, the Town is wholly a RCAA, highest resource and highest median incomes in contrast to the rest of the region. As a result, fair housing issues such as the lack of affordable housing and segregation from the rest of the region should be a high priority.	A-18	~	A20	Yes	Re-assess based on a complete analysis	
<u>Goals and Actions:</u> As noted above, the element must include a complete analysis of affirmatively furthering fair housing (AFFH). The element must be revised to add goals and actions based on the outcomes of a complete analysis. In addition, while the element includes some actions toward AFFH and enhancing housing mobility (e.g., choices and affordability), actions should be added,	10-43-10-50-10-6510-66	~/No	10-76	~	Include metric for home sharing action (Program Q). Program AY Prior Review: See Programs J, L, O, Q, T, AV	A quantified metric was included in a grey highlight for the homesharing action in Program Q on Page 10-53 of Chapter 10, as well as Program AY on Page 10-79 of Chapter 10. Town staff and the Housing Element consultant will be meeting with HCD on Friday, March 1, 2024, to verify the Town's draft

Prior HCD Finding	Page #	Prelim Rev 1	Page#	Prelim Rev 2	HCD Feedback Summary	Staff's Draft Responses as of 02/29/2024
<p>numeric targets should be increased, and geographic targeting should be fine-tuned to better promote inclusive neighborhoods throughout the Town. This is particularly important since over 80 percent of the lower-income regional housing need allocation (RHNA) is isolated in two census tracts. As noted in HCD's prior review and the assessment of fair housing, the Town is wholly a racially concentrated area of affluence, highest resource and highest median incomes in contrast to the rest of the region.</p> <p>These conditions and circumstances warrant significant and robust actions (not limited to the RHNA) to promote housing mobility and increasing housing choices and affordability throughout the Town, including lower-density neighborhoods. Actions should be added and revised with aggressive numeric targets and geographic targets throughout the Town, including lower-density neighborhoods. Examples include creating more housing choices and affordability in single-family neighborhoods beyond complying with law (e.g., SB 9, ADUs) such as missing middle housing types, targeting affordable housing funding, homesharing, more than one unit of converted space within a single-family structure, increased multifamily capacity, enhanced efforts on religious institutional sites and other alternative land use and financing strategies.</p>					<p>Program J should clarify that capacity will be increased (not just zoning text), development standards will be adjusted to facilitate maximum densities and increase the objective (~150 units) or add strategies (religious institutional, JADU plus, SB 10)</p> <p>Consider adding JADU plus to ADU HCV homesharing program and increasing objective</p> <p>Program AV should go beyond complying with SB 9 (marketing, modification to development standards)</p> <p>For all housing mobility actions (Programs J, L, O, Q, T, AV), geographic targeting should be revised to clarify town-wide including highest median income areas and numeric targets should be reflected with geographic targeting (e.g., 100 units townwide and 50% in highest median income areas)</p>	<p>approach to responding to this comment.</p>
Sites Inventory, Analysis and Adequate Sites						
<p><u>Small Sites:</u> The element identifies several sites with parcels less than a half-acre (p. D-13) that have common ownership and, in some cases, expressed interest to redevelop the site. For small sites with expressed interest in redevelopment, the element should clarify that the expressed interest is also in consolidating the sites. For the remaining sites (Sites D-2 and D-5), the element should explain the circumstances leading to the potential for consolidation such as necessity to consolidate due to access, feasibility, shape, or site planning flexibility.</p> <p>the outcomes of this analysis, the element</p>	D-2	Yes	D-11	N/A		

Prior HCD Finding	Page #	Prelim Rev 1	Page#	Prelim Rev 2	HCD Feedback Summary	Staff's Draft Responses as of 02/29/2024
should add or modify Program K (Lot Consolidation) to further promote lot consolidation, if appropriate.						
<p><u>Electronic Sites Inventory:</u> For your information, while the Town has submitted an electronic sites inventory as part of this submittal, pursuant to Government Code section 65583.3, the Town must submit an electronic sites inventory with its adopted housing element. Please see HCD's housing element webpage at https://www.hcd.ca.gov/planning-andcommunity-development/housing-elements for a copy of the form and instructions. The Town can reach out to HCD at sitesinventory@hcd.ca.gov for technical assistance</p>	N/A	FYI		FYI		
<p><u>Adequate Sites Programs:</u> As noted in the prior review, if necessary to make appropriate zoning available to accommodate the lower-income RHNA, programs must be revised to meet all requirements pursuant to Government Code section 65583.2, subdivisions (c), (h) and (i). The element includes Programs D (Program By Right Zoning Text Amendment to Accommodate RHNA), AR (General Plan Amendment) and AS (Adequate Sites for Housing) to address these requirements. With respect to sites identified in prior planning periods, the element meets statutory requirements, but these actions must be completed by January 31, 2024. With respect to a shortfall of adequate sites to accommodate the lower-income RHNA, the element includes Programs AR and AS. However, the Programs commit to the appropriate zoning given the rezoning occurs after the statutory deadline of January 31, 2023. HCD understands the Town completed the rezoning after the statutory deadline and, therefore, the rezoning must meet all by right requirements pursuant to Government Code section 65583.2, subdivisions (h) and (i). Based on a cursory review, the rezoning does not appear to meet these requirements. As a result, these programs must clearly commit to meet all by-right requirements by January 31, 2024.</p>	Not Found	No/?		Yes	Rezone ordinance 2347, Ord 2348, Ord 2349, Ord 23507;	The second reading of the amendment to the Housing Element Overlay Ordinance will be heard by the Town Council on March 5, 2024.

Prior HCD Finding	Page #	Prelim Rev 1	Page#	Prelim Rev 2	HCD Feedback Summary	Staff's Draft Responses as of 02/29/2024
<p>In addition, please be aware, the recent California appellate decision in <i>Martinez v. City of Clovis</i> found that while overlays can be used in a rezone, when the base zone allows residential development, both the base zone and the overlay zone must comply with the minimum density requirements of Government Code section 65583.2, subdivision (h). The Town may need to adjust its rezoning strategy if the underlying zoning for sites that will be rezoned allows minimum densities less than 20 dwelling units per acre. <i>Martinez v. City of Clovis</i> (2023) 90 Cal.App.5th 193, 307 Cal.Rptr.3d 64.</p>						
Governmental Constraints						
<p><u>Land Use Controls:</u> HCD's prior review found that the Town must list and evaluate development standards in the North Forty Specific Plan and High Density Residential and Commercial designation. In response, the Town has now listed development standards by each zoning district but should also analyze those development standards for impacts on housing supply and cost and most importantly, the ability to encourage maximum densities without exceptions. For example, lot coverages, heights, and setbacks in the Multifamily Residential (RM) zone; and lot coverage heights and guest parking requirements in the North Forty Specific Plan could be constraints. Based on the outcomes of a complete analysis, the element should add or modify programs to include specific commitment to review and revise these development standards as necessary.</p>	C-1 C-5 10-62	?	10-43	No	<p>Program D includes action to remove guest parking in North Forty Specific plan; however, include a program to revise all MF guest parking requirements, specifically RM, CH zones.</p> <p>Prior Review: RM parking program? Guest parking reduced? Guest parking and lot coverage in the North Forty Specific Plan analyzed?</p>	<p>Additional language was added in a grey highlight to Program AA on Page 10-60 of Chapter 10 to clarify the intent of the program to amend the Zoning Code for guest parking requirements in all zones of the Town. Town staff and the Housing Element consultant will be meeting with HCD on Friday, March 1, 2024, to verify the Town's draft approach to responding to this comment.</p>
<p><u>Local Processing and Permit Procedures:</u> The element now discusses decision-making bodies and lists approval findings for the Architecture and Site Application. However, the element should also analyze these processes to better inform programs to address identified constraint. For example, the element mentions the decision-making body depends on the scope of the application. The element should explain the scope, resulting decision-making body and impacts on approval timing and certainty. In the element lists approval findings and</p>	10-62	No/?	C-41	~	<p>Brief statement made on approval body but must discuss and analyze the scope of the trigger for PC review.</p> <p>Program AQ</p> <p>Prior Review: See Program AQ</p> <p>Program should remove or modify Findings 4 and 6 of the architectural and site process</p>	<p>Additional language was added in a grey highlight to Page C-41 of Appendix C to clarify that the Planning Commission is the deciding body for all types of multi-family residential and mixed-use projects. Town staff and the Housing Element consultant will be meeting with HCD on Friday, March 1, 2024, to verify the Town's draft</p>

Prior HCD Finding	Page #	Prelim Rev 1	Page#	Prelim Rev 2	HCD Feedback Summary	Staff's Draft Responses as of 02/29/2024
concludes some findings may be constraints then modifies Program AQ (Zoning Code Amendments) to amend approval findings (considerations). But the element should discuss which approval findings may be constraints to better inform implementation of Program AQ.					Scope trigger for approval body analyzed? Addressed?	approach to responding to this comment.
<u>Remove the housing unit cap Programs:</u> As noted above, the element requires a complete analysis of potential governmental constraints. Depending upon the results of that analysis, the Town may need to revise or add programs and address and remove or mitigate any identified constraints. In addition, programs should be revised, as follows:		TBD		TBD	Depends on complete analysis	
<u>Program D (Additional Capacity for the North Forty Specific Plan):</u> The Program should also commit to establish or modify development standards to facilitate achieving maximum densities, regardless of the level of affordability and should specify to either remove the unit cap or increase the unit cap to allow maximum build out of each parcel, including State Density Bonus Law or other circumstances that might warrant increasing allowable densities.	10-41	~/No/?		No	<p>Include a specific commitment to increase or remove unit cap (within 6 months)</p> <p>Prior Review: No action included to modify development standards?</p> <p>No action to remove cap. Commitments should also not implement the cap to allow maximum build out of each parcel or other circumstances warranting increasing allowable densities</p>	The language of Program D on Page 10-43 of Chapter 10 was modified in a grey highlight to state that the North Forty Specific Plan will be amended to remove the unit cap. Town staff and the Housing Element consultant will be meeting with HCD on Friday, March 1, 2024, to verify the Town's draft approach to responding to this comment.
<u>Program V (Housing opportunities for Persons living with Disabilities):</u> Given the importance of promoting housing access for persons with disabilities, the Program could be modified with a date earlier in the planning period (e.g., by December 2024).	?	No/?	10-57	Yes		
<u>Program AA (Reduce Parking Standards):</u> The Program currently commits to "Initiate a study to determine specific updates..." While initiating a study and making a determination are important steps by themselves, these actions do not result in outcomes. The Program should clearly commit to amending the municipal code. For example, the Program could commit to: "Initiate a study and outreach, including with developers, and amend the Municipal Code, as follows:..."	10-53	Yes		N/A		

Prior HCD Finding	Page #	Prelim Rev 1	Page#	Prelim Rev 2	HCD Feedback Summary	Staff's Draft Responses as of 02/29/2024
<u>Program AQ (Zoning Code Amendments)</u> : The Program commits to apply the Housing Element Overlay Zone (HEOZ) to identified sites and modify development standards. HCD understands this action has been completed. Based on a cursory review of the Town's Ordinance 2347, some development standards such as heights may be a constraint on achieving maximum densities. As a result, this Program should commit to monitor and evaluate these development standards, including outreach with the development community, and making adjustments, as appropriate, by a specified date.	10-61	~/No	10-70	Yes	Program AQ	
<u>Program AW (Story Poles and Netting Policy)</u> : While the Program now commits to revise Story Poles and Netting Policy Requirements; these requirements are constraints and impact housing costs; supply (number of units) and approval certainty and should be removed or replaced with cost effective measures to promote certainty for the developers and the community. Further, the element should evaluate the effectiveness of any future requirements or measures, and making adjustments, as necessary, by a specified date (e.g., by 2028).	10-65-	No	C-38	Yes	Program AW Prior Review: Video rendering should be expanded to other visual methods Scope of alternative should be expanded to all multifamily and mixed use	
Housing Programs: ADU						
<u>Program Q Accessory Dwelling Units (ADU)</u> : While the Program now commits to amend the ADU Ordinance, it must also commit to establish incentives such as modifying development standards (e.g., heights), pursuing funding; waiving fees beyond ADU law; proactive marketing and establishing points of contact to ease permitting processes. In addition, the Program commits to monitor production and affordability of ADUs annually but should also commit to making adjustments by a specified date (e.g., within six months) if production and affordability are not meeting assumptions. Further, the Program should clearly commit to options beyond incentives such as rezoning if production and affordability far differs from assumptions.	10-48-	Yes		N/A		

Prior HCD Finding	Page #	Prelim Rev 1	Page#	Prelim Rev 2	HCD Feedback Summary	Staff's Draft Responses as of 02/29/2024
Public Participation:						
<p>Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. Throughout the housing element process, the Town should continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available and considering and incorporating comments where appropriate. Please be aware, any revisions to the element must be posted on the local government's website and to email a link to all individuals and organizations that have previously requested notices relating to the local government's housing element at least seven days before submitting to HCD. HCD particularly encourages the Town to continue engaging commenters on this review. These comments contained valuable insights that can result in a more effective housing elements, especially related to programs and specific commitment. HCD's future reviews will continue to consider the extent to which the revised element documents how the Town solicited, considered, and addressed public comments in the element. The Town's consideration of public comments must not be limited by HCD's findings in this review letter.</p>		?	10-17	Yes/~	Summary of Public comments submitted.	Town staff will continue to engage with the community regarding the Housing Element update process by maintaining the information posted on the Housing Element update website, through posting on the Town's various social media accounts, and evaluation of public comments received.
Other (HCD use only)						
Program J		N/A		No	New language excluding missing middle housing types in multiple areas throughout the Town. The program should remove new language and proceed with previous program language informally reviewed.	Modifications to the language of Program J and Program AY were made in response to the approved motion from the February 20, 2024, meeting in a grey highlight on Pages 10-46, 10-47, 10-77, and 10-78 of Chapter 10. Town staff and the Housing Element consultant will be meeting with HCD on Friday, March 1, 2024, to discuss the Town's draft approach to responding to this comment.

Prior HCD Finding	Page #	Prelim Rev 1	Page#	Prelim Rev 2	HCD Feedback Summary	Staff's Draft Responses as of 02/29/2024
Program AY		N/A		No	See comments above.	Modifications to the language of Program J and Program AY were made in response to the approved motion from the February 20, 2024, meeting in a grey highlight on Pages 10-46, 10-47, 10-77, and 10-78 of Chapter 10. Town staff and the Housing Element consultant will be meeting with HCD on Friday, March 1, 2024, to discuss the Town's draft approach to responding to this comment.
Sb 9 units		N/A	10-9 D-2	No/?	Is the town now counting SB 9 units towards RHNA? Table D-2?	The Town is not counting SB 9 units towards the RHNA. Table D-2 of Appendix D has the SB 9 row struck out in the track changes version of the Draft Revised Housing Element. Town staff and the Housing Element consultant will be meeting with HCD on Friday, March 1, 2024, to clarify this comment.
Public comments		TBD		Yes	Additional comments? Prior Review: Must address new public comments	No additional comments at this time. Town staff will continue to engage with the community and evaluate public comments received.
Document availability		FYI		FYI		
Rezone timing		FYI		FYI	Can't be found in full compliance until all rezones are complete	The second reading of the HEOZ was adopted by the Town Council on December 5, 2023, and went into effect on December 21, 2023. A second reading of an amendment to the HEOZ will be considered by the Town Council on March 5, 2024.
50% nonvacant resolution		FYI		FYI		
Electronic sites inventory		FYI		FYI		
Overlay				No	Program AQ HE Overlay zone	N/A
Modification Authority		N/A		N/A	Informal submittal	N/A

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Programs	
<p>project) of sites identified in the Site Inventory to maintain sufficient sites at appropriate densities to accommodate RHNA for lower income households. If an approval of a development results in a reduction of site capacity below the residential capacity needed to accommodate the remaining RHNA, including for lower income households, the Town will identify and zone sufficient adequate sites at appropriate densities to accommodate the remaining RHNA.</p>	Responsible Department/Review Authority
	Community Development Department
	Timeframe
	Ongoing tracking as developments are approved
	Funding Source
	None required
	Quantified Objective
	Maintain RHNA capacity
	Performance Metric(s)
	Number of units and affordability level applied for; number of units and affordability level entitled; number of units and affordability level permitted; number of units and affordability level completed
<p>D <u>Additional Housing Capacity for the North Forty Specific Plan</u></p> <p>Amend the North Forty Specific Plan to <u>allow for a density from 30 increase the maximum allowable density from 20</u> dwelling units per acre to 40 dwelling units per acre and increase the total number of dwelling units allowed in the Specific Plan.</p> <p><u>Sites identified in the North Forty Specific Plan Area are reuse sites and must permit owner-occupied and rental multi-family uses by-right for developments in which 20 percent or more of the units are affordable to lower-income households. See Implementation Program ARAQ and ASAR.</u></p> <p><u>Amend the North Forty Specific Plan to remove the housing unit cap include a policy specifying that additional units as a result of the State density bonus law, SB 330, and other applicable state laws will not count toward the unit cap. This policy amendment will allow developments to reach the maximum allowable density plus the additional units due to density bonus and other applicable regulations. Annually monitor the impact of implementing the cap on housing production. If by the end of 2027 the cap is found to be constraining to housing production, amend the Specific Plan to modify the cap.</u></p>	Implementation Policies
	HE-1.1 Adequate Sites HE-3.3 Efficient Development Processing
	Responsible Department/Review Authority
	Community Development Department
	Timeframe
	January 2024
	Funding Source
	None required
	Quantified Objective
	Facilitate the construction of <u>15 45</u> new homes for lower-income households.
Performance Metric(s)	
Number of affordable homeownership units entitled and the number of units entitled for lower-income Households	

Programs	
	Amend the North 40 Specific Plan to remove guest parking requirements and modify development standards to facilitate achieving maximum densities.
E Affordable Development on Town Owned Property Pursue opportunities to work with an affordable housing developer <u>or enter into a public-private partnership to develop to construct</u> affordable housing <u>targeting lower-income households</u> on Town owned property.	Implementation Policies
	HE-1.1 Adequate Sites HE-2.9 Public/Private Partnerships
	Responsible Department/Review Authority
	Town Manager
	Timeframe
	Ongoing effort
	Funding Source
	None required
	Quantified Objective
	The number of Town owned <u>two</u> properties that <u>could be</u> suitable for affordable housing <u>up to 20 units</u> .
	Performance Metric(s)
The number of Planning applications submitted for new affordable housing	
F Update Permit Software System Update the existing permit software system to better monitor average processing times for ministerial and discretionary development permits. Use data to set baselines timelines to drive improvements. Update the Town planning and zoning regulations and remove permit processing constraints as appropriate.	Implementation Policies
	HE-3.3 Efficient Development Processing
	Responsible Department/Review Authority
	Community Development Department
	Timeframe
	Review and update regulations as appropriate at biannual years
	Funding Source
	None required
	Quantified Objective
	Reduce processing time by five percent
Performance Metric(s)	
Improve current permit processing time	
G Report Annually on Housing Availability Update the existing permit software system to better monitor average processing times for ministerial and discretionary development permits. Use data to set baselines timelines to drive improvements. Update the Town planning	Implementation Policies
	HE-1.1 Adequate Sites HE-1.5 Variety of Housing Choices HE-3.3 Efficient Development Processing
	Responsible Department/Review Authority
	Community Development Department
	Timeframe

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Programs	
	Performance Metric(s)
	Delivery of Housing Element
<p>JJ <u>Helping Senior Housing s</u> <u>PrograResourceesm</u></p> <p>Provide financial assistance for health, safety, emergency and accessibility home repairs to low-income seniors and low-income mobile homeowners through the Below Market Price Program funds, subject to availability of Program funds.</p> <p><u>Provide regularly updated senior housing resource materials at the Adult Recreation Center, Library, and Farmers' Market.</u></p>	Implementation Policies
	HE-1.6 Universal Design HE-2.7 Senior Housing HE-2.8 Equal Housing and Special Needs <u>HE-6.1 Fair Housing</u> <u>HE-6.2 Financial Assistance</u> <u>HE-6.3 Housing for Persons with Special Needs</u> <u>HE-6.4 Affordable Housing Awareness</u> <u>Responsible Department/Review Authority</u>
	Responsible Department/Review Authority
	Community Development Department and the Town Council
	Timeframe
	Ongoing and annual effort <u>Update materials annually</u>
	Funding Source
	Town Affordable Housing Funds
	Quantified Objective
	Maintain the existing housing stock by funding three home repairs to lower income seniors <u>annually</u>
	Performance Metric(s)
	Measure the number of units assisted versus the need
<p>JK <u>Small Multi-Unit Housing, "Missing Middle"</u></p> <p><u>The Housing Element supports the land use goal of providing opportunities for housing that can accommodate the needs, preferences, and financial capabilities of current and future residents in terms of different housing types, tenures, density, sizes, and costs. Specifically, the Town aims to create mixed residential neighborhoods through new and innovative housing types that meet the changing needs of Los Gatos households and expand housing in a variety of neighborhoodsall neighborhoods. These housing types include, but are not limited to, single dwelling units, multifamily dwelling units, accessory dwelling units, small and micro units, use of pre-fabricated homes, and</u></p>	Implementation Policies
	HE-1.5 Variety of Housing Choices HE-2.4 Rental Housing HE-3.3 Efficient Development Processing
	Responsible Department/Review Authority
	Community Development Department
	Timeframe
	December 2024
	Funding Source
	None required
	Quantified Objective
	Increase the number of <u>housing units, including the combination of small multi-unit housinglow-rise multi-family developments, religious institutions, Junior Accessory Dwelling Unit (JADU), and SB 10 by five50150 units</u> from the previous yearover eight years <u>with the goal of achieving 100% of the units</u>

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Programs	
<p>clustered housing/cottage housing. The Town will also promote small multi-unit housing that increases density while remaining consistent with the building scale and character present in existing neighborhoods. This includes multi-family units or clustered residential buildings that provide relatively smaller, less expensive units within existing neighborhoods.</p> <p>Update the Zoning Code to facilitate low rise multi-family structures small multi-unit housing in the low to mMedium Residential Density designations.</p> <p>Modify the Zoning Code to facilitate small multi-unit housing in certain low and medium density designations. This includes creating mixed residential neighborhoods through new and innovative housing types that meet the changing needs of Los Gatos households and expand housing choices in a variety of neighborhoods. Housing types include, but are not limited to single dwelling units, multifamily dwelling units, accessory dwelling units, small and micro units, use of prefabricated homes, and clustered/cottage housing. This zoning will occur in a variety of areas throughout the Town but NOT in areas which are in Very High Fire Hazard Severity Zones, historic districts, adjacent to homes in our historic inventory (currently pre-1941) homes, in hillside residential zones, within 500 feet of an evacuation route and within a half mile of a transit stop. The modification of the Zoning Code to facilitate small multi-unit housing will occur in a variety of areas throughout the Town, but in no event in any of the following areas or locations, Very High Fire Hazard Severity Zones, historic districts, adjacent to homes in our historic inventory (currently pre-1941 homes), hillside residential zones, within 500 feet of an evacuation route, or farther than one half mile of a transit stop.</p> <p>Small multi-unit housing is defined as multiple units on a single parcel (whether attached or detached) that are compatible in scale and form with detached single-family homes. Common housing types include duplexes; triplexes; fourplexes; courtyard apartments; cottage courts;</p>	<p>in low to medium density designations and high median income areas</p> <p>Performance Metric(s)</p> <p>Complete Zoning Code amendment by December 2024 and track the number of entitled Planning applications received per year</p>

Programs	
<p><u>townhomes; triplex stacked (vertical); and live-work spaces.</u></p> <p>Promote this program through publication, to include the following information: Low rise multi-family dwelling units ranging from two to 10 units can help meet the needs of families, seniors and students. Permit processing times tend to be shorter than larger multi-family buildings due to the low-rise nature of the structures.</p> <p><u>Specifically, update the Zoning to allow for all housing types considered for the provision of Small Multi-Unit Housing types as part of Low Density High Density Residential designations.</u></p> <p><u>Research existing regulatory impediments to the creation of new housing types that have the potential to fulfill unmet housing needs (e.g., tiny homes, co-housing developments) and if necessary, amend applicable ordinances and development standards to facilitate and to allow for their development at the maximum density.</u></p> <p><u>Pursue establishment of a maximum average unit size as a tool to moderate unit sizes for developments over a certain size but to allow flexibility for a range of unit sizes.</u></p>	
<p>L Rental Housing for Large Families</p> <p>Encourage development of multi-family rental housing that is greater than two bedrooms to encourage the provision of adequate rental housing for families.</p>	<p>Implementation Policies</p> <p>HE-1.5 Variety of Housing Choices</p> <p>HE-2.4 Rental Housing</p> <p>Responsible Department/Review Authority</p> <p>Community Development Department</p> <p>Timeframe</p> <p>Ongoing and annual effort</p> <p>Funding Source</p> <p>None required</p> <p>Quantified Objective</p> <p>Four family friendly multi-family rental housing units are entitled a year</p> <p>Performance Metric(s)</p> <p>Number of two-, three-, and four-bedroom units entitled and number of family friendly designated units</p>
<p>MK Lot Consolidation</p>	<p>Implementation Policies</p>

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Programs	
	<ul style="list-style-type: none"> Facilitate annual outreach to developers. Annually identify development and housing opportunities <u>Reduce development impact fees and permit processing fees for affordable housing projects for extremely low and very low units by 10 percent</u>
	Performance Metric(s)
	Number of affordable homeownership units entitled and number of units entitled for moderate, low, and very-low income households.
<u>PT</u>	<p>Purchase Affordability Covenants in Existing Apartments</p> <p>Create a program for the Town to purchase affordability covenants with BMP funding to increase the supply of affordable housing or “buy-down” existing affordability covenants to have deeper affordable units in existing rental properties. This program is analogous to purchasing covenants in new developments in conjunction with the BMP program, but for existing apartments.</p> <p>In existing and new rental developments, the Town could provide a rehabilitation loan or another form of subsidy to a rental property owner in exchange for securing affordability covenants on a percentage of units and the owner’s agreement to restrict rents on these units to levels that would be affordable to very low- and low-income households.</p>
	Implementation Policies
	HE-2.1 Financial Resources
	Responsible Department/Review Authority
	Community Development Department, Town Council
	Timeframe
	January <u>2028-2026</u>
	Funding Source
	Below Market Price Housing In-lieu Fees
	Quantified Objective
	Affordability covenants for three housing units with BMP funding to increase the supply of affordable housing per year
	Performance Metric(s)
	Number of affordability covenants
<u>UQ</u>	<p>Accessory Dwelling Units</p> <p><u>Facilitate ADU/JADU production with the following efforts:</u></p> <ul style="list-style-type: none"> —Waive building fees when an ADU is deed restricted for very low-and low-income <u>pursuant to Town Code Section 29.10.320(a).</u> —Initiate a marketing program for homeowners on the benefits of ADUs and the availability of resources (templates, cost calculators, technical support) to support development. <u>Promote the use of Housing Choice Vouchers (HCVs) and homesharing (once established) to make the units</u>
	Implementation Policies
	HE-1.7 Infill Opportunities in Single-Family Neighborhoods
	HE-2.4 Rental Housing
	HE-2.5 Pre-Approved Accessory Dwelling Units
	HE-2.6 Promote Accessory Dwelling Unit Construction
	HE-2.7 Senior Housing
	HE-3.1 Regulatory Incentives for Affordable Housing
	HE-3.3 Efficient Development Processing
	HE-3.5 Development Impact and Permit Fees
	Responsible Department/Review Authority
	Community Development Department
	Timeframe

10. Housing Element

Programs	
<p>available to lower income households.</p> <ul style="list-style-type: none"> Collaborate with countywide efforts to develop pre-approved ADU plans suitable for Los Gatos, including designs that are ADA accessible. Streamline the review and permitting of ADU's by publishing pre-approved plans including plans that are ADA-compliant, which shall be posted on the Town's website. Promote California Housing Finance Agency (CHFA) ADU grants of \$40,000 available to qualified homeowners for pre-development costs. Proactively promote information made available through the Santa Clara County Planning Collaborative, a joint initiative of all 16 jurisdictions in the county on the Town's website with resources for interested property owners. Actively apply for grant programs, as funds are made available to assist property owners in the construction of ADU's/JADU's. Monitor funding availability annually. Develop and adopt objective standards to allow more than one (at minimum two) JADUs. <p>The Town's ADU Ordinance goes beyond the requirements of State law by allowing a 10 percent increase in the floor area ratio standards.</p> <p>Annually monitor number of ADU's/JADU's produced, affordability levels. By July 2027, if the production of ADU/JADU is falling short of the projected trend, and make adjustments the Town will initiate developing strategies (additional incentives, flexible development standards, and/or identify additional sites for housing development) to accommodate a potential shortfall if determined necessary (i.e. adopt additional incentives or other strategies) and assess whether additional strategies and adjustments are necessary to increase ADU production, including searching for innovative funding sources and revisiting the ADU marketing program</p>	<ul style="list-style-type: none"> Initiate marketing program and coordinate efforts on pre-approved ADU plans (2023) and other resources and services (December 2025) Select at least three plans and conduct media campaign to promote (December 2024) Monitor Annually monitor the production and affordability of ADUs Amend the ADU Ordinance (January 2024) Monitor ADU/JADU production against projection by July 2027 and develop strategies to address any potential shortfall in meeting RHNA by the end of 2027 annually and adjust, if necessary, within six months <p>Funding Source</p> <p>Below Market Price Housing In-lieu Fees for Waiving Building Fees and General Fund</p> <p>Quantified Objective</p> <ul style="list-style-type: none"> Facilitate construction of at least 200 ADUs or JADUs with a goal to facilitate construction of up to 200-350 ADUs or JADUs throughout the Planning period with a goal of 5% of these units being affordable to lower-income households and 50% in single-family, high median income neighborhoods Publish pre-approved ADU plans and templates, including designs that address ADA and senior housing needs Post pre-approved plans on Town website Use the Town's social media, website, local press, and community events to distribute information Adopt objective standards to allow more than one JADU per property by July 2025 Facilitate construction of at least 10 JADUs in low density neighborhoods Through a homesharing program, assist at least 50 homeowners in renting out available ADUs and JADUs, especially in high/higher resource areas throughout the Planning period <p>Performance Metric(s)</p> <p>Number of Building Permits issued; number of ADU/JADUs rented at a rental rate affordable for very low-and low-income households</p>

Programs	
<p>for property owners, shortfall by the end of 2027.</p> <p>Amend the ADU Ordinance to comply with State law.</p> <p>Work with a nonprofit organization to administer a homesharing program that will expand beyond roommate matching by assisting homeowners in renting out ADUs and JADUs, further serving residents in the region with outreach for potential tenants.</p>	
<p>VR Density Bonus</p> <p>Conduct a study to evaluate the existing Density Bonus Ordinance and recommend changes to increase the number of units constructed. The study will include an evaluation of the implementation of the ordinance to date and actual construction of affordable housing units that utilized the Density Bonus. Additional density and height incentives beyond what the State requires will be considered (i.e., fee reductions, add free density of BMP units). The study shall recommend improvements to the Ordinance based on the outcome of the evaluation.</p> <p><u>Amend the Density Bonus Ordinance to comply with State law.</u></p>	<p>Implementation Policies</p> <p>HE-3.1 Regulatory Incentives for Affordable Housing HE-2.3 Mixed-Use Development HE-2.8 Equal Housing and Special Needs</p> <p>Responsible Department/Review Authority</p> <p>Community Development Department</p> <p>Timeframe</p> <ul style="list-style-type: none"> Amend the Density Bonus Ordinance (December 2024) Complete study by June 2026 and implement recommended actions by December 2029 <p>Funding Source</p> <p>None required</p> <p>Quantified Objective</p> <p>Increase affordable housing units generated by an amended Density Bonus Ordinance</p> <p>Performance Metric(s)</p> <p>Measure the number of affordable units that received entitlements</p>
<p>W Affordable Housing Overlay Zone (AHOZ)</p> <p>Continue to encourage development of housing affordable to all income levels on property within this Town Overlay Zone. The Overlay property on Knowles Avenue is a key site for a mixed income affordable housing project.</p>	<p>Implementation Policies</p> <p>HE-3.1 Regulatory Incentives for Affordable Housing HE-2.7 Senior Housing HE-2.8 Equal Housing and Special Needs HE-2.9 Public/Private Partnerships HE-2.11 Smart Growth</p> <p>Responsible Department/Review Authority</p> <p>Community Development Department</p> <p>Timeframe</p> <p>Complete by 2025</p> <p>Funding Source</p>

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Programs	
<p>Study and implement recommendations with regard to the Town’s Rental Dispute Mediation and Arbitration Ordinance 2128 to help further stabilize rents for long-term residents.</p>	<p>HE-2.4 Rental Housing HE-6.6 Rental Dispute Mediation and Arbitration Ordinance</p>
	Responsible Department/Review Authority
	Community Development Department
	Timeframe
	Complete study by January 2025 and implement Municipal Code changes by June 2025
	Funding Source
	Below Market Price Housing In-lieu Fees
	Quantified Objective
	Implement improvement opportunities for the Rental Dispute Mediation and Arbitration Ordinance
	Performance Metric(s)
Measure the number of disputes resolved versus unresolved	
<p>AIAA Reduce Parking Standards</p> <p>Initiate a study <u>and outreach, including developers to determine and to make specific updates that would result amendments to for the Municipal Code, as follows, to address the following:</u></p> <ul style="list-style-type: none"> Align parking requirements with the preparation of Objective Design Standards. Reduce parking requirements near transit. Remove guest parking <u>requirements for all residential and mixed-use projects in all zones.</u> Allow parking to be unbundled from residential units. 	<p>Implementation</p> <p>HE-2.7 Senior Housing HE-2.8 Equal Housing and Special Needs HE-3.1 Regulatory Incentives for Affordable Housing</p>
	Responsible Department/Review Authority
	Community Development Department
	Timeframe
	Complete study by January 2025 and implement Town Code changes by June 2025
	Funding Source
	None required
	Quantified Objective
	Zoning Code amendment to reduce parking standards
	Performance Metric(s)
Zoning Code amendment	
<p>AJAB Allow for 100 Percent Affordable Residential Development in Mixed-Use General Plan Designations</p> <p>Amend the General Plan and the Municipal Code to allow for 100 percent affordable residential development without the requirement of commercial uses.</p>	<p>Implementation</p> <p>HE-3.1 Regulatory Incentives for Affordable Housing</p>
	Responsible Department/Review Authority
	Community Development Department
	Timeframe
	Implement General Plan and Municipal Code changes by June 2024
	Funding Source

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10. Housing Element

Programs	
	<p><u>Establish a list by December 31, 2024, to post online.</u></p> <p><u>Funding Source</u></p> <p><u>General fund (staff time)</u></p> <p><u>Quantified Objective</u></p> <p><u>Annually update the list or upon request from a local union.</u></p> <p><u>Performance Metric(s)</u></p> <p><u>N/A</u></p>
<p>AY Housing Mobility</p> <p>Housing mobility strategies consist of removing barriers to housing in areas of opportunity and strategically enhancing access (Los Gatos is entirely highest resource in terms of access to opportunity and a concentrated area of affluence). To improve housing mobility and promote more housing choices and affordability townwide, including in lower density neighborhoods, the Town will employ a suite of actions to expand housing opportunities affordable to extremely low, very low-, low-, and moderate-income households. Actions and strategies include:</p> <ul style="list-style-type: none"> SB 9 – Monitor the Town’s SB 9 standards and amend standards to facilitate SB 9 applications (e.g., duplexes in single-family zones) if the Town is not on track to meet its SB 9 application goals during the planning period. See Program AV. Rezoning for Small Multi-Unit Housing, “Missing Middle” – Modify the Zoning Code to facilitate small multi-unit housing in certain the low and to medium density designations. This includes creating mixed residential neighborhoods through new and innovative housing types that meet the changing needs of Los Gatos households and expand housing choices in a variety of neighborhoods. Housing types include, but are not limited to single dwelling units, multifamily dwelling units, accessory dwelling units, small and micro units, use of prefabricated homes, and clustered/cottage housing. This zoning will occur in 	<p><u>Implementation</u></p> <p><u>Policy HE-1.5 Variety of Housing Choices</u></p> <p><u>Policy HE-1.7 Infill Opportunities in Single-Family Neighborhoods</u></p> <p><u>Responsible Department/Review Authority</u></p> <p><u>Community Development Department</u></p> <p><u>Timeframe</u></p> <p><u>Annually review overall progress and effectiveness in April and include information in annual report to HCD. If the Town is not on track to meet its 160 affordable housing unit goal for the 8-year RHNA cycle by 2027 (i.e., 80 affordable units built or in process by 2027), the Town will consider alternative land use strategies and make necessary amendments to zoning or other land use documents to facilitate a variety of housing choices, including but not limited to, strategies that encourage missing middle zoning (small-scale multi-unit projects), adaptive reuse, and allowing additional ADUs and/or JADUs, within six months, if sufficient progress toward this quantified objective is not being met.</u></p> <p><u>Funding Source</u></p> <p><u>General fund (staff time)</u></p> <p><u>Quantified Objective</u></p> <p><u>Provide 160 housing opportunities affordable to lower income households by January 2031.</u></p> <p><u>Performance Metric(s)</u></p> <p><u>Townwide, but especially lower-density neighborhoods</u></p>

Programs

a variety of areas throughout the Town but NOT in areas which are in Very High Fire Hazard Severity Zones, historic districts, adjacent to homes in our historic inventory (currently pre-1941) homes, in hillside residential zones, within 500 feet of an evacuation route and within a half mile of a transit stop. The modification of the Zoning Code to facilitate small multi-unit housing will occur in a variety of areas throughout the Town, but in no event in any of the following areas or locations, Very High Fire Hazard Severity Zones, historic districts, adjacent to homes in our historic inventory (currently pre-1941 homes), hillside residential zones, within 500 feet of an evacuation route, or farther than one half mile of a transit stop. See Program J.

- Housing on Town Sites – Enter into a public-private partnership to develop housing, targeting low-income households, on Town owned properties. See Program E.
- Enhanced Inclusionary Housing – Assess and amend the Town’s inclusionary housing requirements to better produce low-income units and units for special needs groups townwide. See Program L.
- Accessory Dwelling Units (ADUs) – Encourage and streamline ADUs in single-family neighborhoods by preparing standardized ADU plans with a variety of unit sizes and by affirmatively marketing and outreach to increase awareness and the diversity of individuals residing in Los Gatos. See Program Q.
- Junior ADUs – Develop and adopt objective standards to allow more than one (at minimum two) Junior ADU per structure by July 2025. The objective is to achieve at least 10 JADUs in lower-density neighborhoods by January 2031. See Program Q.
- Religious Institutional Sites – Expand housing opportunities on all religious institutional sites within the Town. See Program S. Conduct outreach to

10. Housing Element

Programs	
<p>owners and operators of religious institutions to raise awareness and encourage housing proposals. Increase affordable housing on religious institution/faith-based site(s) during the 2023-2031 planning period by 25 units. If no application for housing on a religious institution/faith-based site is received by December 2025, the Town will expand outreach efforts to be conducted annually. This may include direct mailings to faith-based sites highlighting successful affordable housing units on other faith-based sites, as well as available Town resources and programs to support such projects (e.g., Programs N, P, T, AI, AJ – Assist in securing funding for affordable housing projects).</p> <ul style="list-style-type: none"> ▪ Homesharing – Research and pursue a homesharing program, including coordination with non-profits and others to assist at least 50 homeowners in renting out available ADUs and JADUs with with matching tenants with existing homeowners. The Town will publicize and take other actions as necessary (e.g., facilitate presentations at the Los Gatos Adult Recreation Center, etc.) at least annually with the goal of five opportunities per year. See Program T. 	

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Appendix A. AFFH Report

Past priorities for single-family residential land uses through planning and zoning efforts as well as historical restrictive covenants have contributed to the prevalence of RCAs in the Town.

- The Town will use “Affirmative Marketing” strategies, as described in Implementation Program **AT BI**, to work with affordable and market rate housing developers to ensure that affordable housing is affirmatively marketed to households with disproportionate housing needs, including Hispanic and Black households who work in and live outside of Los Gatos (e.g., materials in Spanish and English, distributed through employers). The Town will also amend its Zoning Ordinance in order to increase the development of affordable housing.
 - The adoption of the North Forty Specific Plan by the Town Council in 2015 provided diversity in the housing stock for the Town. As described in Implementation Program D, the Town will amend the North Forty Specific Plan to allow for an increase in the density from 30 dwelling units per acre to 40 dwelling units per acre and will remove the housing unit cap.
 - Opportunities, including employment, environmental, economic, and housing may not be accessible to all residents, especially those in vulnerable populations.
 - In addition to Program AT described above, Los Gatos will implement programs to facilitate the development of affordable housing, including special needs housing, to increase housing opportunities in the Town (Programs D, E, L, N, O, W). The Town will also serve vulnerable populations through Senior Housing Resources (Program I), Housing Opportunities for the Homeless (Program U), Assistance for Persons with Developmental Challenges (Program V), and Supportive Services for the Homeless (Program Y). The Town also aims to increase transportation opportunities for new households through Program AF, Transit Oriented Development.
 - In addition to actions to facilitate new affordable housing opportunities described previously, the Town has outlined place-based strategies for neighborhood improvement with the following metrics to develop better access to opportunities (environmental, housing, etc.). Specifically, the Town will complete three minor home repairs or accessibility improvements for lower income households annually, provide rehabilitation to five low-income homeowner units annually, and complete three projects related to public facilities and transportation infrastructure.

Fair Housing Issue

Los Gatos feeds to high performing schools, yet, except for Asian students, students of color cannot take advantage of these learning opportunities because they cannot afford to live in Los Gatos.

Priority Level: LowHigh

Contributing factors:

- Lack of affordable housing overall due to high land costs, high construction costs, limited availability of land, limited availability of financing, duration of permitting process, cost of permitting process, and lack of incentives.
 - The Town will address this issue by allocating a percentage of the Town's Affordable Housing (Below Market Program) Fund to subsidize housing for extremely low-income households and by including housing development sites on the Sites Inventory in all areas of Town. **The Town aims to increase BMP units by five units annually in addition to other actions to facilitate affordable housing development outlined in this Housing Element.**

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Appendix C. Governmental and Non-Governmental Constraints

- Town's Consulting Traffic Consultant
- Santa Clara Valley Water District
- County of Santa Clara – Health Department

4. Story Poles and Public Hearing Notices: Once a project is deemed complete the story poles and netting and project sign shall be installed prior to the neighborhood notification process and shall remain in place until the project has been acted upon and the appeal period has ended. Public notices will not be mailed and/or application(s) shall not be advertised until a Story Pole Plan has been approved by the project planner, the story poles and netting have been installed, and photographs have been submitted to the project planner. A licensed surveyor or civil engineer shall submit written verification that the height and position of the poles and netting accurately represents the height and location of the proposed structure(s) or addition.

Public hearing notices will be sent out once the story poles process is complete. Public notices are sent out to property owners and tenants within 500 feet of the subject property for hillside zoned properties and 300 feet for non-hillside zoned properties.

5. Public Hearings: If a discretionary application is determined to require a public hearing, Division 7 of Chapter 29 of the Town Code assigns which hearing body has the authority to issue decisions for development applications. There are three types of public hearing bodies in the Town: Development Review Committee (DRC); Planning Commission (PC); and Town Council (TC).

Development Review Committee

The DRC consists of the following departments: Community Development (Planning and Building Divisions), Parks and Public Works, and Santa Clara County Fire. The Santa Clara County Environmental Health Department is also part of the DRC when certain matters require its input. The DRC has the authority to approve certain applications pursuant to Town Code and/or standards, that require no change in the General Plan or Zoning Code, meet the Zoning Code regulations, and meet the Residential Design Guidelines and/or Hillside Development Standard and Guidelines.

DRC meetings are held every Tuesday at 10:00 a.m. in the Town Council Chambers, located in the lower level of Town Hall. Applicants are sent a copy of the DRC agenda. The applicant and/or representative is required to be present, and members of the public are welcome to attend and participate.

If any applicant or an interested person as defined by the Town Code, wishes to appeal an action or decision of the DRC, such appeal must be made in writing with the required fee, to the Community Development Department within 10 calendar days of the DRC's action or decision. The matter will then be set for hearing on the next available Planning Commission agenda.

Planning Commission

The PC consists of seven residents of the Town of Los Gatos, appointed to serve a four-year term. Upon appointment, Planning Commissioners must demonstrate knowledge of the Town Code and its land use and planning policies. The PC has the authority to approve certain applications pursuant to Town Code and/or standards.

The PC performs duties and exercises power and authority with regard to planning, subdivisions, zoning, zoning administration, and other land use regulatory controls as prescribed by ordinance and State law. The PC reviews projects that require variances or exceptions from Town Code, projects that request exceptions from the Town Design standards, projects requiring Conditional Use Permits, hillside development applications depending on the scope of work, and appeals from the DRC. The Planning Commission is the deciding body for all types of projects which propose multi-family residential or mixed-use project.

From: Jauregui, Jose @HCD <[REDACTED]>
Sent: Monday, February 26, 2024 10:46 AM
To: Erin Walters <EWalters@losgatosca.gov>; Veronica Tam <[REDACTED]>; McDougall, Paul@HCD <[REDACTED]>
Cc: Laurel Prevetti <LPrevetti@losgatosca.gov>; Gabrielle Whelan <GWhelan@losgatosca.gov>; Joel Paulson <jpaulson@losgatosca.gov>; Jennifer Armer <JArmer@losgatosca.gov>; Jocelyn Shoopman <jshoopman@losgatosca.gov>
Subject: RE: Los Gatos HE Revisions

[EXTERNAL SENDER]

Sounds good, thank you in advance for sending the zoom link!

Warm regards,



Jose A. Jauregui *he / him*
Housing Policy Analyst
Housing Policy Development
Housing & Community Development
2020 W. El Camino Avenue, Suite 500 | Sacramento, CA 95833
[REDACTED]



From: Erin Walters <EWalters@losgatosca.gov>
Sent: Monday, February 26, 2024 10:41 AM
To: Veronica Tam <[REDACTED]>; Jauregui, Jose @HCD <[REDACTED]>; McDougall, Paul@HCD <[REDACTED]>
Cc: Laurel Prevetti <LPrevetti@losgatosca.gov>; Gabrielle Whelan <GWhelan@losgatosca.gov>; Joel Paulson <jpaulson@losgatosca.gov>; Jennifer Armer <JArmer@losgatosca.gov>; Jocelyn Shoopman <jshoopman@losgatosca.gov>
Subject: RE: Los Gatos HE Revisions

Hello Jose,
Thank you for your response.
Staff and Veronica are available to meet on Friday, March 1st at 10:30am via Zoom.
Our team will send you and Paul a Zoom invite for Friday.

We would like to have a live editing meeting where we can share with you the Town's approach to addressing the preliminary review matrix comments.

Sincerely,



Erin Walters • Associate Planner
Community Development Department • 110 E. Main Street, Los Gatos CA 95030
Ph: 408.354.6867 • 408-354-6872
www.losgatosca.gov [losgatosca.gov] • ewalters@losgatosca.gov

COMMUNITY DEVELOPMENT HOURS:

Counter Hours: 8:00 AM – 1:00 PM, Monday – Friday

Phone Hours: 8:00 AM – 5:00 PM, Monday – Friday

All permit submittals are to be done online via our Citizen’s Portal platform. All other services can be completed at the counter. For more information on permit submittal, resubmittal, and issuance, please visit the [Building \[losgatosca.gov\]](https://www.losgatosca.gov/Building) and [Planning \[losgatosca.gov\]](https://www.losgatosca.gov/Planning) webpages.



General Plan update, learn more at [https://www.losgatosca.gov/GeneralPlan \[losgatosca.gov\]](https://www.losgatosca.gov/GeneralPlan)



Housing Element update, learn more at [www.losgatosca.gov/HousingElement \[losgatosca.gov\]](https://www.losgatosca.gov/HousingElement)

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Think Green, please consider the environment before printing this e-mail.

From: Veronica Tam <[REDACTED]>
Sent: Monday, February 26, 2024 10:32 AM
To: Jauregui, Jose @HCD <[REDACTED]>; Erin Walters <EWalters@losgatosca.gov>; McDougall, Paul@HCD <[REDACTED]>
Cc: Laurel Prevetti <LPrevetti@losgatosca.gov>; Gabrielle Whelan <GWhelan@losgatosca.gov>; Joel Paulson <jpaulson@losgatosca.gov>; Jennifer Armer <JArmer@losgatosca.gov>; Jocelyn Shoopman <jshoopman@losgatosca.gov>
Subject: RE: Los Gatos HE Revisions

[EXTERNAL SENDER]

Hi all –

For me – The earliest I can do on Friday is 10:30 but I would say take whatever slot is available. We really would like to get this to the finish line.

Veronica

Veronica Tam, AICP
Principal
[Veronica Tam and Associates, Inc.](https://www.veronicatam.com)



From: Jauregui, Jose @HCD <[REDACTED]>
Sent: Monday, February 26, 2024 10:29 AM
To: Erin Walters <EWalters@losgatosca.gov>; McDougall, Paul@HCD <[REDACTED]>
Cc: Veronica Tam <[REDACTED]>; Laurel Prevetti <LPrevetti@losgatosca.gov>; Gabrielle Whelan <GWhelan@losgatosca.gov>; Joel Paulson <jpaulson@losgatosca.gov>; Jennifer Armer <JARmer@losgatosca.gov>; Jocelyn Shoopman <jshoopman@losgatosca.gov>
Subject: RE: Los Gatos HE Revisions

Hello Erin,

We are both pretty booked for the week, and our earliest availability would be this Friday at 10 am.

Warm regards,



Jose A. Jauregui *he / him*
Housing Policy Analyst
Housing Policy Development
Housing & Community Development
2020 W. El Camino Avenue, Suite 500 | Sacramento, CA 95833
[REDACTED]



[\[twitter.com\]](https://twitter.com)



[\[facebook.com\]](https://facebook.com)



[\[landlordtenant.dre.ca.gov\]](https://landlordtenant.dre.ca.gov)

From: Erin Walters <EWalters@losgatosca.gov>
Sent: Thursday, February 22, 2024 1:06 PM
To: Jauregui, Jose @HCD <[REDACTED]>; McDougall, Paul@HCD <[REDACTED]>
Cc: veronica.tam@vtaplanning.com; Laurel Prevetti <LPrevetti@losgatosca.gov>; Gabrielle Whelan <GWhelan@losgatosca.gov>; Joel Paulson <jpaulson@losgatosca.gov>; Jennifer Armer <JARmer@losgatosca.gov>; Jocelyn Shoopman <jshoopman@losgatosca.gov>
Subject: RE: Los Gatos HE Revisions

Hello Jose,

Thank you for providing the preliminary review on the informal revisions submitted. Staff and Veronica Tam would like to schedule a meeting with both you and Paul McDougall to discuss the preliminary review matrix.

Staff will be meeting with our Town Council on March 5th to discuss the preliminary review matrix. We would like to meet with you and Paul McDougall prior to returning to Town Council.

Please confirm that you have received this email and respond with your availability.

Sincerely,



Erin Walters • Associate Planner

Community Development Department • 110 E. Main Street, Los Gatos CA 95030

Ph: 408.354.6867 • 408-354-6872
www.losgatosca.gov [losgatosca.gov] • ewalters@losgatosca.gov

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General Plan update, learn more at <https://www.losgatosca.gov/GeneralPlan> [losgatosca.gov]



Housing Element update, learn more at www.losgatosca.gov/HousingElement [losgatosca.gov]

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From: Jauregui, Jose @HCD [REDACTED]
Sent: Tuesday, February 20, 2024 2:05 PM
To: Veronica Tam [REDACTED]; McDougall, Paul@HCD
<[REDACTED]>
Cc: Jennifer Armer <JArmer@losgatosca.gov>; Erin Walters <EWalters@losgatosca.gov>
Subject: RE: Los Gatos HE Revisions

[EXTERNAL SENDER]

Hello Veronica,

Please see the **preliminary** review on the informal revisions submitted.

Warm regards,



Jose A. Jauregui *he / him*
Housing Policy Analyst
Housing Policy Development
Housing & Community Development
2020 W. El Camino Avenue, Suite 500 | Sacramento, CA 95833
[REDACTED]



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[\[landlordtenant.dre.ca.gov\]](#)

Town of Los Gatos Informal 2 Preliminary Review

Received 12/24/2023

Subsequent Informal **2: 2/01/24**

Prior Review: 12/01/2023

Prior HCD Finding	Page #	Prelim Rev 1	Page#	Prelim Rev 2	Notes
Affirmatively Furthering Fair Housing					
<p><u>Income and Racial Concentration Area of Affluence (RCAA):</u> The element now includes actions to promote an inclusive community; however, the element must provide specific analysis of income and RCAA at a regional level (town compared to the broader region) to better formulate appropriate policies and programs. The analysis should at least address trends, conditions, coincidence with other fair housing factors (e.g., race, highest resource, overpayment), effectiveness or absence of past strategies (e.g., lack of publicly assisted housing and lack of multifamily zoning), local data and knowledge and other relevant factors.</p>	A-69	~/No	A-71	Yes/~	<p>Minimal revision.</p> <p>Prior Review: Minimal analysis added; should address trends, coincidence with other factors (e.g., income, TCAC), past strategies and effectiveness such as result of North 40 in the prior planning period, zoning, land use and other factors. These analyses should be incorporated into contributing factors</p>
<p><u>Contributing Factors to Fair Housing Issues:</u> Based on a complete analysis, the element should re-assess and prioritize contributing factors to fair housing issues. For example, the Town is wholly a RCAA, highest resource and highest median incomes in contrast to the rest of the region. As a result, fair housing issues such as the lack of affordable housing and segregation from the rest of the region should be a high priority.</p>	A-18	~	A20	Yes	Re-assess based on a complete analysis
<p><u>Goals and Actions:</u> As noted above, the element must include a complete analysis of affirmatively furthering fair housing (AFFH). The element must be revised to add goals and actions based on the outcomes of a complete analysis.</p>	10-43- 10-50- 10-65 10-66	~/No	10-76	~	Include metric for home sharing action (Program Q)

<p>In addition, while the element includes some actions toward AFFH and enhancing housing mobility (e.g., choices and affordability), actions should be added, numeric targets should be increased, and geographic targeting should be fine-tuned to better promote inclusive neighborhoods throughout the Town. This is particularly important since over 80 percent of the lower-income regional housing need allocation (RHNA) is isolated in two census tracts. As noted in HCD’s prior review and the assessment of fair housing, the Town is wholly a racially concentrated area of affluence, highest resource and highest median incomes in contrast to the rest of the region.</p> <p>These conditions and circumstances warrant significant and robust actions (not limited to the RHNA) to promote housing mobility and increasing housing choices and affordability throughout the Town, including lower-density neighborhoods. Actions should be added and revised with aggressive numeric targets and geographic targets throughout the Town, including lower-density neighborhoods. Examples include creating more housing choices and affordability in single-family neighborhoods beyond complying with law (e.g., SB 9, ADUs) such as missing middle housing types, targeting affordable housing funding, homesharing, more than one unit of converted space within a single-family structure, increased multifamily capacity, enhanced efforts on religious institutional sites and other alternative land use and financing strategies.</p>					<p>Program AY</p> <p>Prior Review: See Programs J, L, O, Q, T, AV</p> <p>Program J should clarify that capacity will be increased (not just zoning text), development standards will be adjusted to facilitate maximum densities and increase the objective (~150 units) or add strategies (religious institutional, JADU plus, SB 10)</p> <p>Consider adding JADU plus to ADU HCV homesharing program and increasing objective</p> <p>Program AV should go beyond complying with SB 9 (marketing, modification to development standards)</p> <p>For all housing mobility actions (Programs J, L, O, Q, T, AV), geographic targeting should be revised to clarify town-wide including highest median income areas and numeric targets should be reflected with geographic targeting (e.g., 100 units townwide and 50% in highest median income areas)</p>
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Sites Inventory, Analysis and Adequate Sites

<p><u>Small Sites:</u> The element identifies several sites with parcels less than a half-acre (p. D-13) that have common ownership some cases, expressed interest to redevelop the site.</p>	D-2	Yes	D-11	N/A	
---	-----	-----	------	-----	--

<p>For small sites with expressed interest in redevelopment, the element should clarify that the expressed interest is also in consolidating the sites. For the remaining sites (Sites D-2 and D-5), the element should explain the circumstances leading to the potential for consolidation such as necessity to consolidate due to access, feasibility, shape, or site planning flexibility. Based on the outcomes of this analysis, the element should add or modify Program K (Lot Consolidation) to further promote lot consolidation, if appropriate.</p>					
<p><u>Electronic Sites Inventory:</u> For your information, while the Town has submitted an electronic sites inventory as part of this submittal, pursuant to Government Code section 65583.3, the Town must submit an electronic sites inventory with its adopted housing element. Please see HCD’s housing element webpage at https://www.hcd.ca.gov/planning-andcommunity-development/housing-elements for a copy of the form and instructions. The Town can reach out to HCD at sitesinventory@hcd.ca.gov for technical assistance</p>	N/A	FYI		FYI	
<p><u>Adequate Sites Programs:</u> As noted in the prior review, if necessary to make appropriate zoning available to accommodate the lower-income RHNA, programs must be revised to meet all requirements pursuant to Government Code section 65583.2, subdivisions (c), (h) and (i). The element includes Programs D (Program By Right Zoning Text Amendment to Accommodate RHNA), AR (General Plan Amendment) and AS (Adequate Sites for Housing) to address these requirements. With respect to sites identified in prior planning periods, the element meets statutory requirements, but these actions must be completed by January 31, 2024. With respect to a shortfall of adequate sites to accommodate the lower-income RHNA, the element includes Programs AR and AS. However, the Programs commit to the appropriate zoning given the rezoning occurs after the statutory deadline of January 31, 2023. HCD understands the Town completed the rezoning after the statutory deadline and, therefore, the rezoning must meet all by right requirements pursuant to Government Code section 65583.2, subdivisions (h) and (i). Based on a cursory review, the rezoning does not appear to meet these requirements. As a result, these programs must</p>	Not Found	No/?		Yes	Rezone ordinance 2347, Ord 2348, Ord 2349, Ord 23507;

<p>clearly commit to meet all by-right requirements by January 31, 2024.</p> <p>In addition, please be aware, the recent California appellate decision in <i>Martinez v. City of Clovis</i> found that while overlays can be used in a rezone, when the base zone allows residential development, both the base zone and the overlay zone must comply with the minimum density requirements of Government Code section 65583.2, subdivision (h). The Town may need to adjust its rezoning strategy if the underlying zoning for sites that will be rezoned allows minimum densities less than 20 dwelling units per acre. <i>Martinez v. City of Clovis</i> (2023) 90 Cal.App.5th 193, 307 Cal.Rptr.3d 64.</p>					
Governmental Constraints					
<p><u>Land Use Controls:</u> HCD's prior review found that the Town must list and evaluate development standards in the North Forty Specific Plan and High Density Residential and Commercial designation. In response, the Town has now listed development standards by each zoning district but should also analyze those development standards for impacts on housing supply and cost and most importantly, the ability to encourage maximum densities without exceptions. For example, lot coverages, heights, and setbacks in the Multifamily Residential (RM) zone; and lot coverage heights and guest parking requirements in the North Forty Specific Plan could be constraints. Based on the outcomes of a complete analysis, the element should add or modify programs to include specific commitment to review and revise these development standards as necessary.</p>	<p>C-1 C-5 10-62</p>	<p>?</p>	<p>10-43</p>	<p>No</p>	<p>Program D includes action to remove guest parking in North Forty Specific plan; however, include a program to revise all MF guest parking requirements, specifically RM, CH zones.</p> <p>Prior Review: RM parking program? Guest parking reduced?</p> <p>Guest parking and lot coverage in the North Forty Specific Plan analyzed?</p>
<p><u>Local Processing and Permit Procedures:</u> The element now discusses decision-making bodies and lists approval findings for the Architecture and Site Application. However, the element should also analyze these processes to better inform programs to address identified constraint. For example, the element mentions the decision-making body depends on the scope of the application. The element should explain the scope, resulting decision-making body and impacts on</p>	<p>10-62</p>	<p>No/?</p>	<p>C-41</p>	<p>~</p>	<p>Brief statement made on approval body but must discuss and analyze the scope of the trigger for PC review.</p> <p>Program AQ</p> <p>Prior Review: See Program AQ</p>

<p>approval timing and certainty. In addition, the element lists approval findings and concludes some findings may be constraints then modifies Program AQ (Zoning Code Amendments) to amend approval findings (considerations). But the element should discuss which approval findings may be constraints to better inform implementation of Program AQ.</p>					<p>Program should remove or modify Findings 4 and 6 of the architectural and site process</p> <p>Scope trigger for approval body analyzed? Addressed?</p>
<p><u>Programs:</u> As noted above, the element requires a complete analysis of potential governmental constraints. Depending upon the results of that analysis, the Town may need to revise or add programs and address and remove or mitigate any identified constraints. In addition, programs should be revised, as follows:</p>		TBD		TBD	Depends on complete analysis
<p><u>Program D (Additional Capacity for the North Forty Specific Plan):</u> The Program should also commit to establish or modify development standards to facilitate achieving maximum densities, regardless of the level of affordability and should specify to either remove the unit cap or increase the unit cap to allow maximum build out of each parcel, including State Density Bonus Law or other circumstances that might warrant increasing allowable densities.</p>	10-41	~/No/?		No	<p>Include a specific commitment to increase or remove unit cap (within 6 months)</p> <p>Prior Review: No action included to modify development standards?</p> <p>No action to remove cap. Commitments should also not implement the cap to allow maximum build out of each parcel or other circumstances warranting increasing allowable densities</p>
<p><u>Program V (Housing opportunities for Persons living with Disabilities):</u> Given the importance of promoting housing access for persons with disabilities, the Program could be modified with a date earlier in the planning period (e.g., by December 2024).</p>	?	No/?	10-57	Yes	
<p><u>Program AA (Reduce Parking Standards):</u> The Program currently commits to “Initiate a study to determine specific updates...” While initiating a study and making a determination are important steps by themselves, these actions do not result in outcomes. The Program should clearly commit to amending the municipal code. For example, the</p>	10-53	Yes		N/A	

Program could commit to: “Initiate a study and outreach, including with developers, and amend the Municipal Code, as follows:...”					
<u>Program AQ (Zoning Code Amendments)</u> : The Program commits to apply the Housing Element Overlay Zone (HEOZ) to identified sites and modify development standards. HCD understands this action has been completed. Based on a cursory review of the Town’s Ordinance 2347, some development standards such as heights may be a constraint on achieving maximum densities. As a result, this Program should commit to monitor and evaluate these development standards, including outreach with the development community, and making adjustments, as appropriate, by a specified date.	10-61	~/No	10-70	Yes	Program AQ
<u>Program AW (Story Poles and Netting Policy)</u> : While the Program now commits to revise Story Poles and Netting Policy Requirements; these requirements are constraints and impact housing costs; supply (number of units) and approval certainty and should be removed or replaced with cost effective measures to promote certainty for the developers and the community. Further, the element should evaluate the effectiveness of any future requirements or measures, and making adjustments, as necessary, by a specified date (e.g., by 2028).	10-65-	No	C-38	Yes	Program AW Prior Review: Video rendering should be expanded to other visual methods Scope of alternative should be expanded to all multifamily and mixed use
Housing Programs: ADU					
<u>Program Q Accessory Dwelling Units (ADU)</u> : While the Program now commits to amend the ADU Ordinance, it must also commit to establish incentives such as modifying development standards (e.g., heights), pursuing funding; waiving fees beyond ADU law; proactive marketing and establishing points of contact to ease permitting processes. In addition, the Program commits to monitor production and affordability of ADUs annually but should also commit to making adjustments by a specified date (e.g., within six months) if production and affordability are not meeting assumptions. Further, the Program should clearly commit to options beyond incentives such as rezoning if production and affordability far differs from assumptions.	10-48-	Yes		N/A	

Public Participation:					
Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. Throughout the housing element process, the Town should continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available and considering and incorporating comments where appropriate. Please be aware, any revisions to the element must be posted on the local government's website and to email a link to all individuals and organizations that have previously requested notices relating to the local government's housing element at least seven days before submitting to HCD. HCD particularly encourages the Town to continue engaging commenters on this review. These comments contained valuable insights that can result in a more effective housing elements, especially related to programs and specific commitment. HCD's future reviews will continue to consider the extent to which the revised element documents how the Town solicited, considered, and addressed public comments in the element. The Town's consideration of public comments must not be limited by HCD's findings in this review letter.		?	10-17	Yes/~	Summary of Public comments submitted.
Other (HCD use only)					
Program J		N/A		No	New language excluding missing middle housing types in multiple areas throughout the Town. The program should remove new language and proceed with previous program language informally reviewed.
Program AY		N/A		No	See comments above.
Sb 9 units		N/A	10-9 D-2	No/?	Is the town now counting SB 9 units towards RHNA? Table D-2?
Public comments		TBD		Yes	Additional comments?

					Prior Review: Must address new public comments
Document availability		FYI		FYI	
Rezone timing		FYI		FYI	Cant be found in full compliance until all rezones are complete
50% nonvacant resolution		FYI		FYI	
Electronic sites inventory		FYI		FYI	
Overlay				No	Program AQ HE Overlay zone
Modification Authority		N/A		N/A	Informal submittal

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**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 03/05/2024

ITEM NO: 10

DATE: February 26, 2024
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Review Input on the Interim Community Center and Authorize the Town Manager to Issue a Request for Proposals for Potential Service Providers

RECOMMENDATION:

Review input on the Interim Community Center and authorize the Town Manager to issue a Request for Proposals (RFP) for potential service providers.

BACKGROUND:

On August 15, 2023, the Town Council allocated \$866,281 to a Community Center Development Fund to design and construct near-term improvements to the Adult Recreation Center to achieve two major purposes. One purpose is to facilitate the use of space for a variety of non-profit agencies to provide services to the community. The second purpose is to reconfigure the existing space to make it more open and inviting to the community. This effort is referred to as the Interim Community Center.

On November 21, 2023, the Town Council provided additional feedback on the Interim Community Center effort. At this meeting, staff explained that a full remodel of the Adult Recreation Center to transform it into a Community Center would be a multi-million-dollar project that would need to be considered as part of the longer-term Capital Improvement Program. Any large investments to remodel the facility should be reserved for the full remodel to ensure that the transformation of the facility is planned holistically and that financial resources are used in the most efficient manner possible.

With this in mind, the Interim Community Center effort focuses on near-term improvements that can be implemented in the interim without substantial remodeling. Staff also identified the proposed steps for this effort:

PREPARED BY: Katy Nomura
Assistant Town Manager

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

SUBJECT: Review Input on the Interim Community Center and Authorize the Town Manager to issue a Request for Proposals for Service Providers

DATE: February 26, 2024

BACKGROUND (continued):

1. **Host Community Meeting** to receive community input on:
 - a. Preferred types of community partners/services,
 - b. Community partner selection criteria, and
 - c. Ideas for near-term improvements to the ARC/Community Center.
2. **Receive the Community Health and Senior Services Commission's (CHSSC) recommendation on items relevant to the Request for Proposals (RFP) for community partners**, such as the types of community partners and selection criteria.
3. **Return to Council with CHSSC's recommendation for Council input and approval on items relevant to the Request for Proposals (RFP) for community partners**, such as the types of community partners and selection criteria.
4. **Issue the RFP.**
5. **Return to Council with the final selection of community partners.**
6. **Discuss any potential physical near-term improvements and operational support needed by selected community partners** with Los Gatos Saratoga Recreation (LGS Recreation).
7. **Receive CHSSC's recommendation on near-term improvements and operational support** for Council's consideration, taking into account ideas shared at the community convening and budget constraints.
8. **Return to Council with CHSSC's recommendation on near-term improvements and operational support** for consideration.
9. **Hire an architect to provide cost estimates for the prioritized items.**
10. **Return to Council with cost estimates** for selection of which prioritized items to move forward for design and bidding.

In alignment with Step 1, on January 25, 2024, with the support of the CHSSC, the Town held a community meeting to gather input on near-term improvements to the Adult Recreation Center (ARC) to transition it to an Interim Community Center by making the space more welcoming for all ages and creating opportunities for a variety of community partners to provide services to the community. Approximately 40 community members attended, including representatives from several community partners. The attendees were divided into five (5) groups to discuss and respond to the following three (3) questions:

- What near-term improvements would you like to see at the Adult Recreation Center/Interim Community Center to make the space more welcoming for all ages?
- What types of community partners and services would you like to see at the Adult Recreation Center/Interim Community Center?
- What criteria do you believe should be used when selecting community partners and services?

SUBJECT: Review Input on the Interim Community Center and Authorize the Town Manager to issue a Request for Proposals for Service Providers

DATE: February 26, 2024

BACKGROUND (continued):

Step 2 was completed on February 15, 2024, when the CHSSC reviewed the input compiled from the community meeting (Attachment 1). The CHSSC recommended that the following criteria be included in the RFP and that eligible service providers should:

- Be a nonprofit that serves Los Gatos and others;
- Have a volunteer support base;
- Have needs themselves, such as for space and possibly financial needs;
- Address basic needs such as health, wellness, mental health, food needs, housing, and transportation; and
- Be willing to rotate in a shared space.

In addition, the CHSSC also provided a non-exhaustive list of examples of service providers it felt would be the types the Town should be looking for: CASSY, West Valley Community Services, Health Trust, Sourcewise, Santa Clara County Behavioral Health Services, and Plant-Based Advocates.

While the conversation focused on service providers and the CHSSC will revisit recommendations on physical near-term improvements, the Commission also recommended that the funds be applied to create a space for hybrid/Zoom meetings with modern equipment and a space with shared desks to be used by local service providers. They also recommended that consultant and designer work expenses should be kept to a minimum and that all additional funds should be conserved for developing a future community center.

DISCUSSION:

Based on the input received and the recommendations from the CHSSC, staff recommends that the RFP be open to any non-profit service providers serving Los Gatos, with an emphasis on those addressing basic needs such as health, wellness, mental health, food needs, housing, and transportation. The following criteria are recommended to assist in selecting the top service providers:

- The extent to which the provider serves basic needs and serves an unmet need in the community.
- The extent to which they already serve Los Gatos residents and the community.
- The extent to which the provider could expand or enhance services with the additional Interim Community Center space. This would include an evaluation of how much the provider needs additional space for their services.
- The extent of the provider's volunteer base and how they can effectively support a service at the Interim Community Center.
- The extent to which the provider's service lends itself to being successful in a rotational shared space at the Interim Community Center.

SUBJECT: Review Input on the Interim Community Center and Authorize the Town Manager to issue a Request for Proposals for Service Providers

DATE: February 26, 2024

DISCUSSION (continued):

- Each service provider selected should provide a service that is unique and not duplicative of other selected service providers. Since service providers can offer a variety of services, some of their services can overlap but each must have at least one unique offering or service.

Additionally, there was feedback to review the provider's financial solvency as well as their financial need to see if providing this space could help support their cause. Since these two criteria seemed to be in opposition in terms of valuing financial strength or financial need, these criteria were not included. However, Council could direct staff to include or adjust any criteria as desired.

At the community meeting, a question that was asked whether or not service providers would need to pay for the space and whether they would be paid to provide services. Staff recommends that if service providers are charged a fee that they only be asked to pay a nominal fee to cover administrative costs of their rotational scheduling, printing, storage, internet, janitorial, etc. In addition, since this is an effort to provide an opportunity and space for service providers, the Town would not monetarily compensate providers selected to take advantage of this opportunity. The hope is that it would be mutually beneficial opportunity for all parties involved. Staff looks forward to Council's direction on these matters.

CONCLUSION:

Staff looks forward to Council's discussion and direction on the types of service providers, the criteria for evaluating service providers, and what costs service providers should expect. With this direction, it is recommended that the Council authorize the Town Manager to issue a Request for Proposals (RFP) for service providers.

After the RFP concludes, staff will return to Council with the final selection of service providers. Once the service providers are selected, staff will return to the CHSSC for its recommendations on physical, near-term improvements for the Interim Community Center with consideration for any needs of the service providers.

COORDINATION:

The preparation of this report was coordinated with the Town Manager's Office and the Town Attorney.

PAGE 5 OF 5

SUBJECT: Review Input on the Interim Community Center and Authorize the Town
Manager to issue a Request for Proposals for Service Providers

DATE: February 26, 2024

FISCAL IMPACT:

The \$866,281 allocated to the Community Center Development Fund can be used for near-term improvements to the Adult Recreation Center/Community Center. Additional funding may be required to support the operational and administrative needs of coordinating and supporting the service providers if the providers do not pay those costs directly.

PUBLIC COMMENT:

Attachment 2 contains public comment received on this topic.

ENVIRONMENTAL ASSESSMENT:

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

ATTACHMENTS:

1. Input Received from January 25, 2024 Community Meeting
2. Public Comment

Input Received from January 25, 2024 Interim Community Center Community Meeting

1. What near-term improvements would you like to see at the Adult Recreation Center/Interim Community Center to make the space more welcoming for all ages?

- Ability for seniors to meet 2 hours/week – Continuing, Large screen TVs/Internet for lounge, Earthquake compliance/retrofit, No improvements
- Sliding doors
- More storage in the conference room
- Enclose patio for storage, more usage
- AV upgrades -- current projectors flaky
- Noise abatement in large hall
- Commercial kitchen update
- Good to have in-wall sound system
- Lighting -- stretch down for better cleaning
- Water damage throughout the building
- Restroom, emergency lights upgrade
- Sensors in bathroom
- Restroom automatic door openers
- Uneven parking lots – unsafe esp. for seniors –add handrails
- More lighting in parking lot
- Cover on the entrance for rain
- More cameras in the parking lot
- Cosmetic improvements (Ask Nancy and users)
- Play area for children
- Panic button (mental health)
- Well-defined purpose of rooms reconfiguration
- Survey of current users of this space and potential users and their road blocks to current use
- This building as a central hub to coordinate
- Upgrading tech to modernize
- Equipment/tech for hybrid/virtual meetings in several designated areas/rooms of various sizes (includes AV camera, OWL 360°, ADA compliant, etc)
- Better utilization of 2nd floor to maximize space, i.e. size of room, combine services, remediation
- Closet/storage space for non-profits
- Access to kitchen
- Food pantry for storage/food prep for unhoused individuals
- One room that service providers can use
- Translation services
- Minor repairs and upgrades (including entryway)
- Suggestion box in lobby somewhere easily accessible
- Make empty space more inviting
- Functional upgrades – See LGS Rec list
 - LGS Rec List: Recommended ARC Building Improvements 2/13/2023

Input Received from January 25, 2024 Interim Community Center Community Meeting

- Replace large hall dividing doors – current divider door is broken
 - Solution for table and chair storage – possible partition wall in large hall for storage?
 - AV upgrades in conference rooms / large hall
 - ARC in-wall sound system in large hall
 - Noise abatement in large hall – wall or ceiling sound dampening?
 - More secure storage in large hall - repurpose large hall outside patio for storage?
 - Deepen shelves in existing large hall locked cabinets
 - Paint/refresh large hall kitchen cabinets and counter
 - Pendant lighting in the lobby – easier to clean and brighter light!
 - Restroom upgrades - emergency lights in restrooms during power outage, sensors on sinks/toilets/soap/towels so they are touchless
 - Parking lot changes to increase safety
 - More lighting, ramps, cameras, handrails
 - Awning at entry to protect against rain
 - Address water damage
- Welcoming entry – sliding glass doors in north wall to a patio
 - Electronic signage with activities and schedule
 - Modern AV and IT upgrades – local and remote capabilities
 - Lighting – External and emergency
 - Improve lobby -- space decorate -- user friendly
 - Lighting
 - Better internet capability
 - Zoom
 - Microphone speaker unit
 - More video screens – adequate size
 - Comfortable rooms for group meetings of 20 people
 - Sound proofing enhancements
 - Big room into 2 soundproof rooms
 - Break room for staff
 - Enhance kitchen
 - Long term -- NUMU, police space could be repurposed
 - Long term -- Use existing inventory of buildings for community usage
 - How should the money be allocated? Initial improvements and reserve funds for future com. Center reconstruction/new center (i.e. \$300k saved for future plan/design for the new center); keep extra \$ in the community center fund

2. What types of community partners and services would you like to see at the Adult Recreation Center/Interim Community Center?

- Ability for seniors to get together/talk
- West Valley Community Services – Already serving LG, pantry, brown bag

Input Received from January 25, 2024 Interim Community Center Community Meeting

- HUB model – place to go
- Mental Health Service with CASSY
- Co-sharing space – Day assignment to different organizations
- Life long learning – LGS Rec
- Speaker series catering to community—Could also use LG Theater (Oshner)
- If \$866K is not used, donate to senior 501c3 as seed to get it started
- Live Oak Nutrition – food scarcity – “Food with a friend”
- “To good to go” app – partner with them
- Dest for RYDE program (senior lobby)
- Sourcewise (house rich, cash poor)
- Fund grant writer
- Case manager/social worker
- Meeting place for other clubs/non-profits
- Mental health services
- Fundraisers
- Financial support for those who need it
- General place to enhance the quality of life for residents
- Plays the role of the Civic Center
- Navigator system (housing, youth and family, mental health) – one stop shop
- Facilitate creation of new organizations
- West valley community services
- Rotation of different types of partners/non-profits
- A room dedicated to non-profits
- Plant-based Advocates non-profit (local in LG)
- Health and nutrition education (esp. plant-based education) and how it relates to health/chronic illnesses
- Certain number of days allocated to community groups to host events at no charge
- Community discussion groups (where seniors feel safe, ADA accessibility, and can speak freely)
- Speaker series
- Mental health services – CASSY, Navigators, County
- Medicare reps
- Veterans affairs Benefits
- Ombudsman
- Health care services
- Business mentoring (SCORE)
- Police dept – fraud/scam prevention
- Transportation
- West Valley College
- Is the Town going to pay providers to staff the ARC, or do potential providers have to pay?
- Person to answer questions in the lobby

Input Received from January 25, 2024 Interim Community Center Community Meeting

- Concierge
- Guidance for transportation
- Life issues – Life and death
- Reference to transit agency
- Community meeting room (seniors) to discuss local issues
- True senior center

3. What criteria do you believe should be used when selecting community partners and services?

- 501c3 or JPA (Joint Powers Authority)
- Should already be serving LG or close by South Bay community
- Should they be financially solvent?
- Are they going to pay?
- Case manager/social worker could funnel ppl/issues to the right area
- Create “volunteer support base” list – helping to provide resources
- Student nurses to do BP check, wellness check
- Youth centric space/activities – Hangout, game console, etc
- Services
- We should survey for services in demand
- Check what other communities have
- Basic needs (housing, mental health, food, nutrition)
- Rideshare services (free/community organized)
- Intentional avoidance of duplication of services
- Maslow’s hierarchy of needs
- Would providing this venue expand the capacity of organizations to provide services?
- Non-profit predominant (free/at cost)
- Non-profits as a priority (but not an absolute)
- Provide services for residents of Los Gatos
- Provide services that promote our health and wellness and benefit society (health, environment, humanity, social responsibility)
- Providers of social services (e.g. case management and other services that funds have been allocated to)
- Unduplicated services
- Reporting requirements (residency percent of service utilization, funding needs/use)
- Provider plan for space utilization
- Operational/administrative needs/footprint
- Non-commercial
- Responsive to community needs/alignment to senior roadmap
- Track record/community presence

Input Received from January 25, 2024 Interim Community Center Community Meeting

- 55+ members have priority to set up meetings or any topic
- Local issues discussion
- A place for 55+members to meet in a safe and accommodating space on Town owned property to have discussion on local regional and national topics, the intent is a forum with [non legible] behavior, where [non legible] can advocate their views, this should be easy to set up without lawyers and discouraging requirements

Feb. 4, 2024

To: Katy Nomura, Asst. Town Manager

Fr: Eleanor Yick

Re: Community Feedback – purple group (front group on the left)

Members of the group: Tom Picraux, Rob Moore, Darryl, friend of Darryl's, 2 women from Plant Based Advocates and Eleanor Yick. The top comments under each question are listed in order.

1. Near term improvements to make the space more welcoming for all ages:

1. Equipment (tech) for hybrid/virtual meetings in several designated areas/room of various sizes, particularly large room on main floor. (Includes 360 degree camera and meets all ADA regs for access, hearing, sight impaired, etc.

2. Better utilization of second floor to maximize usage, i.e. size of room, remediation and combine some rooms. One room that service providers can use.

3. Minor repairs entering building and upgrades

- Closet space for storage for non-profits
- Translation services
- Access to kitchen
- Food pantry for storage, food prep for unhoused individuals
- Suggestion box in lobby that is easily accessible
- Make entry space more inviting

2. What types of Community Partners and Services:

1. West Valley Community Services

2 .Health and Nutrition education (i.e. plant based and how it relates to health and chronic illnesses)

3. Community Discussion Groups: where seniors feel safe and can speak freely. Space must be ADA compliant. Speaker series.

- Rotation of different types of partners and non profits
- A room dedicated to non-profits
- Certain number of days allocated to community groups at no cost to host events

3. Criteria to select Community Partners:

- 1. Non-profits as a priority but not a deal breaker.**
- 2. Provide services to the residents of Los Gatos.**
- 3. Provide services that promote our health and wellness and benefit society (health, environment, humanity, social responsibility. Provides social services, such as case management & other services that funds have been allocated to.**

4. The Group also discussed how the money should be allocated and the idea of saving some funds for a dedicated new community center and agreed:

- 1. Initial improvements and reserve fund for future community center- new or remodeled (i.e. \$300K saved for planning, design, etc.**
- 2. Keep saved/extra funds in a dedicated, restricted fund (i.e. Community Center Fund.**

#1: Near Term Improvements:

Functional upgrades: See LGS Rec. list

Welcoming Entry Way-sliding glass door in north wall to a patio

Electronic Signage with activities and schedule

Modern A/V & IT upgrades; local and remote capabilities

Lighting-external and emergency

#2: Community Partners and Services:

Mental Health Services

CASSY

Navigators

County

West Valley Community Services

West Valley College

Medicare Reps.

Veteran's affairs-Benefits

Ombudsman

Health Care Services

Business Mentoring (SCORE)

Police Department-Fraud/Scam prevention

Transportation

Question: Is the town going to pay providers to staff the space or do potential providers have to pay?

#3: Community Partner Priority Criteria:

Unduplicated service

Reporting requirements

Residency % of service utilization

Funding needs/use

Provider plan for space utilization

Operational/Administrative needs/Footprint

Noncommercial

Responsive to community needs/Alignment to Senior Road Map

Track record/community presence

1. What near-term improvements would you like to see at the Adult Recreation Center/Interim Community Center to make the space more welcoming for all ages? Near-term improvements would be smaller-scale improvements such as improving signage or upgrading conference room technology for hybrid meetings. Larger-scale improvements would be more costly and would be reserved for the full remodel of the building in the future. Tonight's discussion will focus on near-term improvements. If you are not sure whether your idea falls into the "near-term" category, please share it, and we will do our best to determine whether it would be most appropriate for the near-term or future.

Some general improvement areas:

- Replace large hall dividing doors - large hall space must be configurable (current door is reported to be broken)
- Solution for table and chair storage - building partition wall in large hall for storage?
- AV upgrades in conference rooms / large hall
- Noise abatement in large hall
- More secure storage in large hall (repurpose patio for storage?)
- Paint/refresh kitchen cabinets and counter
- In-wall sound system in Large Hall
- Pendant lighting in the lobby - easier to clean plus brighter light
- Look for and fix water damage
- Restroom upgrades - emergency lights in restrooms for power outage, sensors on sinks, toilets, soap, towel holders
- Automatic door openers
- Parking lot changes focusing on safety - lights, direction signs etc. currently parking lots are uneven and hence unsafe for seniors. Install cameras in the parking lot
- More lighting, ramps, install cameras and handrails
- Cover at the entry to protect against rain

2. What types of community partners and services would you like to see at the Adult Recreation Center/Interim Community Center? The Town is exploring providing space for community partners to provide services at the Adult Recreation Center in partnership with LGS Recreation. The intent would be to work with LGS Recreation to ensure there is minimal impact to existing programming, if any. This would mean there may be limited space available for community partners and the Town would appreciate feedback on which services should be prioritized. It is possible that multiple community partners could provide services on a rotation throughout the week to allow a variety of services using minimal space.

- Do not disrupt existing activities, esp for seniors. Maintain the ability for seniors to meet at least 2 hours per week.
- Partner with West valley Community Services - already serving Los Gatos, Support services like pantry, brown bag lunch
- Envision it as a HUB - place to go for everyone including seniors as well as youth. Co-sharing concept - daily assignment to different organizations

- Partner with CASSY to provide mental health services
- Life-long learning opportunities - via speaker series or specific keynotes
- Support Live Oak Nutrition - "Food with a friend". leverage kitchen and relationship with West Valley Community Services to provide food/nutritions
- Potential partnership with "Too Good to go" App to provide food options to the needy at the center
- Desk for RYDE program providing both service/information
- Create Senior Lobby
- Fund GRANT writer to seek grants for the center
- Fund case manager/social worker
- Youth centric space/activities for youths to hangout, with game consoles etc
- Student nurses for basic health check like BP

3. What criteria do you believe should be used when selecting community partners and services? Since space will be limited, it is likely there will be more potential community partners than there is space available, even if they share the space on a rotational basis. Criteria will be used to evaluate community partners to select the top candidates. For example, criteria could include a requirement that they currently provide services to the Los Gatos community or that they are a nonprofit.

- 501c(3) or JPA (Joint Powers Authority)
- Prioritize if already serving Los Gatos or surrounding communities
- Financial sustainability/solvency and be able to pay for the usage
- Prioritize org with existing or commitment to create "Volunteer Support Base" to support services at the center

From: [REDACTED]
To: [Katy Nomura](#)
Subject: comments for interim community space in Los Gatos
Date: Thursday, January 25, 2024 5:27:59 PM
Attachments: [image001.png](#)
[PBA wishlist for community center.docx](#)

[EXTERNAL SENDER]

Hello,

I will be attending tonight's meeting but wanted to share these comments with you (attached and pasted below).

Thank you,
Karen Rubio



.....
Thank you for inviting us to share our vision for the Los Gatos Community Center.

My name is Karen Rubio and I am a co-founder of Plant-Based Advocates, a nonprofit here in town that promotes a plant-based diet and lifestyle for numerous benefits, including: improving human health, repairing our environment, eliminating cruelty to animals, and working towards social justice. Our group has been operating for nearly 5 years, and we have been a nonprofit for nearly 3 years. Together we have been able to achieve a lot of goals, including:

- Offering educational talks at the Los Gatos Library
- Film events, such as the recent showing of Eating Our Way to Extinction at the LG Theater
- Plant-Based meal outreach to unhoused communities during the pandemic
- Outreach at events such as Spring into Green and Stanford Hospital nutrition fairs
- Bringing nutritious plant-based meals and milk to kids in the Los Gatos School District
- Nutrition talks at Fisher Middle School in collaboration with Parenting Continuum
- Humane education at local schools and churches

We are very excited at the opportunity to have a community space for our nonprofit to use.

Specifically, we envision the following for the interim community center:

- Space for nonprofits such as ours to meet, hold meetings. An example of this is the Los Altos community center, which allows nonprofits to rent out rooms for free for their events
- Space to teach educational classes and even cooking classes, if a kitchen is included in the plans
- Ideally this space will serve as a place to address the needs of our most vulnerable residents
- Provide food for the community's underserved members via a community market similar to West Valley Community Services Market. This market could emphasize plant based options and promote healthy eating in town
- High on my list is having individual closets or cabinets for nonprofits to store their materials. As a CERT member, it's possible that local CERT groups could store their equipment there as well

From: [Ulka Agarwal](#)
To: [Katy Nomura](#)
Subject: F/up from meeting last night re: Interim Community Center
Date: Friday, January 26, 2024 8:38:02 AM

[EXTERNAL SENDER]

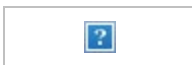
Good morning,

My name is Ulka Agarwal and I'm a local physician and nutrition researcher and educator, and a member of Plant-based Advocates. Last night I had the pleasure of joining other community members to voice our opinions on the Interim Community Center. In our breakout groups and others, a common theme was for non-profits focused on health and wellness, such as [Plant-based Advocates based in Los Gatos](#), to utilize the community space to offer free education and resources.

We can prevent, treat and even reverse obesity, Type 2 diabetes, and heart disease simply by changing what we eat. But most health care professionals – including physicians – don't receive nutrition education, so many people, especially the elderly, needlessly suffer and die from these chronic illnesses. Plant-based Advocates works tirelessly to educate our community on the power of nutrition to help us take back control of our health. If we could use a community space like this, we could make sure every member of our community, especially the most vulnerable, has access to this life-saving information.

Thank you for your kind consideration.

Ulka Agarwal, M.D.
[Plant-Based Advocates](#)



From: [Laurel Prevetti](#)
To: [Rob Moore](#)
Cc: [Katy Nomura](#); [Ryan Baker](#)
Subject: RE: Interim Community Center Improvements Idea
Date: Tuesday, February 13, 2024 3:52:55 PM

Thank you for this insight. We are typing up the notes now from the meeting so I am sharing this with the staff. Thank you!

From: Rob Moore <RMoore@losgatosca.gov>
Sent: Tuesday, February 13, 2024 3:42 PM
To: Laurel Prevetti <LPrevetti@losgatosca.gov>
Subject: Interim Community Center Improvements Idea

Hi Laurel,

I hope all is well! I wanted to reach out and update you on an idea West Valley Community Services has been floating that I'm interested in pursuing.

I just got out of a "West Valley Service Providers" Zoom meeting with folks like WVCS, Jewish Family Services, CASSY, LGS Rec, etc. Folks on the call like Jeffrey Blum and Tom Picraux asked Sujatha about her level of interest in space in the Rec Center. She reiterated how much she would like to have access to space in the building and how she'd like to potentially up WVCS's level of service (adding case managers to be stationed in Los Gatos, etc.) in Los Gatos were she to have space. Nothing particularly new there.

Sujatha also mentioned interest in opening a small free food market (perhaps as small as a few shelves) in the building. She mentioned this at the community meeting held a few weeks ago, but it seemed like her small group didn't speak to it in the share-out section of the meeting. I wanted to specifically call out this idea because I think it is a very good one and it seemed like a lot of community members were enthusiastic about it.

Just some "food" for thought! Thanks so much.

Take care,

Rob

Rob Moore
Councilmember, Los Gatos Town Council

To help avoid violations of the Brown Act, please refrain from forwarding this email.



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 03/05/2024

ITEM NO: 11

DATE: February 29, 2024

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Parking Program (CIP No. 813-0242):

- a. Authorize an Expenditure Budget Decrease Adjustment of Previously Allocated Funds in Program 5101 (PPW Administration) from \$200,000 to \$168,955;
- b. Authorize a Budget Transfer of \$168,955 from the Previously Allocated Funds from Program 5101 (PPW Administration) to the Parking Program Implementation Project (CIP No. 411-813-0242); and
- c. Authorize the Town Manager to Execute an Agreement with Dixon Resources Unlimited for Parking Program Management in the Amount of \$168,955.

RECOMMENDATION:

Parking Program (CIP No. 813-0242):

- a. Authorize an Expenditure Budget Decrease Adjustment of Previously Allocated Funds in Program 5101 (PPW Administration) from \$200,000 to \$168,955;
- b. Authorize a Budget Transfer of \$168,955 from the Previously Allocated Funds from Program 5101 (PPW Administration) to the Parking Program Implementation Project (CIP No. 411-813-0242); and
- c. Authorize the Town Manager to execute an agreement with Dixon Resources Unlimited for Parking Program Management in the amount of \$168,955 (Attachment 1).

BACKGROUND:

On March 19, 2019 Town Council approved an agreement with Dixon Resources Unlimited (Dixon) for a Comprehensive Downtown Parking Study.

PREPARED BY: Nicolle Burnham
Parks and Public Works Director

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

BACKGROUND (continued):

After receiving an update and providing input on the study on August 20, 2019, the Town Council received the final Parking Roadmap¹ on December 17, 2019. Implementation of the Roadmap has been ongoing since that time and addressing concerns related to Downtown parking remains a Town Council priority.

On December 6, 2022 Town Council received an updated on the parking program implementation that highlighted: Hunt Design's work to develop the wayfinding and signage program; implementation of the downtown employee parking program, the hiring of a part-time (0.25 FTE) parking manager; and efforts to implement some form of paid parking downtown. At that meeting, Town Council provided direction on next steps for the program.

On August 15, 2023, Town Council received a report on Parking Program Implementation and took action on a number of items. Those items included changes to the residential permit parking program charges, eliminating employee parking permit fees for the Olive Zone, and allocating up to \$200,000 for to fund a limited-term (one-year) Parking Coordinator position to continue implementing the Downtown Parking Program.

DISCUSSION:

Staff has been working to add the Parking Coordinator position to the Town's schedule of positions. Adding this position requires budget adjustments to execute the Council direction, developing a job description to define the roles and responsibilities, setting the appropriate compensation for the position, and coordinating the new role with the Town labor union (the Town Employees Association).

With the vacancy of the Transportation and Mobility Manager, current staff do not have extensive experience in managing parking programs or parking personnel. This has created challenges in finalizing the job description and it has become apparent that a job description could more effectively be crafted once the parking program has been implemented to confirm the expertise that is actually needed. In addition, without dedicated parking staff, important changes like expanding employee parking to Saturdays and clarifying the parking signage are lagging. Staff recognizes that the Downtown Parking Program is important to residents, businesses, and visitors, and that its implementation cannot continue to be delayed. Therefore, it is recommended that the Town contract out the management of the parking program for the initial implementation.

¹ <https://www.losgatosca.gov/DocumentCenter/View/23807/Los-Gatos-Parking-Roadmap>

SUBJECT: Authorize an Agreement for Consultant Services for Downtown Parking Program Management

DATE: February 29, 2024

DISCUSSION (continued):

Having been guiding the Town’s Downtown Parking Program since 2019, Dixon is uniquely qualified to support the Town as staff finishes developing the Parking Coordinator position and moves forward in implementing changes previously decided by Town Council. If Town Council authorizes this contracting approach, the funds that were allocated in August 2023 to the staff position would be repurposed to this contract. Future funding of a Parking Coordinator position can then be addressed through the 2025/2026 Operating Budget process.

CONCLUSION:

Contracting the management of the Downtown Parking Program will provide staffing support in the most expedient manner. It will also provide expertise beyond a single staff member and is expected to accelerate necessary improvements that Town Council has requested staff to make.

COORDINATION:

This report was coordinated with the Police Department, the Economic Vitality Manager, the Town Manager’s Office, and Finance Department.

FISCAL IMPACT:

Approval of the recommendation will provide sufficient funds to move forward with the contract management of the Downtown Parking Program.

Parking Program Implemenation CIP No. 813-0242		
	Budget	Costs
GFAR	\$ 598,500	
Budget Increase Requested with this Staff Report	\$ 168,955	
Total Budget	\$ 767,455	
		Costs
Advertising		\$ 384
Misc. Project Costs		\$ 892
Consultant Services		\$ 147,364
Consultant Services Agreement with Dixon Resources Unlimited (Requested with this Staff Report)		\$ 168,955
Project Constuction		\$ 128,056
Temp Staff Salary Costs		\$ 1,934
Total Costs		\$ 447,584
Available Balance		\$ 319,871

PAGE 4 OF 4

SUBJECT: Authorize an Agreement for Consultant Services for Downtown Parking Program
Management

DATE: February 29, 2024

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. Agreement for Consultant Services with Dixon Resources Unlimited, including Exhibit A,
Scope of Services

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is dated for identification on March 5, 2024 by and between TOWN OF LOS GATOS, a California municipal corporation, (“Town”) and Dixon Resources Unlimited (“Consultant”), a California Corporation, whose address is 3639 Midway Drive, Suite B345 San Diego, CA 92110. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 The Town desires to engage Consultant to provide services to Parking Program Management Services.
- 1.2 The Consultant represents and affirms that it is willing to perform the desired work pursuant to this Agreement.
- 1.3 Consultant warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. Consultant acknowledges Town has relied upon these warranties to retain Consultant.

II. AGREEMENTS

- 2.1 Scope of Services. Consultant shall provide services as described in that certain proposal sent to the Town and dated February 22, 2024 which is hereby incorporated by reference and attached as Exhibit A.
- 2.2 Term and Time of Performance. This contract will remain in effect upon execution to December 31, 2025. Consultant shall perform the services described in this agreement as described in Exhibit A.
- 2.3 Compliance with Laws. The Consultant shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws. Consultant represents and warrants to Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Consultant to practice its profession. Consultant shall maintain a Town of Los Gatos business license pursuant to Chapter 14 of the Code of the Town of Los Gatos.
- 2.4 Sole Responsibility. Consultant shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.
- 2.5 Information/Report Handling. All documents furnished to Consultant by the Town and all reports and supportive data prepared by the Consultant under this Agreement are the Town’s property and shall be delivered to the Town upon the completion of Consultant's services or at the Town's written request. All reports, information, data, and exhibits prepared or assembled by Consultant in connection with the performance of its services

pursuant to this Agreement are confidential until released by the Town to the public, and the Consultant shall not make any of these documents or information available to any individual or organization not employed by the Consultant or the Town without the written consent of the Town before such release. The Town acknowledges that the reports to be prepared by the Consultant pursuant to this Agreement are for the purpose of evaluating a defined project, and Town's use of the information contained in the reports prepared by the Consultant in connection with other projects shall be solely at Town's risk, unless Consultant expressly consents to such use in writing. Town further agrees that it will not appropriate any methodology or technique of Consultant which is and has been confirmed in writing by Consultant to be a trade secret of Consultant.

- 2.6 Compensation. Compensation for Consultant's professional services **shall not exceed \$168,955**, inclusive of all costs. Payment shall be based upon Town approval of each invoice and billed on a per month basis based on percentage of work complete.
- 2.7 Billing. Billing shall be monthly by invoice within thirty (30) days of the rendering of the service and shall be accompanied by a detailed explanation of the work performed and tasks completed. In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by the Director, for all services set forth in this Agreement, City agrees to pay Consultant at a rate of \$9,938.53 per month for seventeen months. In no event will the City pay more than \$168,955 as total compensation for the Agreement. No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City.

Payment shall be net thirty (30) days. All invoices and statements to the Town shall be addressed as follows:

Invoices:

Town of Los Gatos

Attn: Accounts Payable

P.O. Box 655

Los Gatos, CA 95031-0655

Email: ap@losgatosca.gov

- 2.8 Availability of Records. Consultant shall maintain the records supporting this billing for not less than three years following completion of the work under this Agreement. Consultant shall make these records available to authorized personnel of the Town at the Consultant's offices during business hours upon written request of the Town.
- 2.9 Assignability and Subcontracting. The services to be performed under this Agreement are unique and personal to the Consultant. No portion of these services shall be assigned or subcontracted without the written consent of the Town.

- 2.10 Independent Contractor. It is understood that the Consultant, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and not an agent or employee of the Town. As an independent contractor he/she shall not obtain any rights to retirement benefits or other benefits which accrue to Town employee(s). With prior written consent, the Consultant may perform some obligations under this Agreement by subcontracting, but may not delegate ultimate responsibility for performance or assign or transfer interests under this Agreement. Consultant agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. Consultant shall be compensated for its costs and expenses in preparing for, traveling to, and testifying in such matters at its then current hourly rates of compensation, unless such litigation is brought by Consultant or is based on allegations of Consultant's negligent performance or wrongdoing.
- 2.11 Conflict of Interest. Consultant understands that its professional responsibilities are solely to the Town. The Consultant has and shall not obtain any holding or interest within the Town of Los Gatos. Consultant has no business holdings or agreements with any individual member of the Staff or management of the Town or its representatives nor shall it enter into any such holdings or agreements. In addition, Consultant warrants that it does not presently and shall not acquire any direct or indirect interest adverse to those of the Town in the subject of this Agreement, and it shall immediately disassociate itself from such an interest, should it discover it has done so and shall, at the Town's sole discretion, divest itself of such interest. Consultant shall not knowingly and shall take reasonable steps to ensure that it does not employ a person having such an interest in this performance of this Agreement. If after employment of a person, Consultant discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Consultant shall promptly notify Town of this employment relationship, and shall, at the Town's sole discretion, sever any such employment relationship.
- 2.12 Equal Employment Opportunity. Consultant warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither Consultant nor its subcontractors do and neither shall discriminate against persons employed or seeking employment with them on the basis of age, sex, color, race, marital status, sexual orientation, ancestry, physical or mental disability, national origin, religion, or medical condition, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment & Housing Act.

III. INSURANCE AND INDEMNIFICATION

- 3.1 Minimum Scope of Insurance:
- i. Consultant agrees to have and maintain, for the duration of the contract, General Liability insurance policies insuring him/her and his/her firm to an amount not less than: two million dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.

- ii. Consultant agrees to have and maintain for the duration of the contract, an Automobile Liability insurance policy ensuring him/her and his/her staff to an amount not less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
- iii. Consultant shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. Consultant agrees that all certificates and endorsements are to be received and approved by the Town before work commences.
- iv. Consultant agrees to have and maintain, for the duration of the contract, professional liability insurance in amounts not less than \$1,000,000 which is sufficient to insure Consultant for professional errors or omissions in the performance of the particular scope of work under this agreement.

General Liability:

- i. The Town, its elected and appointed officials, employees, and, agents are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of Consultant, premises owned or used by the Consultant. This requirement does not apply to the professional liability insurance required for professional errors and omissions.
- ii. The Consultant's insurance coverage shall be primary insurance as respects the Town, its elected and appointed officials, employees, and agents. Any insurance or self-insurances maintained by the Town, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town, its officers, officials, employees or volunteers.
- iv. The Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

3.2 All Coverages. Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Town. Current certification of such insurance shall be kept on file at all times during the term of this agreement with the Town Clerk.

- 3.3 Workers' Compensation. In addition to these policies, Consultant shall have and maintain Workers' Compensation insurance as required by California law and shall provide evidence of such policy to the Town before beginning services under this Agreement. Further, Consultant shall ensure that all subcontractors employed by Consultant provide the required Workers' Compensation insurance for their respective employees.
- 3.4 Indemnification. The Consultant shall save, keep, hold harmless and indemnify and defend the Town its elected and appointed officials, agents, employees and volunteers from all damages, liabilities, penalties, costs, or expenses in law or equity that may at any time arise or be set up because of damages to property or personal injury received by reason of, or in the course of performing work which may be occasioned by a willful or negligent act or omissions of the Consultant, or any of the Consultant's officers, employees, or agents or any subconsultant.

IV. GENERAL TERMS

- 4.1 Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.
- 4.2 Governing Law. This Agreement, regardless of where executed, shall be governed by and construed to the laws of the State of California. Venue for any action regarding this Agreement shall be in the Superior Court of the County of Santa Clara.
- 4.3 Termination of Agreement. The Town and the Consultant shall have the right to terminate this agreement with or without cause by giving not less than fifteen days (15) written notice of termination. In the event of termination, the Consultant shall deliver to the Town all plans, files, documents, reports, performed to date by the Consultant. In the event of such termination, Town shall pay Consultant an amount that bears the same ratio to the maximum contract price as the work delivered to the Town bears to completed services contemplated under this Agreement, unless such termination is made for cause, in which event, compensation, if any, shall be adjusted in light of the particular facts and circumstances involved in such termination.
- 4.4 Amendment. No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by the Town and the Consultant.
- 4.5 Disputes. In any dispute over any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, including costs of appeal.

4.6 Notices. Any notice required to be given shall be deemed to be duly and properly given if mailed postage prepaid, and addressed to:

Town of Los Gatos
Attn: Town Clerk
110 E. Main Street
Los Gatos, CA 95030

Dixon Resources Unlimited
3639 Midway Drive, Suite B345
San Diego, CA 92110

or personally delivered to Consultant to such address or such other address as Consultant designates in writing to Town.

4.7 Order of Precedence. In the event of any conflict, contradiction, or ambiguity between the terms and conditions of this Agreement in respect of the Products or Services and any attachments to this Agreement, then the terms and conditions of this Agreement shall prevail over attachments or other writings.

4.8 Entire Agreement. This Agreement, including all Exhibits, constitutes the complete and exclusive statement of the Agreement between the Town and Consultant. No terms, conditions, understandings or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by the party to be bound, shall be binding on either party.

IN WITNESS WHEREOF, the Town and Consultant have executed this Agreement.

Town of Los Gatos by:

Consultant, by:

Laurel Prevetti, Town Manager

Julianne Dixon, President
Dixon Resources Unlimited

Recommended by:

Nicolle Burnham
Director of Parks and Public Works

Approved as to Form:

Gabrielle Whelan, Town Attorney

Attest:

Wendy Wood, CMC, Town Clerk

Proposal

Program Management Support Services (Revised)

Town of Los Gatos, CA
February 22, 2024

Proposal for Program Management Support

To: Nicolle Burnham, Parks & Public Works Director, Town of Los Gatos
From: Dixon Resources Unlimited
Date: February 22, 2024
Subject: Revised Proposal for Program Management Support Services

Dixon Resources Unlimited (DIXON) is pleased to submit this revised proposal to provide program management consulting services to the Town of Los Gatos (Town). Our uniquely qualified firm specializes in supporting parking and mobility programs across the country, consistently proving our ability to identify and implement operations, management, and technology recommendations to transition municipal parking operations to long-term, sustainable programs.

We have direct, hands-on experience acting as interim parking manager and supporting municipal programs to manage the ongoing optimization of parking programs, including policy updates, permit management, use of technology, and community engagement and education.

For the City of Seal Beach, we assisted in the complete overhaul of the City's parking program as the interim Parking Manager, overseeing the transition of parking management between city departments, installation of turnkey parking technology, and ongoing community engagement, which resulted in the City being awarded Parking Today's 2019 "Innovative Use of Technology" Award.

In the City of Ventura, we have assisted as interim Parking Coordinator to assist the City through municipal code and parking policy updates, participating in regular meetings of the City's Downtown Parking Advisory Committee, and assisting the City as it contemplates the implementation of paid parking and congestion management strategies in their on- and off-street parking locations.

DIXON has provided on-call parking consulting for the City of Monterey since 2018. This project is a great example of how we personify the "Parking Coach" mentality, providing hands-on collaboration with the City to thoroughly evaluate staffing challenges, provide customized recommendations for parking technology and solutions, and offer full support in the installation and implementation of equipment and services.

We have the resources and experience to help the Town manage the assist with hiring qualified parking staff, optimizing the parking program and policies, implementing parking program adjustments and enhancements, and providing critical engagement with the community to provide education, build consensus on policy changes, and promote long-term success of the parking program.

Proposed Scope of Services

The following work plan details the technical approach, methodology, specific tasks, and associated deliverables that our team will perform.

Task 1. Interim Parking Coordinator Services

DIXON will serve as the interim Parking Coordinator to support the Town's parking operations and program initiatives for a period of approximately seventeen (17) months, until August 31, 2025, with options to extend on a month-to-month basis.

We will assign a dedicated Project Manager and who will work directly with the Parks & Public Works Director and other assigned Town staff to provide program management support for the Town's parking programs and assist in implementing the Town's immediate parking initiatives, including but not limited to, on- and off-street parking operations, residential parking permit fees, employee parking permit policy and related signage, coordinate community outreach and public engagement as necessary, and perform related work as assigned.

DIXON is prepared to support, but not limited to, the following core services:

- Assisting with the hiring process for a full-time Parking Coordinator position.
- Optimization of the Town's residential parking permits processes and developing recommendations for permit fee adjustments.
- Employee permit program policy updates and related community outreach.
- Ongoing implementation of the wayfinding program, including related signage enhancements in Downtown and Olive Zone areas.
- Assessment of parking related signage, design, and painting and developing recommendations for adjustments or improvements as necessary.
- Participate in Town Council meetings, as requested.
- Coordinate public outreach, as required.

Additionally, our team is prepared to support, but not limited to, the following projects as budget allows:

- Evaluate the feasibility of alternative fees for residential parking permits, including low-income rates and potential discounts for households without off-street parking, as well as temporary visitor passes.
- Evaluate the parking conditions adjacent to Los Gatos High School, including the Olive Zone and nearby residential parking areas and prepare recommendations to optimize the use of existing parking supply.
- Assist with transition of parking permit management from the Police Department to Public Works.
- Coach City staff on how to develop an internal measurement tool to assess ongoing program performance and effectiveness.
- Implementation of parking congestion management strategies to manage parking demand.
- Assisting with public outreach and education related to parking program updates.

Task 1. Deliverables

- Assign a Project Manager to serve as the single point of contact for overall communications and project coordination with the Town.

- Conduct a virtual project kickoff meeting and bi-weekly calls.
- Assist in the hiring of a full-time Parking Coordinator.
- Provide support for the Town’s overall parking program; our support will include the core services and will extend to the parking initiatives outlined in this proposal as budget allows.
- Includes up to two (2) site visits per month.
- Participate in Town Council meetings, as requested.

Cost Proposal

This cost proposal is based upon a program management model that will provide the Town with the direct support needed to ensure an efficient and optimized parking operation, especially for the long term. Our terms can be customized based upon the Town’s priorities.

Our monthly program management pricing model is inclusive and adaptive. The rates presented below include all services necessary to accomplish the Town’s objectives, incorporate DIXON staff costs, and any travel/incidental expenses required to produce the deliverables under the contract. The Town will be invoiced monthly at one consistent flat monthly rate.

We have supported many similar projects and understand the labor required to support your initial, ongoing, and developing parking program needs. This approach allows for flexibility, optimization, and convenience, regardless of the phase or task.

Program Management Pricing

The total, flat monthly rate is detailed below:

Cost Estimate: DIXON Program Management Pricing Model		
Task	Description	Monthly Fixed Fee
Interim Parking Coordinator Services		
1	<ul style="list-style-type: none"> • Assign a Project Manager • Virtual project kickoff meeting and bi-weekly calls • Assist in the hiring of a full-time Parking Coordinator • Provide support for the Town’s overall parking program; our support will include the core services and will extend to the parking initiatives outlined in this proposal as budget allows • Includes up to two (2) site visits per month • Participate in Town Council meetings, as requested 	\$9,938.53
Total Cost		\$168,955
<i>17 months from Contract Date</i>		



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 03/05/2024

ITEM NO: 12

DATE: February 26, 2024
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Provide Direction Regarding the Development of a Labor Negotiations Policy Similar to the City of Menlo Park as Recommended by the Finance Commission

RECOMMENDATION:

Provide direction regarding the development of a Labor Negotiations Policy similar to the City of Menlo Park as recommended by the Finance Commission.

BACKGROUND:

The Finance Commission considered the topic of labor negotiations in November 2022 and January 2024. In November 2022, the Finance Commission unanimously passed the following motions:

- Motion to recommend for Council consideration that during labor negotiation, the Town should not engage in any sort of confidentiality agreements with any of the bargaining units in terms of conditions that otherwise would be disclosable under the Brown Act.
- Motion to recommend for Council consideration the adoption of procedures regarding public input and outreach related to labor negotiation in a similar way as Menlo Park administers its public communication regarding labor negotiations.
- Motion to recommend for Council consideration that the Town website should provide a reference to the publicly available Town employee compensation data.

The first two motions were referred to the Council Policy Committee and they were added to the Committee's 2023 work plan. Due to other priorities, the items remain on the Policy Committee's 2024 work plan.

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

PAGE 2 OF 4

SUBJECT: Provide Direction Regarding the Development of a Labor Negotiations Policy
Similar to the City of Menlo Park as Recommended by the Finance Commission

DATE: February 26, 2024

BACKGROUND (continued):

With respect to the third motion, two California public employee salary and benefit databases are linked to the Town's Human Resources Department website (<https://www.losgatosca.gov/418/Salaries>). The Town of Los Gatos and other municipalities are included in these databases.

At its January 2024 meeting, the Finance Commission expressed frustration about the lack of progress by the Policy Committee regarding the 2022 recommendations. As a result, the Commission unanimously approved the following motions:

- Motion to recommend the Town Council consider the Menlo Park's policy and act upon it accordingly.
- Motion to make a recommendation to the Town Council that it direct our labor negotiator to document in writing the ground rules that have been agreed upon with each of our three-bargaining units.
- Motion to make a recommendation to the Town Council to publish salary surveys prior to beginning negotiations.

The first motion pertaining to the Menlo Park Policy (Attachment 1) is the subject of this report.

DISCUSSION:

Attachment 1 contains the Menlo Park Public Input and Outreach Regarding Labor Negotiations Policy. The purpose of the Policy is to "incorporate public input into the labor negotiations process." Among other items, the Policy requires public input prior to the first Council closed session to discuss labor negotiations. The Policy also contains other requirements to keep the Council apprised of the status of negotiations with additional opportunities for public input.

Prior to all Los Gatos closed sessions, the public has the opportunity to provide comments on the agenda items, including labor negotiations. The Town Council may also wish to provide an opportunity for public comment on labor negotiations during a regular open session, recognizing that the Town must follow State law with respect to fair bargaining practices.

ALTERNATIVES:

The Town Council has several alternatives:

SUBJECT: Provide Direction Regarding the Development of a Labor Negotiations Policy
Similar to the City of Menlo Park as Recommended by the Finance Commission

DATE: February 26, 2024

ALTERNATIVES (continued):

- Prepare a Similar Policy and Return Directly to Town Council: If the Town Council is interested in Los Gatos having a similar policy as Menlo Park, the Council should provide specific direction to staff with respect to the parameters that it would like to see in a Los Gatos Policy. In addition, staff will work with legal counsel to ensure that the draft Los Gatos Policy is consistent with current law. With this option, the draft Policy would return directly to Town Council.
- Prepare a Similar Policy and Ask the Policy Committee for its Review and Recommendation: With this option, the draft Policy would return directly to Council Policy Committee for review, discussion, and recommendation prior to returning to Council for consideration.
- Ask the Policy Committee to Make a Recommendation on this Matter: The Council could ask the Policy Committee to consider the merits of the Menlo Park Policy and make a recommendation to Town Council. If it wished, the Council could indicate the priority of this work plan item and provide any general direction on the topic.
- Not Pursue a New Policy at this Time: The Council may decide that the current practice is sufficient for public input into the labor negotiations process.
- Take Other Action: The Council is welcome to consider other options and provide direction accordingly.

CONCLUSION:

Staff welcomes the Council's discussion and direction on this matter.

COORDINATION:

The preparation of this report was coordinated with the Town Attorney.

FISCAL IMPACT:

The agenda item has no fiscal impact.

ENVIRONMENTAL ASSESSMENT:

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

PAGE 4 OF 4

SUBJECT: Provide Direction Regarding the Development of a Labor Negotiations Policy
Similar to the City of Menlo Park as Recommended by the Finance Commission

DATE: February 26, 2024

Attachment:

1. Menlo Park Negotiations Policy

City of Menlo Park

City Council Policy

Department City Council	Page 1 of 1	Effective Date 03/02/2011
Subject Public Input and Outreach regarding Labor Negotiations	Approved by City Council 03/01/2011	Procedure # CC-11-0001

PURPOSE

To incorporate public input into the labor negotiations process.

BACKGROUND

The City Council has expressed a desire to improve public communication and outreach on labor relations to the extent reasonably possible.

POLICY

A regular business item shall be placed on a Council agenda in advance of formal labor negotiations that includes an opportunity for the public to comment. At least seven days prior to this meeting, staff shall post a report that contains relevant information on employee salaries and benefits, as well as the methodology used to determine a competitive and appropriate compensation package. As part of this process, a concerted effort shall be made to request public comment on the negotiations parameters.

As a general rule, staff shall engage the services of a labor attorney to participate in formal labor negotiations with bargaining units representing permanent employees.

During labor negotiations, public comment will be provided prior to the entry into closed session to discuss labor negotiations, in accordance with State law. At the conclusion of the closed session, the Council shall report out any action taken, including in the record the individual votes taken and the characterization of the deliberations. In addition, at some point in the negotiations process, staff shall submit a public report to Council that provides a general status of labor negotiations and that allows for public input prior to concluding negotiations.

Staff shall prepare and make public a staff report, at least fifteen calendar days prior to Council consideration of a tentative agreement or implementation resolution for any bargaining unit, that provides full details and costing associated with the recommended action, shall schedule the matter as a regular business item and shall provide an opportunity for the public to comment.



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 03/05/2024

ITEM NO: 13

DATE: February 29, 2024
TO: Town Council
FROM: Joel Paulson, Community Development Director
SUBJECT: Consider the Adoption of a Resolution Denying an Appeal of a Planning Commission Decision that Approved the Demolition of an Existing Single-Family Residence and Construction of a New Single-Family Residence with Reduced Setbacks on a Non-Conforming Property Zoned R-1D. **Located at 212 Thurston Street.** APN 410-15-039. This Project is Categorically Exempt Pursuant to the California Environmental Quality Act (CEQA) Guidelines, Section 15303(a): New Construction or Conversion of Small Structures. PROPERTY OWNER/APPLICANT: Meleah Guillard. PROJECT PLANNER: Maria Chavarin

RECOMMENDATION:

Adopt a resolution denying an appeal of a Planning Commission decision to approve the demolition of an existing single-family residence and construction of a new single-family residence with reduced setbacks on property zoned R-1D, located at 212 Thurston Street.

BACKGROUND:

The subject property is located on the north side of Thurston Street between N. Santa Cruz Avenue and Monterey Avenue (Attachment 2, Exhibit 1). The property is 4,671 square feet and is nonconforming as to size, where 5,000 square feet is required for a parcel in the R-1D zone.

On May 8, 2023, the applicant submitted an Architecture and Site application for the demolition of an existing single-family residence, and construction of a new two-story residence with a cellar. The site is developed with a 1,109-square foot single-story residence and a 385-square foot detached garage.

On October 11, 2023, the application was deemed complete. Project signage and story poles were installed on the subject property and certified by a licensed civil engineer on November 7,

PREPARED BY: Maria Chavarin
Assistant Planner

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Community Development Director

PAGE 2 OF 7

SUBJECT: 212 Thurston Street/S-23-009

DATE: February 29, 2024

2023. On December 1, 2023, notice cards were mailed to surrounding

BACKGROUND (continued):

property owners and occupants as required by the Town Code. It was discovered that the signage did not contain the Planning Commission meeting date.

On December 13, 2023, the Architecture and Site application was scheduled as an “other business” item for the Planning Commission meeting to open the public hearing and allow for public comments on the matter (Attachment 1). No public comments were received at that time and the item was continued to the January 10, 2024 Planning Commission meeting to allow public notice on the project sign consistent with Town Policy.

On January 10, 2024, the Planning Commission considered the application, including written and verbal public comments (Attachment 2 and 3). The Planning Commission approved the application subject to additional conditions as described in the Action Letter (Attachment 4) and Section B below.

On January 22, 2024, the decision of the Planning Commission was appealed to the Town Council by an interested person, Eric Rafia, property owner of 214 Thurston Street (Attachment 5). The appellant indicated that there was both an error and abuse of discretion and the Planning Commission’s decision is not supported by substantial evidence in the record.

Pursuant to the Town Code, any interested person as defined by Section 29.10.020 may appeal to the Council any decision of the Planning Commission. For residential projects an interested person is defined as “a person or entity who owns property or resides within 1,000 feet of a property for which a decision has been rendered and can demonstrate that their property will be injured by the decision.” The appellant meets the requirements.

Pursuant to Town Code Section 29.20.280, the appeal must be heard within 56 days of the Planning Commission hearing, in this case by March 6, 2024. The Council must at least open the public hearing for the item and may continue the matter to a date certain if the Council does not complete its deliberations.

Pursuant to Town Code Section 29.20.295, in the appeal, and based on the record, the appellant bears the burden to prove that either there was an error or abuse of discretion by the Planning Commission or the decision was not supported by substantial evidence in the record. If neither is proved, the appeal should be denied. If the appellant meets the burden, the Town Council shall grant the appeal and may modify, in whole or in part, the determination from which the appeal was taken or, at its discretion, return the matter to Planning Commission. If the basis for granting the appeal is, in whole or in part, information not presented to or considered by the Planning Commission, the matter shall be returned to the Planning Commission for review.

DISCUSSION:

A. Project Summary

The applicant proposes demolition of the existing single-family residence and construction of a new 1,632.7-square foot two-story single-family residence with an 875.5-square foot cellar (Attachment 2, Exhibit 12). Due to the small lot size, the proposed residence would appear larger in bulk and mass in relation to other residences in the immediate neighborhood. In addition, the proposed residence includes a front setback of seven feet, three inches, where 15 feet is required. The project includes retention of an existing one-car garage in the rear corner of the lot and one proposed uncovered on-site parking space to comply with the minimum requirement of two parking spaces.

A single-family residence is permitted in the R-1D zone. The subject property is 4,671 square feet and is nonconforming as to size, where 5,000 square feet is required for a parcel in the R-1D zone. The proposed residence is in compliance with the zoning regulations for floor area, height, and on-site parking requirements. The applicant requests an exception to the front yard setbacks. The applicant provided a Letter of Justification discussing this request (Attachment 2, Exhibits 5 and 6). A full discussion and analysis of the application, including the requested exception, is provided in the January 5, 2024 Planning Commission Staff Report (Attachment 2).

B. Planning Commission

On January 5, 2024, the Planning Commission received the staff report (Attachments 2). After receiving public comment and asking questions of the applicant, the Planning Commission closed the public hearing and discussed the project. Based on the neighbor's concerns, the motion for approval included additional conditions of approval regarding repairs to the existing garage, privacy screening, and window changes (Attachment 4, Conditions 4, 5, and 6). The Planning Commission voted five to one to approve the application, with Commissioner Burnett voting no. Attachment 3 contains the verbatim minutes.

C. Appeal to Town Council

The decision of the Planning Commission was appealed on January 22, 2024, by an interested person, Eric Rafia (Attachment 5).

The appeal states that the Planning Commission based their decision on "setback, condition of approval for existing garage to remain" and "setbacks do not conform to R1-D minimum setback requirements" (Attachment 5). A summary of the specific reasons listed in the appeal form are provided below as verbatim excerpts, followed by the applicant's response in *italic* font and staff's response.

DISCUSSION (continued):

1. Appellant: There was an error or abuse of discretion by the Planning Commission: Setback, condition of approval for existing garage to remain.

Applicant: The adjacent neighbor has appealed the Planning Commission approval of Meleah Gullardo's proposed new home at 212 Thurston Street. In the appeal, he states that there was an error or abuse of discretion by the Planning Commission for the "Setback, condition of approval for existing garage to remain" and that the Planning Commission's decision is not supported by substantial evidence in the record as "Setbacks do not conform to R1-D minimum setback requirements".

For the first part, this neighbor has demanded that the existing detached garage be removed since he first learned of the Ms. Guillardo's plans to build a new home. Attached is the first letter he sent to the Town complaining about the garage. However, the garage is a legal, non-conforming structure that Ms. Guillardo would like to keep and to repair. There is no law or ordinance that requires that this garage be demolished, and the garage was not even part of what was before the Commission. Nevertheless, the Commission addressed the condition of the garage, and at Ms. Guillardo's assent, added the condition of approval that the garage is to be repaired in conjunction with the construction of the house.

Staff response: Sheet A1 of the Development plans identifies the location of the detached garage. The garage is a legal non-conforming structure as to setbacks, which would require five feet from any side or rear property line. The Town records show that on May 11, 1948, an application was filed for the construction of an 18 by 20-foot one-story garage. No plans are available; however, the 1928-1956 Sanborn Fire Insurance Maps show the garage existed. The existing detached garage is not included as part of this Architecture and Site application.

The Planning Commission, after discussing the current state of the garage, and the applicant's plans to make improvements in the future, approved the project with an additional condition requiring repair of the detached garage prior to certificate of occupancy of the main residence. The added condition of approval is addressed through Condition 5, Attachment 4.

At the Planning Commission meeting of January 10, 2024, the Town Attorney clarified for the record that the added conditions of approval related to the maintenance and repair of the garage cannot be imposed on the project since it is not a part of the application; however, since the property owner agreed to the added condition of approval related to the maintenance and repair of the garage during the meeting, the Town can include the added condition.

DISCUSSION (continued):

2. Appellant: The Planning Commission's decision is not supported by substantial evidence in the record: Setbacks do not conform to R1-D minimum setback requirements.

Applicant: For the 2nd part, the Planning Commission spent considerable amount of time during the hearing discussing, taking testimony and asking questions of the neighbors about the proposed reduced front setback of the main house. This is all recorded in the video record of the hearing. Since the property is a substandard lot, the Town Code allows for the reduction of setbacks, per the Commission's discretion. The Commission fully took into account the context of the site, the setbacks of the surrounding structures, the effect on the rear neighbors (were the house to be moved back), and the images of the story poles when viewed from up and down the street.

In conclusion, the Commission did not err or abuse its discretion when it added a condition of approval that the detached garage be repaired concurrently with the construction of the main house. It would have been abuse to force the rebuilding and relocation of the existing garage against the owner's wishes.

Secondly, there is ample evidence in the record that the Commission properly considered the proposed reduced front setback for this home, and that their decision was not made in haste, under subterfuge, or duress.

Staff response: Sheet A1 of the Development plans identify the location of the single-family residence. Currently, the residence is situated three feet, six inches from the front property line. The proposed residence, measured to the stone veneer columns of the front porch, would be situated seven feet, three inches from the front property line where a 15-foot front yard setback is required per the R1-D zoning regulations. In addition, the applicant provided an aerial photo of the neighborhood context showing the current setbacks of residences in the immediate neighborhood (Attachment 2, Exhibit 6).

Section 29.10.265 of the Town Code allows for the modification of any rule of the zone on nonconforming property, including setbacks, when found to be compatible with the neighborhood. The Planning Commission found that the reduced setbacks of the new residence complied with these requirements.

PUBLIC COMMENTS:

Story poles and signage have been maintained on the site since the November 7, 2023, Planning Commission meeting. Written notice of the Town Council hearing was sent to property owners and tenants within 300 feet of the subject property. At the time of this report's preparation, the Town has not received any public comment.

ENVIRONMENTAL REVIEW:

The project is Categorical Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act (CEQA), Section 15303(a): New Construction or Conversion of Small Structures.

CONCLUSION:

A. Recommendation

For the reasons stated in this report, it is recommended that the Town Council uphold the decision of the Planning Commission and adopt a resolution (Attachment 6) denying the appeal.

B. Alternatives

Alternatively, the Town Council could continue the application to a date certain and:

1. Provide direction to staff to prepare a resolution to grant the appeal and remand the application back to the Planning Commission with specific direction;
2. Provide direction to staff to prepare a resolution granting the appeal and denying the application; or
3. Continue the application to a date certain with other specific direction.

ATTACHMENTS:

1. December 13, 2024 Planning Commission Staff Report
2. January 10, 2024 Planning Commission Staff Report, with Exhibits 1-12
3. January 10, 2024 Planning Commission Verbatim Minutes
4. January 17, 2024 Planning Commission Action Letter
5. Appeal of the Planning Commission Decision, received January 22, 2024
6. Applicant's Response to Appeal, Received February 20, 2024
7. Draft Resolution to Deny Appeal and Approve Project



**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 12/13/2023

ITEM NO: 3

DATE: December 8, 2023
TO: Planning Commission
FROM: Joel Paulson, Community Development Director
SUBJECT: Open a Public Hearing for a Request for Approval for Demolition of an Existing Single-Family Residence and Construction of a New Single-Family Residence with Reduced Setbacks on Non-Conforming Property Zoned R-1D and Continue the Matter to January 10, 2024. **Located at 212 Thurston Street.** APN 410-15-039. Architecture and Site Application S-23-009. Categorically Exempt Pursuant to the California Environmental Quality Act (CEQA) Guidelines, Section 15303(a): New Construction or Conversion of Small Structures. PROPERTY OWNER/APPLICANT: Meleah Guillard. PROJECT PLANNER: Maria Chavarin.

REMARKS:

Staff recommends that the Planning Commission open the public hearing to receive any public comment from interested parties in attendance, close the public hearing, and continue the item to a date certain of January 10, 2024, to allow public notice on the project sign consistent with Town policy.

PREPARED BY: Maria Chavarin
Assistant Planner

Reviewed by: Community Development Director and Planning Manager

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**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 01/10/2024

ITEM NO: 3

DATE: January 5, 2024
TO: Planning Commission
FROM: Joel Paulson, Community Development Director
SUBJECT: Requesting Approval for Demolition of an Existing Single-Family Residence and Construction of a New Single-Family Residence with Reduced Setbacks on Property Zoned R-1D. **Located at 212 Thurston Street.** APN 410-15-039. Categorically Exempt Pursuant to the California Environmental Quality Act (CEQA) Guidelines, Section 15303(a): New Construction or Conversion of Small Structures. PROPERTY OWNER/APPLICANT: Meleah Guillardo. PROJECT PLANNER: Maria Chavarin.

RECOMMENDATION:

Consider approval of a request for demolition of an existing single-family residence and construction of a new single-family residence with reduced setbacks on property zoned R-1D, located at 212 Thurston Street.

PROJECT DATA:

General Plan Designation: Medium Density Residential
Zoning Designation: R-1D
Applicable Plans & Standards: General Plan; Residential Design Guidelines
Parcel Size: 4,671 square feet
Surrounding Area:

	Existing Land Use	General Plan	Zoning
North	Residential	Medium Density Residential	R-1D
South	Residential	Medium Density Residential	R-1D
East	Commercial	Neighborhood Commercial	C-1
West	Residential	Medium Density Residential	R-1D

PREPARED BY: Maria Chavarin
Assistant Planner

Reviewed by: Planning Manager and Community Development Director

CEQA:

The Project is Categorically Exempt Pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act (CEQA), Section 15303(a): New Construction or Conversion of Small Structures.

FINDINGS:

- The Project is Categorically Exempt Pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act (CEQA), Section 15303(a): New Construction or Conversion of Small Structures.
- As required by Section 29.10.09030(e) of the Town Code for the demolition of an existing residence.
- The project meets the objective standards of Chapter 29 of the Town Code (Zoning Regulations) with the exception of the request for reduced front yard setbacks.
- As required by Section 29.10.265(3) of the Town Code for modification of zoning rules on nonconforming lots, including setback requirements.
- As required by the Residential Design Guidelines that the project complies with the Residential Design Guidelines.

CONSIDERATIONS:

- As required by Section 29.20.150 of the Town Code for granting approval of an Architecture and Site application.

ACTION:

The decision of the Planning Commission is final unless appealed within ten days.

BACKGROUND:

The subject property is located on the north side of Thurston Street between N. Santa Cruz Avenue and Monterey Avenue (Exhibit 1). The property is 4,671 square feet and is nonconforming as to size, where 5,000 square feet is required for a parcel in the R-1D zone. The site is developed with a 1,109-square foot single-story residence and a 385-square foot garage. The applicant proposes demolition of the existing one-story single-family residence and construction of a new two-story single-family residence with a cellar (Exhibit 12).

On May 8, 2023, the applicant submitted an Architecture and Site application for the demolition of an existing single-family residence, and construction of a new two-story residence.

BACKGROUND (continued):

The proposed project meets technical requirements of the Town Code including parking, height, and floor area. The project is being considered by the Planning Commission to consider the project's compliance with the Residential Design Guidelines for mass and bulk compared to other homes in the immediate neighborhood, as discussed in Section C below.

The Architecture and Site application was originally scheduled for the Planning Commission hearing date of December 13, 2023. The item was continued to the January 10, 2024 Planning Commission meeting to allow public notice on the project sign consistent with Town policy.

PROJECT DESCRIPTION:

A. Location and Surrounding Neighborhood

The subject property is located on the north side of Thurston Street between N. Santa Cruz Avenue and Monterey Avenue (Exhibit 1). The subject site and surrounding properties to the north, west, and south have a medium density residential land use designation and are developed with one and two-story single-family residences. The neighboring property immediately to the east has a neighborhood commercial land use designation, but is developed with a one-story single-family residence.

B. Project Summary

The applicant proposes demolition of the existing single-family residence and construction of a new 1,632.7-square foot two-story single-family residence with an 875.5-square foot cellar (Exhibit 12). Due to the small lot size, the proposed residence would appear larger in bulk and mass in relation to other residences in the immediate neighborhood. In addition, the proposed residence includes a front setback of seven feet, three inches, where 15 feet is required. The project includes retention of an existing one-car garage in the rear corner of the lot and one proposed on-site parking space.

C. Zoning Compliance

A single-family residence is permitted in the R-1D zone. The subject property is 4,671 square feet and is nonconforming as to size, where 5,000 square feet is required for a parcel in the R-1D zone. The proposed residence is in compliance with the zoning regulations for floor area, height, and on-site parking requirements. The applicant requests an exception to the front yard setbacks.

DISCUSSION:

A. Architecture and Site Analysis

The applicant proposes demolition of the existing single-family residence and construction of a 1,632-square foot two-story single-family residence. A portion of the front porch would have a front setback of seven feet, three inches, where 15 feet is required, as discussed in Section F below. The project site has an existing detached one-car parking garage in the rear left corner of the lot which is proposed to remain. The maximum height of the proposed residence is 26.3 feet. The applicant provided a Letter of Justification discussing the project (Exhibit 5).

A summary of the floor area for the existing and proposed residence is included in the table below.

Floor Area Summary

	Existing SF	Proposed SF	Allowed SF
Main Residence			
First Floor	1,109	875.5	--
Second Floor	--	757.2	--
Total	1,109	1,632.7	1,682
Below-Grade Area*	0	875.5	--
Garage	385	0	400
* Pursuant to Sec. 29.10.020, floor area means the entire enclosed area of all floors that are more than four feet above the proposed grade, measured from the outer face of exterior walls or in the case of party walls from the centerline.			

Neighborhood compatibility of the proposed floor area is discussed in Section C below.

B. Building Design

The project consists of a contemporary style residence with warm colors and materials. Proposed exterior materials include: a standing-seam metal roof (dark bronze with a matte finish); real stone veneer; smooth stucco siding; metal guard rails; metal-clad wood windows with factory installed casing frames; roof boards and trim; and metal gutters (Exhibit 4).

The Town’s Consulting Architect reviewed the proposed residence on May 16, 2023 (Exhibit 7). The Consulting Architect identified several issues and concerns and provided recommendations for changes to the original design to increase compatibility with the Residential Design Guidelines. In response to these recommendations, the applicant made

DISCUSSION (continued):

several modifications to the design of the residence. The Consulting Architect's recommendations are provided below, followed by the applicant's response in *italics*, the full responses are in Exhibit 8.

Recommendations:

1. Increase the size of the first floor segment over the kitchen window to reinforce the first floor eave and roof line and to improve the front façade compatibility with other homes in the immediate neighborhood.

The entry porch has been enlarged to bring it across in front of the kitchen window as recommended. This extends the lower roof eave line to better align with the adjacent houses and buffers the front 2-story element.

2. Revise the entry to provide an under-the-eave entry similar to other homes in the immediate neighborhood, reinforce the first floor roof line and improve the front façade compatibility with other nearby homes.

The gable-roof at the entry has been removed, as recommended.

3. Select either stucco or horizontal siding and use it consistently on all exterior walls.

The exterior siding has been revised to be 2 materials – stucco and stone. These materials are also used for one of the homes in the immediate neighborhood – 529 Monterey Avenue.

4. Select roofing materials similar to that on other homes in the immediate neighborhood.

Metal roofing is also present in the immediate neighborhood – again on the home at 529 Monterey Ave.

5. Use wood columns on the front entry and back porch in lieu of the proposed stone columns.

Similar to the home at 529 Monterey Avenue, Ms. Guillard would like her home to be more contemporary in style, while still having a more traditional massing (i.e., peaked roofs with eaves). The elevations have been revised to expand the area of stone veneer, including keeping the porch columns as stone.

DISCUSSION (continued):

- 6. Treat all windows with the same detailing and provide trim consistent with the Residential Design Guideline 3.7.4.

In keeping with the more contemporary styling, the windows will not have trim. This is detailed in the drawings on sheet A2.

C. Neighborhood Compatibility

The immediate neighborhood contains one- and two-story single-family residences. Based on Town and County records, the residences in the immediate area range in size from 1,215 square feet to 3,093 square feet. The floor area ratios range from 0.14 to 0.34. Pursuant to Section 29.40.075 of the Town Code, the maximum Floor Area Ratio (FAR) for the subject property is 0.36 (1,682 square feet). The proposed residence would have an FAR of 0.35 (1,632.7 square feet). The proposed residence would be the fifth largest in terms of house floor area, the largest in terms of FAR, and tallest the immediate neighborhood. The table below reflects the current conditions of the homes in the immediate neighborhood:

Immediate Neighborhood Comparison

Address	Zoning	House Floor Area	Garage Floor Area	Total Floor Area	Lot Size	House FAR	No. of Stories
214 Thurston St	R-1D	1,957	451	2,408	6,534	0.30	2
228 Thurston St	R-1D	2,152	562	2,714	6,398	0.34	2
533 N. Santa Cruz Ave	C-1	1,368	324	1,692	8,712	0.16	1
531 N. Santa Cruz Ave	C-1	1,215	600	1,815	8,712	0.14	1
590 Monterey Ave	R-1D	3,093	899	3,992	10,800	0.29	1
529 Monterey Ave	R-1D	2,858	797	3,655	8,994	0.32	2
212 Thurston St (E)	R-1D	1,109	385	1,494	4,671	0.24	1
212 Thurston St (P)	R-1D	1,632	385	2,017	4,671	0.35	2

The proposed residence would comply with the maximum allowed floor area on the site, would not be the first two-story home, and would not be the largest home in the immediate neighborhood in terms of floor area. However, the proposed residence would be the tallest in the immediate neighborhood by three inches and have the largest FAR.

DISCUSSION (continued):

D. Tree Impacts

Fruit trees are located on the project site. Two fruit trees are noted to be removed from the project site: a 15-inch olive tree located adjacent to the existing concrete driveway and fronting the existing detached garage; and a 12-inch fruit tree located at the rear of the residence. Pursuant to Section 29.10.0970 of the Town Code, fruit trees less than 18 inches in diameter may be removed without a tree removal permit.

E. Parking

Pursuant to Section 29.10.150(c)(1) of the Town Code, the number of required parking spaces for a single-family residence is two parking spaces. A detached one-car garage exists on the lot and would remain. To satisfy the minimum required parking spaces, the proposed project also includes one uncovered parking space outside of the front yard setback.

F. Exception - Setbacks

The applicant is requesting an exception to the required front yard setback in the R-1D zone (Exhibit 6). Pursuant to Town Code, the required front setback in the R-1D zone is 15 feet. The existing residence is nonconforming with the front yard setback requirement and situated three feet, six inches from the front property line. The proposed residence, measured to the stone veneer columns of the front porch, would be situated seven feet, three inches from the front property line. The Town Code allows for modified setbacks for nonconforming lots through an Architecture and Site approval if the deciding body finds the request compatible with the neighborhood.

In Exhibit 6, the applicant provided an aerial photo of the neighborhood context showing the current setbacks of the residences in the immediate neighborhood. Although the proposed residence would not meet the required 15-foot front yard setback, the exception request for the reduced front yard setbacks would be compatible with other properties in the immediate neighborhood and create a more conforming situation than the existing residence.

G. CEQA Determination

The Project is Categorically Exempt Pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act (CEQA), Section 15303(a): New Construction or Conversion of Small Structures.

PUBLIC COMMENTS:

Story poles and project signage were installed on the site by November 7, 2023, in anticipation of the December 13, 2023, Planning Commission hearing. The applicant provided a summary of their efforts to communicate with their neighbors (Exhibit 9). Several letters from neighbors are included in Exhibit 10. The applicant provided a response letter addressing the neighbor's concerns in relation to the design of the project (Exhibit 11).

CONCLUSION:

A. Summary

The applicant is requesting approval of an Architecture and Site application for demolition of an existing single-family residence, and construction of a new single-family residence. The project is in compliance with the Town Code, with the exception of the reduced front yard setback request. The project would not result in the largest home in the immediate neighborhood in terms of floor area, but would be the tallest, and largest in terms of FAR.

B. Recommendation

Based on the analysis above, staff recommends approval of the Architecture and Site application subject to the recommended conditions of approval (Exhibit 3). If the Planning Commission finds merit with the proposed project, it should:

1. Make the finding that the proposed project is categorically exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15303(a): New Construction or Conversion of Small Structures (Exhibit 2);
2. Make the findings as required by Section 29.10.09030(e) of the Town Code for the demolition of existing structures (Exhibit 2);
3. Make the finding that the project complies with the objective standards of Chapter 29 of the Town Code (Zoning Regulations) with the exception of the request for a reduced front yard setback (Exhibit 2);
4. Make the findings as required by Section 29.10.265 (3) of the Town Code for modification of zoning rules on nonconforming lots, including setback requirements (Exhibit 2);
5. Make the finding as required by the Town's Residential Design Guidelines that the project complies with the Residential Design Guidelines (Exhibit 2);
6. Make the considerations as required by Section 29.20.150 of the Town Code for granting approval of an Architecture and Site application (Exhibit 2); and
7. Approve Architecture and Site application S-23-009 with the conditions contained in Exhibit 3 and the development plans in Exhibit 12.

CONCLUSION (continued):

C. Alternatives

Alternatively, the Commission can:

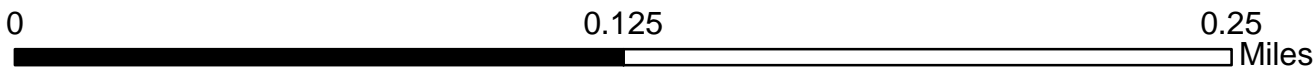
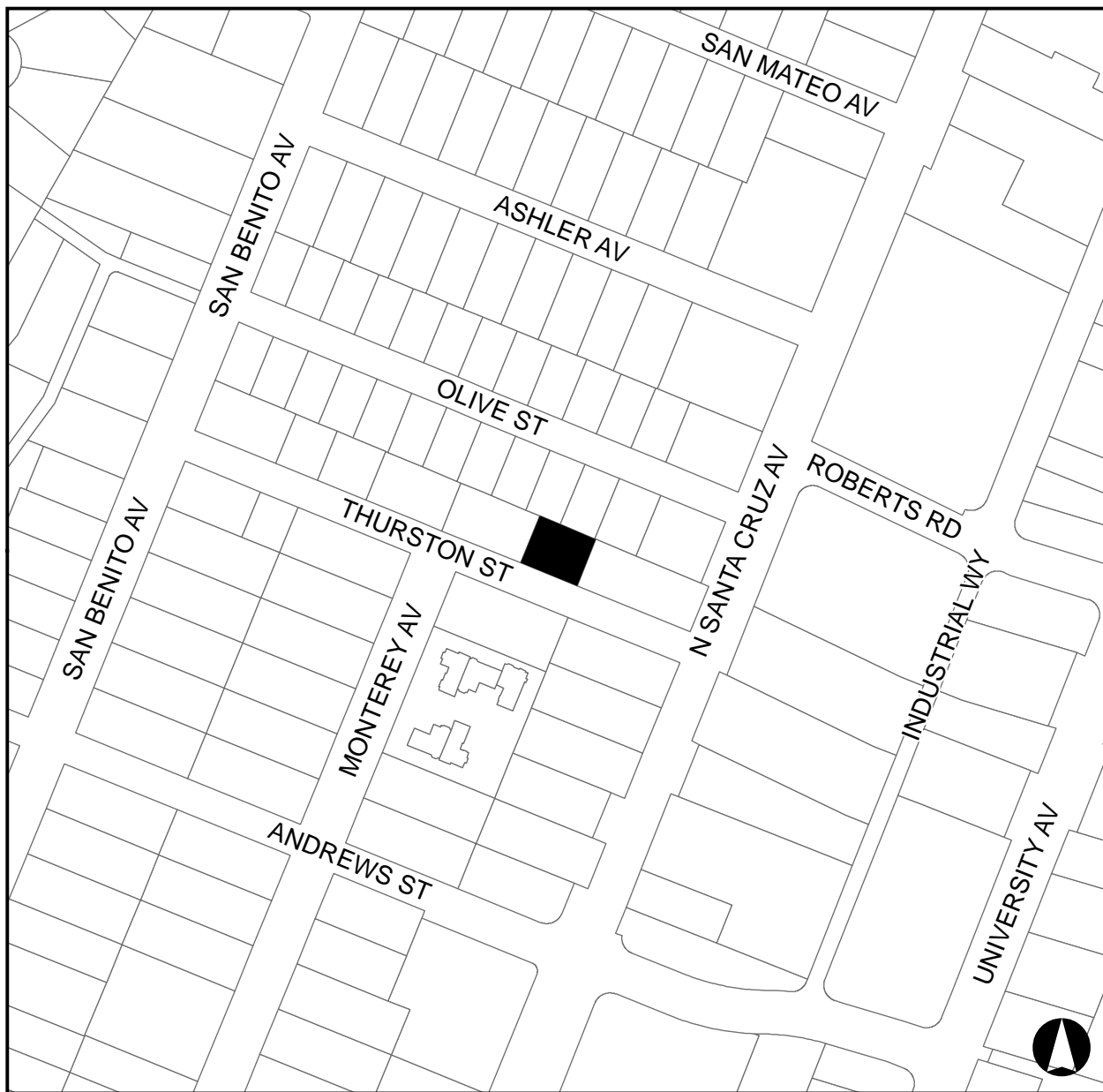
1. Continue the matter to a date certain with specific direction;
2. Approve the application with additional and/or modified conditions; or
3. Deny the application.

EXHIBITS:

1. Location Map
2. Required Findings and Considerations
3. Recommended Conditions of Approval
4. Color and Materials Board, Received November 29, 2023
5. Letter of Justification
6. Letter of Justification for reduced setbacks
7. Towns Consulting Architect
8. Applicant's Response to Consulting Architect
9. Applicant's Neighborhood Outreach
10. Public Comments Received Prior to 11:00 a.m., Friday, January 5, 2024
11. Applicant's Response to Public Comment, Received December 4, 2023
12. Development Plans

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212 Thurston Street



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PLANNING COMMISSION – January 10, 2024
REQUIRED FINDINGS AND CONSIDERATIONS FOR:

212 Thurston Street
Architecture and Site Application S-23-009

Requesting Approval for Demolition of an Existing Single-Family Residence and Construction of a New Single-Family Residence with Reduced Setbacks on Property Zoned R-1D. APN 410-15-039. Categorically Exempt Pursuant to the California Environmental Quality Act (CEQA) Guidelines, Section 15303(a): New Construction or Conversion of Small Structures.

PROPERTY OWNER/APPLICANT: Meleah Guillardo
PROJECT PLANNER: Maria Chavarin

FINDINGS

Required finding for CEQA:

- The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15303(a): New Construction or Conversion of Small Structures.

Required finding for the demolition of existing structures:

- As required by Section 29.10.09030(e) of the Town Code for the demolition of existing structures:
 1. The Town's housing stock will be maintained as the single-family residence will be replaced.
 2. The existing structure has no architectural or historical significance.
 3. The property owner does not desire to maintain the structure as it exists; and
 4. The economic utility of the structure was considered.

Required compliance with the Zoning Regulations:

- The project meets the objective standards of Chapter 29 of the Town Code (Zoning Regulations) with the exception of the request for reduced front yard setbacks.

EXHIBIT 2

Required finding for non-conforming lots:

- As required by Section 29.10.265(3) of the Town Code for modification of zoning rules on nonconforming lots, including setback requirements:
 1. The subject property is nonconforming with regard to lot size.
 2. The front setbacks of the new residence are compatible with the neighborhood.

Required compliance with the Residential Design Guidelines:

- The project design is in compliance with the Residential Design Guidelines in that the Town's Consulting Architect has reviewed the proposal and recommendations were provided to address consistency with the immediate neighborhood. While the proposed home appears to be large in mass compared to most others in the immediate neighborhood, the site is also non-conforming as to size.

CONSIDERATIONS**Required considerations in review of Architecture and Site applications:**

- As required by Section 29.20.150 of the Town Code, the considerations in review of an Architecture and Site application were all made in reviewing this project.

PLANNING COMMISSION – January 10, 2024
CONDITIONS OF APPROVAL

212 Thurston Street
Architecture and Site Application S-23-009

Requesting Approval for Demolition of an Existing Single-Family Residence and Construction of a New Single-Family Residence with Reduced Setbacks on Property Zoned R-1D. Located at 212 Thurston Street. APN 410-15-039.

PROPERTY OWNER/APPLICANT: Meleah Guillardo
PROJECT PLANNER: Maria Chavarin

TO THE SATISFACTION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT:

Planning Division

1. **APPROVAL:** This application shall be completed in accordance with all of the conditions of approval and in substantial compliance with the approved plans. Any changes or modifications to the approved plans and/or business operation shall be approved by the Community Development Director, DRC, or the Planning Commission depending on the scope of the changes.
2. **EXPIRATION:** The approval will expire two years from the approval date pursuant to Section 29.20.320 of the Town Code, unless the approval has been vested.
3. **STORY POLES:** The story poles on the project site shall be removed within 30 days of approval of the Architecture & Site application.
4. **OUTDOOR LIGHTING:** Exterior lighting shall be kept to a minimum, and shall be down directed fixtures that will not reflect or encroach onto adjacent properties. No flood lights shall be used unless it can be demonstrated that they are needed for safety or security.
5. **EXISTING TREES:** All existing trees shown on the plan and trees required to remain or to be planted are specific subjects of approval of this plan, and must remain on the site.
6. **TREE FENCING:** Protective tree fencing and other protection measures shall be placed at the drip line of existing trees prior to issuance of demolition and building permits and shall remain through all phases of construction. Include a tree protection plan with the construction plans.
7. **TREE STAKING:** All newly planted trees shall be double-staked using rubber tree ties.
8. **FRONT YARD LANDSCAPE:** Prior to issuance of a Certificate of Occupancy the front yard must be landscaped.
9. **WATER EFFICIENCY LANDSCAPE ORDINANCE:** The final landscape plan shall meet the Town of Los Gatos Water Conservation Ordinance or the State Water Efficient Landscape Ordinance, whichever is more restrictive. A review fee based on the current fee schedule adopted by the Town Council is required when working landscape and irrigation plans are submitted for review.
10. **TOWN INDEMNITY:** Applicants are notified that Town Code Section 1.10.115 requires that any applicant who receives a permit or entitlement (“the Project”) from the Town shall

defend (with counsel approved by Town), indemnify, and hold harmless the Town, its agents, officers, and employees from and against any claim, action, or proceeding (including without limitation any appeal or petition for review thereof) against the Town or its agents, officers or employees related to an approval of the Project, including without limitation any related application, permit, certification, condition, environmental determination, other approval, compliance or failure to comply with applicable laws and regulations, and/or processing methods (“Challenge”). Town may (but is not obligated to) defend such Challenge as Town, in its sole discretion, determines appropriate, all at applicant’s sole cost and expense.

Applicant shall bear any and all losses, damages, injuries, liabilities, costs and expenses (including, without limitation, staff time and in-house attorney’s fees on a fully-loaded basis, attorney’s fees for outside legal counsel, expert witness fees, court costs, and other litigation expenses) arising out of or related to any Challenge (“Costs”), whether incurred by Applicant, Town, or awarded to any third party, and shall pay to the Town upon demand any Costs incurred by the Town. No modification of the Project, any application, permit certification, condition, environmental determination, other approval, change in applicable laws and regulations, or change in such Challenge as Town, in its sole discretion, determines appropriate, all the applicant’s sole cost and expense. No modification of the Project, any application, permit certification, condition, environmental determination, other approval, change in applicable laws and regulations, or change in processing methods shall alter the applicant’s indemnity obligation.

11. COMPLIANCE MEMORANDUM: A memorandum shall be prepared and submitted with the building plans detailing how the Conditions of Approval will be addressed.

Building Division

12. PERMITS REQUIRED: A Demolition Permit is required for the demolition of the existing single-family residence. A separate Building Permit is required for the construction of the new single-family residence. An additional Building Permit will be required for the PV System if the system is required by the California Energy Code.
13. APPLICABLE CODES: The current codes, as amended and adopted by the Town of Los Gatos as of January 1, 2023, are the 2022 California Building Standards Code, California Code of Regulations Title 24, Parts 1-12, including locally adopted Reach Codes.
14. CONDITIONS OF APPROVAL: The Conditions of Approval must be blue lined in full on the cover sheet of the construction plans. A Compliance Memorandum shall be prepared and submitted with the building permit application detailing how the Conditions of Approval will be addressed.
15. SIZE OF PLANS: Minimum size 24” x 36”, maximum size 30” x 42”.
16. REQUIREMENTS FOR COMPLETE DEMOLITION OF STRUCTURE: Obtain a Building Department Demolition Application and a Bay Area Air Quality Management District Application from the Building Department Service Counter. Once the demolition form has been completed, all signatures obtained, and written verification from PG&E that all utilities have been disconnected, return the completed form to the Building Department Service Counter with the Air District’s J# Certificate, PG&E verification, and three (3) sets

of site plans showing all existing structures, existing utility service lines such as water, sewer, and PG&E. No demolition work shall be done without first obtaining a permit from the Town.

17. SOILS REPORT: A Soils Report, prepared to the satisfaction of the Building Official, containing foundation, and retaining wall design recommendations, shall be submitted with the Building Permit Application. This report shall be prepared by a licensed Civil Engineer specializing in soils mechanics.
18. SHORING: Shoring plans and calculations will be required for all excavations which exceed five (5) feet in depth, or which remove lateral support from any existing building, adjacent property, or the public right-of-way. Shoring plans and calculations shall be prepared by a California licensed engineer and shall conform to the Cal/OSHA regulations.
19. FOUNDATION INSPECTIONS: A pad certificate prepared by a licensed civil engineer or land surveyor shall be submitted to the project Building Inspector at foundation inspection. This certificate shall certify compliance with the recommendations as specified in the Soils Report, and that the building pad elevations and on-site retaining wall locations and elevations have been prepared according to the approved plans. Horizontal and vertical controls shall be set and certified by a licensed surveyor or registered Civil Engineer for the following items:
 - a. Building pad elevation
 - b. Finish floor elevation
 - c. Foundation corner locations
 - d. Retaining wall(s) locations and elevations
20. TITLE 24 ENERGY COMPLIANCE: All required California Title 24 Energy Compliance Forms must be blue-lined (sticky-backed), i.e., directly printed, onto a plan sheet.
21. TOWN RESIDENTIAL ACCESSIBILITY STANDARDS: New residential units shall be designed with adaptability features for single-family residences per Town Resolution 1994-61:
 - a. Wood backing (2" x 8" minimum) shall be provided in all bathroom walls, at water closets, showers, and bathtubs, located 34 inches from the floor to the center of the backing, suitable for the installation of grab bars if needed in the future.
 - b. All passage doors shall be at least 32-inch-wide doors on the accessible floor level.
 - c. The primary entrance door shall be a 36-inch-wide door including a 5'x 5' level landing, no more than 1 inch out of plane with the immediate interior floor level and with an 18-inch clearance at interior strike edge.
 - d. Door buzzer, bell or chime shall be hard wired at primary entrance.
22. BACKWATER VALVE: The scope of this project may require the installation of a sanitary sewer backwater valve per Town Ordinance 6.50.025. Please provide information on the plans if a backwater valve is required and the location of the installation. The Town of Los Gatos Ordinance and West Valley Sanitation District (WVSD) requires backwater valves on drainage piping serving fixtures that have flood level rims less than 12 inches above the elevation of the next upstream manhole.
23. HAZARDOUS FIRE ZONE: All projects in the Town of Los Gatos require Class A roof assemblies.
24. SPECIAL INSPECTIONS: When a special inspection is required by CBC Section 1704, the Architect or Engineer of Record shall prepare an inspection program that shall be

submitted to the Building Official for approval prior to issuance of the Building Permit. The Town Special Inspection form must be completely filled-out and signed by all requested parties prior to permit issuance. Special Inspection forms are available online at www.losgatosca.gov/building.

25. BLUEPRINT FOR A CLEAN BAY SHEET: The Town standard Santa Clara Valley Nonpoint Source Pollution Control Program Sheet (page size same as submitted drawings) shall be part of the plan submittal as the second page. The specification sheet is available online at www.losgatosca.gov/building.
26. APPROVALS REQUIRED: The project requires the following departments and agencies approval before issuing a building permit:
 - a. Community Development – Planning Division: (408) 354-6874
 - b. Engineering/Parks & Public Works Department: (408) 399-5771
 - c. Santa Clara County Fire Department: (408) 378-4010
 - d. West Valley Sanitation District: (408) 378-2407
 - e. Local School District: The Town will forward the paperwork to the appropriate school district(s) for processing. A copy of the paid receipt is required prior to permit issuance.

TO THE SATISFACTION OF THE DIRECTOR OF PARKS & PUBLIC WORKS:

Engineering Division

27. GENERAL: All public improvements shall be made according to the latest adopted Town Standard Plans, Standard Specifications and Engineering Design Standards. All work shall conform to the applicable Town ordinances. The adjacent public right-of-way shall be kept clear of all job-related mud, silt, concrete, dirt and other construction debris at the end of the day. Dirt and debris shall not be washed into storm drainage facilities. The storing of goods and materials on the sidewalk and/or the street will not be allowed unless an encroachment permit is issued by the Engineering Division of the Parks and Public Works Department. The Owner's representative in charge shall be at the job site during all working hours. Failure to maintain the public right-of-way according to this condition may result in the issuance of correction notices, citations, or stop work orders and the Town performing the required maintenance at the Owner's expense.
28. APPROVAL: This application shall be completed in accordance with all the conditions of approval listed below and in substantial compliance with the latest reviewed and approved development plans. Any changes or modifications to the approved plans or conditions of approvals shall be approved by the Town Engineer.
29. CONSTRUCTION PLAN REQUIREMENTS: Construction drawings shall comply with Section 1 (Construction Plan Requirements) of the Town's Engineering Design Standards, which are [available for download from the Town's website](#).
30. PRIOR APPROVALS: All conditions per prior approvals shall be deemed in full force and affect for this approval.
31. CHANGE OF OCCUPANCY: Prior to initial occupancy and any subsequent change in use or occupancy of any non-residential condominium space, the buyer or the new or existing occupant shall apply to the Community Development Department and obtain approval for

- use determination and building permit and obtain inspection approval for any necessary work to establish the use and/or occupancy consistent with that intended.
32. ENCROACHMENT PERMIT: All work in the public right-of-way will require a Construction Encroachment Permit. All work over \$5,000 will require construction security. It is the responsibility of the Owner to obtain any necessary encroachment permits from affected agencies and private parties, including but not limited to, Pacific Gas and Electric (PG&E), AT&T, Comcast, Santa Clara Valley Water District, California Department of Transportation (Caltrans). Copies of any approvals or permits must be submitted to the Town Engineering Division of the Parks and Public Works Department prior to releasing any permit.
 33. FOR PLANTERS: The Owner, Applicant and/or Developer shall apply for an encroachment permit for the proposed planters within the public sidewalk and/or Town's right-of-way. The Owner, Applicant and/or Developer shall work with Parks and Public Works Department staff to arrive at a mutually agreeable solution that addresses safety and aesthetic issues. If no solution is reached, the vegetative screening requirement shall be waived. A Private Improvements in the Public Right-of-Way (formerly Indemnity) Agreement will be required if planters are proposed to be located within the Town's right-of-way. A copy of the recorded agreement shall be submitted to the Engineering Division of the Parks and Public Works Department prior to the issuance of any grading or building permits.
 34. PRIVATE IMPROVEMENTS IN THE PUBLIC RIGHT-OF-WAY (INDEMNITY AGREEMENT): The property owner shall enter into an agreement with the Town for all existing and proposed private improvements within the Town's right-of-way. The Owner shall be solely responsible for maintaining the improvements in a good and safe condition at all times and shall indemnify the Town of Los Gatos. The agreement must be completed and accepted by the Director of Parks and Public Works, and subsequently recorded by the Town Clerk at the Santa Clara County Office of the Clerk-Recorder, prior to the issuance of any grading or building permits. Please note that this process may take approximately six to eight (6-8) weeks.
 35. GENERAL LIABILITY INSURANCE: The property owner shall provide proof of insurance to the Town on a yearly basis. In addition to general coverage, the policy must cover all elements encroaching into the Town's right-of-way.
 36. PUBLIC WORKS INSPECTIONS: The Owner, Applicant and/or Developer or their representative shall notify the Engineering Inspector at least twenty-four (24) hours before starting any work pertaining to on-site drainage facilities, grading or paving, and all work in the Town's right-of-way. Failure to do so will result in penalties and rejection of any work that occurred without inspection.
 37. RESTORATION OF PUBLIC IMPROVEMENTS: The Owner, Applicant and/or Developer or their representative shall repair or replace all existing improvements not designated for removal that are damaged or removed because of the Owner, Applicant and/or Developer or their representative's operations. Improvements such as, but not limited to: curbs, gutters, sidewalks, driveways, signs, pavements, raised pavement markers, thermoplastic pavement markings, etc., shall be repaired and replaced to a condition equal to or better than the original condition. Any new concrete shall be free of stamps, logos, names,

graffiti, etc. Any concrete identified that is displaying a stamp or equal shall be removed and replaced at the Contractor's sole expense and no additional compensation shall be allowed therefore. Existing improvement to be repaired or replaced shall be at the direction of the Engineering Construction Inspector and shall comply with all Title 24 Disabled Access provisions. The restoration of all improvements identified by the Engineering Construction Inspector shall be completed before the issuance of a certificate of occupancy. The Owner, Applicant and/or Developer or their representative shall request a walk-through with the Engineering Construction Inspector before the start of construction to verify existing conditions.

38. SITE SUPERVISION: The General Contractor shall provide qualified supervision on the job site at all times during construction.
39. STREET/SIDEWALK CLOSURE: Any proposed blockage or partial closure of the street and/or sidewalk requires an encroachment permit. Special provisions such as limitations on works hours, protective enclosures, or other means to facilitate public access in a safe manner may be required.
40. PLAN CHECK FEES: Plan check fees associated with the Grading Permit shall be deposited with the Engineering Division of the Parks and Public Works Department prior to the commencement of plan check review.
41. INSPECTION FEES: Inspection fees shall be deposited with the Town prior to the issuance of any grading or building permits or recordation of the Parcel / Final Map.
42. DESIGN CHANGES: Any proposed changes to the approved plans shall be subject to the approval of the Town prior to the commencement of any and all altered work. The Owner's project engineer shall notify, in writing, the Town Engineer at least seventy-two (72) hours in advance of all the proposed changes. Any approved changes shall be incorporated into the final "as-built" plans.
43. PLANS AND STUDIES: All required plans and studies shall be prepared by a Registered Professional Engineer in the State of California and submitted to the Town Engineer for review and approval. Additionally, any post-project traffic or parking counts, or other studies imposed by the Planning Commission or Town Council shall be funded by the Owner, Applicant and/or Developer.
44. GRADING PERMIT: A grading permit is required for all site grading and drainage work except for exemptions listed in Section 12.20.015 of The Code of the Town of Los Gatos (Grading Ordinance). Grading work taking place simultaneously, on-site is considered eligible for the grading permit process and could be counted toward quantities, depending on permit status. After the preceding Architecture and Site Application has been approved by the respective deciding body and the appeal period has passed, the grading permit application with grading plans and associated required materials shall be submitted via email to the PPW engineer assigned to the A&S review. Plan check fees (determined after initial submittal) shall be sent to the Engineering Division of the Parks and Public Works Department located at 41 Miles Avenue. The grading plans shall include topographic map/existing conditions, final grading, drainage, retaining wall location(s), driveway, utility sheet and erosion control. Grading plans shall list earthwork quantities and a table of existing and proposed impervious areas. Unless specifically allowed by the Director of Parks and Public Works, the grading permit will be issued concurrently with

the building permit. The grading permit is for work outside the building footprint(s). Prior to Engineering signing off and closing out on the issued grading permit, the Owner's soils engineer shall verify, with a stamped and signed letter, that the grading activities were completed per plans and per the requirements as noted in the soils report. A separate building permit, issued by the Building Department, located at 110 E. Main Street, is needed for grading within the building footprint.

45. GRADING PERMIT DETERMINATION DURING CONSTRUCTION DRAWINGS: In the event that, during the production of construction drawings and/or during construction of the plans approved with this application by the Town of Los Gatos, it is determined that a grading permit would be required as described in Chapter 12, Article II (Grading Permit) of the Town Code of the Town of Los Gatos, an Architecture and Site Application would need to be submitted by the Owner for review and approval by the Development Review Committee prior to applying for a grading permit.
46. ILLEGAL GRADING: Per the Town's Comprehensive Fee Schedule, applications for work unlawfully completed shall be charged double the current fee. As a result, the required grading permit fees associated with an application for grading will be charged accordingly.
47. CONSTRUCTION EASEMENT: Prior to the issuance of a grading or building permit, it shall be the sole responsibility of the Owner, Applicant and/or Developer to obtain any and all proposed or required easements and/or permissions necessary to perform the grading herein proposed. Proof of agreement/approval is required prior to the issuance of any Permit.
48. DRAINAGE IMPROVEMENT: Prior to the recordation of a subdivision map (except maps for financing and conveyance purposes only) or prior to the issuance of any grading/improvement permits, whichever comes first, the Owner, Applicant and/or Developer shall: a) design provisions for surface drainage; and b) design all necessary storm drain facilities extending to a satisfactory point of disposal for the proper control and disposal of storm runoff; and c) provide a recorded copy of any required easements to the Town.
49. TREE REMOVAL: Copies of all necessary tree removal permits shall be provided prior to the issuance of a building permit. An arborist report may be necessary.
50. PRECONSTRUCTION MEETING: Prior to issuance of any grading or building permits or the commencement of any site work, the general contractor shall:
 - a) Along with the Owner, Applicant and/or Developer, attend a pre-construction meeting with the Town Engineer to discuss the project conditions of approval, working hours, site maintenance and other construction matters;
 - b) Acknowledge in writing that they have read and understand the project conditions of approval and will make certain that all project sub-contractors have read and understand them as well prior to commencing any work, and that a copy of the project conditions of approval will be posted on-site at all times during construction.
51. DELAYED/DEFERRED REPORTS AND REVIEWS: TLGPPW strongly recommend that reports requiring a peer review be submitted and completed prior to committee approval/building permit stage. Note that these reviews may require a design change by the applicant and/or additional studies. Applicants who chose to defer assume risk that required changes may send project back to planning stage.

52. **WATER METER:** The existing water meter, currently located within the Town of Los Gatos right-of-way, shall be relocated within the property in question, directly behind the public right-of-way line. The Owner, Applicant and/or Developer shall repair and replace to existing Town standards any portion of concrete flatwork within said right-of-way that is damaged during this activity prior to issuance of a certificate of occupancy.
53. **SANITARY SEWER CLEANOUT:** The existing sanitary sewer cleanout, currently located within the Town of Los Gatos right-of-way, shall be relocated within the property in question, within one (1) foot of the property line per West Valley Sanitation District Standard Drawing 3, or at a location specified by the Town. The Owner, Applicant and/or Developer shall repair and replace to existing Town standards any portion of concrete flatwork within said right-of-way that is damaged during this activity prior to issuance of a certificate of occupancy.
54. **CERTIFICATE OF OCCUPANCY:** The Engineering Division of the Parks and Public Works Department will not sign off on a Temporary Certificate of Occupancy or a Final Certificate of Occupancy until all required improvements within the Town's right-of-way have been completed and approved by the Town.
55. **UTILITIES:** The Owner, Applicant and/or Developer shall install all new, relocated, or temporarily removed utility services, including telephone, electric power and all other communications lines underground, as required by Town Code Section 27.50.015(b). All new utility services shall be placed underground. Underground conduit shall be provided for cable television service. The Owner, Applicant and/or Developer is required to obtain approval of all proposed utility alignments from any and all utility service providers before a Certificate of Occupancy for any new building can be issued. The Town of Los Gatos does not approve or imply approval for final alignment or design of these facilities.
56. **UTILITY SETBACKS:** House foundations shall be set back from utility lines a sufficient distance to allow excavation of the utility without undermining the house foundation. The Town Engineer shall determine the appropriate setback based on the depth of the utility, input from the project soils engineer, and the type of foundation.
57. **UTILITY EASEMENTS:** Deed restrictions shall be placed on lots containing utility easements. The deed restrictions shall specify that no trees, fences, structures or hardscape are allowed within the easement boundaries, and that maintenance access must be provided. The Town will prepare the deed language and the Owner's surveyor shall prepare the legal description and plat. The Owner, Applicant and/or Developer shall pay any recordation costs. The documents shall be recorded before any grading or permits are issued.
58. **SIDEWALK REPAIR:** The Owner, Applicant and/or Developer shall repair and replace to existing Town standards any sidewalk damaged now or during construction of this project. All new and existing adjacent infrastructure must meet current ADA standards. Sidewalk repair shall match existing color, texture and design, and shall be constructed per Town Standard Details. New concrete shall be free of stamps, logos, names, graffiti, etc. Any concrete identified that is displaying a stamp or equal shall be removed and replaced at the Contractor's sole expense and no additional compensation shall be allowed therefore. The limits of sidewalk repair will be determined by the Engineering Construction Inspector during the construction phase of the project. The improvements must be completed and

accepted by the Town before a Certificate of Occupancy for any new building can be issued.

59. CURB AND GUTTER REPAIR: The Owner, Applicant and/or Developer shall repair and replace to existing Town standards any curb and gutter damaged now or during construction of this project. All new and existing adjacent infrastructure must meet Town standards. New curb and gutter shall be constructed per Town Standard Details. New concrete shall be free of stamps, logos, names, graffiti, etc. Any concrete identified that is displaying a stamp or equal shall be removed and replaced at the Contractor's sole expense and no additional compensation shall be allowed therefore. The limits of curb and gutter repair will be determined by the Engineering Construction Inspector during the construction phase of the project. The improvements must be completed and accepted by the Town before a Certificate of Occupancy for any new building can be issued.
60. VALLEY GUTTER REPAIR: The Owner/Applicant shall repair and replace to existing Town standards any valley gutter damaged now or during construction of this project. All new and existing adjacent infrastructure must meet Town standards. New valley gutter shall be constructed per Town Standard Details. New concrete shall be free of stamps, logos, names, graffiti, etc. Any concrete identified that is displaying a stamp or equal shall be removed and replaced at the Contractor's sole expense and no additional compensation shall be allowed therefore. The limits of valley gutter repair will be determined by the Engineering Construction Inspector during the construction phase of the project. The improvements must be completed and accepted by the Town before a Certificate of Occupancy for any new building can be issued.
61. FENCING: Any fencing proposed within two hundred (200) feet of an intersection shall comply with Town Code Section §23.10.080.
62. FENCES: Fences between all adjacent parcels will need to be located on the property lines/boundary lines. Any existing fences that encroach into the neighbor's property will need to be removed and replaced to the correct location of the boundary lines before a Certificate of Occupancy for any new building can be issued. Waiver of this condition will require signed and notarized letters from all affected neighbors.
63. CONSTRUCTION VEHICLE PARKING: Construction vehicle parking within the public right-of-way will only be allowed if it does not cause access or safety problems as determined by the Town.
64. CONSTRUCTION VEHICLE PARKING: No construction vehicles, trucks, equipment and worker vehicles shall be allowed to park on the portion of any public (Town) streets without written approval from the Town Engineer.
65. ADVANCE NOTIFICATION: Advance notification of all affected residents and emergency services shall be made regarding parking restriction, lane closure or road closure, with specification of dates and hours of operation.
66. HAULING OF SOIL: Hauling of soil on- or off-site shall not occur during the morning or evening peak periods (between 7:00 a.m. and 9:00 a.m. and between 4:00 p.m. and 6:00 p.m.), and at other times as specified by the Director of Parks and Public Works. Prior to the issuance of a grading or building permit, the Owner and/or Applicant or their representative shall work with the Town Building Department and Engineering Division Inspectors to devise a traffic control plan to ensure safe and efficient traffic flow under

periods when soil is hauled on or off the project site. This may include, but is not limited to provisions for the Owner and/or Applicant to place construction notification signs noting the dates and time of construction and hauling activities, or providing additional traffic control. Coordination with other significant projects in the area may also be required. Cover all trucks hauling soil, sand and other loose debris.

67. CONSTRUCTION HOURS: All subdivision improvements and site improvements construction activities, including the delivery of construction materials, labors, heavy equipment, supplies, etc., shall be limited to the hours of 8:00 a.m. to 6:00 p.m., weekdays and 9:00 a.m. to 4:00 p.m. Saturdays. The Town may authorize, on a case-by-case basis, alternate construction hours. The Owner, Applicant and/or Developer shall provide written notice twenty-four (24) hours in advance of modified construction hours. Approval of this request is at discretion of the Town.
68. CONSTRUCTION NOISE: Between the hours of 8:00 a.m. to 6:00 p.m., weekdays and 9:00 a.m. to 4:00 p.m. Saturdays, construction, alteration or repair activities shall be allowed. No individual piece of equipment shall produce a noise level exceeding eighty-five (85) dBA at twenty-five (25) feet from the source. If the device is located within a structure on the property, the measurement shall be made at distances as close to twenty-five (25) feet from the device as possible. The noise level at any point outside of the property plane shall not exceed eighty-five (85) dBA.
69. CONSTRUCTION MANAGEMENT PLAN SHEET: Prior to the issuance of any grading or building permits, the Owner and/or Applicant's design consultant shall submit a construction management plan sheet (full-size) within the plan set that shall incorporate at a minimum the Earth Movement Plan, Traffic Control Plan, Project Schedule, site security fencing, employee parking, construction staging area, materials storage area(s), construction trailer(s), concrete washout(s) and proposed outhouse locations. Please refer to the Town's [Construction Management Plan Guidelines](#) document for additional information.
70. NPDES STORMWATER COMPLIANCE: In the event that, during the production of construction drawings for the plans approved with this application by the Town of Los Gatos, it is determined that the project will create and/or replace more than 2,500 square feet of impervious area, completion of the NPDES Stormwater Compliance Small Projects Worksheet and implementation of at least one of the six low impact development site design measures it specifies shall be completed and submitted to the Engineering Division before issuance of a grading/building permit.
71. SITE DESIGN MEASURES: All projects shall incorporate at least one of the following measures:
 - a) Protect sensitive areas and minimize changes to the natural topography.
 - b) Minimize impervious surface areas.
 - c) Direct roof downspouts to vegetated areas.
 - d) Use porous or pervious pavement surfaces on the driveway, at a minimum.
 - e) Use landscaping to treat stormwater.
72. LANDSCAPING: In finalizing the landscape plan for the biotreatment area(s), it is recommended that the landscape architect ensure that the characteristics of the selected plants are similar to those of the plants listed for use in bioretention areas in Appendix D

of the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) C.3 Stormwater Handbook.

73. LANDSCAPE MAINTENANCE AGREEMENT: The Owner and/or Applicant shall enter into a Landscape Maintenance Agreement with the Town of Los Gatos in which the Owner and/or Applicant agrees to maintain the vegetated areas along the project's Street Name frontage located within the public right-of-way. The agreement must be completed and accepted by the Town Attorney prior to the issuance of any grading or building permits.
74. DUST CONTROL: Blowing dust shall be reduced by timing construction activities so that paving and building construction begin as soon as possible after completion of grading, and by landscaping disturbed soils as soon as possible. Further, water trucks shall be present and in use at the construction site. All portions of the site subject to blowing dust shall be watered as often as deemed necessary by the Town, or a minimum of three (3) times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites in order to insure proper control of blowing dust for the duration of the project. Watering on public streets shall not occur. Streets shall be cleaned by street sweepers or by hand as often as deemed necessary by the Town Engineer, or at least once a day. Watering associated with on-site construction activity shall take place between the hours of 8 a.m. and 5 p.m. and shall include at least one (1) late-afternoon watering to minimize the effects of blowing dust. All public streets soiled or littered due to this construction activity shall be cleaned and swept on a daily basis during the workweek to the satisfaction of the Town. Demolition or earthwork activities shall be halted when wind speeds (instantaneous gusts) exceed twenty (20) miles per hour (MPH). All trucks hauling soil, sand, or other loose debris shall be covered.
75. DETAILING OF STORMWATER MANAGEMENT FACILITIES: Prior to the issuance of any grading or building permits, all pertinent details of any and all proposed stormwater management facilities, including, but not limited to, ditches, swales, pipes, bubble-ups, dry wells, outfalls, infiltration trenches, detention basins and energy dissipaters, shall be provided on submitted plans, reviewed by the Engineering Division of the Parks and Public Works Department, and approved for implementation.
76. OFF-SITE DRAINAGE: The Owner, Applicant and/or Developer shall construct and install a private on-site storm drain system that is adequately sized to collect and convey adjacent off-site tributary drainage. Hydraulic calculations for a 100-year storm event shall provide documentation that the proposed storm drain system can convey said off-site drainage as well as on-site drainage during this event over, within, through and off the site, and ultimately into the Town's storm drain system.
77. MAINTENANCE OF PRIVATE STREETS: It is the responsibility of the property owner(s)/homeowners association to implement a plan for street sweeping of paved private roads and cleaning of all storm drain inlets.
78. SILT AND MUD IN PUBLIC RIGHT-OF-WAY: It is the responsibility of Contractor and homeowner to make sure that all dirt tracked into the public right-of-way is cleaned up on a daily basis. Mud, silt, concrete and other construction debris SHALL NOT be washed into the Town's storm drains.
79. PERMIT ISSUANCE: Permits for each phase; reclamation, landscape, and grading, shall be issued simultaneously.

80. COVERED TRUCKS: All trucks transporting materials to and from the site shall be covered.

TO THE SATISFACTION OF THE SANTA CLARA COUNTY FIRE DEPARTMENT:

81. FIRE SPRINKLERS REQUIRED: *(As Noted on Sheet A1)* Approved automatic sprinkler systems in new and existing buildings and structures shall be provided in the locations described in this Section or in Sections 903.2.1 through 903.2.12 whichever is the more restrictive and Sections 903.2.14 through 903.2.21. For the purposes of this section, firewalls and fire barriers used to separate building areas shall be constructed in accordance with the California Building Code and shall be without openings or penetrations. 1. An automatic sprinkler system shall be provided throughout all new buildings and structures, other than Group R occupancies, except as follows: a. Buildings and structures not located in any Wildland-Urban Interface and not exceeding 1,200 square feet of fire area. b. Buildings and structures located in any Wildland-Urban Interface Fire Area and not exceeding 500 square feet of fire area. c. Group S-2 or U occupancies, including photovoltaic support structures, used exclusively for vehicle parking which meet all of the following: i. Noncombustible construction. ii. Maximum 5,000 square feet in building area. iii. Structure is open on not less than three (3) sides nor 75% of structure perimeter. iv. Minimum of 10 feet separation from existing buildings, or similar structures, unless area is separated by fire walls complying with California Building Code 706. d. Canopies, constructed in accordance with CBC 406.7.2, used exclusively for weather protection of vehicle fueling pads per CBC 406.7.1 and not exceeding 5,000 square feet of fire area. 2. An automatic sprinkler system shall be installed throughout all new buildings with a Group R fire area. Exception: Accessory Dwelling Unit, provided that all of the following are met: a. The unit meets the definition of an Accessory Dwelling Unit as defined in the Government Code Section 65852.2. b. The existing primary residence does not have automatic fire sprinklers. c. The accessory dwelling unit does not exceed 1,200 square feet in size. d. The unit is on the same lot as the primary residence. e. The unit meets all apparatus access and water supply requirements of Chapter 5 and Appendix B of the 2022 California Fire Code. 3. An approved automatic fire sprinkler system shall be installed in new manufactured homes (as defined in California Health and Safety Code Sections 18007 and 18009) and multifamily manufactured homes with two dwelling units (as defined in California Health and Safety Code Section 18008.7) in accordance with Title 25 of the California Code of Regulations. 4. An automatic sprinkler system shall be installed throughout existing buildings with a Group R fire area when additions are made causing the fire area to exceed 3,600 square feet. Exception: Additions where all of the following are met: a. Building addition does not exceed 500 square feet. b. The resultant structure meets all water supply requirements of Chapter 5 and Appendix B of the 2022 California Fire Code. 5. An automatic sprinkler system shall be provided throughout existing Group A, B, E, F, L, M, S and U buildings and structures, when additions are made that increase the fire area to more than 3,600 square feet or that create conditions described in Sections 903.2.1 through 903.2.18. 6. Any change in the character of occupancy or in use of any building with a fire area equal to or greater than 3,600 square feet which, in the opinion of the fire code official or building official, would place the building into a more hazardous division of the same occupancy group or into a different

group of occupancies and constitutes a greater degree of life safety 1 or increased fire risk 2 , shall require the installation of an approved fire automatic fire sprinkler system.
Sprinklers require for new house.

82. REQUIRED FIRE FLOW: *(Letter received)* The minimum require fireflow for this project is 500 Gallons Per Minute (GPM) at 20 psi residual pressure. This fireflow assumes installation of automatic fire sprinklers per CFC [903.3.1.3]
83. WATER SUPPLY REQUIREMENT: *(As Noted on Sheet A1)* Potable water supplies shall be protected from contamination caused by fire protection water supplies. It is the responsibility of the applicant and any contractors and subcontractors to contact the water purveyor supplying the site of such project, and to comply with the requirements of that purveyor. Such requirements shall be incorporated into the design of any water-based fire protection systems, and/or fire suppression water supply systems or storage containers that may be physically connected in any manner to an appliance capable of causing contamination of the potable water supply of the purveyor of record. Final approval of the system(s) under consideration will not be granted by this office until compliance with the requirements of the water purveyor of record are documented by that purveyor as having been met by the applicant(s). 2019 CFC Sec. 903.3.5 and Health and Safety Code 13114.7.
84. ADDRESS IDENTIFICATION: *(As Noted on Sheet A1)* New and existing buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Where required by the fire code official, address numbers shall be provided in additional approved locations to facilitate emergency response. Address numbers shall be Arabic numbers or alphabetical letters. Numbers shall be a minimum of 4 inches (101.6 mm) high with a minimum stroke width of 0.5 inch (12.7 mm). Where access is by means of a private road and the building cannot be viewed from the public way, a monument, pole or other sign or means shall be used to identify the structure. Address numbers shall be maintained. CFC Sec. 505.1.
85. CONSTRUCTION SITE FIRE SAFETY: *(As Noted on Sheet A1)* All construction sites must comply with applicable provisions of the CFC Chapter 33 and our Standard Detail and Specification S1-7. Provide appropriate notations on subsequent plan submittals, as appropriate to the project. CFC Chp. 33.

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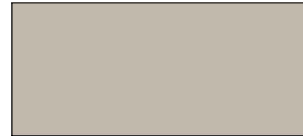
ROOFING & GUTTERS, FASCIA & BARGE
BOARDS: TAYLOR METAL PRODUCTS
STANDING SEAM METAL ROOFING
COLOR: DARK BRONZE - LRV 22



METAL-CLAD WOOD WINDOW FRAMES
COLOR: BRONZE



SMOOTH STUCCO SIDING
COLOR: KELLY MOORE
'AFTERNOON TEA'



STONE:
REAL STONE VENEER
COLOR: CREAMY LIMESTONE



METAL RAILINGS
COLOR: BLACK



FROM THE OFFICE OF
CHRIS SPAULDING
ARCHITECT
801 CAMELIA STREET, SUITE E
BERKELEY CA 94710

MATERIAL & COLOR BOARD
212 THURSTON STREET
LOS GATOS □ CALIFORNIA

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Christopher Spaulding, Architect

4-7-23

Project Description & Justification Letter – 212 Thurston Street

The existing residence at 212 Thurston Street is a small one-story home (846 sq.ft.) on a substandard-sized parcel (4,671 sq.ft.) in the R-1-D zoning district. The house was originally built in 1915, but has since been remodeled multiple times and no longer retains any historic value. In 2023, the HPC approved taking the house out of the historic inventory. Due to the very poor condition of the house, the owner would like to replace it with a new house.

The new owner proposes to build a new 2-story home with a basement, and retain the existing detached garage. One fruit tree in the rear yard will be removed. Due to the small, substandard lot size, the owner proposes to reduce the front setback to 10', which is compatible with the adjacent properties.

The current residence has a substandard front setback of about 3'-6". The proposed residence will have a greater setback – 10' to the entry porch, and 12' to the body of the house.

There are existing substandard front setbacks in the immediate neighborhood:

- # 210 Thurston Street: This house is actually 6" into the public right-of-way
- # 531 N. Santa Cruz Avenue: The detached garage at this site has a 3'-6" setback to Thurston St.
- # 590 Monterey Avenue has a 10' setback to Thurston St. (an exterior side setback).

With 3 other 2-story homes in the immediate neighborhood and with the existing reduced front setbacks noted above, this project will not be out of character with its neighbors.

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Christopher Spaulding, Architect



9-11-23

212 Thurston Street

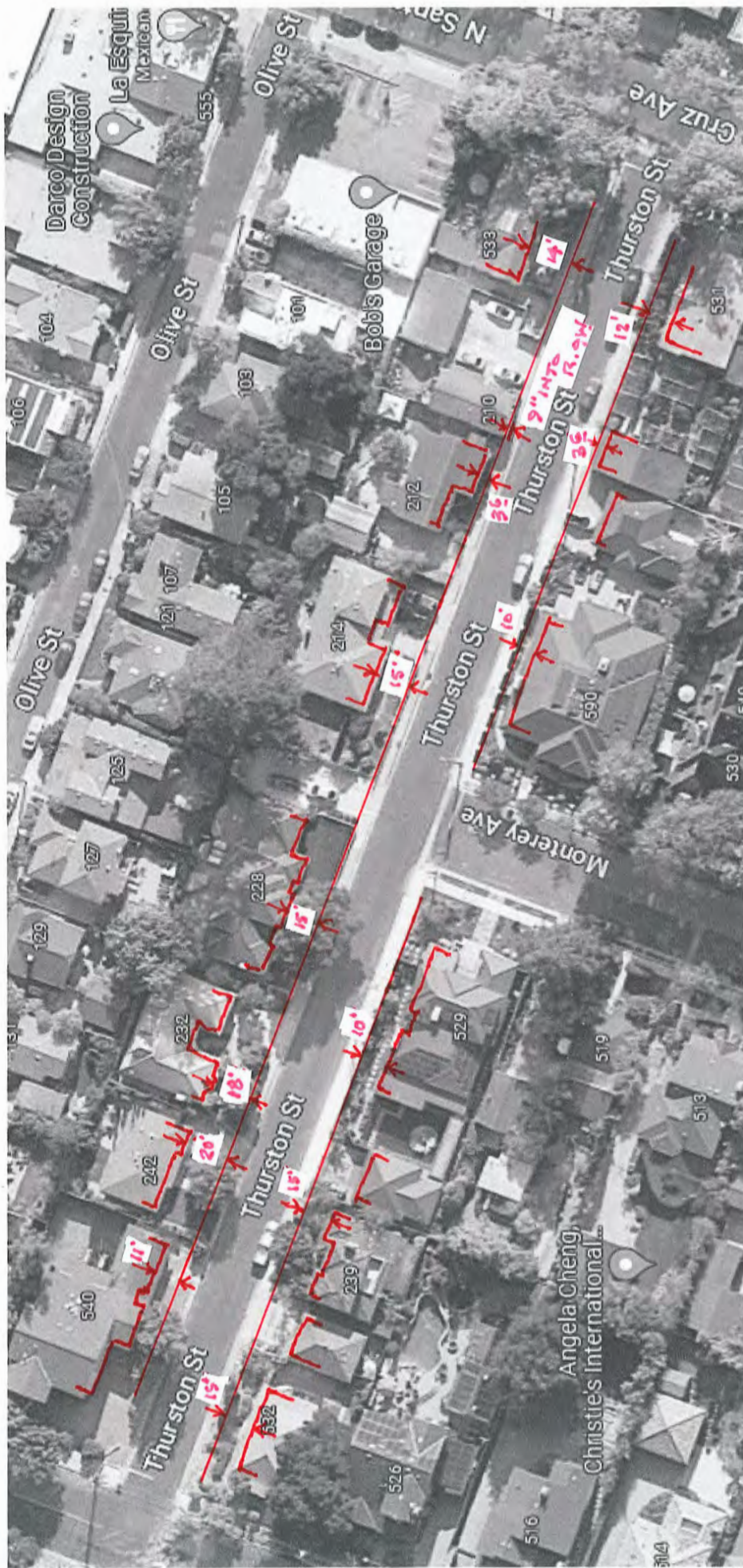
Reduced front setback justification

Due to the fact that the property at 212 Thurston Street is a substandard lot with a shallow depth of 62', the owners request that the Town relax the front yard setback by several feet (from 15' to 12') for the house, and a 7'-3" front setback for the open front porch.

This reduction of the front setback is compatible with the existing neighborhood building setbacks. The immediate neighborhood of the site at 212 Thurston Street is unique in that 6 of the 12 properties on the street are fronted on the perpendicular streets, so that they have 'street-side' setbacks fronting Thurston. The required street side setback is 10' for these parcels – see attached 'Thurston Street Setback Diagram'. The existing street-side setbacks for the buildings on these properties range from 9" into the public right-of-way to 15', with an average of about 9'-6".

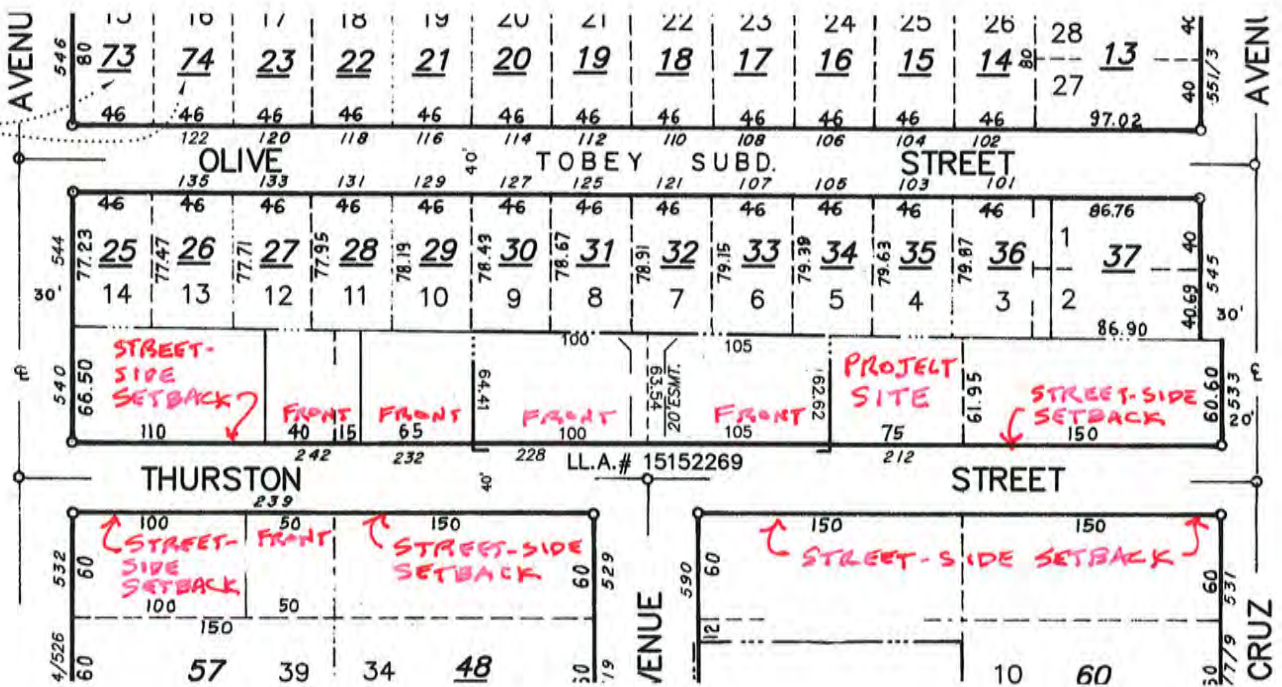
While most of the existing residences with front setbacks on Thurston meet the normal 15' setback, the existing residence on the property has a front setback of 3'-6". The proposed house will increase this to 12' for the house and to 7'-3" for the open front porch.

In the future, when the adjacent Accessory dwelling unit that currently extends 9" over the front property line into the public right-of-way is replaced, whatever building that replaces it will either have a 10' street-side setback, or a reduced street side setback of 4' (for a new ADU). The proposed residence at 212 Thurston will therefore provide a nice streetscape now and in the future, where the buildings at 210, 212 and 214 step back progressively further from the sidewalk as one moves west.



EXISTING BUILDING SETBACKS ON THURSTON ST.

VER'S REQUEST
1997-98



THURSTON STREET
SETBACK DIAGRAM

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May 16, 2023

Ms. Maria Chavarin
Community Development Department
Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95031

RE: 212 Thurston Street

Dear Maria:

I reviewed the drawings and evaluated the neighborhood context. My comments and recommendations on the design are as follows:

NEIGHBORHOOD CONTEXT

The site is located in an established neighborhood of one and two story traditional homes. Photos of the site and its surrounding neighborhood are shown on the following page.





THE SITE



House immediately across Thurston Street



House immediately to the left



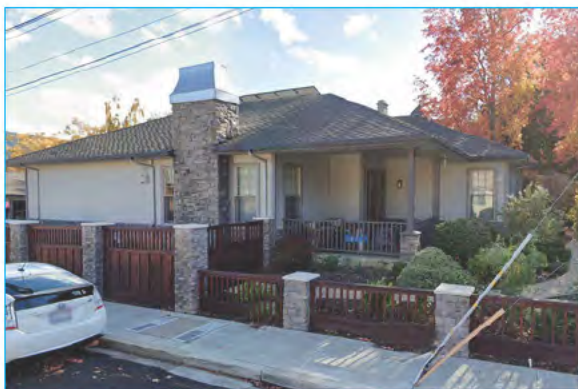
House immediately to the right



Nearby house to the left



Nearby house to the right



Nearby house across Thurston Street



Nearby house across Thurston Street

PROPOSED PROJECT



Proposed Front Elevation



Proposed Rear Elevation



Proposed Left Side Elevation



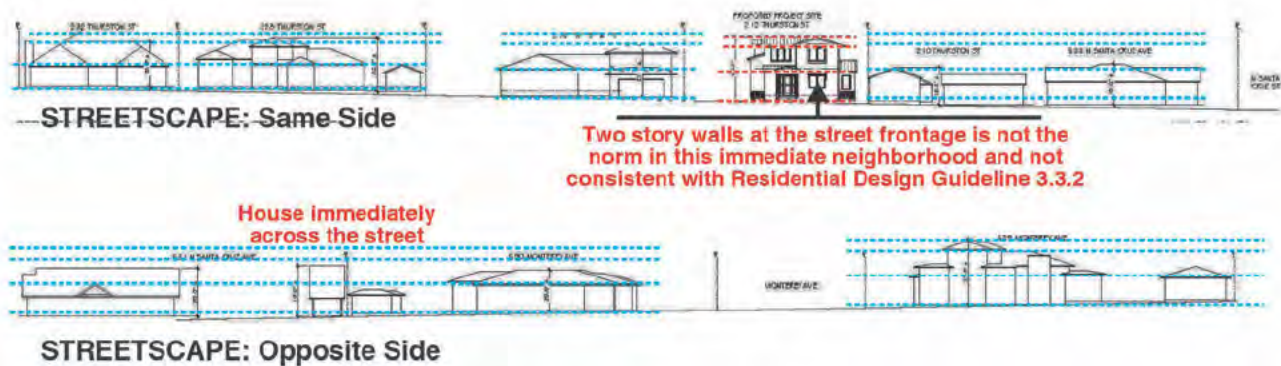
Proposed Right Side Elevation



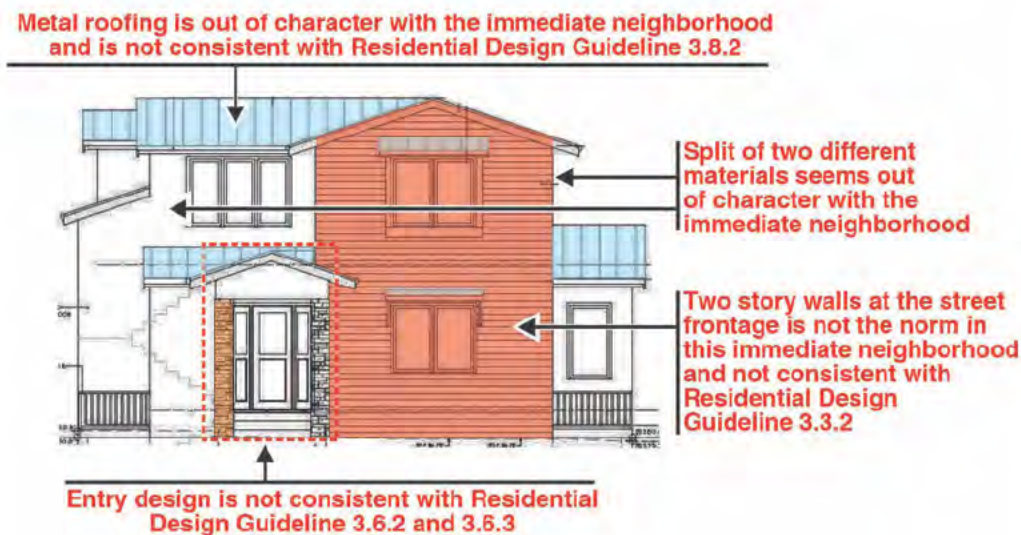
Proposed Streetscape: Same Side

ISSUES AND CONCERNS

The immediate neighborhood contains a mix of one and two story homes designed in traditional styles. The proposed house, however, would be taller than many others in the immediate neighborhood - see streetscape illustration below.



Some specific issues include the following:



1. The two story wall at the street frontage is not the norm of the immediate neighborhood and would not be consistent with Residential Design Guideline 3.3.2.

3.3.2 Height and bulk at front and side setbacks

- Two story houses may not be appropriate for every neighborhood. For neighborhoods dominated by one story homes, an effort should be made to limit the house to one story in height or to accommodate second floor space within the roof form as is common in the Craftsman Style.
- In neighborhoods with small homes, try to place more of the floor area on the first floor with less area on the second floor.
- Take care in the placement of second floor masses. Unless the architectural style traditionally has the second floor front wall at or near the first floor wall, set the second floor back from the front facade a minimum of 5 feet.
- The design of two story homes constructed adjacent to one story houses should include techniques to minimize their visual impact and provide transitions in scale.

2. The proposed projecting gable entry is in sharp contrast with other nearby homes which have entries located under the first floor eave line and would not be consistent with Residential Design Guideline 3.6.3.

3.6.3 Design entries with sensitivity to the surrounding neighborhood

- *Avoid large and formal entries unless that is the norm for nearby houses. It is often best to start the design consideration with an entry type (e.g., projecting or under eave porch) that is similar to nearby homes.*

3. The use of a combination of stucco and horizontal siding is complex in contrast to the simplicity of materials treatment of other homes in the immediate neighborhood.
4. The proposed metal roofing would be out of character for the immediate neighborhood and would not be consistent with Residential Design Guideline 3.8.2.

3.8.2 Select materials that are sensitive to the surrounding neighborhood

5. The stone columns at the entry are awkward and not well suited the rest of the traditional design. It would not be consistent Residential Design Guideline 3.6.2.

3.6.2 Design home entries with sensitivity to the architectural style

- *Most architectural styles have a distinctively unique entry type. Avoid using an entry type that is not part of the style.*

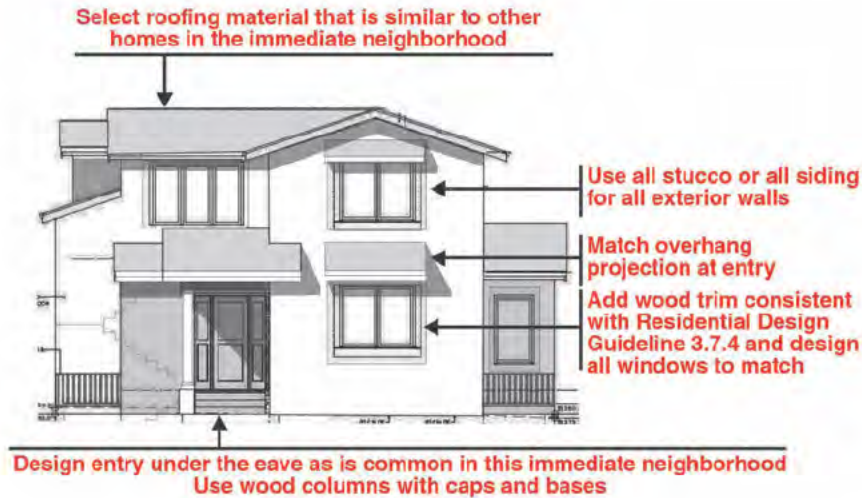
6. The windows appear to be treated differently and the trim width may be too narrow to meet the requirements of Residential Design Guideline 3.7.4.

3.7.4 Design the windows with attention to matching the traditional details of the architectural style

- Most architectural styles - except Mission, Spanish Eclectic or Modern - should have wood trim around the windows. The trim width should be matched to the style, but in general, should not be less than 3 1/2 inches wide. Head trim depth should be equal to or wider than the jamb casing, but not less than one-sixth of the opening width.
- Projecting window sills and heads are strongly encouraged unless the architectural style would not normally have those features.
- Wood trim is also encouraged on stucco houses unless the window frames are recessed at least 6 inches from the outside face of the wall. The use of stucco covered foam trim is strongly discouraged.

RECOMMENDATIONS

1. Increase the size of the first floor segment over the kitchen window to reinforce the first floor eave and roof line and to improve the front facade compatibility with other homes in the immediate neighborhood.
2. Revise the entry to provide an under-the-eave entry similar to other homes in the immediate neighborhood, reinforce the first floor roof line and improve the front facade compatibility with other nearby homes.

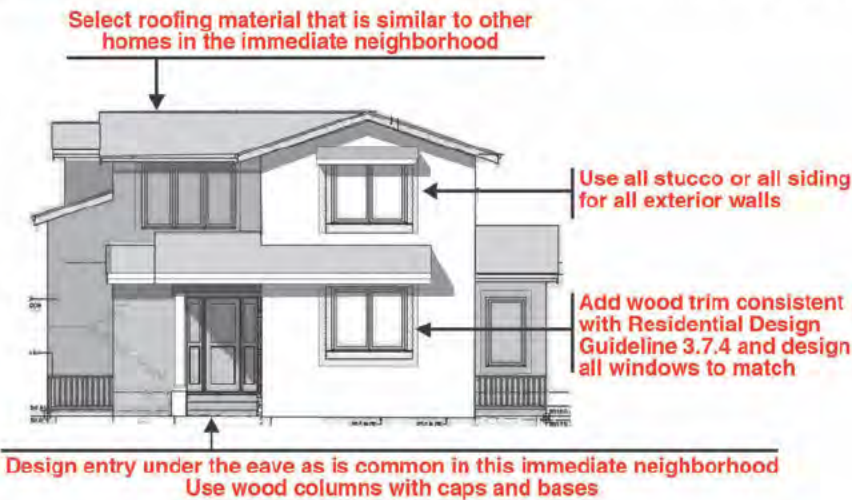


3. Select either stucco or horizontal siding and use it consistently on all exterior walls.
4. Select a roofing material similar to that on other homes in the immediate neighborhood.
5. Use wood columns on the front entry and back porch in lieu of the proposed stone columns.
6. Treat all windows with the same detailing and provide trim consistent with Residential Design Guideline 3.7.4.

The streetscape illustrations below at a small and large scale show the proposed front elevation recommendations..



There is one other option to better relating the larger front facade to the nearby one story homes. That would be to extend the entry roof partially across the front facade in lieu of the proposed roof segment over the kitchen window. This would emphasize the one story eave portion of the home.



Maria, please let me know if you have any questions or if there are any issues that I did not address.

Sincerely,
CANNON DESIGN GROUP

Larry L. Cannon

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Christopher Spaulding, Architect

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

7-31-23

212 Thurston Street

Consulting Architect's Comments Response Letter – Comment Letter Dated May 16, 2023

Recommendation 1:

The entry porch has been enlarged to bring it across in front of the kitchen window as recommended. This extends the lower roof eave line to better align with the adjacent houses and buffers the front 2-story element.

Recommendation 2:

The gable-roof at the entry has been removed, as recommended.

Recommendation 3:

The exterior siding has been revised to be 2 materials – stucco and stone. These materials are also used for one of the homes in the immediate neighborhood – 529 Monterey Ave., as shown below:



Recommendation 4:

Metal roofing is also present in the immediate neighborhood – again on the home at 529 Monterey Ave.

Recommendation 5:

Similar to the home at 529 Monterey Avenue, Ms. Guillard would like her home to be more contemporary in style, while still having a more traditional massing (i.e., peaked roofs with eaves). The elevations have been revised to expand the area of stone veneer, including keeping the porch columns as stone.

Recommendation 6:

In keeping with the more contemporary styling, the windows will not have trim. This is detailed in the drawings on sheet A2.

The example photo below has similar features and materials:

- Stucco & stone siding, along with stone columns, metal roofing and windows without trim. The Guillard house will have a slightly warmer color scheme for the stucco and stone, but the roofing, fascia and window colors are the same.



Property: 212 Thurston St, Los Gatos, CA 95030

Owner: Meleah Guillard, [REDACTED]

Subject: Discussion with neighbors regarding 212 Thurston St development

Neighbors inquired with:

1. [REDACTED], 228 Thurston St, Los Gatos, CA
 - a. Date of inquiries: 6/25/2023
 - b. No issues with plans noted
2. [REDACTED], 105 Olive St, Los Gatos, CA
 - a. Date of inquiries: 6/25/2023
 - b. No issues with plans noted
3. [REDACTED], 531 N Santa Cruz Avenue, Los Gatos, CA
 - a. Date of inquiries: 6/25/2023
 - b. No issues with plans noted
4. [REDACTED], 590 Monterey Ave, Los Gatos, CA
 - a. Date of inquiries: 6/25/2023
 - b. No issues with plans noted
5. [REDACTED], 214 Thurston St, Los Gatos, CA
 - a. Date of inquiries: 6/25/2023
 - b. No issues with plans noted

Neighbors not inquired with

1. [REDACTED], 103 Olive St.
 - a. Neighbor did not answer doorbell on 6/25/2023
2. 533 N Santa Cruz Ave, Los Gatos, CA
 - a. Neighbor did not answer doorbell on 6/25/2023
3. 210 Thurston St, Los Gatos, CA
 - a. Neighbor did not answer doorbell on 6/25/2023

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From: Eric Rafia <[REDACTED]>
Sent: Friday, July 7, 2023 5:54 PM
To: Planning <Planning@losgatosca.gov>
Subject: 212 Thurston St, Los Gatos

[EXTERNAL SENDER]

As the owner of the adjacent property at [REDACTED], I am writing to you regarding the proposed development at 212 Thurston Street. I have been informed by the current owners of their intent to construct a new residence on this site. I would greatly appreciate any information regarding a public comment period, including its potential timeline.

My primary concern is the dilapidated garage, which is situated very close to or on the shared boundary line. To better illustrate the situation, I have included photographs demonstrating the disrepair and unsightly nature of this structure. Its location, infringing upon the setback area, is a pressing issue, especially if substantial development is being proposed.

I am categorically opposed to the garage remaining in its current location if that is part of their proposal. I urge that all necessary setback codes for this prospective development be strictly followed.

Furthermore, I have witnessed friends, property owners on Olive Street, face considerable resistance from their neighbors when proposing a second story for their similarly sized lot, resulting in a single-story construction. Although I am uncertain about the plans for 212 Thurston Street, if a second story is proposed, I believe the potential impact on second-story sightlines needs serious consideration. Should these sightlines significantly affect the privacy of adjacent properties, I suggest restrictions be placed on constructing a second story.

Thank you in advance for your time and consideration. I wish you a pleasant weekend.

Best regards,

Eric Rafia











From: Eric Rafia [REDACTED] >
Sent: Wednesday, July 12, 2023 8:52 AM
To: Maria Chavarin <MChavarin@losgatosca.gov>
Cc: Sean Mullin <SMullin@losgatosca.gov>
Subject: RE: 212 Thurston St, Los Gatos

[EXTERNAL SENDER]

Thank you for sending this along. I reviewed the documents.

I see they in-fact do want to maintain the existing garage in its current place. This is not acceptable. There is currently a single-car garage, and it appears they have room to construct a new single-car garage in connection with their new house, within what is likely the required setback area, effectively netting them the same benefit. They were additionally aware of setback requirements when they acquired the property, so the encroachment into the setback requirements needs to end.

In addition, I noticed they have hired an architect which has done a lot of work in the Town and has a reputation for being well-connected. There is certainly nothing wrong with that, and I would argue it is smart, however I do note that the letter of justification cites that other properties nearby have reduced front yard setbacks, and thus somehow that justifies the same here. I think this is a stretch. 590 Monterey is a side yard setback for fairly new construction, so its an apples-to-oranges comparison. Furthermore, the adjacent property that encroaches into the right of way should in no way be used as justification for reducing setback requirements as that is in no way a benchmark which should be used. Looking up the street in the opposite direction, you will see that setbacks actually are fairly harmonious and that is the metric by which these plans should be reviewed and commented on.

Lastly, I would recommend that the garage be placed in such a manner that would yield a driveway that would completely accommodate a **large** vehicle or SUV/Truck. There are kids that play on that street, and pedestrian traffic should not be forced to navigate around the tail end of a vehicle parked in a driveway. An example of this on the street is below, at 239 Thurston Street – where you can see the driveway can't even accommodate a compact vehicle.

If that means there is a slightly reduced rear yard (but not the side yard) setback for the garage only to accommodate this, I would support some leniency there.



Thanks!

Eric

William Hopps

November 17, 2023

Maria Chavarin
Project Planner
Town of Los Gatos
Via Email: MChavarin@losgatoca.gov

RE: Site Application S-23-009

Dear Maria,

I am writing to voice my concerns about the pending development application for 212 Thurston Street. My property at [REDACTED] is behind and to the east of 212 Thurston. Our first knowledge of this planned construction was November 1st when the story poles were erected.

The proposed development is not keeping with the existing character of the neighborhood. The height and bulk of the property is considerably greater than the surrounding sites.

- The overall bulk of the building with the reduced rear setback exacerbates privacy issues for the properties behind the proposed development. The upstairs bedrooms in the proposed development have a clear line-of-sight into our home and outdoor living space. This loss of privacy is invasive.
- A loss of privacy at our property is particularly impactful since our homes are smaller in square footage, and therefore rely on the outdoor living space. Intruding on this space reduces the livability and desirability of our property.
- The proposed two-story structure eliminates sightlines of the surrounding hills and blocks sunlight from our property.

Your consulting architect raised many of these issues and noted the design was not consistent with your Residential Design Guidelines. These issues were not fully addressed in the revised application.

As a long-term resident that has raised a family in Los Gatos, I strive to be a thoughtful and considerate neighbor that is open to change. However, I am concerned that we are sacrificing the character of this neighborhood. If this project is approved, it is reasonable to expect that the neighboring properties will have larger structures approved for development, further eroding the charm and character of our Town.

Please advise me on next steps in the project's application process and how I can ensure my concerns are heard and addressed. Thank you for your time and consideration.

Respectfully,


William Hopps

Carolyn M. Bechtel



November 20, 2023

Attention: Maria Chavarin, Planning Technician
Los Gatos

Re: 212 Thurston, Los Gatos
S-23-009

Dear Ms. Chavarin,

I reside at [REDACTED] (home owned by my daughter, Carly Bechtel Sereni). Several weeks ago I was alerted to an upcoming change in our neighborhood—specifically over the fence of my backyard—with the placement of story poles at 212 Thurston, indicating planned renovation of the property. This was quite a shock as I had not heard of any plans from the owners, and the story poles clearly show the effect it will directly have on my backyard and the rear of my home.

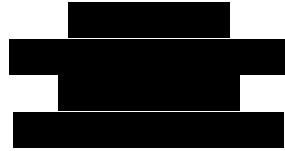
The beautiful Los Gatos mountain ridgeline and colorful trees I have enjoyed for so many years, as well as the natural light I will sorely miss. Even more problematic is the issue of privacy, as the owners must know their proposed second story windows will look directly into my bedroom windows.

I am not familiar with the process of planning and renovation in our neighborhoods, but did want to submit in writing my concerns about this proposed project and its effect on Olive Street neighbors.

Thank you,

Carolyn Bechtel

Christopher Marselli & Marta Iglesias-Xamani



December 4, 2023

Attention: Maria Chavarin, Los Gatos Assistant Planner

Re: 212 Thurston Street
Site Application S-23-009

Dear Ms. Chavarin,

We reside and are owners of the property at [REDACTED]. Our yard borders the property at 212 Thurston St. Specifically, the existing garage in that property is right on our property line.

We are writing to communicate our concerns about the constructions taking place in that property:

We understand that there is no plan to make modifications to the existing garage. This garage does not comply with current setback codes- it's right on our property line, and it is in poor condition: there is cement missing between the cinderblocks and some of these cinderblocks are cracked and missing small pieces. In addition, its roof tiles have been coming detached and falling on our yard. Since there is major construction planned for this property and its garage infringes on our property, we would like to request the lack of code compliance and poor condition of this garage be addressed.

Besides this, the story pole placements and proposed building plans show a major impact to us. In addition to limiting our views and light, from what we understand, the windows in the back of the top story will look into both our daughter's and our son's bedrooms. These windows will also have a full view of our yard. We have a small house and we (and particularly our children) use our yard regularly. We would like our privacy concerns to be taken into consideration and learn what modifications can be made to the building plans to mitigate the effect to us and other neighbors on Olive St.

We also want to draw attention to the fact that there is a sign on the Thurston St. property that shows that a hearing will be scheduled but the date and time are blank. We learned from a neighbor that it would be on Dec. 13th, but other neighbors might not have advance notice of the time of this meeting, and therefore might not be able to participate and share their concerns.

Thanks in advance for your consideration,

Christopher Marselli and Marta Iglesias-Xamani

From: [REDACTED] >
Sent: Friday, January 5, 2024 9:38 AM
To: MChavarin@losgatoca.gov
Cc: Sean Mullin <SMullin@losgatosca.gov>
Subject: 212 Thurston st. S-23-009

[EXTERNAL SENDER]

Good morning. [REDACTED] here. As a resident of the neighborhood, I just wanted to make a couple comments on the proposed new home.

1. Overall, it looks like a nice home design that will be a great improvement from the current structure.
2. It looks like the applicant is asking for a reduced front setback from the usual 15ft. Given the reduced setback and the front sidewalk being so close, the 2 story front facade with a gable ridge/roof seems a bit overpowering and tall.
3. If you look at the rest of the street, there are no 2 story homes that have a gable roofline. It might be a better idea to implement a hip roof and give the look of a shorter 2 story wall plane at the reduced front setback.
4. I have attached a photo for your reference of a nearby home that is comparable in size and uses a hip roof, to lower the look while maintaining the same ridge height..

Just wanted to pass along a few possible ideas to what I think will be a nice home.
Thank you..





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Christopher Spaulding, Architect

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

12-18-23

212 Thurston Street

Response to neighbor concerns

Dear Maria,

Ms. Guillard (the property owner of 212 Thurston) and I have discussed the letters received from the three neighbors and have gone to the property and taken photos of the line-of-sight view from the proposed 2nd floor windows towards the neighbor's homes.

In doing this, we agree with the rear neighbors that the new windows will impact the privacy of their back yards. To mitigate this, we propose to raise the window sill height of the rear bathroom windows to be 5' above the floor and to make them obscure glass (see attached graphic). This will eliminate privacy concerns from the bathroom windows.

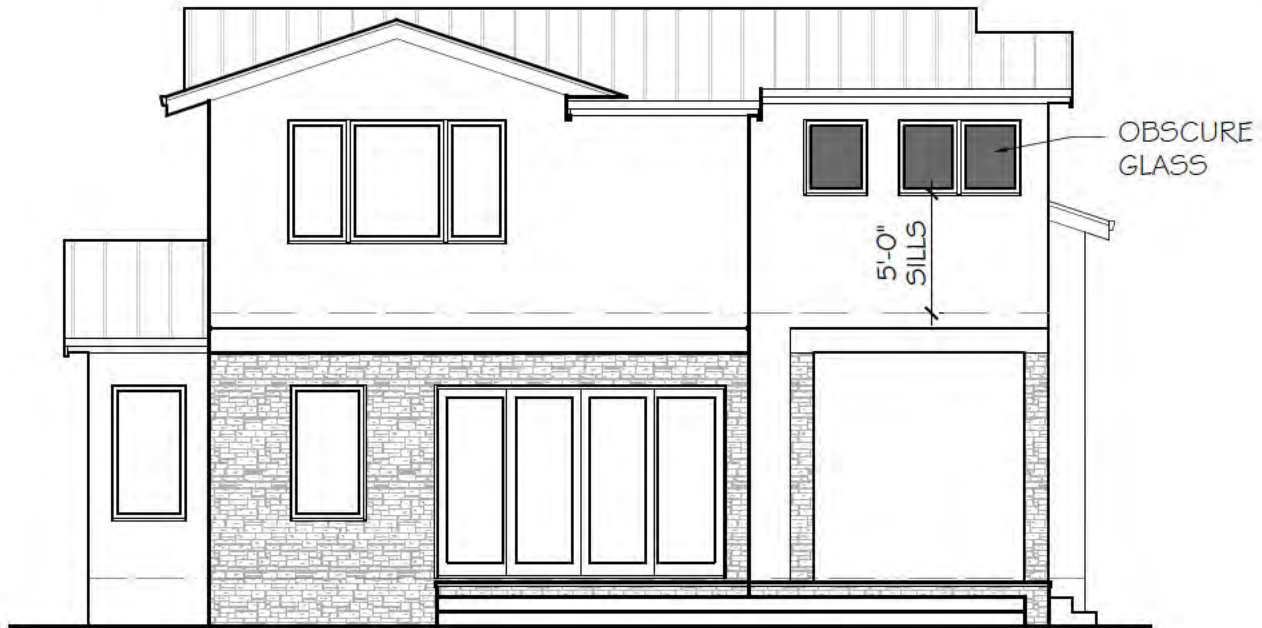
For the remaining bedroom window, we propose to plant evergreen screen planting that will screen the view between the properties, while also not growing too tall (so as to not block the light into their yards). Ms. Guillard has retained a landscape architect to propose an appropriate species for the screen (see attached). I have also attached a graphic roughly showing where the trees would be planted and how they can block the view from the proposed bedroom window to the neighbor's yards.

For the adjacent neighbor to the left, Ms. Guillard intends to repair the existing garage as part of this construction project (repairing the garage does not require Planning Approval, so is not included in this Planning Application – A separate building permit will be obtained to repair the garage). As for the privacy issue for this neighbor, there are only two 2nd floor windows looking out towards the adjacent property – one in the bathroom and one in the stairhall. I have attached a photo of the view from the future 2nd floor window location, and as you can see, there are no windows visible on the adjacent house, nor is the back yard visible. As such, we do not think there is a privacy issue between these properties.



REAR ELEVATION AS DESIGNED

1/8" = 1'-0"

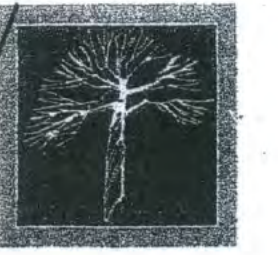


PROPOSED REAR ELEVATION

1/8" = 1'-0"

FROM THE OFFICE OF
CHRIS SPAULDING
ARCHITECT

REAR PRIVACY CHANGES
212 THURSTON STREET



THOMAS SCHERER ASSOCIATES
Landscape Architecture

P.O. Box 68, Aptos, CA 95007
Tel (831) 689-8913

DRAWINGS PREPARED BY
CHRIS SPAULDING
ARCHITECT

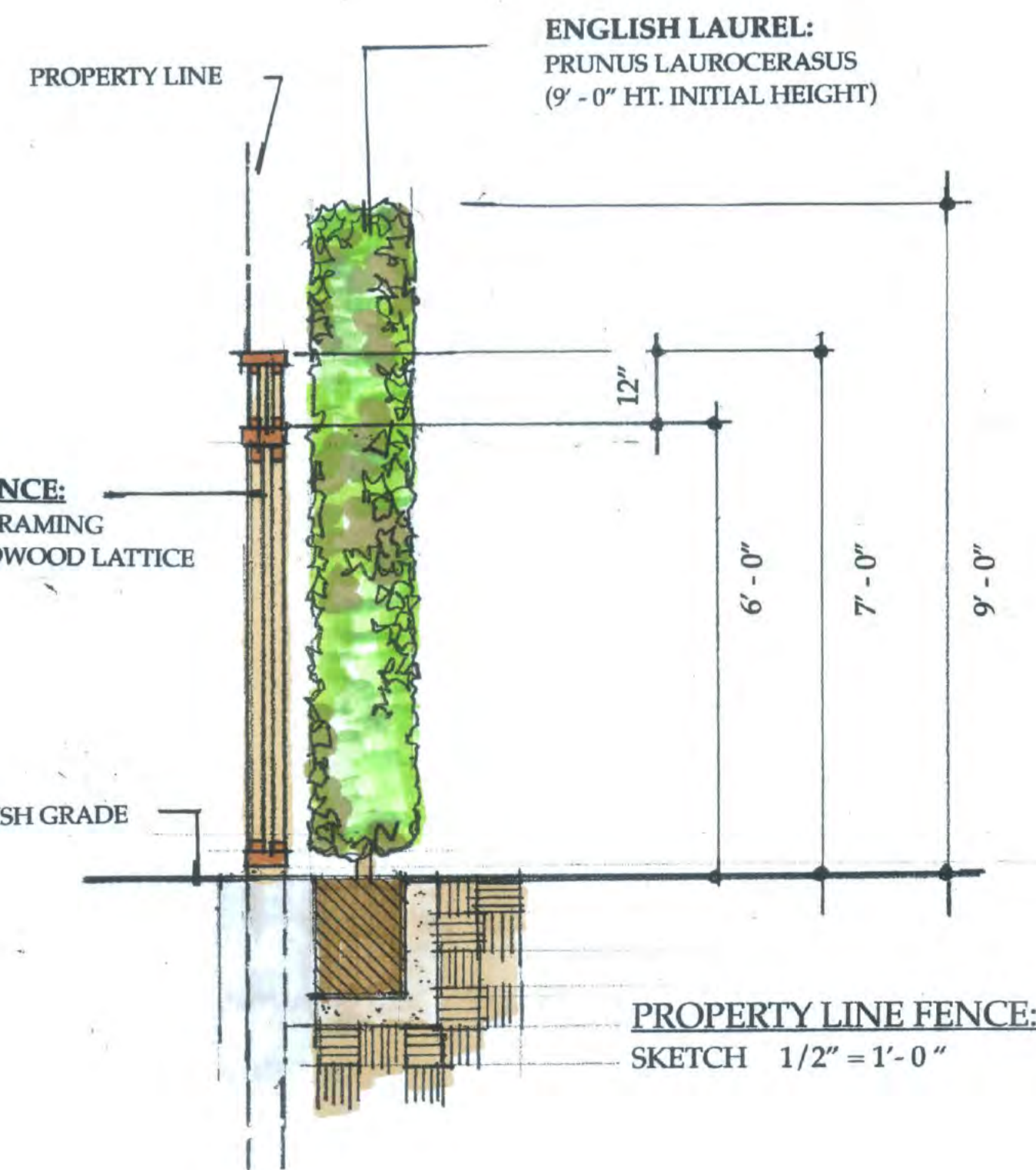
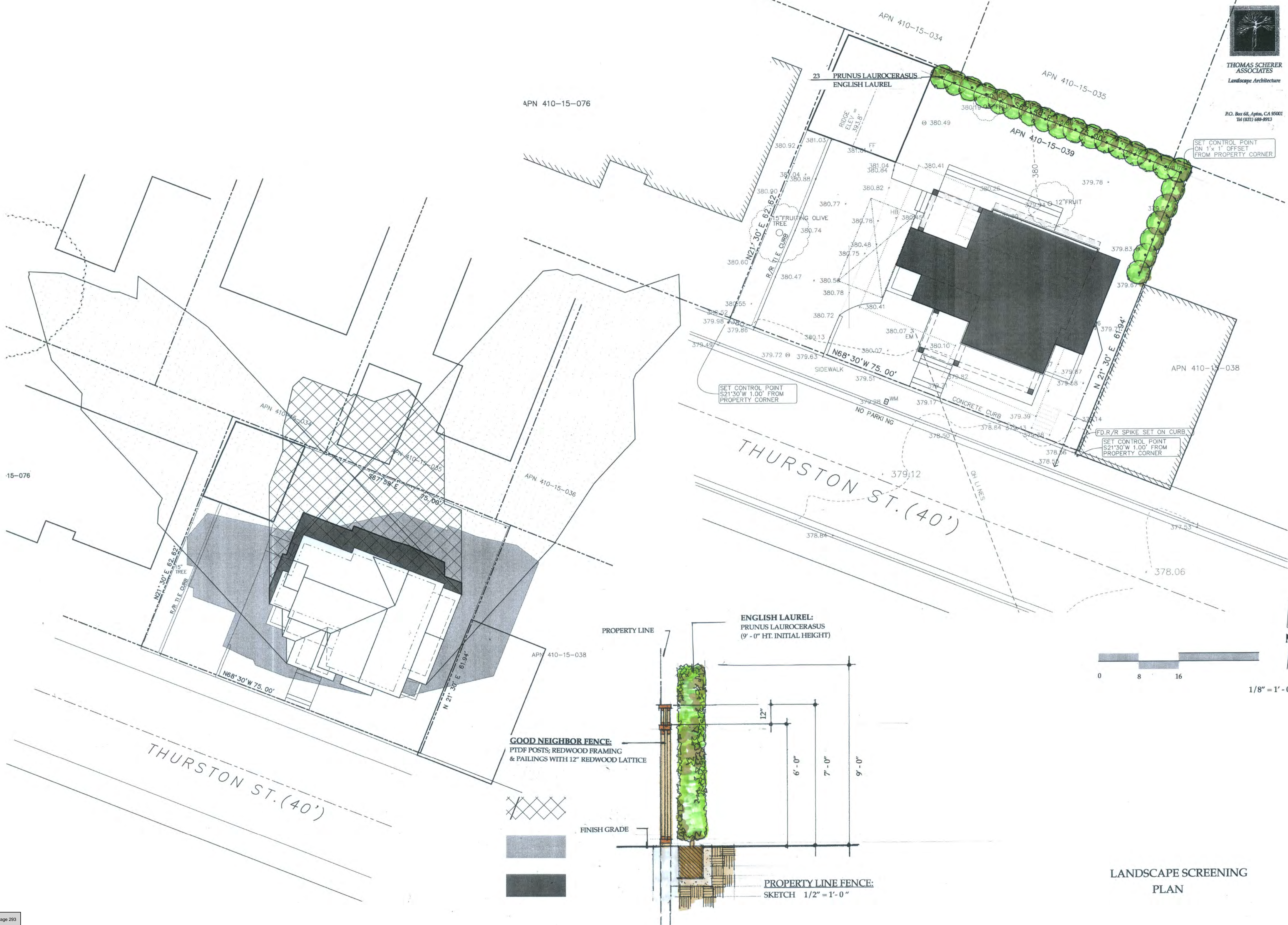
REVISIONS	BY
7-19-23	db
10-11-23	
10-20-23	
11-29-23 Enlarge parking space	

PRELIMINARY SET	
DESIGN REVIEW SET	
PLAN CHECK SET	
PERMIT SET	
CONSTRUCTION SET	

A PROPOSED NEW 2-STORY HOME FOR
GUILLARDO RESIDENCE
212 THURSTON ST
LOS GATOS - CALIFORNIA

DATE:	12-4-2023
SCALE:	AS NOTED
DRAWN:	CSDB TJS
JOB:	GUILLARDO
SHEET	

L.1
OF 4 SHEETS



LANDSCAPE SCREENING
PLAN

Christopher Spaulding, Architect

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

12-18-23

212 Thurston Street

Site Photos

View from future bathroom window looking towards the left neighbor



View from future bedroom window looking out towards the rear neighbor, showing proposed screen planting



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REVISIONS	BY
7-1-23	ds
10-1-23	
10-20-23	
11-28-23	Design printing/prepare

PRELIMINARY SET	
DESIGN REVIEW SET	
PLAN CHECK SET	
PERMIT SET	
CONSTRUCTION SET	

A PROPOSED NEW 2-STORY HOME FOR
GUILLARDO RESIDENCE
212 THURSTON ST
LOS GATOS - CALIFORNIA

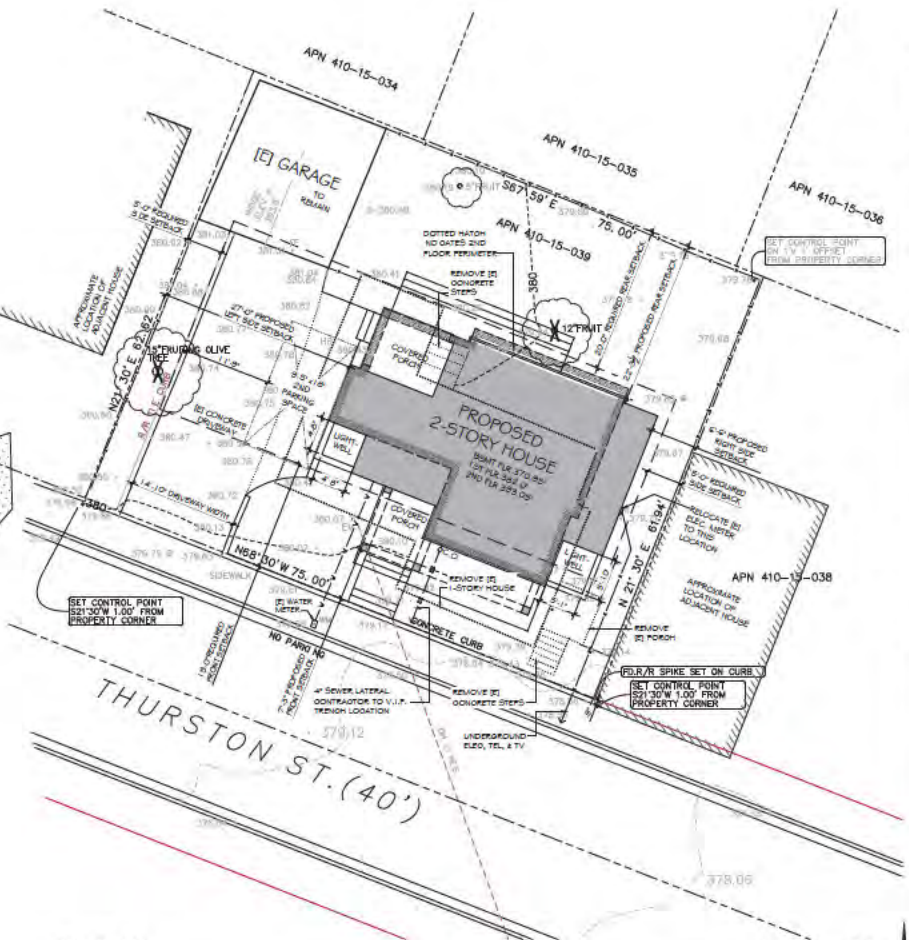
DATE	4-17-23
SCALE	AS NOTED
DRAWN	OSDS
JOB	GUILLARDO
SHEET	

A1
OF 4 SHEETS

FIRE DEPARTMENT NOTES

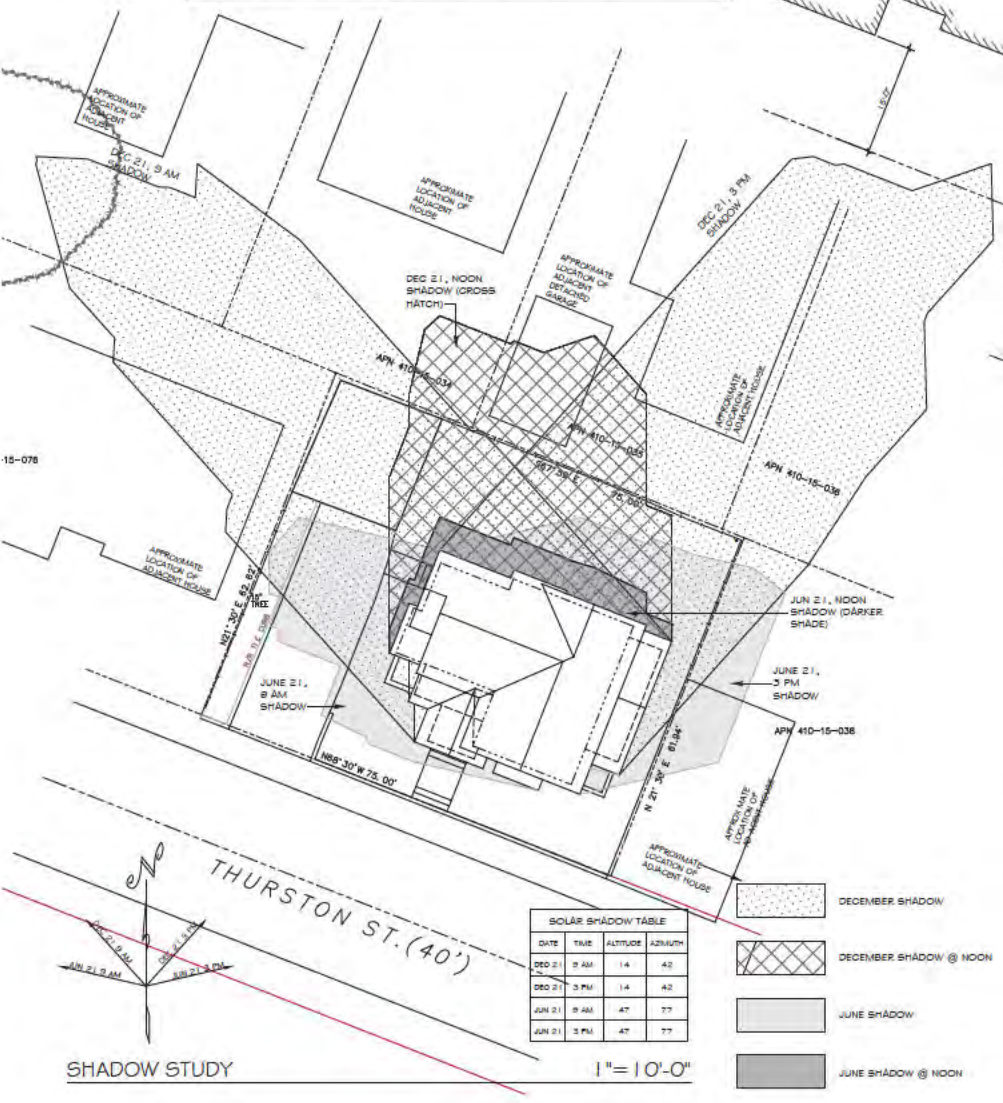
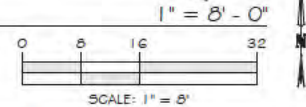
- The Sprinkler System: An automatic fire alarm in the sprinkler system shall be installed in new dwelling.
- Required Fire Flow: This is a new single-family home for this project as 500 Gallons Per Minute (GPM) at 2.0 psi residual pressure. The fire flow minimum requirement of automatic fire sprinkler per CDP 9003.3.1.3.
- Water Supply Requirements: Public water supply shall be protected from contamination caused by fire protection water supply. It is the responsibility of the applicant and any contractors and subcontractors to contact the water purveyor supplying the site of such project, and to comply with the requirements of that purveyor. Such requirements shall be incorporated into the design of any subsurface fire protection systems. Under the supervision and water supply systems or storage containers that may be physically connected in any manner to an automatic system of existing container of the public water supply of this purveyor of water. Fire approval of the electrical water introduction is not to be general by this office until compliance with the requirements of the water purveyor or local fire department by their purveyor as having been made by the applicant. 2019 CDP Sec. 9003.3.5 and Health and Safety Code 131147.
- Address Identification: New and existing lots are to have approved address numbers. For all projects or approval building construction placed in a year 1 on this is per city logic and varies from the street on road fronting the property. Those numbers shall comply with that background. Where required by the fire code official, address numbers shall be provided in additional approval upon the building category category. Address numbers shall be 4 inches (10) x 6 inch high with a minimum width of 0.5 inch (12.7 mm). Where address is by means of a private road and the building cannot be viewed from the public way, a monument, post or other sign or means shall be used to identify the structure. Address numbers shall be on the road. CDP Sec. 505.1.
- Construction Fire Safety: All construction on site must comply with applicable provisions of the CDP Chapter 53 and our Standard Code and Department 51.7. Private fire alarm notification on subsurface pipe addresses, as appropriate to the project. CDP City 55.

APN 410-15-076



SITE PLAN

PLOTTED ON SURVEY BY ROBERT J. CRAIG, DATED 12-5-2022, JOB # C-22086.



DATE	TIME	ALTITUDE	AZIMUTH
DEC 21	9 AM	14	42
DEC 21	3 PM	14	42
JUN 21	9 AM	47	77
JUN 21	3 PM	47	77

- DECEMBER SHADOW
- DECEMBER SHADOW @ NOON
- JUNE SHADOW
- JUNE SHADOW @ NOON

DRAWING INDEX	
ARCHITECTURAL	SHEET A1 SITE PLAN, PROJECT DATA, SHADOW STUDY
SHEET A2	FLOOR PLANS, ROOF PLAN
SHEET A3	ELEVATIONS
SHEET A4	SECTION, STREETSCAPE & SITE SECTION
CIVIL	SHEET 1 GRADING & DRAINAGE NOTES
SHEET 2	SWP SHEET
SHEET 3	SITE PLAN & DEMO PLAN
SHEET 4	DRAINAGE PLAN
SHEET 5	SITE PROP. LE, SLOOT ON OUTS, & DETAILS
SHEET 6	UTILITY PLAN
SHEET 7	CONSTRUCTION MANAGEMENT PLAN
SHEET 8	EROSION & SEDIMENT CONTROL PLAN, NOTES AND DETAILS
SHEET 9	CONSTRUCTION SITE FIRE SAFETY

GRADING & DRAINAGE NOTE REFER TO GRADING & DRAINAGE PLANS PREPARED BY LE ENGINEERING, DATED 6-29-23 FOR ALL GRADING, DRAINAGE, UTILITIES, AND IMPERVIOUS COVERAGE

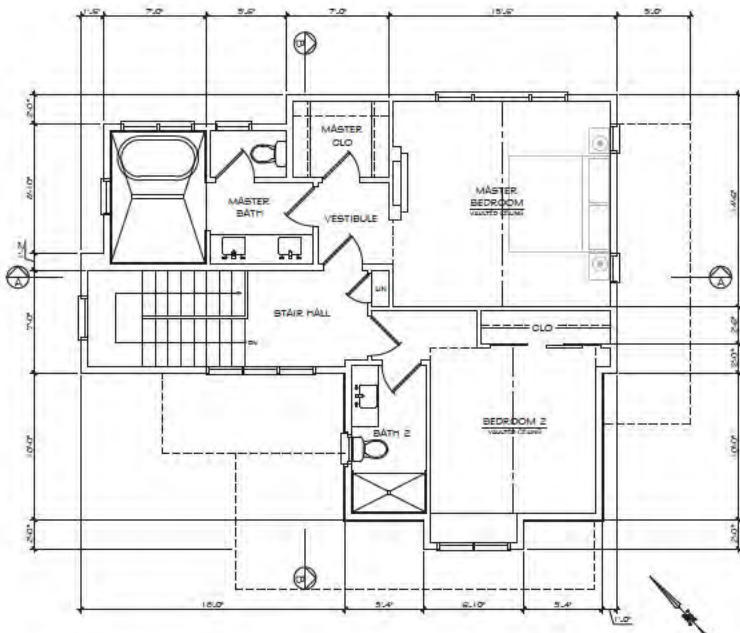


FRONT SETBACK NOTE
THE ADJACENT HOUSE SETBACKS ARE 18'-0" AND MINUS 8", SO THE REQUIRED FRONT SETBACK IS THE AVERAGE = (18'-0.75)/2 = 7.125'

LANDSCAPING NOTE
NO LANDSCAPING IS PROPOSED - ALL DISTURBED AREAS IN THE FRONT YARD WILL BE COVERED WITH MULCH PRIOR TO FINAL INSPECTION

PROJECT DATA	
OWNER:	WELSH GUILLARDO
ADDRESS:	212 THURSTON ST
PROJECT DESCRIPTION:	REMODEL (2 1-STORY HOUSE (2,110 SQ. FT.), KEEP (2) GARAGE (2,308 SQ. FT.) & BUILD (1) 2-STORY HOUSE IN SUBSEQUENT REMOVE (2) FRUIT TREES
APN:	410-15-028
ZONING:	R-1-D
CONSTRUCTION TYPE:	V - B, SPRINKLER SYSTEM REQUIRED
OCCUPANCY GROUP:	R-3 (U)
GROSS & NET LOT SIZE:	4,471 SQ. FT.
AVERAGE LOT SLOPE:	LESS THAN 4% (PLAT)
MAX. ALLOWABLE PARKING:	1,424 SQ. FT.
FLOOR AREA (ALL NUMBERS IN SQ. FT.):	
1ST FLOOR	279.8
2ND FLOOR	787.2
TOTAL	1,067.0
BASEMENT	879.3
(2) GARAGE	308
COVERED PORCHES	242.6
LIGHTWELLS	87.6
TOTAL PROPOSED BLDG COVERAGE	1,871
TOTAL (BY BUILDING COVERAGE	1,803.4
PARKING SPACES:	
(1) COVERED & (1) UNCOVERED	

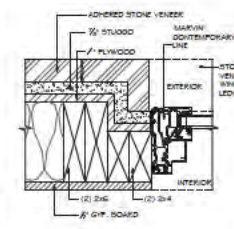
- NOTES:
- A separate building permit is required for the PV system that is required by the California Energy Code Performance or Prescriptive standards. The separate PV system permit must be filed prior to the issuance of Certificate of Occupancy.
 - This Residence will comply with the Town's all electric appliance, electric vehicle and energy storage system requirements in accordance with Town Code.



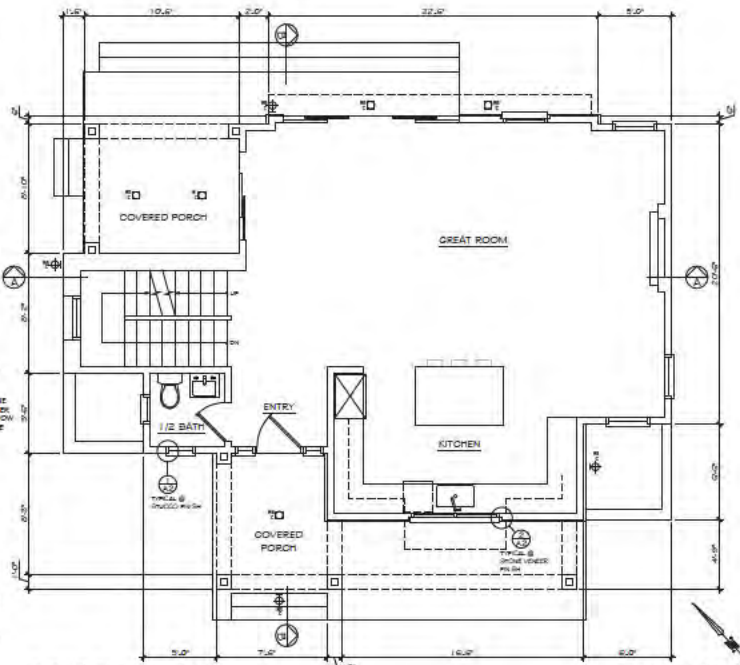
SECOND FLOOR PLAN

1/4" = 1'-0"

1 WINDOW JAMB @ STUCCO FINISH NTS

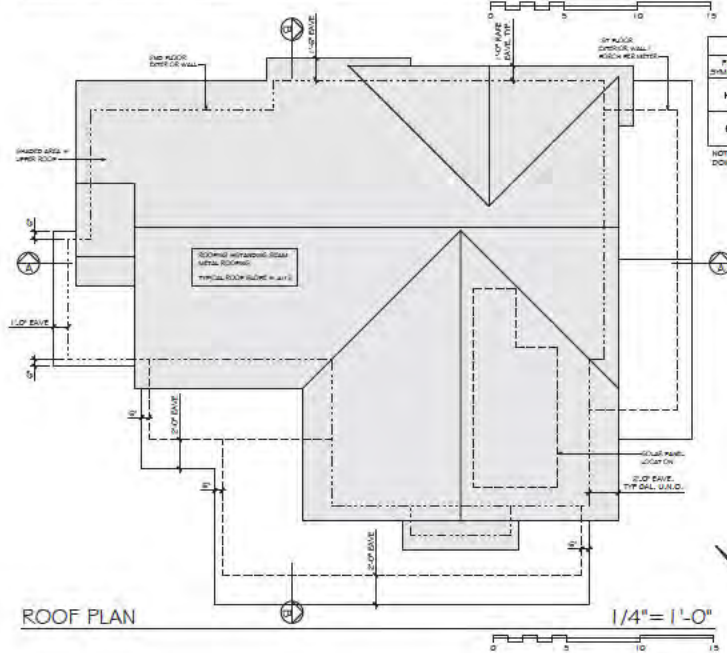


2 WINDOW JAMB @ STONE VENEER NTS



FIRST FLOOR PLAN

1/4" = 1'-0"

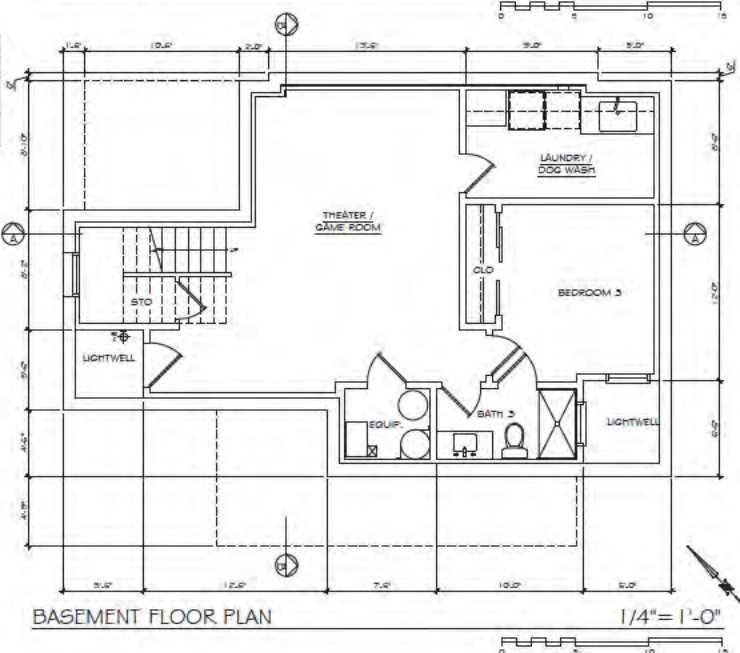


ROOF PLAN

1/4" = 1'-0"

PLAN SYMBOL/ID	PLANTING NAME/MODEL	QUANTITY	VOLTAGE
⬢	ROAD LIGHTING - MODERN LED WALL LANTERN WITH MOTION & PHOTOCELL SENSOR	5	14
⬢	LED RECESSED LIGHTING WITH MOTION & PHOTOCELL SENSOR	5	

NOTE: ENTRY OR LIGHT FIX SHALL BE DOWNWARD DIRECTED AND SHIELDED



BASEMENT FLOOR PLAN

1/4" = 1'-0"

DRAWINGS PREPARED BY
CHRIS SPAULDING
ARCHITECT

REVISIONS	BY
7-15-23	cm
10-11-23	
10-20-23	
11-28-23	Enrique pringipio

PRELIMINARY SET	
DESIGN REVIEW SET	
PLAN CHECK SET	
PERMIT SET	
CONSTRUCTION SET	

A PROPOSED NEW 2-STORY HOME FOR
GUILLARDO RESIDENCE
212 THURSTON ST
LOS GATOS - CALIFORNIA

DATE	4-17-23
SCALE	AS NOTED
DRAWN	OSOB
JOB	GUILLARDO
SHEET	

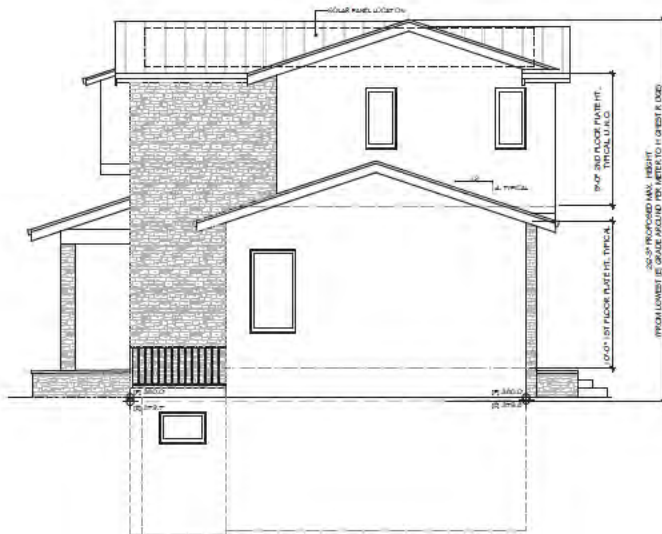
A2
SHEETS



LEFT SIDE (NORTHWEST) ELEVATION 1/4" = 1'-0"



FRONT (SOUTHWEST) ELEVATION 1/4" = 1'-0"



RIGHT SIDE (SOUTHEAST) ELEVATION 1/4" = 1'-0"



REAR (NORTHEAST) ELEVATION 1/4" = 1'-0"



DRAWINGS PREPARED BY
CHRIS SPAULDING
ARCHITECT

REVISIONS	BY
7-18-23	CS
10-11-23	CS
11-20-23	CS
1-1-24-24	CS

PRELIMINARY SET
DESIGN REVIEW SET
PLANNING CHECK SET
PERMIT SET
CONSTRUCTION SET

A PROPOSED NEW 2-STORY HOME FOR
GUILLARDO RESIDENCE
212 THURSTON ST
LOS GATOS • CALIFORNIA

DATE	4-17-23
SCALE	AS NOTED
DRAWN	CS/CS
JOB	GUILLARDO
SHEET	

A3
SHEETS

OF 4

DRAWINGS PREPARED BY
CHRIS SPAULDING
 ARCHITECT

801 CAMELIA STREET SUITE E
 BERKELEY CALIFORNIA 9 710
 (510) 527-5997 FAX (510) 527-5999

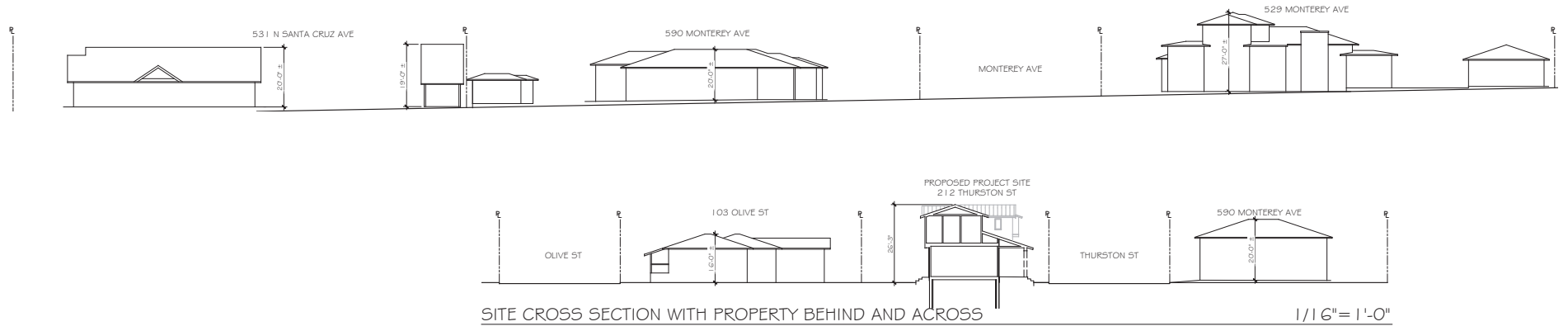
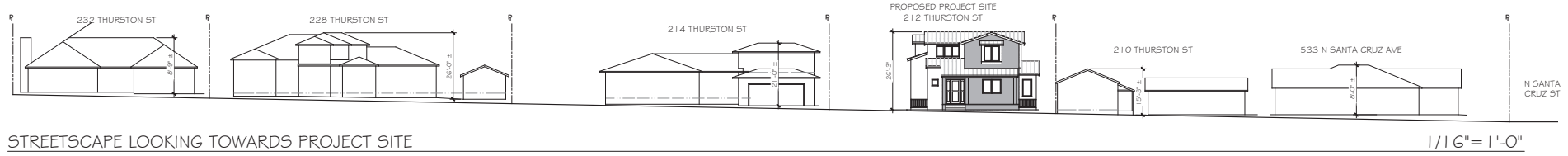
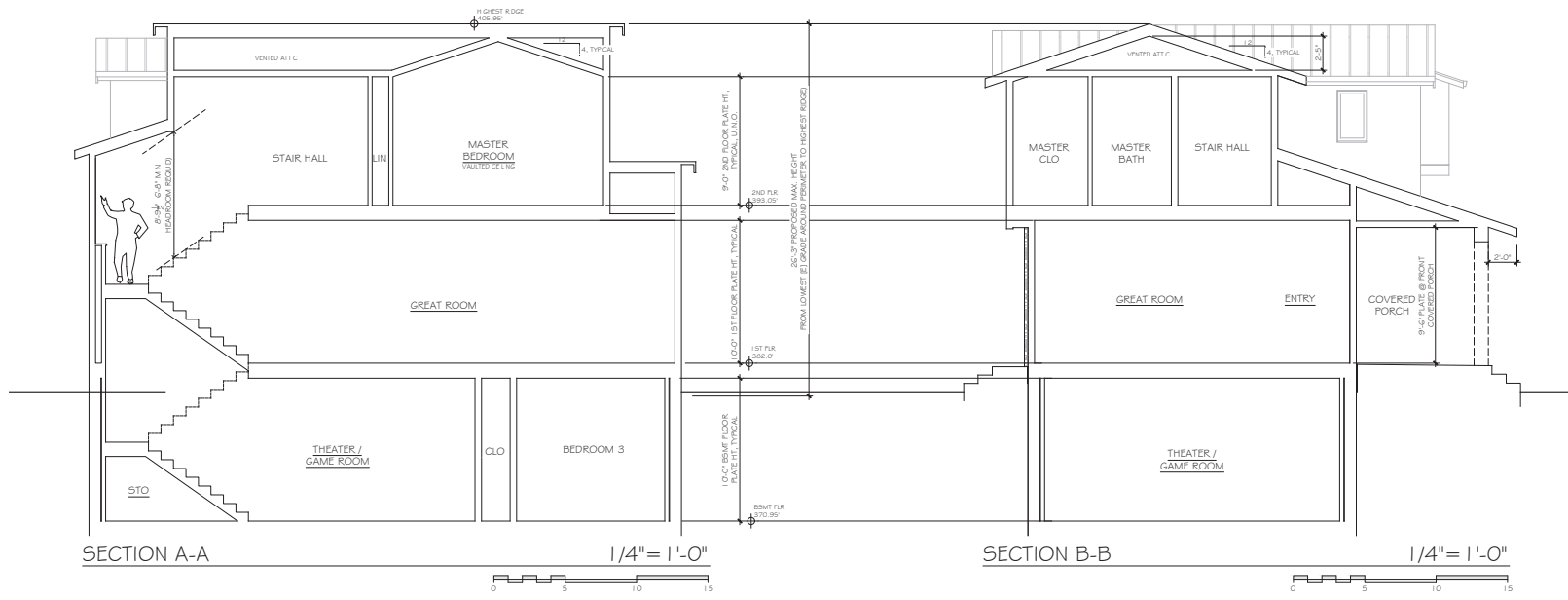
REVISIONS	BY
7-19-23	ab
10-11-23	
10-20-23	
11-29-23	Enlarge parking space

PRELIMINARY SET	
DESIGN REVIEW SET	
PLAN CHECK SET	
PERMIT SET	
CONSTRUCTION SET	

A PROPOSED NEW 2-STORY HOME FOR
GUILLARDO RESIDENCE
 212 THURSTON ST
 LOS GATOS • CALIFORNIA

DATE	4-17-23
SCALE	AS NOTED
DRAWN	CSDB
JOB	GUILLARDO
SHEET	

A4
 OF 4 SHEETS



TOWN OF LOS GATOS STANDARD GRADING NOTES

- 1. ALL WORK SHALL CONFORM TO CHAPTER 12 OF THE CODE OF THE TOWN OF LOS GATOS... 2. WATER SHALL BE AVAILABLE ON THE SITE AT ALL TIMES DURING GRADING OPERATIONS... 3. THIS PLAN DOES NOT APPROVE THE REMOVAL OF TREES... 4. APPROVAL OF PLANS DOES NOT RELEASE THE DEVELOPER OF THE RESPONSIBILITY FOR THE CORRECTION OF MISTAKES, ERRORS, OR OMISSIONS...

20 CUT: 350 CY FILL: 5 CY DWY: 350 CY SWY: 0 CY

21. WATER SHALL BE AVAILABLE ON THE SITE AT ALL TIMES DURING GRADING OPERATIONS TO PROPERLY MAINTAIN DUST CONTROL.

22. THIS PLAN DOES NOT APPROVE THE REMOVAL OF TREES. APPROPRIATE TREE REMOVAL PERMITS AND METHODS OF TREE PRESERVATION SHALL BE REQUIRED. TREE REMOVAL PERMITS ARE REQUIRED PRIOR TO THE APPROVAL OF ALL PLANS.

23. A TOWN ENCROACHMENT PERMIT IS REQUIRED FOR ANY WORK WITHIN THE PUBLIC RIGHT-OF-WAY. A STATE ENCROACHMENT PERMIT IS REQUIRED FOR ANY WORK WITHIN STATE RIGHT-OF-WAY (IF APPLICABLE). THE FRONTAGE AND/OR CONTROL STRUCTURE SHALL BE RESPONSIBLE COORDINATING INSPECTION PERFORMED BY OTHER GOVERNMENTAL AGENCIES.

24. NO CROSS-LOT DRAINAGE WILL BE PERMITTED WITHOUT SATISFACTORY STORMWATER ACCEPTANCE TESTS/FACILITIES. ALL SEWAGE SHALL BE DIRECTED TO THE STREET OR OTHER ACCEPTABLE DRAINAGE FACILITY VIA A NON-EROSIVE METHOD AS APPROVED BY THE TOWN ENGINEER.

25. IT IS THE RESPONSIBILITY OF CONTRACTOR AND/OR OWNER TO MAKE SURE THAT ALL DIRT TRACKED INTO THE PUBLIC RIGHT-OF-WAY IS CLEANED UP ON A DAILY BASIS. SAND, SALT, CONCRETE AND OTHER CONSTRUCTION DEBRIS SHALL NOT BE WASHED INTO THE TOWN'S STORM DRAINS.

26. GOOD HOUSEKEEPING PRACTICES SHALL BE OBSERVED AT ALL TIMES DURING THE COURSE OF CONSTRUCTION. SUPERVISOR/ENGINEER OF CONSTRUCTION SHALL BE DULIGENTLY PERFORMED BY A PERSON OR PERSONS AUTHORIZED TO DO SO AT ALL TIMES DURING WORKING HOURS. THE STORMING OF CROSSLANDS AND/OR MATERIALS ON THE SIDEWALK AND/OR THE STREET WILL NOT BE ALLOWED UNLESS A SPECIAL PERMIT IS ISSUED BY THE ENGINEERING DIVISION... THE ADVISORY PUBLIC RIGHT-OF-WAY SHALL BE KEPT CLEAR OF ALL MATERIALS AND DEBRIS AT THE END OF THE DAY. FAILURE TO MAINTAIN THE PUBLIC RIGHT-OF-WAY ACCORDING TO THIS CONDITION MAY RESULT IN PENALTIES AND/OR THE TOWN PERFORMING THE REQUIRED MAINTENANCE AT THE DEVELOPER'S EXPENSE.

27. GRADING SHALL BE UNDERTAKEN IN ACCORDANCE WITH CONDITIONS AND REQUIREMENTS OF THE PROJECT STORM WATER POLLUTION CONTROL PLAN AND/OR STORM WATER POLLUTION PREVENTION PLAN (SWPPP). THE TOWN OF LOS GATOS STORM WATER QUALITY MANAGEMENT PROGRAM, NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) AND ANY OTHER PERMITS/REGULATIONS ISSUED BY THE STATE OF CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, PLANS (INCLUDING ALL UPDATES) SHALL BE ON-SITE AT ALL TIMES. NO DIRT OR OTHER STORMWATER DISCHARGES FROM THE DEVELOPER ARE ALLOWED INTO TOWN STREETS OR INTO THE PUBLIC STORM DRAIN SYSTEM WITHOUT TREATMENT BY AN APPROVED STORM WATER POLLUTION PREVENTION DEVICE OR OTHER APPROVED METHODS. MAINTENANCE OF PRIVATE STORMWATER POLLUTION PREVENTION DEVICES SHALL BE THE SOLE RESPONSIBILITY OF THE OWNER. DISCHARGES OF CONSTRUCTION WASTE TO AN APPROVED AND ADEQUATELY OPERATING STORMWATER POLLUTION PREVENTION DEVICE OR OTHER APPROVED METHOD SHALL BE CONSIDERED A VIOLATION OF THE ABOVE REFERENCED PERMIT AND THE TOWN OF LOS GATOS STORMWATER ORDINANCE.

28. IT SHALL BE THE RESPONSIBILITY OF THE PERMITTEE OR CONTRACTOR TO IDENTIFY, LOCATE AND PROTECT ALL UNDERGROUND FACILITIES. PERMITTEE OR CONTRACTOR SHALL NOTIFY USA (UNDERGROUND SERVICE ALERT) AT 1-800-222-2888 A MINIMUM OF FORTY-EIGHT (48) HOURS BUT NOT MORE THAN FORTY-NINE (49) DAYS PRIOR TO COMMENCING ANY WORK.

29. ALL GRADING SHALL BE PERFORMED IN SUCH A MANNER AS TO COMPLY WITH THE STANDARDS ESTABLISHED BY THE AIR QUALITY MANAGEMENT DISTRICT FOR AIRBORNE PARTICULATES.

30. THE CONTRACTOR SHALL COMPLY WITH ALL LOCAL, STATE AND FEDERAL LAWS, CODES, RULES AND REGULATIONS GOVERNING THE WORK DESCRIBED ON THESE PLANS. THESE SHALL INCLUDE, WITHOUT LIMITATION, SAFETY AND HEALTH RULES AND REGULATIONS ESTABLISHED BY OR PURSUANT TO THE OCCUPATIONAL SAFETY AND HEALTH ACT OR ANY OTHER APPLICABLE PUBLIC AUTHORITY.

31. THE GENERAL CONTRACTOR SHALL PROVIDE QUALIFIED SUPERVISION ON THE JOB SITE AT ALL TIMES DURING CONSTRUCTION.

32. HORIZONTAL AND VERTICAL CONTROLS SHALL BE SET AND CERTIFIED BY A LICENSED SURVEYOR OR REGISTERED CIVIL ENGINEER QUALIFIED TO PRACTICE LAND SURVEYING FOR THE FOLLOWING REASONS:

a. RETAINING WALL: TOP OF WALL ELEVATIONS AND LOCATIONS (ALL WALLS TO BE PERMITTED SEPARATELY AND APPLIED FOR AT THE TOWN OF LOS GATOS BUILDING DIVISION).

b. THE AND TOP OF CUT AND FILL SLOPES.

33. PRIOR TO ISSUANCE OF ANY PERMIT, THE APPLICANT'S SOILS ENGINEER SHALL REVIEW THE FINAL GRADING AND DRAINAGE PLANS TO ENSURE THAT DESIGNS FOR FOUNDATIONS, RETAINING WALLS, SITE DRAINAGE, AND SITE DRAINAGE ARE IN ACCORDANCE WITH THEIR RECOMMENDATIONS AND THE PEER REVIEW COMMENTS. THE APPLICANT'S SOILS ENGINEER'S APPROVAL SHALL THEN BE CONVEYED TO THE TOWN EITHER BY LETTER OR BY SIGNING THE PLANS.

34. THE GENERAL CONTRACTOR SHALL PROVIDE QUALIFIED SUPERVISION ON THE JOB SITE AT ALL TIMES DURING CONSTRUCTION.

35. HORIZONTAL AND VERTICAL CONTROLS SHALL BE SET AND CERTIFIED BY A LICENSED SURVEYOR OR REGISTERED CIVIL ENGINEER QUALIFIED TO PRACTICE LAND SURVEYING FOR THE FOLLOWING REASONS:

a. RETAINING WALL: TOP OF WALL ELEVATIONS AND LOCATIONS (ALL WALLS TO BE PERMITTED SEPARATELY AND APPLIED FOR AT THE TOWN OF LOS GATOS BUILDING DIVISION).

b. THE AND TOP OF CUT AND FILL SLOPES.

36. PRIOR TO ISSUANCE OF ANY PERMIT, THE APPLICANT'S SOILS ENGINEER SHALL REVIEW THE FINAL GRADING AND DRAINAGE PLANS TO ENSURE THAT DESIGNS FOR FOUNDATIONS, RETAINING WALLS, SITE DRAINAGE, AND SITE DRAINAGE ARE IN ACCORDANCE WITH THEIR RECOMMENDATIONS AND THE PEER REVIEW COMMENTS. THE APPLICANT'S SOILS ENGINEER'S APPROVAL SHALL THEN BE CONVEYED TO THE TOWN EITHER BY LETTER OR BY SIGNING THE PLANS.

37. THE GENERAL CONTRACTOR SHALL PROVIDE QUALIFIED SUPERVISION ON THE JOB SITE AT ALL TIMES DURING CONSTRUCTION.

38. HORIZONTAL AND VERTICAL CONTROLS SHALL BE SET AND CERTIFIED BY A LICENSED SURVEYOR OR REGISTERED CIVIL ENGINEER QUALIFIED TO PRACTICE LAND SURVEYING FOR THE FOLLOWING REASONS:

a. RETAINING WALL: TOP OF WALL ELEVATIONS AND LOCATIONS (ALL WALLS TO BE PERMITTED SEPARATELY AND APPLIED FOR AT THE TOWN OF LOS GATOS BUILDING DIVISION).

GRADING AND DRAINAGE PLANS 212 THURSTON STREET, LOS GATOS, CA 95030 GRADING PERMIT APPLICATION NO. ASSESSOR'S PARCEL NO. 410-15-039

PROJECT DATA table with 20 rows including Project Address, Project Owner, Assessor's Parcel Number, Existing Use, Existing Zoning, Proposed Use, Proposed Zoning, Site Area, Applicant/Developer, and various engineering disciplines.

AVERAGE SLOPE: AVERAGE SLOPE LESS THAN 4%

SCOPE OF WORK: 1. GRADE HOUSE SIZE WITH A BARGMENT 2. SEED/LANDSCAPE ALL DISTURBED AREAS

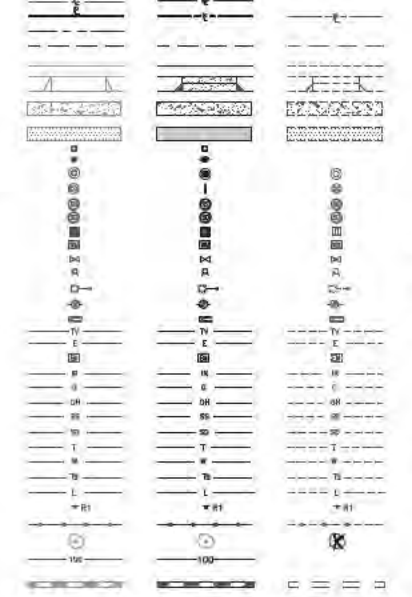
- SHEET INDEX: 1. TOWN NOTES, GENERAL NOTES, LEGEND & ABBREVIATIONS 2. BLUPRINT FOR A CLEAN BAY SHEET 3. DRAINAGE PLAN & SITE PLAN 4. GRADING AND DRAINAGE PLAN 5. BUILDING CROSS SECTIONS 6. UTILITY PLAN 7. EROSION CONTROL PLAN 8. EROSION CONTROL DETAILS 9. CONSTRUCTION MANAGEMENT PLAN



TABLE OF PROPOSED IMPROVEMENTS AND IMPROVABLE AREAS. Includes columns for Total Site Area, Total Site Area Disturbed, and Total Area Post-Project.

TABLE OF PROPOSED EARTHWORK QUANTITIES. Includes columns for Area Description, Cut (CY), Max Cut Height (FT), Fill (CY), Max Fill Depth (FT), and Import/Export (CY).

LEGEND



TOWN NOTES, GENERAL NOTES, LEGEND & ABBREVIATIONS (CONTINUED FROM PREVIOUS PAGE)

212 THURSTON STREET

SECTION NUMBER SHEET NUMBER

Pollution Prevention — It's Part of the Plan

Make sure your crews and subs do the job right!

Runoff from streets and other paved areas is a major source of pollution in San Francisco Bay. Construction activities can directly affect the health of the Bay unless contractors and crews plan ahead to keep dirt, debris, and other construction waste away from storm drains and local creeks. Following these guidelines will ensure your compliance with local ordinance requirements.



Materials storage & spill cleanup

Non-hazardous materials management

- ✓ Sand, dirt, and similar materials must be stored at least 10 feet from catch basins, and covered with a tarp during wet weather or when rain is forecast.
- ✓ Use (but don't overuse) reclaimed water for dust control as needed.
- ✓ Sweep streets and other paved areas daily. Do not wash down streets or work areas with water!
- ✓ Recycle all asphalt, concrete, and aggregate base material from demolition activities.
- ✓ Check dumpsters regularly for leaks and to make sure they don't overflow. Repair or replace leaking dumpsters promptly.

Hazardous materials management

- ✓ Label all hazardous materials and hazardous wastes (such as pesticides, paints, flammables, solvents, fuel, oil, and antifreeze) in accordance with city, state, and federal regulations.
- ✓ Store hazardous materials and wastes in secondary containment and cover them during wet weather.
- ✓ Follow manufacturer's application instructions for hazardous materials and be careful not to use more than necessary. Do not apply chemicals outdoors when rain is forecast within 24 hours.
- ✓ Be sure to arrange for appropriate disposal of all hazardous wastes.

Spill prevention and control

- ✓ Keep a stockpile of spill cleanup materials (rags, absorbents, etc.) available at the construction site at all times.
- ✓ When spills or leaks occur, contain them immediately and be particularly careful to prevent leaks and spills from reaching the gutter, street, or storm drain. Never wash spilled material into a gutter, street, storm drain, or creek!
- ✓ Report any hazardous materials spills immediately! Dial 911 or your local emergency response number.

Vehicle and equipment maintenance & cleaning

- ✓ Inspect vehicles and equipment for leaks frequently. Use drip pans to catch leaks until repairs are made; repair leaks promptly.
- ✓ Fuel and maintain vehicles on site only in a bermed area or over a drip pan that is big enough to prevent runoff.
- ✓ If you must clean vehicles or equipment on site, clean with water only in a bermed area that will not allow rinsewater to run into gutters, streets, storm drains, or creeks.
- ✓ Do not clean vehicles or equipment on-site using soaps, solvents, degreasers, steam cleaning equipment, etc.



Dewatering operations

- ✓ Reuse water for dust control, irrigation, or another on-site purpose to the greatest extent possible.
- ✓ Be sure to call your city's storm drain inspector before discharging water to a street, gutter, or storm drain. Filtration or diversion through a basin, tank, or sediment trap may be required.
- ✓ In areas of known contamination, testing is required prior to reuse or discharge of groundwater. Consult with the city inspector to determine what testing to do and to interpret results. Contaminated groundwater must be treated or hauled off-site for proper disposal.



Saw cutting

- ✓ Always completely cover or barricade storm drain inlets when saw cutting. Use filter fabric, hay bales, sand bags, or fine gravel dams to keep slurry out of the storm drain system.
- ✓ Shovel, shovel, or vacuum saw-cut slurry and pick up all waste as soon as you are finished in one location or at the end of each work day (whichever is sooner!)
- ✓ If saw cut slurry enters a catch basin, clean it up immediately.

Concrete, grout, and mortar storage & waste disposal

- ✓ Be sure to store concrete, grout, and mortar under cover and away from drainage areas. These materials must never reach a storm drain.
- ✓ Wash out concrete equipment/trucks off-site or designate an on-site area for washing where water will flow onto dirt or into a temporary pit in a dirt area. Let the water seep into the soil and dispose of hardened concrete with trash.
- ✓ Divert water from washing exposed aggregate concrete to a dirt area where it will not run into a gutter, street, or storm drain.
- ✓ If a suitable dirt area is not available, collect the wash water and remove it for appropriate disposal off site.



Earthwork & contaminated soils

- ✓ Keep excavated soil on the site where it is least likely to collect in the street. Transfer to dump trucks should take place on the site, not in the street.
- ✓ Use hay bales, silt fences, or other control measures to minimize the flow of silt off the site.
- ✓ Avoid scheduling earth moving activities during the rainy season if possible. If grading activities during wet weather are allowed in your permit, be sure to implement all control measures necessary to prevent erosion.
- ✓ Mature vegetation is the best form of erosion control. Minimize disturbances to existing vegetation whenever possible.
- ✓ If you disturb a slope during construction, prevent erosion by securing the soil with erosion control fabric, or seed with fast-growing grasses as soon as possible. Place hay bales down slope until soil is secure.
- ✓ If you suspect contamination from site history, discoloration, odor, texture, abandoned underground tanks or pipes, or buried debris, call your local fire department for help in determining what testing should be done.
- ✓ Manage disposal of contaminated soil according to Fire Department instructions.



Paving/asphalt work

- ✓ Do not pave during wet weather or when rain is forecast.
- ✓ Always cover storm drain inlets and manholes when paving or applying seal coat, wet coat, slurry seal, or fog seal.
- ✓ Place drip pans or absorbent material under paving equipment when not in use.
- ✓ Protect gutters, ditches, and drainage courses with hay bales, sandbags or earthen berms.
- ✓ Do not sweep or wash down excess sand from sand sealing into gutters, storm drains, or creeks. Collect sand and return it to the stockpile, or dispose of it as trash.
- ✓ Do not use water to wash down fresh asphalt concrete pavement.



Painting

- ✓ Never rinse paint brushes or materials in a gutter or street!
- ✓ Paint out excess water-based paint before rinsing brushes, rollers, or containers in a sink. If you can't use a sink, direct wash water to a dirt area and spade it in.
- ✓ Paint out excess oil based paint before cleaning brushes to thinner.
- ✓ Filter paint thinners and solvents for reuse whenever possible. Dispose of oil-based paint sludge and unusable thinner as hazardous waste.



Storm drain polluters may be liable for fines of up to \$10,000 per day!



DATE	ISSUED	BY	DATE	BY
SCALE	DESIGN	PT	CHECK	INC
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SEAN ANDERSON/PAVE
212 THURSTON STREET
BLUEPRINT FOR A CLEAR BAY
ISSUING PERMIT APPLICATION NO.



REV	DATE	DESCRIPTION

SHEET 2 OF 9

CONTRACTOR MUST MAINTAIN A CLEAN WORK AREA AT ALL TIMES. ALL MATERIALS MUST BE STORED PROPERLY AND COVERED TO PREVENT POLLUTION. ALL WASTE MUST BE PROPERLY DISPOSED OF. THIS PLAN IS SUBJECT TO CHANGE WITHOUT NOTICE. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND FOR OBTAINING ALL NECESSARY INFORMATION FROM THE CITY OF SAN FRANCISCO. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY INFORMATION FROM THE CITY OF SAN FRANCISCO. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY INFORMATION FROM THE CITY OF SAN FRANCISCO.

San Area Stormwater Management
Agency Association (SASMAA)
1-888-HAYWISE

CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND CONDITIONS OF EXISTING UTILITIES AND STRUCTURES PRIOR TO CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL JURISDICTIONS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL JURISDICTIONS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL JURISDICTIONS.

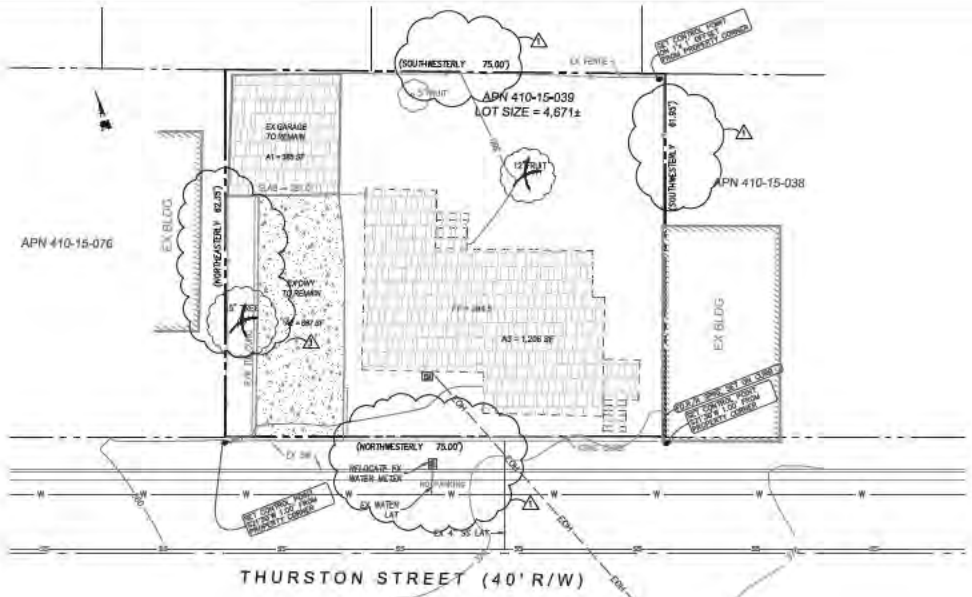


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SCALE	DRAWN	PT	CHECK	INC
PROJECT NO.				

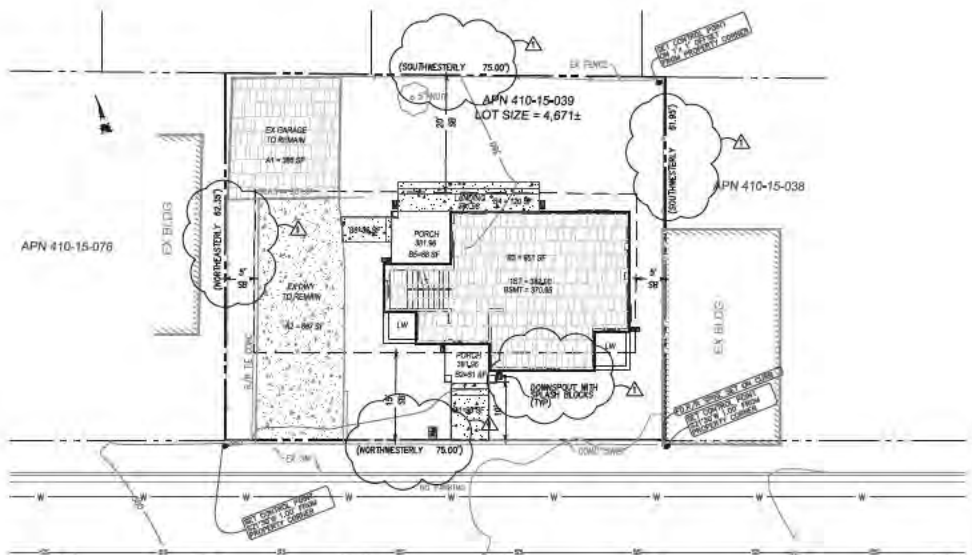
REVISION AND CHANGE PLAN
212 THURSTON STREET
 DEMOLITION PLAN & SITE PLAN
 (SEENING PERMITS APPLICATION)



REVISIONS	DATE	BY
REV. 01: REVISION COMMENTS	DATE	BY
REV. 02: REVISION COMMENTS	DATE	BY



DEMOLITION PLAN



SITE PLAN

LEGEND

- ITEM OR AREA TO BE REMOVED
- ITEM OR AREA TO REMAIN
- EX CONC TO REMAIN
- PROPOSED CONC
- EX BLDG TO REMAIN
- BUILDING
- EXISTING TREE TO REMAIN
- EXISTING TREE TO BE REMOVED

PRE-DEVELOPMENT

ITEM#	DESCRIPTION	REMAIN	INTERVOLS	PERVOLS
A1	GARAGE	(REMAIN)	385 SF	
A2	DWY	(REMAIN)	687 SF	
A3	BLDG	(REMOVE)	1,206 SF	
	LANDSCAPE			2,413 SF
TOTAL			2,278 SF	2,413 SF

POST-DEVELOPMENT

ITEM#	DESCRIPTION	REMAIN	INTERVOLS	PERVOLS
A1	GARAGE	(REMAIN)	385 SF	
A2	DWY	(REMAIN)	687 SF	
B1	WLF	(NEW)	36 SF	
B2	PORCH	(NEW)	41 SF	
B3	BLDG	(NEW)	382 SF	
B4	LANDING	(NEW)	121 SF	
B5	PORCH	(NEW)	88 SF	
B6	WLF	(NEW)	36 SF	
	LANDSCAPE			2,177 SF
TOTAL			2,896 SF	2,177 SF

SUMMARY

ITEM#	DESCRIPTION	INTERVOLS	PERVOLS
1	PRE-DEVELOPMENT	2,278 SF	2,413 SF
2	POST-DEVELOPMENT	2,396 SF	2,177 SF
TOTAL		4,674 SF	4,590 SF

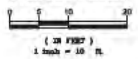
BASIS OF ELEVATIONS

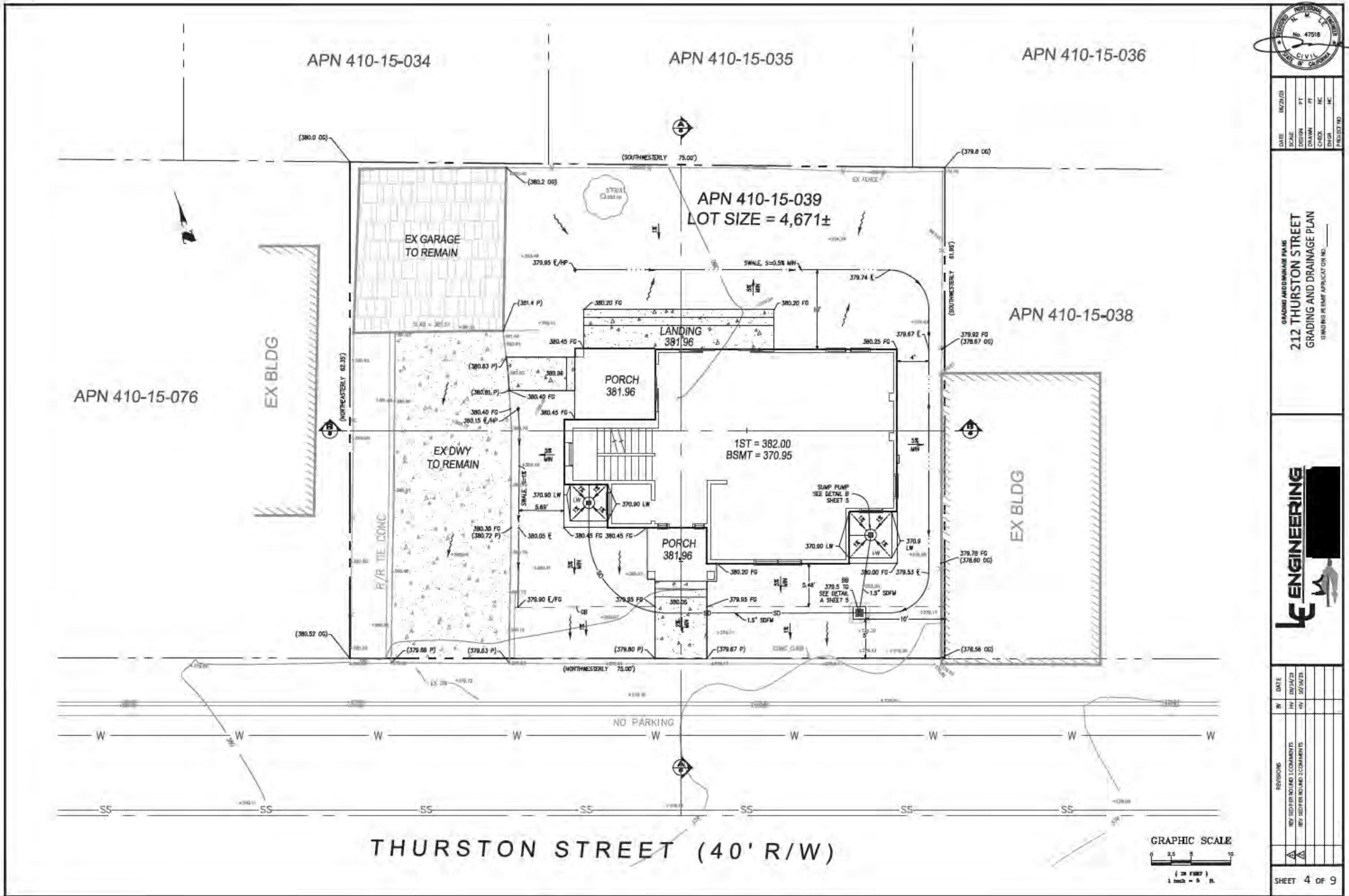
ELEVATIONS SHOWN ON THIS MAP ARE BASED ON AVERAGE CURB ENDS ALONG THURSTON STREET AND HOLDING THE BEARING OF MERIDIAN AS SHOWN ON THE MAP OF THE NOTY SUBDIVISION FILED IN BOOK 17 OF MAPSPACE #SANTA CLARA COUNTY RECORDS.

BASIS OF BEARINGS

THE BEARINGS SHOWN ON THIS MAP ARE BASED ON AVERAGE CURB ENDS ALONG THURSTON STREET AND HOLDING THE BEARING OF MERIDIAN AS SHOWN ON THE MAP OF THE NOTY SUBDIVISION FILED IN BOOK 17 OF MAPSPACE #SANTA CLARA COUNTY RECORDS.

GRAPHIC SCALE





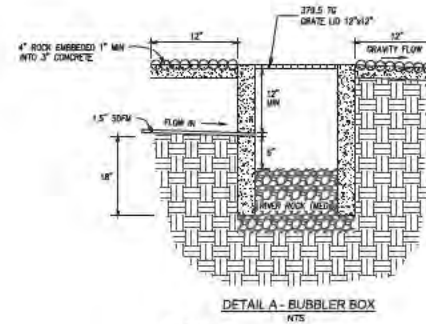
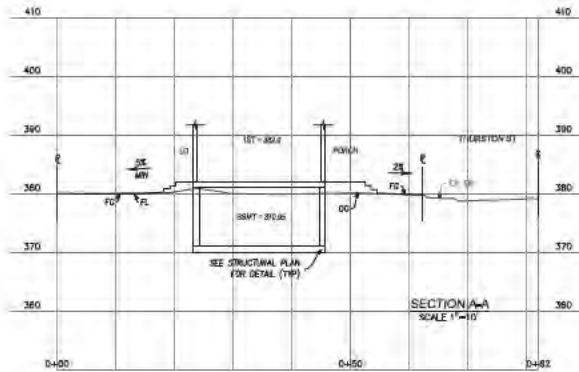
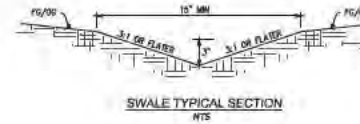
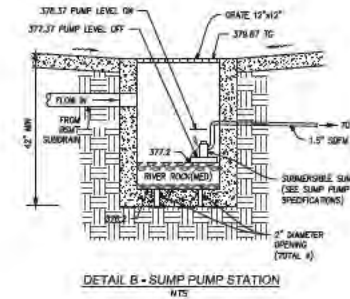
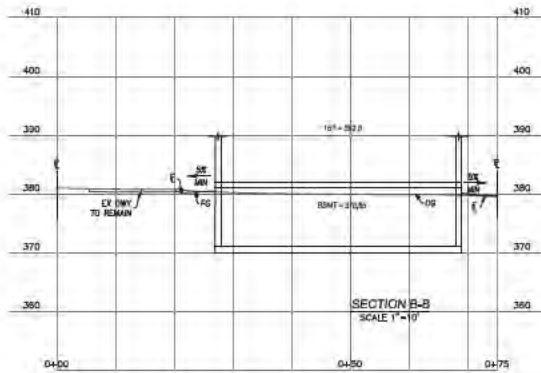
DATE	10/22/23
SCALE	
DESIGN	PT
DRAWN	MC
CHECK	MC
BY	MC
PROJECT NO.	

GRADING AND DRAINAGE PLAN
212 THURSTON STREET
FINISHING PLUMB APPLICATION NO. _____

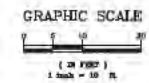


REV	DATE	DESCRIPTION

SHEET 4 OF 9



- NOTES:**
1. RIBB PLASTIC, A.C., C.I., OR STEEL PIPE ALLOWED TO BOX FROM INLET.
 2. BOX SHALL BE SET WITH ALIGNMENT BRACKETS SLUING AWAY TO PREVENT RAINWATER & LANDSCAPE WATER FROM ENTERING.
 3. BOX SHALL BE SET IN LANDSCAPED AREA TO FACILITATE PERCOLATION.
 4. BOX SHALL NOT HAVE CONCRETE BOTTOM TO FACILITATE PERCOLATION.



DATE:	10/22/23
SCALE:	AS SHOWN
DRAWN BY:	PT
CHECKED BY:	RS
PROJECT NO.:	18

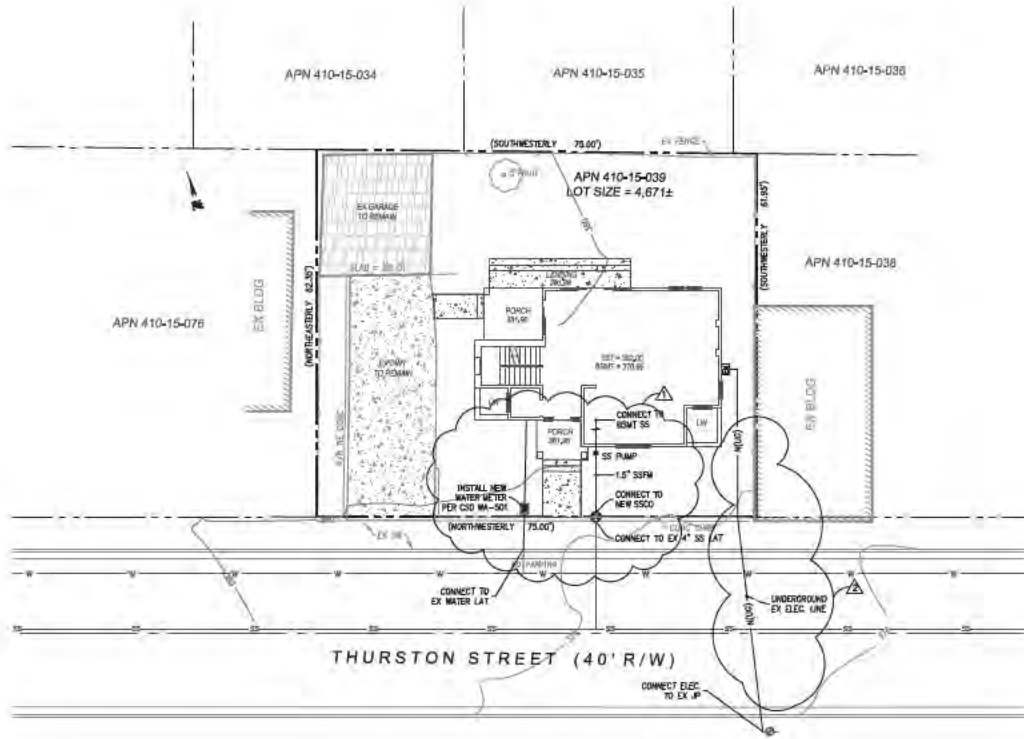
ROBERT L. THOMPSON P.E.
 212 THURSTON STREET
 BUILDING CROSS SECTIONS
 (PENDING PERMIT APPLICATION #)



DATE	BY	DESCRIPTION

SHEET 5 OF 9

THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF SAN JOSE AND THE CALIFORNIA DEPARTMENT OF WATER RESOURCES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF SAN JOSE AND THE CALIFORNIA DEPARTMENT OF WATER RESOURCES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF SAN JOSE AND THE CALIFORNIA DEPARTMENT OF WATER RESOURCES.



DATE	ISSUES	BY	DATE

SEASON AND SUMMER PLAN
212 THURSTON STREET
 UTILITY PLAN
 (FINISH PERMITS APPLICATION)

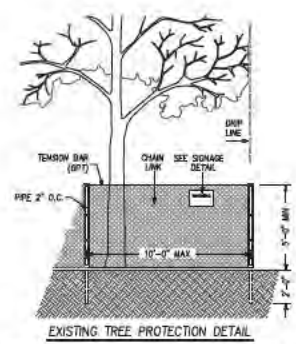
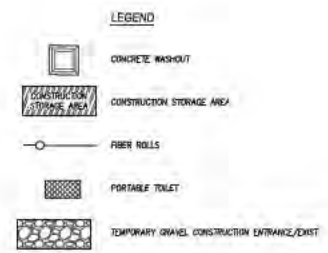
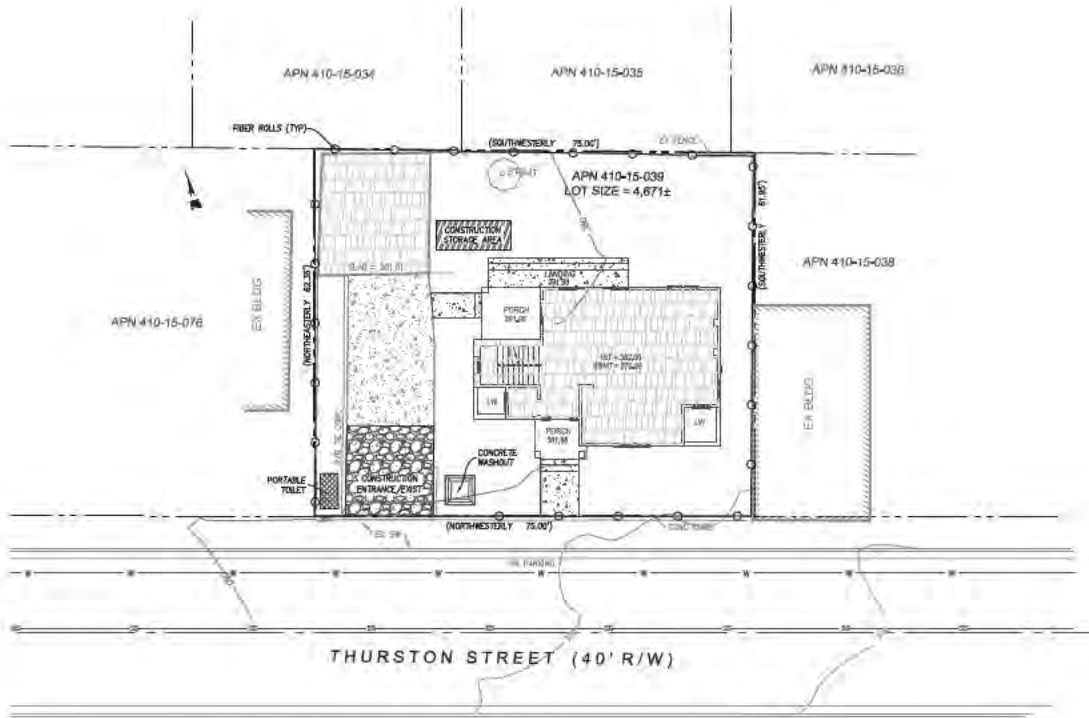


REV	DATE	DESCRIPTION

SHEET 6 OF 9

REV. 08/17/2024

THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF SACRAMENTO AND THE CALIFORNIA DEPARTMENT OF WATER RESOURCES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CALIFORNIA DEPARTMENT OF WATER RESOURCES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CALIFORNIA DEPARTMENT OF WATER RESOURCES.



1. PRIOR TO THE COMMENCEMENT OF ANY GRADING, TREE PROTECTIVE FENCING SHALL BE IN PLACE IN ACCORDANCE WITH THE TREE PRESERVATION PLAN AND INSPECTED BY A CERTIFIED ARBORIST. THE ARBORIST SHALL MONITOR CONSTRUCTION ACTIVITY TO ENSURE THAT THE TREE PROTECTION MEASURES ARE IMPLEMENTED AND ADHERED TO DURING CONSTRUCTION. THIS CONDITION SHALL BE INCORPORATED INTO THE GRADING PLANS.
2. FENCE SHALL BE MINIMUM 5 FEET TALL CONSTRUCTED OF STURDY MATERIAL (CHAIN-LINK OR EQUIVALENT STRENGTH/DURABILITY).
3. FENCE SHALL BE SUPPORTED BY VERTICAL POSTS DRIVEN 2 FEET (MIN) INTO THE GROUND AND SPACED NOT MORE THAN 10 FEET APART.
4. TREE FENCING SHALL BE MAINTAINED THROUGHOUT THE SITE DURING THE CONSTRUCTION PERIOD, INSPECTED PERIODICALLY FOR DAMAGE AND PROPER FUNCTION, REPAIRED AS NECESSARY TO PROVIDE A PHYSICAL BARRIER FROM CONSTRUCTION ACTIVITIES, AND REMAIN IN PLACE UNTIL THE FINAL INSPECTION.
5. A SIGN THAT INCLUDES THE WORDS, "WARNING: THIS FENCE SHALL NOT BE REMOVED WITHOUT THE EXPRESS PERMISSION OF THE CITY LOS BAÑOS PLANNING OFFICE," SHALL BE SECURELY ATTACHED TO THE FENCE IN A VISUALLY PROMINENT LOCATION.

- NOTES**
1. EROSION AND SEDIMENT CONTROL SHALL REMAIN IN PLACE AND MAINTAINED UNTIL THE PERMANENT LANDSCAPE IS INSTALLED.
 2. CONTRACTOR TO PROVIDE STORMWATER INLET PROTECTION AT NEAREST INLET DOWNSIDE OF PROJECT SITE.



DATE	NO./REV.	BY	CHKD.	APP'D.

REVISION APPROVAL MARK
212 THURSTON STREET
 EROSION CONTROL PLAN
 (ISSUING PERMITS APPLICATION NO. _____)



REV.	DATE	BY	CHKD.	APP'D.

SHEET 7 OF 9



DATE	ISSUED	BY	FOR
SCALE	EROSION	PLAN	NO.
CHECK	NO.	NO.	NO.
BY	NO.	NO.	NO.
PROJECT NO.			

REVISION APPROVAL MARK
212 THURSTON STREET
EROSION CONTROL DETAILS
(PRINTING PRIMARY APPLICATION)



DATE	BY	FOR
NO. OF SHEETS	NO. OF SHEETS	NO. OF SHEETS
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SHEET 8 OF 9

GENERAL EROSION AND SEDIMENT CONTROL NOTES:

- CONTRACTOR/OWNER: MILEAH GULLARDO
ADDRESS: 212 THURSTON STREET, LOS GATOS, CA 95030
PHONE NUMBER: (408) 808-7187
IT SHALL BE THE OWNER'S RESPONSIBILITY TO MAINTAIN CONTROL OF THE ENTIRE CONSTRUCTION OPERATION AND TO KEEP THE ENTIRE SITE IN COMPLIANCE WITH THE SOIL EROSION CONTROL PLAN.
- CIVIL ENGINEER: LC ENGINEERING 308 E SANTA CLARA ST, SUITE #210
SAN JOSE, CA 95131
(408) 808-7187
CONTRACTOR: MILEAH GULLARDO
ADDRESS: 212 THURSTON STREET, LOS GATOS, CA 95030
24-HOUR PHONE NUMBER:
CONSTRUCTION SUPERINTENDENT: MILEAH GULLARDO
ADDRESS: 212 THURSTON STREET, LOS GATOS, CA 95030
24-HOUR PHONE NUMBER:
- THIS PLAN IS INTENDED TO BE USED FOR INTERIM EROSION AND SEDIMENT CONTROL ONLY AND IS NOT TO BE USED FOR FINAL ELEVATIONS OR PERMANENT IMPROVEMENTS.
- DEVELOPER WILL SUBMIT TO THE COUNTY/CITY MONTHLY (AT THE FIRST OF EACH MONTH BETWEEN OCT 15TH AND APRIL 15TH) CERTIFICATIONS THAT ALL EROSION/SEDIMENT MEASURES IDENTIFIED ON THE APPROVED EROSION CONTROL PLAN ARE IN PLACE. IF MEASURES ARE NOT IN PLACE, DEVELOPER SHALL PROVIDE THE COUNTY/CITY WITH A WRITTEN EXPLANATION OF WHY THE MEASURE IS NOT IN PLACE, AND WHAT WILL BE DONE TO REMEDY THIS SITUATION.
- OWNER/CONTRACTOR SHALL BE RESPONSIBLE FOR MONITORING EROSION AND SEDIMENT CONTROL MEASURES PRIOR, DURING, AND AFTER STORM EVENTS.
- REASONABLE CARE SHALL BE TAKEN WHEN HAULING ANY EARTH, SAND, GRAVEL, STONE, DEBRIS, PAPER OR ANY OTHER SUBSTANCE OVER ANY PUBLIC STREET, ALLEY, OR OTHER PUBLIC PLACE. SHOULD ANY BLEND, SPILL, OR TRUCK OVER AND UPON SAID PUBLIC OR ADJACENT PRIVATE PROPERTY, IMMEDIATE REMEDY SHALL OCCUR.
- SAFETY FACILITIES SHALL BE MAINTAINED ON THE SITE.
- DURING THE RAINY SEASON, ALL PAVED AREAS SHALL BE KEPT CLEAR OF EARTH MATERIAL AND DEBRIS. THE SITE SHALL BE MAINTAINED SO AS TO MINIMIZE SEDIMENT LOADS TO ANY STORM DRAINAGE SYSTEM, INCLUDING EXISTING DRAINAGE DITCHES AND WATER COURSES.
- CONSTRUCTION OPERATIONS SHALL BE CARRIED OUT IN SUCH A MANNER THAT EROSION AND WATER POLLUTION WILL BE MINIMIZED. STAKE AND LOGS MARKS CONCERNING POLLUTION ABATEMENT SHALL BE COMPLETED WITH.
- CONTRACTOR SHALL PROVIDE DUST CONTROL AS REQUIRED BY THE APPROPRIATE FEDERAL, STATE AND LOCAL AGENCY REQUIREMENTS.

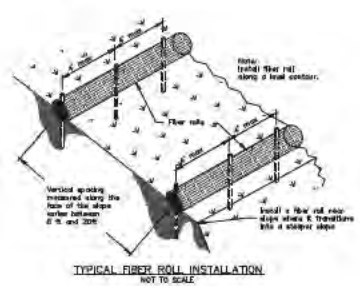
EROSION AND SEDIMENT CONTROL MEASURES

- THE FACILITIES SHOWN ON THIS PLAN ARE DESIGNED TO CONTROL EROSION AND SEDIMENT DURING THE RAINY SEASON, OCTOBER 15 TO APRIL 15. FACILITIES ARE TO BE OPERABLE PRIOR TO OCTOBER 1 OF ANY YEAR. GRADING OPERATIONS DURING THE RAINY SEASON WHICH LEAVE SENSITIVE SLOPES SHALL BE PROTECTED WITH EROSION CONTROL MEASURES IMMEDIATELY FOLLOWING GRADING ON THE SLOPES.
- THIS PLAN COVERS ONLY THE FIRST WINTER FOLLOWING GRADING WITH ASSUMED SITE CONDITIONS AS SHOWN ON THE EROSION CONTROL PLAN. PRIOR TO SEPTEMBER 15, THE COMPLETION OF SITE IMPROVEMENT SHALL BE EVALUATED AND REVISIONS MADE TO THIS PLAN ARE NECESSARY WITH THE APPROVAL OF THE COUNTY/CITY ENGINEER. PLANS RESTRICTED FOR THE COUNTY/CITY APPROVAL PRIOR TO SEPTEMBER 1 OF EACH SUBSEQUENT YEAR UNTIL ARE TO BE SITE IMPROVEMENTS ARE ACCEPTED BY THE COUNTY/CITY.
- CONSTRUCTION ENTRANCES SHALL BE INSTALLED PRIOR TO COMMENCEMENT OF GRADING. ALL CONSTRUCTION TRAFFIC ENTERING ONTO THE PAVED ROADS MUST CROSS THE STABILIZED CONSTRUCTION ENTRANCEWAYS.
- CONTRACTOR SHALL MAINTAIN STABILIZED ENTRANCE AT EACH VEHICLE ACCESS POINT TO EXISTING PAVED STREETS. ANY MUD OR DEBRIS TRACKED ON TO PUBLIC STREETS SHALL BE REMOVED DAILY AND AS REQUIRED BY THE COUNTY/CITY.
- IF HYDROSEEDING IS NOT USED OR IS NOT EFFECTIVE BY 10/10, THEN OTHER IMMEDIATE METHODS SHALL BE IMPLEMENTED, SUCH AS EROSION CONTROL BLANKETS OR THREE-SHEET APPLICATIONS OF 1) SEED, MULCH, FERTILIZER 2) SLOW STRAW 3) TROPICOP AND MULCH.
- MULET PROTECTION SHALL BE INSTALLED AT OPEN MULETS TO PREVENT SEDIMENT FROM ENTERING THE STORM DRAIN SYSTEM. MULETS NOT USED IN CONJUNCTION WITH EROSION CONTROL ARE TO BE BUSHED TO PREVENT ENTRY OF.
- LOTS WITH HOUSES UNDER CONSTRUCTION WILL NOT BE HYDROSEEDED. EROSION PROTECTION FOR EACH LOT WITH A HOUSE UNDER CONSTRUCTION SHALL CONFORM TO THE TYPICAL LOT EROSION CONTROL DETAIL SHOWN ON THIS SHEET.
- THE EROSION AND SEDIMENT CONTROL PLAN MAY NOT COVER ALL THE SITUATIONS THAT MAY ARISE DURING CONSTRUCTION DUE TO UNANTICIPATED FIELD CONDITIONS. VARIATIONS AND ADDITIONS MAY BE MADE TO THIS PLAN IN THE FIELD. NOTIFY THE REPRESENTATIVE OF ANY FIELD CHANGES.
- GRADING WORK BETWEEN OCTOBER 15 AND APRIL 15 IS AT THE DISCRETION OF COUNTY/CITY.

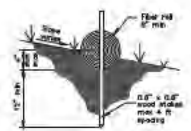
MAINTENANCE NOTES

- MAINTENANCE IS TO BE PERFORMED AS FOLLOWS:
 - REPAIR DAMAGES CAUSED BY SOIL EROSION OR CONSTRUCTION AT THE END OF EACH WORKING DAY.
 - SINKS SHALL BE INSPECTED PERIODICALLY AND MAINTAINED AS NEEDED.
 - SEDIMENT TRAPS, BOWLS, AND SINKS ARE TO BE INSPECTED AFTER EACH STORM AND REPAIRS MADE AS NEEDED.
 - SEDIMENT SHALL BE REMOVED AND SEDIMENT TRAP RESTORED TO ITS ORIGINAL DIMENSIONS WHEN SEDIMENT HAS ACCUMULATED TO A DEPTH OF 1 FOOT.
 - SEDIMENT REMOVED FROM TRAP SHALL BE DEPOSITED IN A SUITABLE AREA AND IN SUCH A MANNER THAT IT WILL NOT ERODE.
 - WELLS AND FILLERS MUST BE REPAIRED.
- SAND BAR INLET PROTECTION SHALL BE CLEANED OUT WHENEVER SEDIMENT DEPTH IS ONE HALF THE HEIGHT OF ONE SAND BAR.
- EXPOSED SLOPES SHALL BE PROTECTED WITH JUTE NET AND/OR HYDROSEED. HYDROSEED SHALL BE A HOMOGENEOUS MIX OF SLURRY CONTAINING NOT LESS THAN 44 LBS OF SYNTHETIC MOLYBDENUM NUTRIENT PLUS FERTILIZER, CHEMICAL ADDITIVES AND SOLIDS FOR EACH 100 GALLONS OF WATER.

1 Fiber Rolls
CASQA Detail SE-5

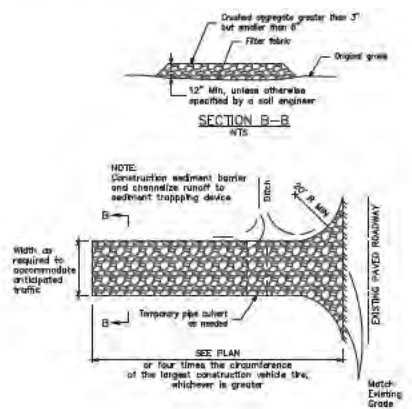


TYPICAL FIBER ROLL INSTALLATION
NOT TO SCALE



ENTRENCHMENT DETAIL
NOT TO SCALE

3 Stabilized Construction Entrance/Exit
CASQA Detail TC-1



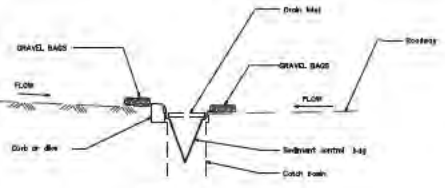
SECTION B-B
NOT TO SCALE

NOTE: Construction sediment barrier and channelize runoff to sediment trapping device.

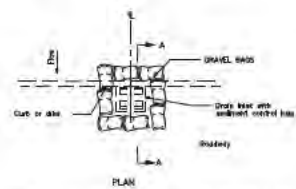
Width as required to accommodate anticipated traffic

SEE PLAN
or four times the circumference of the largest construction vehicle tire, whichever is greater

Match Existing Grade



SECTION A-A



TEMPORARY DRAINAGE INLET PROTECTION
For paved areas exposed to traffic

CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LOCAL ORDINANCES AND REGULATIONS OF THE COUNTY AND CITY OF LOS GATOS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE COUNTY AND CITY OF LOS GATOS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE COUNTY AND CITY OF LOS GATOS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE COUNTY AND CITY OF LOS GATOS.

CONSTRUCTION APPLICANT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF CHICAGO AND THE CHICAGO DEPARTMENT OF PUBLIC WORKS. THE APPLICANT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF CHICAGO AND THE CHICAGO DEPARTMENT OF PUBLIC WORKS. THE APPLICANT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF CHICAGO AND THE CHICAGO DEPARTMENT OF PUBLIC WORKS.



CONSTRUCTION SITE FIRE SAFETY:
 ALL CONSTRUCTION SITES MUST COMPLY WITH APPLICABLE PROVISIONS OF THE CITY CHARTER 33 AND OUR STANDARD DETAILS AND SPECIFICATION SI-7.



DATE	10/22/23
SCALE	N/A
DESIGN	PT
DRAWN	PT
CHECK	NC
BY/CP	NC
PROJECT NO.	

REASON AND NUMBER PLAN
212 THURSTON STREET
CONSTRUCTION MANAGEMENT PLAN
 (FINISHING PERMIT APPLICATION NO. _____)



REV	DATE	DESCRIPTION

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A P P E A R A N C E S:

Los Gatos Planning Commissioners:
Steve Raspe, Chair
Emily Thomas, Vice Chair
Susan Burnett
Melanie Hanssen
Kathryn Janoff
Adam Mayer

Town Manager: Laurel Prevetti

Community Development Director: Joel Paulson

Town Attorney: Gabrielle Whelan

Transcribed by: Vicki L. Blandin
(619) 541-3405

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P R O C E E D I N G S:

CHAIR RASPE: We'll now move to the Public Hearings portion of the calendar, of which there is one matter tonight. Tonight is a request for approval of demolition of an existing single-family residence and construction of a new single-family residence with reduced setbacks on a property zoned R-1D located at 212 Thurston Street, APN 410-15-039. The Property Owner/Applicant is Meleah Guillard, and the project planner is Maria Chavarin.

First, can I see a show of hands of Commissioners who have visited the property? Thank you all. Are there any disclosures on this item? Seeing none, can I please have the Staff Report then, Ms. Chavarin?

MARIA CHAVARIN: Good evening, Maria Chavarin, project planner for the property located at 212 Thurston Street.

The item before you this evening is an Architecture and Site Application for demolition of an existing single-family residence and construction of a new single-family residence with reduced setbacks on a property zoned R-1D. The project consists of the construction of a

1 two-story single-family residence including below-grade
2 square footage and the removal of two existing fruit trees.
3 As part of the application the Applicant is requesting an
4 exception to Chapter 29 of the Town Code of regulations for
5 reduced front yard setbacks.

6 This will conclude Staff's presentation. I'm
7 happy to answer questions. Thank you.

8 CHAIR RASPE: Thank you for that report, Ms.
9 Chavarin. Commissioners, any questions for Staff on this
10 matter? Seeing none, I have one card from the Applicant.
11 Meleah Guillardo is the project applicant. You can come
12 forward to the podium and speak. You have up to three
13 minutes to speak. Thank you.

14 JENNIFER ARMER: Through the Vice Chair, she has
15 up to five minutes, in combination with her architect as
16 well, who is available on Zoom, if she so chooses.

17 CHAIR RASPE: Very good. My apologies. You have
18 five minutes total. You can allot that as between you and
19 your architect in any fashion. Thank you.

20 MELEAH GUILLARDO: Thank you. My name is Meleah
21 Guillardo and I am the owner of 212 Thurston Street. I've
22 lived in Los Gatos my whole life and am excited to make
23 Thurston Street my forever home in this beautiful town.
24
25

1 I am requesting approval to build a new home, as
2 the current structure is very out of date and an eyesore in
3 the surrounding neighborhood. I also plan to repair the
4 garage. I look forward to being a good and accommodating
5 neighbor and I thank you, Commissioners, for your time this
6 evening.

7 I will pass it off to my architect, Chris
8 Spaulding, for further comments.

9 CHAIR RASPE: Thank you. Mr. Spaulding, can you
10 hear us on Zoom?
11

12 CHRIS SPAULDING: I can. Can you hear me?

13 CHAIR RASPE: Yes, we can. Go ahead and proceed.

14 CHRIS SPAULDING: Thank you. This is a very
15 interesting lot, a very small lot—you've all been out to
16 see it—and it's adjacent to the commercial zone, and the
17 adjacent property on the commercial zone has a house that's
18 actually partially on Meleah's property by 6", and is also
19 onto the public right-of-way by another 9", I believe.

20 At some point something is going to happen on
21 that property, so when we designed this we anticipated that
22 something large or unattractive might go there in the
23 future, maybe four units, or who knows? We designed his
24 house for Meleah's needs, and also as best as we could to
25

1 protect the neighbors' privacy, their light, and their
2 views.

3 As you can see from some of the neighbors, they
4 were also very concerned about their privacy, so we did
5 some revisions to the second floor windows. If you look in
6 your packet, it's page 74, or if Maria could put it up on
7 the screen, it's our slide "212 Thurston Privacy Window
8 Changes." That's it.

9 Originally we had some large windows in the
10 bathroom and we have made those windows with 5' sills and
11 changed them to obscure glass, and that leaves only one
12 window, which is in the bedroom facing the rear yard. We
13 have a photo of what it looks like looking out that window.
14 Maria, if you could put up "From Second Floor Looking at
15 Rear Neighbors with Proposed Hedge." There it is.

16 This is the view from that window, and we're
17 proposing a hedge, which is also in your packet, I think
18 page 75, and if Maria could put it on the screen, it's "212
19 Thurston Screening Plan." It shows the configuration of
20 that hedge that the landscape architect proposes. I think
21 with that hedge we could protect the neighbors' privacy
22 from that one remaining window on the second story. There
23 isn't really a privacy issue looking in the other
24 directions.
25

1 Also, I should say that the reason that we're
2 asking for reduced setbacks is those setbacks reduce the
3 shadows onto the rear neighbors a little bit; it allows for
4 us to have space for a small porch on the front, which was
5 requested by the Town's consulting architect, and we'd like
6 to have a porch ourselves; and even with the reduced
7 setbacks the proposed house is still farther back than the
8 existing house and it does allow for a little larger back
9 yard for Meleah, so that was the idea about asking for the
10 reduced setback.
11

12 That's all I have to say, unless you have some
13 questions of me. Thank you.

14 CHAIR RASPE: Thank you very much, Mr. Spaulding.
15 Please stay on the call for one moment and I'll ask my
16 fellow commissioners whether they have any questions for
17 the Applicant, either the owner or the architect on the
18 line? Commissioner Hanssen.

19 COMMISSIONER HANSSEN: Thank you for your
20 presentation. I wanted to ask about the consulting
21 architect's comments. While you responded to a number of
22 the architectural concerns I didn't see a lot of discussion
23 of when they brought up being the largest house in the
24 neighborhood from a couple of different metrics.
25 Specifically the consulting architect talked about because

1 you're so close to the front setback and having a wall of
2 two-story, so I was curious if you could address that,
3 because I didn't see that in there? Maybe I missed it, but
4 maybe you could address that.

5 CHRIS SPAULDING: Sure. One of his suggestions to
6 mitigate not having such a tall wall at the front of the
7 house was to expand the front porch, and so we took that
8 suggestion and added that to the plans so that there is no
9 longer any full two-story wall segments that are visible at
10 the front; the front porch is a one-story element that
11 mitigates the height, I guess I could say.

12 COMMISSIONER HANSSEN: Maybe it's because we
13 don't have drawings like the consulting architect does. So
14 it sounds like you have made some effort to reduce the
15 massing at the street.

16 CHRIS SPAULDING: Yes.

17 COMMISSIONER HANSSEN: Can I also ask you about
18 the garage? The Applicant did mention yes, we're going to
19 fix the garage, but you had a number of comments from your
20 neighbors about the garage, and it wasn't in the plans to
21 tear down and rebuild the garage. What is planned for the
22 garage since that was a source of complaint from at least a
23 couple neighbors?
24
25

1 CHRIS SPAULDING: It can't be torn down if we
2 want to leave it in its existing location, and we do want
3 to leave it in the existing location, because it's almost
4 at zero lot line, so on this tiny property it gives more
5 space for parking in front of the garage and it also gives
6 more yard space. The intent is to repair it and fix it and
7 make it as nice as the new house will be, but it will
8 essentially be the same building, just with cosmetic
9 repairs.

10
11 COMMISSIONER HANSSEN: But the cosmetic repairs
12 will at least address the concerns that the neighbors had
13 about it looking dilapidated and things falling off?

14 CHRIS SPAULDING: Correct. It is dilapidated and
15 things are falling off, and that will all get repaired.
16 That will be included in our construction plans, but this
17 application was really for the house, not the garage, so
18 that's why it's not included in the application.

19 COMMISSIONER HANSSEN: Understood, but we just
20 want to make sure that you've addressed all the neighbors'
21 concerns as best as possible. Thank you.

22 CHRIS SPAULDING: That is our intent.

23 CHAIR RASPE: Thank you so much. Any other
24 questions or comments from Commissioners? Yes, Commissioner
25 Burnett.

1 COMMISSIONER BURNETT: Thank you, Mr. Spaulding,
2 for responding to our questions. After going through the
3 documents here, our Town architect made six recommendations
4 and you really only agree with two, wanting to maintain
5 more of a contemporary style home.

6 After walking the neighborhood, which I did,
7 there's really only one home that is contemporary; most of
8 the houses are one- to two-story traditional. You refer
9 mostly to the house on Monterey Avenue; I think it's 529
10 Monterey.

11 Did you discuss other options with your client,
12 since this is predominantly a traditional neighborhood and
13 there's really only one other home that is real
14 contemporary? There is one home on Olive Street that has a
15 similar roof, but the FAR is very small; it's a small lot
16 and small home, and considering the size of this lot and
17 the other FARs in the neighborhood that are less but the
18 lots are much larger, this adds to the dominance of the
19 style of this home, so I'm wondering if there were other
20 options for your client considering four of the
21 recommendations of our Town architect were not acted upon?
22 Thank you.

23 CHRIS SPAULDING: Sure. Maria, could you put up
24 the slide of 529 Monterey, please? There it is. That's the
25

1 house you're referring to, which is across the street and
2 one property over. Similar style to what Meleah would like.
3 We discussed it and she wants a more contemporary house,
4 not such a traditional one, so that's what we're trying to
5 achieve. There is already an example in the neighborhood,
6 so the Planning Staff said that since there is already one
7 it's kind of the ice had been broken and we could follow
8 suit.

9
10 I'd also like to say that it's likely that
11 something more contemporary will probably happen adjacent
12 to us on the property zoned commercial, and this house is
13 right at the edge of the neighborhood, it's not in the
14 center of the neighborhood.

15 Perhaps Maria could also put on the slide
16 "Thurston Street View of Story Poles." There we go. This is
17 looking down the street and that contemporary house on
18 Monterey is to your right. Our proposed house, you can see
19 with the orange netting, is on the left. I just don't see
20 that this is going to be an overwhelming presence on the
21 street. It's not going to be orange, so it's not going to
22 stand out like the netting. I think it will fit in very
23 nicely, and we're trying to do what the owner prefers, and
24 she prefers the contemporary style.
25

1 COMMISSIONER BURNETT: Thank you for that, but
2 again, that's the only real contemporary home in the
3 neighborhood that you're describing. I walked the whole
4 neighborhood, and that's the only one, and we do have a
5 Residential Design Guideline and our architect recommended
6 six changes, and you decided to only go for two. Those are
7 just my comments, so that concerns me.

8 And it is the tallest house that is going to be
9 built. It's a very small lot and the FAR is one of the
10 fifth highest of the FARs. The other FARs are on much
11 larger lots, so I was just making those comments. Thank
12 you.

13 CHAIR RASPE: Thank you so much. Any other
14 Commissioner comments for the Applicant? Commissioner
15 Mayer.

16 COMMISSIONER MAYER: I just want to ask a
17 question for clarification. The reason that the setback
18 went from 10' to 7'3" was because of the addition of the
19 front porch? Am I understanding that correctly?
20

21 CHRIS SPAULDING: Yes.

22 COMMISSIONER MAYER: Okay, thanks.

23 CHAIR RASPE: Thank you. Any other questions from
24 Commissioners? Mr. Spaulding, please stand by. There will
25

1 be a chance to ask and answer some additional questions
2 after we hear from the rest of the public.

3 Now I open the discussion to comments from the
4 public. I know we have at least one on Zoom, Mr. Paulson.
5 Zoom callers, if you want to speak, please raise your hand.
6 You will be called up and then please state your name for
7 the record.

8 JENNIFER ARMER: The first speaker is Bill Hopps.

9 CHAIR RASPE: Mr. Hopps. Welcome.

10 BILL HOPPS: Thank you. My name is Bill Hopps. I
11 am a resident on Olive Street behind the property.

12 First off, I've got to acknowledge that I didn't
13 have time to look at any of the planning documents that
14 were revised; I haven't seen them, so thank you for
15 addressing some of the issues.

16 Overall my biggest concern is just the scale of
17 the property. It's much larger than any of the other homes,
18 and especially any of the homes behind it. It's going to
19 impact our light and visibility out of the back. I
20 acknowledge the input of a hedge is great. The master
21 bedroom windows though, I don't know how much that hedge
22 blocks, but they weren't changed in size and they do have a
23 good view of our back entryway and bedroom.
24
25

1 I think that kind of sums it up. My concern
2 overall is that you have a consulting architect that has
3 said the size and scale was out of character of the
4 neighborhood, and that seems to have been somewhat ignored.
5 Thank you.

6 CHAIR RASPE: Thank you very much for your
7 comments. Before you go, any questions? Mr. Hopps, we have
8 one question for you from our commissioner.

9 VICE CHAIR THOMAS: Hi, Mr. Hopps. Thank you for
10 speaking during public comment tonight. My question for you
11 is would you not be comfortable with any two-story home, or
12 is it really just the location of the bedroom?
13

14 BILL HOPPS: That's kind of a long and not deep
15 lot. A two-story home is going to be imposing on that
16 structure, so that is an overall concern.

17 I will live with accommodation somewhat of the
18 windows. I understand the neighborhood is changing and I'm
19 basically not stuck in the mud or not open to change, but
20 it does imply that the entire neighborhood is going to be
21 going through a change. If the two stories get built there,
22 then I don't see what logic stops two-story buildings from
23 being built on all of our lots except behind it, and that
24 will definitely start changing the entire character of the
25 neighborhood. I hope that answers your question.

1 VICE CHAIR THOMAS: Thank you.

2 CHAIR RASPE: Thank you. Any other questions for
3 Mr. Hopps? Seeing none, thank you for your comments
4 tonight, Mr. Hopps. Mr. Paulson, any other comments on
5 Zoom?

6 JOEL PAULSON: Martha, you'll be next to speak.

7 CHAIR RASPE: Hi Martha. You have three minutes
8 to speak, and if you can begin by stating your name for the
9 record, please.
10

11 MARTHA: My name is Martha (inaudible) and my
12 husband and I are the owners of 105 Olive and our back yard
13 shares a little bit of the garage and a little bit of the
14 fence with Meleah.

15 I want to thank Meleah for taking some measures
16 to respect our privacy. One of the concerns that have not
17 been addressed is that the house next to Meleah is also a
18 two-story house, but it is much lower. I look in my back
19 yard and I can barely see that house, even the two-story,
20 but Meleah's house is much taller than that. Can the two-
21 story house be lower like the other one next to it? It's
22 one of my questions. Why does it have to be so much taller?
23 So that's one of the things.

24 Then the window, I'm very happy that there are
25 going to be some privacy measures for our privacy concerns,

1 otherwise, our whole back yard is like completely visible,
2 but I don't know that that hedge is going to protect our
3 privacy, because the window, it didn't show what it does to
4 our yard really. I'm not sure if it's because it's not
5 visible from that window or not, but I would be surprised,
6 because that house, from our yard looking just from our
7 back yard door, it's very prominent right now what you see
8 of that house.

9
10 And again, the one just in front of me, I cannot
11 see that second floor; it's much lower. So it's not that a
12 second floor couldn't be built, it's like can it be like 5'
13 lower like the one next to it is what I'm asking.

14 CHAIR RASPE: Thank you for your comments. Before
15 you leave, do any Commissioners have questions for this
16 witness? Seeing none, thank you so much. Mr. Paulson, any
17 other voices to be heard on Zoom?

18 JOEL PAULSON: Thank you, Vice Chair. The next
19 speaker will be Carolyn.

20 CAROLYN BECHTEL: I am Carolyn Bechtel and I'm
21 right between those last two neighbors. I'm at 103 Olive
22 Street, and yes, this is directly in my back yard, over the
23 fence.

24 I am all for building our personal homes that
25 make us feel wonderful in this fantastic town of Los Gatos.

1 I will miss my sky view and trees and all that will happen,
2 but I also appreciate progress.

3 You talked about the bathroom windows being
4 elevated and frosted, shaded, whatever, but I'm not quite
5 clear on the bedroom windows, because I think it's looking
6 directly into my bedroom, so I'm not quite clear on that.
7 It does seem like the height is quite tall in the
8 neighborhood, but I also look up our street on Olive and I
9 think it's kind of the same thing. I don't know, I'm a
10 little concerned about the visual from the windows looking
11 right into my bedroom window, and I'm not sure what can be
12 done about that, but that's all I have to say.

14 CHAIR RASPE: Thank you for your comments. Before
15 you leave, I'm going to ask if any Commissioners have any
16 questions for you, and I see Commissioner Janoff.

17 COMMISSIONER JANOFF: Thank you. Just a question.
18 Your primary concern sounds like it is the rear bedroom
19 window that you stated appears to look directly into yours.
20 The Applicant has proposed a hedge screening that, by
21 documentations provided to us and in the package for public
22 review, would seem to obscure from that window to yours.
23 Have you seen that proposed hedge, and do you find that an
24 acceptable means to ensure your privacy?
25

1 CAROLYN BECHTEL: I did see that earlier and that
2 actually very positively affected me, and I really
3 appreciate that that is their intention. So yes, I would
4 say that I have better feelings about that.

5 COMMISSIONER JANOFF: Thank you so much for your
6 response.

7 CHAIR RASPE: Commissioner Thomas.

8 VICE CHAIR THOMAS: My question has to do with
9 the front yard setback. One of the requests that the
10 Applicant is making tonight is that the front yard setback
11 is only at 7' versus 15' so that there is a larger back
12 yard space. I'm just asking you as a neighbor, how you feel
13 about that adjustment, making sure that that house is
14 closer to the front lot line than the back, and does that
15 help with your privacy concerns?
16

17 CAROLYN BECHTEL: Who was that question actually
18 addressed to?

19 VICE CHAIR THOMAS: That was to you. So sorry,
20 let me summarize it again. To meet the setbacks required
21 for this neighborhood and for this lot, the house would
22 need to be moved back, so one of the things we're
23 considering tonight is an exception to that rule. I was
24 just asking if having the house set more forward toward its
25

1 front lot line, father away from your lot line, would help
2 with some of your privacy concerns?

3 CAROLYN BECHTEL: That's an architectural
4 question. Gosh, I really don't know how to answer that. He
5 faced that on our own street on Olive Street, and from the
6 other perspective, I wouldn't have a problem either way.

7 VICE CHAIR THOMAS: But would you be comfortable
8 with the house closer to you?

9 CAROLYN BECHTEL: I wouldn't want to ruin the
10 plans. I don't know.

11 VICE CHAIR THOMAS: Okay, thank you.

12 CHAIR RASPE: Thank you so much. Any other
13 questions from Commissioners for this witness? Seeing none,
14 thank you, again for attending this evening. Mr. Paulson,
15 any other Zoom speakers?

16 JOEL PAULSON: Yes, thank you. The next speaker
17 will be Lee Quintana.

18 CHAIR RASPE: Thank you. Ms. Quintana, if you
19 could state your name for the record, and you have three
20 minutes.

21 LEE QUINTANA: My name is Lee Quintana, and I
22 should mention that I'm currently a member of the Historic
23 Preservation Committee, but I am making this comment as an
24 individual resident.

1 My comment has to do with the garage and the fact
2 that it is going to have a separate application. I am
3 wondering, since that seems to be a consideration for the
4 neighbor, if the Conditions of Approval should add a
5 condition that the Occupancy Permit cannot be finalized
6 until the garage has also been repaired? That's one thing.

7 The other thing is in response to a Commissioner
8 question. If you move the house back as built, obviously it
9 would probably have more impact on the rear yard neighbors;
10 if you move it forward it would have more impact on the
11 street, so in a sense the question is not whether it should
12 be moved back or forward, but whether it should be modified
13 to not be as massive and imposing. Thank you.

14 CHAIR RASPE: Thank you, Ms. Quintana. Any
15 questions from Commissioners for Ms. Quintana? Seeing none,
16 Mr. Paulson, any further?

17 JOEL PAULSON: Thank you, Chair. No, no further
18 hands.

19 CHAIR RASPE: Thank you. I don't have any yellow
20 cards for anybody in the audience who wants to be heard on
21 this matter, but if there is anybody who wishes to be
22 heard, please, as you would reach the podium, state your
23 name and address for the record, and you would have three
24 minutes to speak.

1 MOSES GUILLARDO: Hi, my name is Moses Guillardo;
2 this is my daughter here.

3 CHAIR RASPE: Sorry, then you would be part of
4 the Applicant's team, so you'll have another chance to
5 speak. Again, you'll have three minutes at the end; you can
6 apportion that between you and the architect.

7 Any other members of the public wish to be heard?
8 Okay, now Applicant, you have up to three minutes to speak
9 in rebuttal to any of the points that the members of the
10 public have stated. You can allot that time any way you
11 wish, between yourselves or your architect on Zoom. If you
12 do speak in person, please attend the podium. You can
13 begin.
14

15 MOSES GUILLARDO: Hi, my name is Moses Guillardo;
16 this is my daughter Meleah. I've lived in Los Gatos since
17 1978 and I've seen the whole area grow. After the 1989
18 earthquake I've seen all the remodeling people did in
19 downtown and stuff like that. A lot of stuff is going
20 through changes right now.

21 We're a landscape construction company, me and my
22 brother, we have a company, been around for a long time, so
23 I see a lot of change in the neighborhood and stuff like
24 that, and I hear some of the neighbors behind, what they're
25 asking about the height and the house like that.

1 I said I would bring in big English Laurel
2 between 8'-9'tall, and if I have to I would bring in 14'-
3 16' foot camphor trees if they want to be screened for the
4 back. We're going to build a brand new fence, so there
5 would be privacy down there; we're not going to be
6 affecting anybody for any views that you are seeing. You'll
7 still see the mountains in Los Gatos.

8 The only thing I'm trying to say is this house,
9 my daughter works hard and you can barely afford to live in
10 this neighborhood. We looked at just fixing the house up,
11 but it is not fixable, it is a tear down. And the house
12 right next to her, it's like a chicken coop. It's sitting
13 on her property, but we would like to make a change and
14 build something nice for Los Gatos.

15 We love Los Gatos. We've lived here all our years
16 and I'd like to see Los Gatos grow, but I do see a lot of
17 change in all these neighborhoods, so I'm just asking
18 Commissioners to take a look at everything and see what you
19 guys can do, and I really appreciate you giving us a chance
20 to talk. Thank you.

21 CHAIR RASPE: Thank you, Mr. Guillard. Before
22 you sit down, there may be questions from the Commissioners
23 for either of you, your daughter, or for the architect on
24 Zoom. Let's see what the questions are. You also have an
25

1 additional one minute and 20 seconds. Does anyone have
2 anything further to say?

3 JOEL PAULSON: The architect has his hand raised.
4 I assume he wants to speak.

5 CHAIR RASPE: If we can go to Zoom, Mr. Paulson.
6 Yes, Mr. Spaulding.

7 CHRIS SPAULDING: I was just raising my hand in
8 case you had a question for me.

9 CHAIR RASPE: Okay, before we go to questions,
10 your team essentially has a little over a minute left to
11 speak if you have any comments before you take questions.
12

13 CHRIS SPAULDING: I don't at the moment.

14 CHAIR RASPE: Then please stay on Zoom. I think
15 there will be some questions from Commissioners.
16 Commissioners, any questions?

17 MELEAH GUILLARDO: I just want to say that while
18 I do respect the privacy concerns of my neighbors, I also
19 want to acknowledge I have my own privacy concerns too,
20 being it's my bedroom window, my bathroom window. I won't
21 be looking into my neighbors' yards all day. I want to have
22 my privacy protected as much as possible, which is why we
23 are making these changes as well.

24 Like I said, I do want to be a good neighbor,
25 better the neighborhood, better the community as best as I

1 can, but I just want to make that clear that my privacy is
2 a concern as well.

3 CHAIR RASPE: Thank you so much. Again, I think
4 we've heard from all the members of the Applicant's team.
5 Commissioners, any question for any members of the
6 Applicant's team? Commissioner Thomas.

7 VICE CHAIR THOMAS: My question is actually for
8 Mr. Spaulding. Well, both of you, but probably for Mr.
9 Spaulding. The screening that you plan on doing will be
10 evergreen, correct?
11

12 CHRIS SPAULDING: Yes.

13 VICE CHAIR THOMAS: Okay, thank you.

14 CHAIR RASPE: Thank you. Any other Commissioners?
15 Commissioner Janoff.

16 COMMISSIONER JANOFF: Thank you. For the
17 Applicant. There was a suggestion that we consider adding a
18 Condition of Approval to not finalize your project until
19 the garage is repaired as well. Would you be willing to
20 accept that condition as part of the terms of approval?
21

22 MELEAH GUILLARDO: I would say yes, I'm just not
23 sure on the planning steps when that is. I mean overall
24 when the house is built, I would like the garage to be
25 built simultaneously in that same time frame. I'm not sure,

1 just timing, when that needs to be about to happen. I'd
2 probably defer to my architect to address that.

3 COMMISSIONER JANOFF: Thank you.

4 CHRIS SPAULDING: Yes, we'll accept the Condition
5 of Approval.

6 COMMISSIONER JANOFF: Great, thank you.

7 CHAIR RASPE: Thank you. Any others questions,
8 Commissioners? Commissioner Thomas.

9 VICE CHAIR THOMAS: This is actually a question
10 for Staff regarding that. Is that a legal Condition of
11 Approval, Ms. Whelan, that we could require?
12

13 ATTORNEY WHELAN: Yes. I'd have to check in with
14 Planning as to whether that was part of the planning
15 application, and if it's part of the planning application,
16 the Town can impose that condition. If the planning
17 application did not reference the garage, the Town cannot
18 mandate it, but the Applicant can agree to it.

19 VICE CHAIR THOMAS: Okay, so basically it can be
20 a strong suggestion that the Applicant would agree to?

21 JENNIFER ARMER: Or a condition could be added
22 based on the fact that the Applicants have agreed to it.

23 ATTORNEY WHELAN: And once the condition is
24 added, it will be enforceable.

25 VICE CHAIR THOMAS: Okay, thank you.

1 CHAIR RASPE: Thank you. Any other questions from
2 Commissioners? Commissioner Mayer.

3 COMMISSIONER MAYER: This is for Mr. Spaulding.
4 Thank you; I appreciate your team responding to the
5 neighbor concerns regarding privacy by raising the sills in
6 the bathroom.

7 I do have a question about the master bedroom, if
8 you had discussed with the client perhaps using one of the
9 walls, primarily the wall with the window that the
10 neighbors are concerned about, as the bed wall and having
11 Clerestory windows there so there is privacy, and then the
12 main windows looking outside or to the side yard. I'm just
13 wondering if that is something you had taken a look at.

14 CHRIS SPAULDING: We did look at that option.
15 Meleah would prefer to look out to the north, mainly
16 because we don't know what's going to happen on the
17 property to the east. So yes, we did look at that, but
18 Meleah preferred the way it is currently.

19 COMMISSIONER MAYER: Got it. Thank you.

20 CHAIR RASPE: Any other questions from
21 Commissioners? Vice Chair Thomas.

22 VICE CHAIR THOMAS: Mr. Spaulding, my last
23 question for you is with regard to some of the consulting
24 architect's suggestions that one of my other Commissioners
25

1 brought up before, and that is the stucco and the stone to
2 maintain that more contemporary style, which I understand.
3 That other house that you are citing is in the immediate
4 neighborhood, its stone and the stucco are the same color,
5 so I was wondering what the plan was for this stone and
6 stucco combination?

7 CHRIS SPAULDING: Ours is similar. We do have a
8 color board; it's in your packet. I don't know if it's in
9 color in your packet; it should be. It's page 39. Ours is a
10 similar color scheme; the stone is a little more golden,
11 but otherwise very similar.

12 JENNIFER ARMER: It's included as Exhibit 4.

13 VICE CHAIR THOMAS: Thank you. I was looking at
14 the adjusted ones at the end and that was black and white.
15 So those colors are the same, but the porch and everything
16 is what ended up changing. Okay, thank you.

17 CHAIR RASPE: Thank you. Any further questions? I
18 actually have one. Mr. Spaulding, I think you're the best
19 one to answer this. One of the neighbors indicated that
20 they also had a two-story structure, but it was shorter in
21 height than this proposed one, so I'm curious, what is your
22 floor plate height on this building?

23 CHRIS SPAULDING: First of all, that second story
24 is over the garage, so the 8' garage ceiling is measured
25

1 from the grade, whereas our plate is measured from a raised
2 floor that is 2' off the ground, so that's 2' right there,
3 and then we have a 10' ceiling on the lower floor and 9' on
4 the top, so that's the other. And they probably have an 8'
5 second floor, so we're about 5' taller than that building.

6 CHAIR RASPE: As a follow up question then, as
7 part of your planning did you consider—especially with
8 respect to the second floor, the 10' high ceilings—reducing
9 that floor height?
10

11 CHRIS SPAULDING: The second floor is 9'.

12 CHAIR RASPE: I'm sorry, 9'.

13 CHRIS SPAULDING: I've suggested it. Meleah would
14 like to keep the ceiling heights the way they are, but it's
15 up to her.

16 CHAIR RASPE: I appreciate that. Thank you. If I
17 can ask the Applicant, you've heard my question to your
18 architect, would you be willing to consider reducing the
19 ceiling height as a way to reduce the overall height of it?

20 MELEAH GUILLARDO: I would be open to it. I don't
21 want to make extreme concessions to that. Maybe like 6" on
22 each level could be my concession, but I'm trying to make
23 the most out of the house, as it is a small lot and it is a
24 pretty small house, so I'm just trying to maximize where I
25 can, but if that is necessary.

1 CHAIR RASPE: I appreciate your response.
2 Commissioners, do you have any further questions? No. Then
3 I will close the public portion of this matter and then
4 open it up to my Commissioners for discussion of questions,
5 comments, or a motion. Commissioners Janoff.

6 COMMISSIONER JANOFF: This is a very small lot,
7 it's a very challenging lot, it's sort of long and not very
8 deep, which is also unusual and challenging. The house
9 itself is pretty modest in size, which is consistent with
10 the size of the lot.

11
12 I think that the plans are reasonable for the
13 area. I can find consistent with the Residential Design
14 Guideline that in terms of the 2-2-5 rule guideline that
15 the contemporary house that you see on the corner of
16 Monterey is in that 2-2-5 immediate neighborhood, and
17 therefore there is context for this house being a
18 contemporary house as well, so I think that we can make
19 that finding.

20 As a result of the choice of the contemporary
21 design the two of six requests from the consulting
22 architect wouldn't apply, because this is a contemporary
23 style and so the metal roof as well as the window trim
24 would be consistent with the contemporary style, so I can
25 see that to the extent that the architectural style is

1 contemporary the architect has managed to make the
2 adjustments that the consulting architect has recommended
3 that would apply, so I find that this is a reasonable
4 project for this site.

5 Regarding the 7' setback, it's an improvement
6 over the setback you currently have, and as Commissioner
7 Thomas was alluding to in her questions about resiting the
8 house itself back on the lot in order to be able to meet
9 the 15' setback, it would be a loss of the use of the
10 property in the rear yard, so that doesn't seem reasonable,
11 and the mass moving backwards would certainly impinge on
12 your neighbor's privacy. That's why the 7' setback seems
13 reasonable, particularly when you're adding a porch, which
14 is something that's very consistent within the Town and a
15 good recommendation from Staff, so I can justify the 7'
16 setback in that regard.

18 I also appreciate that the Applicant has agreed
19 to the privacy hedge, and you've heard the neighbor tonight
20 agree that that would go a long way toward preserving the
21 privacy.

22 Lastly, I'm glad that the Applicant brought up
23 her own concerns for privacy. It is always a two-way
24 street, and the privacy that each party desires to cherish
25 is one that we hope to achieve, so I'm glad that you are

1 also concerned with your privacy and that the measure that
2 you're taking will afford that as well as your neighbors,
3 so I'm in favor of this application.

4 CHAIR RASPE: Thank you for those comments.
5 Commissioner Hanssen.

6 COMMISSIONER HANSSEN: I pretty much agree with
7 everything that Commissioner Janoff said. I thought long
8 and hard about it. I always look to the consulting
9 architect's comments, but to be able to provide any
10 reasonable amount of space with this small of a lot, it's
11 going to be very difficult to move the second story back
12 and all that, and then you might create unintended
13 consequences, so I do think that this size of it is
14 appropriate for this remodeling. We're improving the
15 setback to a certain extent.

17 I would, pursuant to your Vice Chair's
18 suggestion, want to consider at least removing some of the
19 things that put it over the top maybe by very slightly
20 lowering the plate height of the second floor by even 6";
21 that would hopefully bring the house down under the 3" and
22 not be the tallest in the neighborhood. I think whenever
23 we're pushing things to the very edge, it's problematic.

25

1 I do think the things you've suggested for
2 privacy will make a lot of sense, and I agree that is a
3 two-way street.

4 Generally I'm in favor of the application, but I
5 would maybe like to see a very slight height reduction; and
6 I would also be in favor of the Condition of Approval for
7 the garage, since we had enough neighbors complaining about
8 it.

9
10 CHAIR RASPE: Thank you for those comments.
11 Commissioner Janoff.

12 COMMISSIONER JANOFF: The plate height issue is
13 one that we see on every application these days when it's a
14 residential application; it's always a 10' first floor and
15 proposed 9' second floor. Normally I would not be in favor
16 of those plate heights, particularly when we are looking at
17 designs where the houses are quite large, but when you have
18 a modest sized house like this the plate heights make a
19 huge difference when you're overall room size is small. I
20 know this from personal experience since my kids live in a
21 1,000 square foot house, and it doesn't seem so, because
22 it's got 10' height ceilings in the living areas and 9' in
23 the bedroom; it makes a big difference.

24
25 When I look at the plans for this, especially on
the upper floor, you have a very modest couple of rooms, so

1 although the Applicant graciously would accept a lower
2 plate height I wouldn't recommend lowering it any more than
3 6", because those inches really do make a big difference on
4 a small scale.

5 CHAIR RASPE: Thank you. Vice Chair Thomas.

6 VICE CHAIR THOMAS: I would like to echo
7 Commissioner Janoff's comments. I would not be in favor of
8 reducing the plate height, again, because I do think that
9 what is being requested has become more of the standard,
10 and I think that it is a very modest and well designed
11 house that would fit into the neighborhood and take into
12 account the privacy issues of the neighborhood.
13

14 I'm also speaking as someone who has a neighbor
15 that has rooms that look in, trees and screening and window
16 coverings, these are all things because they don't want me
17 looking out at them in their bedroom window either, so I
18 appreciate that the Applicant pointed that out. I don't
19 think that 6" is going to make a huge difference with
20 regard to privacy or to the bulk and mass from the street,
21 so I would not be in favor of changing that, unless my
22 fellow commissioners feel very passionate about it.
23

24 Overall I do agree that it does comply with our
25 Residential Design Guidelines and I think that it would
really improve the neighborhood, and so I'm happy to

1 support the application as is, with making sure that those
2 screen trees are included.

3 CHAIR RASPE: Thank you for those comments. Any
4 further comments, Commissioners? Commissioner Mayer.

5 COMMISSIONER MAYER: I'm pretty much in agreement
6 with what the other Commissioners have said so far. I
7 somewhat disagree with the consulting architect's comments.
8 Even though the material palette for the exterior is
9 contemporary, I think it's tastefully done, but you have
10 sort of more traditional window proportions and the roof
11 gable forms that kind of tie it back to the historic nature
12 of the neighborhood.
13

14 We have to remember too that this particular
15 block is sort of a transition zone between the commercial
16 area of Santa Cruz Avenue and the more residential area
17 going up Thurston Street, so I think this design is
18 appropriate for that zone.

19 I don't take asking for setback exceptions
20 lightly, but in this case this is a very special
21 circumstance, it's a nonconforming lot that is smaller than
22 a typical lot in this zoning district, and the way that the
23 house meets the street is really nice, the addition of the
24 front porch, and I especially love the fact that you are
25

1 planning to keep the garage and rehabilitate it and refresh
2 it so it doesn't look like it's falling apart.

3 One of the disappointments I see with a lot of
4 new construction houses, not just in Los Gatos but in other
5 Bay Area cities, is having a gargantuan garage like right
6 on the street side. I really miss the days of garages in
7 the rear, so I'm happy that that's the proposal here.

8 I'm probably inclined to support this. The only
9 comment I would make is--this is for the architect--in the
10 future for these kinds of applications I'd like to see more
11 3-D visualization. I'd like to see maybe a 3-D view of the
12 street, like a rendering of the proposal in the context of
13 the neighborhood. I know we have the elevations and the
14 diagrams and the story poles, but I would like to see more
15 3-D visualization.
16

17 CHAIR RASPE: Thank you for those comments. Any
18 other comments, Commissioners? Commissioner Hanssen.

19 COMMISSIONER HANSSEN: I just wanted to follow up
20 based on Commissioner Janoff's response to my comments. I
21 don't feel incredibly strongly about reducing the height. I
22 always prefer to have less exceptions than more, but I do
23 think that this is a small enough house, we're looking at
24 above ground 1,600 square feet, it's not a very big house
25 at all, and I can imagine that the extra few inches would

1 make a big difference in terms of comfort of living, so I
2 could let go of that.

3 I still feel that we have to be committed to make
4 sure that the garage is fine.

5 I also agree with Commissioner Mayer's comments
6 about having the garage in the back. It is in our
7 Residential Design Guidelines not to have a big, massive
8 garage in front, but we see it a lot.

9 CHAIR RASPE: Thank you for those comments. Any
10 further comments? I will just make one to note that the
11 only ask in this application really was the setback. I made
12 comments about floor plates earlier and I appreciate
13 Commissioner Janoff's comments, but the house is within our
14 Town limits and guidelines for height as well as FAR, and I
15 think this helps this application, so I would be supportive
16 of it in its configuration with the added provisos
17 regarding the garage being simultaneously constructed.
18 Commissioner Burnett.

19 COMMISSIONER BURNETT: Thank you. I will not be
20 able to support this project. I think it is a nice design.
21 I tend to agree with our Town Architect on his six
22 recommendations, only of which two were followed. This is a
23 neighborhood that is still pretty much intact and I think
24 there is a lot of value in keeping a traditional
25

1 architectural designed neighborhood, and I feel some
2 changes could have been made of recommendations from our
3 architect that I could have gone along with the project,
4 but because I don't feel it's following our design
5 guidelines and I'd like to look further, because it's not
6 in my book about modern design in the neighborhood, so that
7 would be my feeling. Thank you.

8 CHAIR RASPE: Thank you for those comments.
9 Commissioner Janoff.

10 COMMISSIONER JANOFF: I'm prepared to make a
11 motion.

12 CHAIR RASPE: Thank you. Before the motion,
13 Commissioner Thomas I think had her hand raised.

14 VICE CHAIR THOMAS: I just wanted to add that I
15 think that we should definitely add the garage situation.

16 CHAIR RASPE: Thank you. If we're ready then,
17 Commissioner Janoff, I'd like to receive your motion,
18 please.

19 COMMISSIONER JANOFF: All right, thank you. I
20 move to approve demolition of an existing single-family
21 residence and construction of a new single-family residence
22 with reduced setbacks on property zoned R-1D, APN 410-15-
23 039. This is Architecture and Site Application S-23-009,
24 and the address is 212 Thurston Street.
25

1 This project is categorically exempt from the
2 California Environmental Quality Act Guidelines, Section
3 15303(a), New Construction or Conversion of Small
4 Structures. Property owner/Applicant, Meleah Guillardo.
5 Project Planner, Maria Chavarin.

6 I can make the required findings for CEQA. I can
7 make the required finding for the demolition of existing
8 structures, make the required compliance with zoning
9 regulations, make the required finding for nonconforming
10 lots, and I can make the required findings that this
11 project is in compliance with the Residential Design
12 Guidelines and this is in consideration of an Architecture
13 and Site Application, and these findings are in Exhibit 2.
14 We're also including the Condition of Approval in Exhibit 3
15 with the addition that we are asking the Applicant to
16 repair the garage in sequence with the build of the house
17 so that the final approval will include the repaired garage
18 as well.
19

20 CHAIR RASPE: Thank you for that motion.
21 Commissioners, do I have a second? Commissioner Hanssen.

22 COMMISSIONER HANSSEN: I second the motion.

23 JENNIFER ARMER: Through the Chair, just a
24 clarification that whether the motion was also intended to
25 include the modifications for privacy shown in Exhibit 11

1 for the hedge, and the modifications to windows? There was
2 discussion of that by the Planning Commission.

3 COMMISSIONER JANOFF: Yes, the motion would
4 include the privacy screening as well as the window change
5 in Exhibit 11. Thank you.

6 COMMISSIONER HANSSEN: And I concur with the
7 second.

8 CHAIR RASPE: Thank you. With the so modified
9 motion, show by a raise of hands all those in favor of the
10 motion. And all those opposed.

11 CHAIR RASPE: The motion carries 5-1. Thank you
12 so much.

13
14 (END)

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25



TOWN OF LOS GATOS
COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION
(408) 354-6872 Fax (408) 354-7593

CIVIC CENTER
110 E. MAIN STREET
LOS GATOS, CA 95030

January 17, 2024

Meleah Guillard
15995 Lancaster Rd.
Monte Sereno, CA 95030
Via Email

RE: 212 Thurston Street
Architecture and Site Application S-23-009

Requesting Approval for Demolition of an Existing Single-Family Residence and Construction of a New Single-Family Residence with Reduced Setbacks on Property Zoned R-1D. APN 410-15-039.
PROPERTY OWNER/APPLICANT: Meleah Guillard
PROJECT PLANNER: Maria Chavarin

At its meeting of January 10, 2024, the Town of Los Gatos Planning Commission approved the above referenced application subject to the attached draft conditions of approval.

The attached conditions of approval will not be final until the Planning Commission has approved the January 10, 2024 meeting minutes at their next meeting, confirming any additional or modified conditions of approval for the project in the underlined font. You will be notified in writing once the Planning Commission has approved the minutes.

PLEASE NOTE: Pursuant to Section 29.20.275 of the Town Code, this approval may be appealed to the Town Council within 10 days of the date the approval is granted. Therefore, this action for approval should not be considered final, and no permits by the Town will be issued until the appeal period has passed.

If you have any questions, I can be contacted by mchavarin@losgatosca.gov.

Sincerely,

Maria Chavarin
Maria Chavarin
Assistant Planner

Cc: Chris Spaulding

N:\DEV\PC\PC ACTION Letters\2024\01-10-24 [212 Thurston St. - Item #3; approved].docx

PLANNING COMMISSION – January 10, 2024
CONDITIONS OF APPROVAL

212 Thurston Street
Architecture and Site Application S-23-009

Requesting Approval for Demolition of an Existing Single-Family Residence and Construction of a New Single-Family Residence with Reduced Setbacks on Property Zoned R-1D. Located at 212 Thurston Street. APN 410-15-039.

PROPERTY OWNER/APPLICANT: Meleah Guillardo
PROJECT PLANNER: Maria Chavarin

TO THE SATISFACTION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT:

Planning Division

1. APPROVAL: This application shall be completed in accordance with all of the conditions of approval and in substantial compliance with the approved plans. Any changes or modifications to the approved plans and/or business operation shall be approved by the Community Development Director, DRC, or the Planning Commission depending on the scope of the changes.
2. EXPIRATION: The approval will expire two years from the approval date pursuant to Section 29.20.320 of the Town Code, unless the approval has been vested.
3. STORY POLES: The story poles on the project site shall be removed within 30 days of approval of the Architecture & Site application.
4. SCREENING: Plant a row of evergreen shrubs along the rear (north) and side (east) of the lot to form a hedge and serve as screening from the east wall of the garage to the eastern most corner of the proposed house, as shown in Exhibit 11 to the January 10, 2024 Planning Commission Staff Report.
5. GARAGE: Repair the detached garage concurrently with the construction of the residence prior to certificate of occupancy for the house.
6. WINDOWS: Bathroom windows that are located on the second floor facing the rear of the lot shall be raised five (5) feet above the floor and use an obscure glass, as shown in Exhibit 11 to the January 10, 2024 Planning Commission Staff Report.
7. OUTDOOR LIGHTING: Exterior lighting shall be kept to a minimum, and shall be down directed fixtures that will not reflect or encroach onto adjacent properties. No flood lights shall be used unless it can be demonstrated that they are needed for safety or security.
8. EXISTING TREES: All existing trees shown on the plan and trees required to remain or to be planted are specific subjects of approval of this plan, and must remain on the site.
9. TREE FENCING: Protective tree fencing and other protection measures shall be placed at the drip line of existing trees prior to issuance of demolition and building permits and shall remain through all phases of construction. Include a tree protection plan with the construction plans.
10. TREE STAKING: All newly planted trees shall be double-staked using rubber tree ties.

11. FRONT YARD LANDSCAPE: Prior to issuance of a Certificate of Occupancy the front yard must be landscaped.
12. WATER EFFICIENCY LANDSCAPE ORDINANCE: The final landscape plan shall meet the Town of Los Gatos Water Conservation Ordinance or the State Water Efficient Landscape Ordinance, whichever is more restrictive. A review fee based on the current fee schedule adopted by the Town Council is required when working landscape and irrigation plans are submitted for review.
13. TOWN INDEMNITY: Applicants are notified that Town Code Section 1.10.115 requires that any applicant who receives a permit or entitlement (“the Project”) from the Town shall defend (with counsel approved by Town), indemnify, and hold harmless the Town, its agents, officers, and employees from and against any claim, action, or proceeding (including without limitation any appeal or petition for review thereof) against the Town or its agents, officers or employees related to an approval of the Project, including without limitation any related application, permit, certification, condition, environmental determination, other approval, compliance or failure to comply with applicable laws and regulations, and/or processing methods (“Challenge”). Town may (but is not obligated to) defend such Challenge as Town, in its sole discretion, determines appropriate, all at applicant’s sole cost and expense.

Applicant shall bear any and all losses, damages, injuries, liabilities, costs and expenses (including, without limitation, staff time and in-house attorney’s fees on a fully-loaded basis, attorney’s fees for outside legal counsel, expert witness fees, court costs, and other litigation expenses) arising out of or related to any Challenge (“Costs”), whether incurred by Applicant, Town, or awarded to any third party, and shall pay to the Town upon demand any Costs incurred by the Town. No modification of the Project, any application, permit certification, condition, environmental determination, other approval, change in applicable laws and regulations, or change in such Challenge as Town, in its sole discretion, determines appropriate, all the applicant’s sole cost and expense. No modification of the Project, any application, permit certification, condition, environmental determination, other approval, change in applicable laws and regulations, or change in processing methods shall alter the applicant’s indemnity obligation.

14. COMPLIANCE MEMORANDUM: A memorandum shall be prepared and submitted with the building plans detailing how the Conditions of Approval will be addressed.

Building Division

15. PERMITS REQUIRED: A Demolition Permit is required for the demolition of the existing single-family residence. A separate Building Permit is required for the construction of the new single-family residence. An additional Building Permit will be required for the PV System if the system is required by the California Energy Code.
16. APPLICABLE CODES: The current codes, as amended and adopted by the Town of Los Gatos as of January 1, 2023, are the 2022 California Building Standards Code, California Code of Regulations Title 24, Parts 1-12, including locally adopted Reach Codes.
17. CONDITIONS OF APPROVAL: The Conditions of Approval must be blue lined in full on the cover sheet of the construction plans. A Compliance Memorandum shall be prepared and

submitted with the building permit application detailing how the Conditions of Approval will be addressed.

18. SIZE OF PLANS: Minimum size 24" x 36", maximum size 30" x 42".
19. REQUIREMENTS FOR COMPLETE DEMOLITION OF STRUCTURE: Obtain a Building Department Demolition Application and a Bay Area Air Quality Management District Application from the Building Department Service Counter. Once the demolition form has been completed, all signatures obtained, and written verification from PG&E that all utilities have been disconnected, return the completed form to the Building Department Service Counter with the Air District's J# Certificate, PG&E verification, and three (3) sets of site plans showing all existing structures, existing utility service lines such as water, sewer, and PG&E. No demolition work shall be done without first obtaining a permit from the Town.
20. SOILS REPORT: A Soils Report, prepared to the satisfaction of the Building Official, containing foundation, and retaining wall design recommendations, shall be submitted with the Building Permit Application. This report shall be prepared by a licensed Civil Engineer specializing in soils mechanics.
21. SHORING: Shoring plans and calculations will be required for all excavations which exceed five (5) feet in depth, or which remove lateral support from any existing building, adjacent property, or the public right-of-way. Shoring plans and calculations shall be prepared by a California licensed engineer and shall confirm to the Cal/OSHA regulations.
22. FOUNDATION INSPECTIONS: A pad certificate prepared by a licensed civil engineer or land surveyor shall be submitted to the project Building Inspector at foundation inspection. This certificate shall certify compliance with the recommendations as specified in the Soils Report, and that the building pad elevations and on-site retaining wall locations and elevations have been prepared according to the approved plans. Horizontal and vertical controls shall be set and certified by a licensed surveyor or registered Civil Engineer for the following items:
 - a. Building pad elevation
 - b. Finish floor elevation
 - c. Foundation corner locations
 - d. Retaining wall(s) locations and elevations
23. TITLE 24 ENERGY COMPLIANCE: All required California Title 24 Energy Compliance Forms must be blue-lined (sticky-backed), i.e., directly printed, onto a plan sheet.
24. TOWN RESIDENTIAL ACCESSIBILITY STANDARDS: New residential units shall be designed with adaptability features for single-family residences per Town Resolution 1994-61:
 - a. Wood backing (2" x 8" minimum) shall be provided in all bathroom walls, at water closets, showers, and bathtubs, located 34 inches from the floor to the center of the backing, suitable for the installation of grab bars if needed in the future.
 - b. All passage doors shall be at least 32-inch-wide doors on the accessible floor level.
 - c. The primary entrance door shall be a 36-inch-wide door including a 5'x 5' level landing, no more than 1 inch out of plane with the immediate interior floor level and with an 18-inch clearance at interior strike edge.
 - d. A door buzzer, bell or chime shall be hard wired at primary entrance.

25. BACKWATER VALVE: The scope of this project may require the installation of a sanitary sewer backwater valve per Town Ordinance 6.50.025. Please provide information on the plans if a backwater valve is required and the location of the installation. The Town of Los Gatos Ordinance and West Valley Sanitation District (WVSD) requires backwater valves on drainage piping serving fixtures that have flood level rims less than 12 inches above the elevation of the next upstream manhole.
26. HAZARDOUS FIRE ZONE: All projects in the Town of Los Gatos require Class A roof assemblies.
27. SPECIAL INSPECTIONS: When a special inspection is required by CBC Section 1704, the Architect or Engineer of Record shall prepare an inspection program that shall be submitted to the Building Official for approval prior to issuance of the Building Permit. The Town Special Inspection form must be completely filled-out and signed by all requested parties prior to permit issuance. Special Inspection forms are available online at www.losgatosca.gov/building.
28. BLUEPRINT FOR A CLEAN BAY SHEET: The Town standard Santa Clara Valley Nonpoint Source Pollution Control Program Sheet (page size same as submitted drawings) shall be part of the plan submittal as the second page. The specification sheet is available online at www.losgatosca.gov/building.
29. APPROVALS REQUIRED: The project requires the following departments and agencies approval before issuing a building permit:
 - a. Community Development – Planning Division: (408) 354-6874
 - b. Engineering/Parks & Public Works Department: (408) 399-5771
 - c. Santa Clara County Fire Department: (408) 378-4010
 - d. West Valley Sanitation District: (408) 378-2407
 - e. Local School District: The Town will forward the paperwork to the appropriate school district(s) for processing. A copy of the paid receipt is required prior to permit issuance.

TO THE SATISFACTION OF THE DIRECTOR OF PARKS & PUBLIC WORKS:

Engineering Division

30. GENERAL: All public improvements shall be made according to the latest adopted Town Standard Plans, Standard Specifications and Engineering Design Standards. All work shall conform to the applicable Town ordinances. The adjacent public right-of-way shall be kept clear of all job-related mud, silt, concrete, dirt and other construction debris at the end of the day. Dirt and debris shall not be washed into storm drainage facilities. The storing of goods and materials on the sidewalk and/or the street will not be allowed unless an encroachment permit is issued by the Engineering Division of the Parks and Public Works Department. The Owner's representative in charge shall be at the job site during all working hours. Failure to maintain the public right-of-way according to this condition may result in the issuance of correction notices, citations, or stop work orders and the Town performing the required maintenance at the Owner's expense.
31. APPROVAL: This application shall be completed in accordance with all the conditions of approval listed below and in substantial compliance with the latest reviewed and

approved development plans. Any changes or modifications to the approved plans or conditions of approvals shall be approved by the Town Engineer.

32. CONSTRUCTION PLAN REQUIREMENTS: Construction drawings shall comply with Section 1 (Construction Plan Requirements) of the Town's Engineering Design Standards, which are [available for download from the Town's website](#).
33. PRIOR APPROVALS: All conditions per prior approvals shall be deemed in full force and affect for this approval.
34. CHANGE OF OCCUPANCY: Prior to initial occupancy and any subsequent change in use or occupancy of any non-residential condominium space, the buyer or the new or existing occupant shall apply to the Community Development Department and obtain approval for use determination and building permit and obtain inspection approval for any necessary work to establish the use and/or occupancy consistent with that intended.
35. ENCROACHMENT PERMIT: All work in the public right-of-way will require a Construction Encroachment Permit. All work over \$5,000 will require construction security. It is the responsibility of the Owner to obtain any necessary encroachment permits from affected agencies and private parties, including but not limited to, Pacific Gas and Electric (PG&E), AT&T, Comcast, Santa Clara Valley Water District, California Department of Transportation (Caltrans). Copies of any approvals or permits must be submitted to the Town Engineering Division of the Parks and Public Works Department prior to releasing any permit.
36. FOR PLANTERS: The Owner, Applicant and/or Developer shall apply for an encroachment permit for the proposed planters within the public sidewalk and/or Town's right-of-way. The Owner, Applicant and/or Developer shall work with Parks and Public Works Department staff to arrive at a mutually agreeable solution that addresses safety and aesthetic issues. If no solution is reached, the vegetative screening requirement shall be waived. A Private Improvements in the Public Right-of-Way (formerly Indemnity) Agreement will be required if planters are proposed to be located within the Town's right-of-way. A copy of the recorded agreement shall be submitted to the Engineering Division of the Parks and Public Works Department prior to the issuance of any grading or building permits.
37. PRIVATE IMPROVEMENTS IN THE PUBLIC RIGHT-OF-WAY (INDEMNITY AGREEMENT): The property owner shall enter into an agreement with the Town for all existing and proposed private improvements within the Town's right-of-way. The Owner shall be solely responsible for maintaining the improvements in a good and safe condition at all times and shall indemnify the Town of Los Gatos. The agreement must be completed and accepted by the Director of Parks and Public Works, and subsequently recorded by the Town Clerk at the Santa Clara County Office of the Clerk-Recorder, prior to the issuance of any grading or building permits. Please note that this process may take approximately six to eight (6-8) weeks.
38. GENERAL LIABILITY INSURANCE: The property owner shall provide proof of insurance to the Town on a yearly basis. In addition to general coverage, the policy must cover all elements encroaching into the Town's right-of-way.
39. PUBLIC WORKS INSPECTIONS: The Owner, Applicant and/or Developer or their representative shall notify the Engineering Inspector at least twenty-four (24) hours

before starting any work pertaining to on-site drainage facilities, grading or paving, and all work in the Town's right-of-way. Failure to do so will result in penalties and rejection of any work that occurred without inspection.

40. **RESTORATION OF PUBLIC IMPROVEMENTS:** The Owner, Applicant and/or Developer or their representative shall repair or replace all existing improvements not designated for removal that are damaged or removed because of the Owner, Applicant and/or Developer or their representative's operations. Improvements such as, but not limited to: curbs, gutters, sidewalks, driveways, signs, pavements, raised pavement markers, thermoplastic pavement markings, etc., shall be repaired and replaced to a condition equal to or better than the original condition. Any new concrete shall be free of stamps, logos, names, graffiti, etc. Any concrete identified that is displaying a stamp or equal shall be removed and replaced at the Contractor's sole expense and no additional compensation shall be allowed therefore. Existing improvement to be repaired or replaced shall be at the direction of the Engineering Construction Inspector and shall comply with all Title 24 Disabled Access provisions. The restoration of all improvements identified by the Engineering Construction Inspector shall be completed before the issuance of a certificate of occupancy. The Owner, Applicant and/or Developer or their representative shall request a walk-through with the Engineering Construction Inspector before the start of construction to verify existing conditions.
41. **SITE SUPERVISION:** The General Contractor shall provide qualified supervision on the job site at all times during construction.
42. **STREET/SIDEWALK CLOSURE:** Any proposed blockage or partial closure of the street and/or sidewalk requires an encroachment permit. Special provisions such as limitations on works hours, protective enclosures, or other means to facilitate public access in a safe manner may be required.
43. **PLAN CHECK FEES:** Plan check fees associated with the Grading Permit shall be deposited with the Engineering Division of the Parks and Public Works Department prior to the commencement of plan check review.
44. **INSPECTION FEES:** Inspection fees shall be deposited with the Town prior to the issuance of any grading or building permits or recordation of the Parcel / Final Map.
45. **DESIGN CHANGES:** Any proposed changes to the approved plans shall be subject to the approval of the Town prior to the commencement of any and all altered work. The Owner's project engineer shall notify, in writing, the Town Engineer at least seventy-two (72) hours in advance of all the proposed changes. Any approved changes shall be incorporated into the final "as-built" plans.
46. **PLANS AND STUDIES:** All required plans and studies shall be prepared by a Registered Professional Engineer in the State of California and submitted to the Town Engineer for review and approval. Additionally, any post-project traffic or parking counts, or other studies imposed by the Planning Commission or Town Council shall be funded by the Owner, Applicant and/or Developer.
47. **GRADING PERMIT:** A grading permit is required for all site grading and drainage work except for exemptions listed in Section 12.20.015 of The Code of the Town of Los Gatos (Grading Ordinance). Grading work taking place simultaneously, on-site is considered eligible for the grading permit process and could be counted toward quantities,

depending on permit status. After the preceding Architecture and Site Application has been approved by the respective deciding body and the appeal period has passed, the grading permit application with grading plans and associated required materials shall be submitted via email to the PPW engineer assigned to the A&S review. Plan check fees (determined after initial submittal) shall be sent to the Engineering Division of the Parks and Public Works Department located at 41 Miles Avenue. The grading plans shall include topographic map/existing conditions, final grading, drainage, retaining wall location(s), driveway, utility sheet and erosion control. Grading plans shall list earthwork quantities and a table of existing and proposed impervious areas. Unless specifically allowed by the Director of Parks and Public Works, the grading permit will be issued concurrently with the building permit. The grading permit is for work outside the building footprint(s). Prior to Engineering signing off and closing out on the issued grading permit, the Owner's soils engineer shall verify, with a stamped and signed letter, that the grading activities were completed per plans and per the requirements as noted in the soils report. A separate building permit, issued by the Building Department, located at 110 E. Main Street, is needed for grading within the building footprint.

48. **GRADING PERMIT DETERMINATION DURING CONSTRUCTION DRAWINGS:** In the event that, during the production of construction drawings and/or during construction of the plans approved with this application by the Town of Los Gatos, it is determined that a grading permit would be required as described in Chapter 12, Article II (Grading Permit) of the Town Code of the Town of Los Gatos, an Architecture and Site Application would need to be submitted by the Owner for review and approval by the Development Review Committee prior to applying for a grading permit.
49. **ILLEGAL GRADING:** Per the Town's Comprehensive Fee Schedule, applications for work unlawfully completed shall be charged double the current fee. As a result, the required grading permit fees associated with an application for grading will be charged accordingly.
50. **CONSTRUCTION EASEMENT:** Prior to the issuance of a grading or building permit, it shall be the sole responsibility of the Owner, Applicant and/or Developer to obtain any and all proposed or required easements and/or permissions necessary to perform the grading herein proposed. Proof of agreement/approval is required prior to the issuance of any Permit.
51. **DRAINAGE IMPROVEMENT:** Prior to the recordation of a subdivision map (except maps for financing and conveyance purposes only) or prior to the issuance of any grading/improvement permits, whichever comes first, the Owner, Applicant and/or Developer shall: a) design provisions for surface drainage; and b) design all necessary storm drain facilities extending to a satisfactory point of disposal for the proper control and disposal of storm runoff; and c) provide a recorded copy of any required easements to the Town.
52. **TREE REMOVAL:** Copies of all necessary tree removal permits shall be provided prior to the issuance of a building permit. An arborist report may be necessary.
53. **PRECONSTRUCTION MEETING:** Prior to issuance of any grading or building permits or the commencement of any site work, the general contractor shall:

- a) Along with the Owner, Applicant and/or Developer, attend a pre-construction meeting with the Town Engineer to discuss the project conditions of approval, working hours, site maintenance and other construction matters;
 - b) Acknowledge in writing that they have read and understand the project conditions of approval and will make certain that all project sub-contractors have read and understand them as well prior to commencing any work, and that a copy of the project conditions of approval will be posted on-site at all times during construction.
54. DELAYED/DEFERRED REPORTS AND REVIEWS: TLGPPW strongly recommend that reports requiring a peer review be submitted and completed prior to committee approval/building permit stage. Note that these reviews may require a design change by the applicant and/or additional studies. Applicants who chose to defer assume risk that required changes may send project back to planning stage.
55. WATER METER: The existing water meter, currently located within the Town of Los Gatos right-of-way, shall be relocated within the property in question, directly behind the public right-of-way line. The Owner, Applicant and/or Developer shall repair and replace to existing Town standards any portion of concrete flatwork within said right-of-way that is damaged during this activity prior to issuance of a certificate of occupancy.
56. SANITARY SEWER CLEANOUT: The existing sanitary sewer cleanout, currently located within the Town of Los Gatos right-of-way, shall be relocated within the property in question, within one (1) foot of the property line per West Valley Sanitation District Standard Drawing 3, or at a location specified by the Town. The Owner, Applicant and/or Developer shall repair and replace to existing Town standards any portion of concrete flatwork within said right-of-way that is damaged during this activity prior to issuance of a certificate of occupancy.
57. CERTIFICATE OF OCCUPANCY: The Engineering Division of the Parks and Public Works Department will not sign off on a Temporary Certificate of Occupancy or a Final Certificate of Occupancy until all required improvements within the Town's right-of-way have been completed and approved by the Town.
58. UTILITIES: The Owner, Applicant and/or Developer shall install all new, relocated, or temporarily removed utility services, including telephone, electric power and all other communications lines underground, as required by Town Code Section 27.50.015(b). All new utility services shall be placed underground. Underground conduit shall be provided for cable television service. The Owner, Applicant and/or Developer is required to obtain approval of all proposed utility alignments from any and all utility service providers before a Certificate of Occupancy for any new building can be issued. The Town of Los Gatos does not approve or imply approval for final alignment or design of these facilities.
59. UTILITY SETBACKS: House foundations shall be set back from utility lines a sufficient distance to allow excavation of the utility without undermining the house foundation. The Town Engineer shall determine the appropriate setback based on the depth of the utility, input from the project soils engineer, and the type of foundation.
60. UTILITY EASEMENTS: Deed restrictions shall be placed on lots containing utility easements. The deed restrictions shall specify that no trees, fences, structures or hardscape are allowed within the easement boundaries, and that maintenance access must be provided. The Town will prepare the deed language and the Owner's surveyor

shall prepare the legal description and plat. The Owner, Applicant and/or Developer shall pay any recordation costs. The documents shall be recorded before any grading or permits are issued.

61. **SIDEWALK REPAIR:** The Owner, Applicant and/or Developer shall repair and replace to existing Town standards any sidewalk damaged now or during construction of this project. All new and existing adjacent infrastructure must meet current ADA standards. Sidewalk repair shall match existing color, texture and design, and shall be constructed per Town Standard Details. New concrete shall be free of stamps, logos, names, graffiti, etc. Any concrete identified that is displaying a stamp or equal shall be removed and replaced at the Contractor's sole expense and no additional compensation shall be allowed therefore. The limits of sidewalk repair will be determined by the Engineering Construction Inspector during the construction phase of the project. The improvements must be completed and accepted by the Town before a Certificate of Occupancy for any new building can be issued.
62. **CURB AND GUTTER REPAIR:** The Owner, Applicant and/or Developer shall repair and replace to existing Town standards any curb and gutter damaged now or during construction of this project. All new and existing adjacent infrastructure must meet Town standards. New curb and gutter shall be constructed per Town Standard Details. New concrete shall be free of stamps, logos, names, graffiti, etc. Any concrete identified that is displaying a stamp or equal shall be removed and replaced at the Contractor's sole expense and no additional compensation shall be allowed therefore. The limits of curb and gutter repair will be determined by the Engineering Construction Inspector during the construction phase of the project. The improvements must be completed and accepted by the Town before a Certificate of Occupancy for any new building can be issued.
63. **VALLEY GUTTER REPAIR:** The Owner/Applicant shall repair and replace to existing Town standards any valley gutter damaged now or during construction of this project. All new and existing adjacent infrastructure must meet Town standards. New valley gutter shall be constructed per Town Standard Details. New concrete shall be free of stamps, logos, names, graffiti, etc. Any concrete identified that is displaying a stamp or equal shall be removed and replaced at the Contractor's sole expense and no additional compensation shall be allowed therefore. The limits of valley gutter repair will be determined by the Engineering Construction Inspector during the construction phase of the project. The improvements must be completed and accepted by the Town before a Certificate of Occupancy for any new building can be issued.
64. **FENCING:** Any fencing proposed within two hundred (200) feet of an intersection shall comply with Town Code Section §23.10.080.
65. **FENCES:** Fences between all adjacent parcels will need to be located on the property lines/boundary lines. Any existing fences that encroach into the neighbor's property will need to be removed and replaced to the correct location of the boundary lines before a Certificate of Occupancy for any new building can be issued. Waiver of this condition will require signed and notarized letters from all affected neighbors.
66. **CONSTRUCTION VEHICLE PARKING:** Construction vehicle parking within the public right-of-way will only be allowed if it does not cause access or safety problems as determined by the Town.

67. CONSTRUCTION VEHICLE PARKING: No construction vehicles, trucks, equipment and worker vehicles shall be allowed to park on the portion of any public (Town) streets without written approval from the Town Engineer.
68. ADVANCE NOTIFICATION: Advance notification of all affected residents and emergency services shall be made regarding parking restriction, lane closure or road closure, with specification of dates and hours of operation.
69. HAULING OF SOIL: Hauling of soil on- or off-site shall not occur during the morning or evening peak periods (between 7:00 a.m. and 9:00 a.m. and between 4:00 p.m. and 6:00 p.m.), and at other times as specified by the Director of Parks and Public Works. Prior to the issuance of a grading or building permit, the Owner and/or Applicant or their representative shall work with the Town Building Department and Engineering Division Inspectors to devise a traffic control plan to ensure safe and efficient traffic flow under periods when soil is hauled on or off the project site. This may include, but is not limited to provisions for the Owner and/or Applicant to place construction notification signs noting the dates and time of construction and hauling activities, or providing additional traffic control. Coordination with other significant projects in the area may also be required. Cover all trucks hauling soil, sand and other loose debris.
70. CONSTRUCTION HOURS: All subdivision improvements and site improvements construction activities, including the delivery of construction materials, labors, heavy equipment, supplies, etc., shall be limited to the hours of 8:00 a.m. to 6:00 p.m., weekdays and 9:00 a.m. to 4:00 p.m. Saturdays. The Town may authorize, on a case-by-case basis, alternate construction hours. The Owner, Applicant and/or Developer shall provide written notice twenty-four (24) hours in advance of modified construction hours. Approval of this request is at discretion of the Town.
71. CONSTRUCTION NOISE: Between the hours of 8:00 a.m. to 6:00 p.m., weekdays and 9:00 a.m. to 4:00 p.m. Saturdays, construction, alteration or repair activities shall be allowed. No individual piece of equipment shall produce a noise level exceeding eighty-five (85) dBA at twenty-five (25) feet from the source. If the device is located within a structure on the property, the measurement shall be made at distances as close to twenty-five (25) feet from the device as possible. The noise level at any point outside of the property plane shall not exceed eighty-five (85) dBA.
72. CONSTRUCTION MANAGEMENT PLAN SHEET: Prior to the issuance of any grading or building permits, the Owner and/or Applicant's design consultant shall submit a construction management plan sheet (full-size) within the plan set that shall incorporate at a minimum the Earth Movement Plan, Traffic Control Plan, Project Schedule, site security fencing, employee parking, construction staging area, materials storage area(s), construction trailer(s), concrete washout(s) and proposed outhouse locations. Please refer to the Town's [Construction Management Plan Guidelines](#) document for additional information.
73. NPDES STORMWATER COMPLIANCE: In the event that, during the production of construction drawings for the plans approved with this application by the Town of Los Gatos, it is determined that the project will create and/or replace more than 2,500 square feet of impervious area, completion of the NPDES Stormwater Compliance Small Projects Worksheet and implementation of at least one of the six low impact development site

design measures it specifies shall be completed and submitted to the Engineering Division before issuance of a grading/building permit.

74. SITE DESIGN MEASURES: All projects shall incorporate at least one of the following measures:
 - a) Protect sensitive areas and minimize changes to the natural topography.
 - b) Minimize impervious surface areas.
 - c) Direct roof downspouts to vegetated areas.
 - d) Use porous or pervious pavement surfaces on the driveway, at a minimum.
 - e) Use landscaping to treat stormwater.
75. LANDSCAPING: In finalizing the landscape plan for the biotreatment area(s), it is recommended that the landscape architect ensure that the characteristics of the selected plants are similar to those of the plants listed for use in bioretention areas in Appendix D of the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) C.3 Stormwater Handbook.
76. LANDSCAPE MAINTENANCE AGREEMENT: The Owner and/or Applicant shall enter into a Landscape Maintenance Agreement with the Town of Los Gatos in which the Owner and/or Applicant agrees to maintain the vegetated areas along the project's Street Name frontage located within the public right-of-way. The agreement must be completed and accepted by the Town Attorney prior to the issuance of any grading or building permits.
77. DUST CONTROL: Blowing dust shall be reduced by timing construction activities so that paving and building construction begin as soon as possible after completion of grading, and by landscaping disturbed soils as soon as possible. Further, water trucks shall be present and in use at the construction site. All portions of the site subject to blowing dust shall be watered as often as deemed necessary by the Town, or a minimum of three (3) times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites in order to insure proper control of blowing dust for the duration of the project. Watering on public streets shall not occur. Streets shall be cleaned by street sweepers or by hand as often as deemed necessary by the Town Engineer, or at least once a day. Watering associated with on-site construction activity shall take place between the hours of 8 a.m. and 5 p.m. and shall include at least one (1) late-afternoon watering to minimize the effects of blowing dust. All public streets soiled or littered due to this construction activity shall be cleaned and swept on a daily basis during the workweek to the satisfaction of the Town. Demolition or earthwork activities shall be halted when wind speeds (instantaneous gusts) exceed twenty (20) miles per hour (MPH). All trucks hauling soil, sand, or other loose debris shall be covered.
78. DETAILING OF STORMWATER MANAGEMENT FACILITIES: Prior to the issuance of any grading or building permits, all pertinent details of any and all proposed stormwater management facilities, including, but not limited to, ditches, swales, pipes, bubble-ups, dry wells, outfalls, infiltration trenches, detention basins and energy dissipaters, shall be provided on submitted plans, reviewed by the Engineering Division of the Parks and Public Works Department, and approved for implementation.
79. OFF-SITE DRAINAGE: The Owner, Applicant and/or Developer shall construct and install a private on-site storm drain system that is adequately sized to collect and convey adjacent off-site tributary drainage. Hydraulic calculations for a 100-year storm event shall provide

documentation that the proposed storm drain system can convey said off-site drainage as well as on-site drainage during this event over, within, through and off the site, and ultimately into the Town's storm drain system.

80. MAINTENANCE OF PRIVATE STREETS: It is the responsibility of the property owner(s)/homeowners association to implement a plan for street sweeping of paved private roads and cleaning of all storm drain inlets.
81. SILT AND MUD IN PUBLIC RIGHT-OF-WAY: It is the responsibility of Contractor and homeowner to make sure that all dirt tracked into the public right-of-way is cleaned up on a daily basis. Mud, silt, concrete and other construction debris SHALL NOT be washed into the Town's storm drains.
82. PERMIT ISSUANCE: Permits for each phase; reclamation, landscape, and grading, shall be issued simultaneously.
83. COVERED TRUCKS: All trucks transporting materials to and from the site shall be covered.

TO THE SATISFACTION OF THE SANTA CLARA COUNTY FIRE DEPARTMENT:

84. FIRE SPRINKLERS REQUIRED: *(As Noted on Sheet A1)* Approved automatic sprinkler systems in new and existing buildings and structures shall be provided in the locations described in this Section or in Sections 903.2.1 through 903.2.12 whichever is the more restrictive and Sections 903.2.14 through 903.2.21. For the purposes of this section, firewalls and fire barriers used to separate building areas shall be constructed in accordance with the California Building Code and shall be without openings or penetrations. 1. An automatic sprinkler system shall be provided throughout all new buildings and structures, other than Group R occupancies, except as follows: a. Buildings and structures not located in any Wildland-Urban Interface and not exceeding 1,200 square feet of fire area. b. Buildings and structures located in any Wildland-Urban Interface Fire Area and not exceeding 500 square feet of fire area. c. Group S-2 or U occupancies, including photovoltaic support structures, used exclusively for vehicle parking which meet all of the following: i. Noncombustible construction. ii. Maximum 5,000 square feet in building area. iii. Structure is open on not less than three (3) sides nor 75% of structure perimeter. iv. Minimum of 10 feet separation from existing buildings, or similar structures, unless area is separated by fire walls complying with California Building Code 706. d. Canopies, constructed in accordance with CBC 406.7.2, used exclusively for weather protection of vehicle fueling pads per CBC 406.7.1 and not exceeding 5,000 square feet of fire area. 2. An automatic sprinkler system shall be installed throughout all new buildings with a Group R fire area. Exception: Accessory Dwelling Unit, provided that all of the following are met: a. The unit meets the definition of an Accessory Dwelling Unit as defined in the Government Code Section 65852.2. b. The existing primary residence does not have automatic fire sprinklers. c. The accessory dwelling unit does not exceed 1,200 square feet in size. d. The unit is on the same lot as the primary residence. e. The unit meets all apparatus access and water supply requirements of Chapter 5 and Appendix B of the 2022 California Fire Code. 3. An approved automatic fire sprinkler system shall be installed in new manufactured homes (as defined in California Health and Safety Code Sections 18007 and 18009) and multifamily manufactured homes with two dwelling units (as defined in California Health and Safety Code Section 18008.7) in accordance with Title

25 of the California Code of Regulations. 4. An automatic sprinkler system shall be installed throughout existing buildings with a Group R fire area when additions are made causing the fire area to exceed 3,600 square feet. Exception: Additions where all of the following are met: a. Building addition does not exceed 500 square feet. b. The resultant structure meets all water supply requirements of Chapter 5 and Appendix B of the 2022 California Fire Code. 5. An automatic sprinkler system shall be provided throughout existing Group A, B, E, F, L, M, S and U buildings and structures, when additions are made that increase the fire area to more than 3,600 square feet or that create conditions described in Sections 903.2.1 through 903.2.18. 6. Any change in the character of occupancy or in use of any building with a fire area equal to or greater than 3,600 square feet which, in the opinion of the fire code official or building official, would place the building into a more hazardous division of the same occupancy group or into a different group of occupancies and constitutes a greater degree of life safety 1 or increased fire risk 2, shall require the installation of an approved fire automatic fire sprinkler system. *Sprinklers require for new house.*

85. REQUIRED FIRE FLOW: *(Letter received)* The minimum required fireflow for this project is 500 Gallons Per Minute (GPM) at 20 psi residual pressure. This fireflow assumes installation of automatic fire sprinklers per CFC [903.3.1.3]
86. WATER SUPPLY REQUIREMENT: *(As Noted on Sheet A1)* Potable water supplies shall be protected from contamination caused by fire protection water supplies. It is the responsibility of the applicant and any contractors and subcontractors to contact the water purveyor supplying the site of such project, and to comply with the requirements of that purveyor. Such requirements shall be incorporated into the design of any water-based fire protection systems, and/or fire suppression water supply systems or storage containers that may be physically connected in any manner to an appliance capable of causing contamination of the potable water supply of the purveyor of record. Final approval of the system(s) under consideration will not be granted by this office until compliance with the requirements of the water purveyor of record are documented by that purveyor as having been met by the applicant(s). 2019 CFC Sec. 903.3.5 and Health and Safety Code 13114.7.
87. ADDRESS IDENTIFICATION: *(As Noted on Sheet A1)* New and existing buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Where required by the fire code official, address numbers shall be provided in additional approved locations to facilitate emergency response. Address numbers shall be Arabic numbers or alphabetical letters. Numbers shall be a minimum of 4 inches (101.6 mm) high with a minimum stroke width of 0.5 inch (12.7 mm). Where access is by means of a private road and the building cannot be viewed from the public way, a monument, pole or other sign or means shall be used to identify the structure. Address numbers shall be maintained. CFC Sec. 505.1.
88. CONSTRUCTION SITE FIRE SAFETY: *(As Noted on Sheet A1)* All construction sites must comply with applicable provisions of the CFC Chapter 33 and our Standard Detail and Specification S1-7. Provide appropriate notations on subsequent plan submittals, as appropriate to the project. CFC Chp. 33.

**Town of Los Gatos
Office of the Town Clerk
110 E. Main St., Los Gatos CA 95030**

APPEAL OF PLANNING COMMISSION DECISION

I, the undersigned, do hereby appeal a decision of the Planning Commission as follows: (PLEASE TYPE OR PRINT NEATLY) **RECEIVED TOWN OF LOS GATOS**

FILING FEES
\$505.00 (PLAPPEAL) Residential
\$2,031.00 (PLAPPEAL), per
Commercial, Multi-family, or
Tentative Map Appeal
TRANSCRIPTION \$500 (PLTRANS)

DATE OF PLANNING COMMISSION DECISION 01-22-2024 **JAN 22 2024**
PROJECT / APPLICATION NO: S-23-009 **CLERK DEPARTMENT**
ADDRESS LOCATION: 212 Thurston Street, Los Gatos, CA

Pursuant to the Town Code, any interested person as defined in Section 29.10.020 may appeal to the Council any decision of the Planning Commission.

Interested person means:

- 1. Residential projects.** Any person or persons or entity or entities who own property or reside within 1,000 feet of a property for which a decision has been rendered, and can demonstrate that their property will be injured by the decision.
- 2. Non-residential and mixed-use projects.** Any person or persons or entity or entities who can demonstrate that their property will be injured by the decision.


Section 29.20.275 The notice of appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Commission or wherein its decision is not supported by substantial evidence in the record.

1. There was an error or abuse of discretion by the Planning Commission:
Setback, condition of approval for existing garage to remain _____ **OR**
2. The Planning Commission's decision is not supported by substantial evidence in the record:
Setbacks do not conform to R1-D minimum setback requirements _____

IF MORE SPACE IS NEEDED, PLEASE ATTACH ADDITIONAL SHEETS.

IMPORTANT:

- 1. Appellant is responsible for fees for transcription of minutes. A \$500.00 deposit is required at the time of filing.**
- 2. Appeal must be filed within ten (10) calendar days of Planning Commission Decision accompanied by the required filing fee. Deadline is 4:00 p.m. on the 10th day following the decision. If the 10th day is a Friday, the appeal must be filed by 1:00 P.M. If the 10th day a Saturday, Sunday, or Town holiday, then it may be filed on the workday immediately following the 10th day, usually a Monday.**
- 3. The Town Clerk will set the hearing within 56 days of the date of the Planning Commission Decision (Town Ordinance No. 1967).**
- 4. Once filed, the appeal will be heard by the Town Council.**
- 5. If the basis for granting the appeal is, in whole or in part, information not presented to or considered by the Planning Commission, the matter shall be returned to the Planning Commission for review.**

PRINT NAME: Eric Rafia SIGNATURE: 
DATE: 01-22-2024 ADDRESS: Los Gatos, CA 95030
PHONE: _____ EMAIL: _____

***** OFFICIAL USE ONLY *****

DATE OF PUBLIC HEARING: _____
Pending Planning Department Confirmation
DATE TO SEND PUBLICATION: _____ DATE OF PUBLICATION: _____

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Christopher Spaulding, Architect

801 Camelia Street, Suite E
Berkeley, CA 94710
Voice 510-527-5997
chris@csarchitect.net

2-20-24

212 Thurston Street

Response to Planning Commission Appeal

Dear Council Members,

The adjacent neighbor has appealed the Planning Commission approval of Meleah Gullardo's proposed new home at 212 Thurston Street. In the appeal, he states that there was an error or abuse of discretion by the Planning Commission for the "Setback, condition of approval for existing garage to remain" and that the Planning Commission's decision is not supported by substantial evidence in the record as "Setbacks do not conform to R1-D minimum setback requirements".

For the first part, this neighbor has demanded that the existing detached garage be removed since he first learned of the Ms Guillardo's plans to build a new home. Attached is the first letter he sent to the Town complaining about the garage. However, the garage is a legal, non-conforming structure that Ms Guillardo would like to keep and to repair. There is no law or ordinance that requires that this garage be demolished, and the garage was not even part of what was before the Commission. Nevertheless, the Commission addressed the condition of the garage, and at Ms Guillardo's assent, added the condition of approval that the garage is to be repaired in conjunction with the construction of the house.

For the 2nd part, the Planning Commission spent considerable amount of time during the hearing discussing, taking testimony and asking questions of the neighbors about the proposed reduced front setback of the main house. This is all recorded in the video record of the hearing. Since the property is a substandard lot, the Town Code allows for the reduction of setbacks, per the Commission's discretion. The Commission fully took into account the context of the site, the setbacks of the surrounding structures, the effect on the rear neighbors

(were the house to be moved back), and the images of the story poles when viewed from up and down the street.

In conclusion, the Commission did not err or abuse its discretion when it added a condition of approval that the detached garage be repaired concurrently with the construction of the main house. It would have been abuse to force the rebuilding and relocation of the existing garage against the owner's wishes.

Secondly, there is ample evidence in the record that the Commission properly considered the proposed reduced front setback for this home, and that their decision was not made in haste, under subterfuge, or duress.

From: Eric Rafia <[REDACTED]>
Sent: Friday, July 7, 2023 5:54 PM
To: Planning <Planning@losgatosca.gov>
Subject: 212 Thurston St, Los Gatos

[EXTERNAL SENDER]

As the owner of the adjacent property at [REDACTED], I am writing to you regarding the proposed development at 212 Thurston Street. I have been informed by the current owners of their intent to construct a new residence on this site. I would greatly appreciate any information regarding a public comment period, including its potential timeline.

My primary concern is the dilapidated garage, which is situated very close to or on the shared boundary line. To better illustrate the situation, I have included photographs demonstrating the disrepair and unsightly nature of this structure. Its location, infringing upon the setback area, is a pressing issue, especially if substantial development is being proposed.

I am categorically opposed to the garage remaining in its current location if that is part of their proposal. I urge that all necessary setback codes for this prospective development be strictly followed.

Furthermore, I have witnessed friends, property owners on Olive Street, face considerable resistance from their neighbors when proposing a second story for their similarly sized lot, resulting in a single-story construction. Although I am uncertain about the plans for 212 Thurston Street, if a second story is proposed, I believe the potential impact on second-story sightlines needs serious consideration. Should these sightlines significantly affect the privacy of adjacent properties, I suggest restrictions be placed on constructing a second story.

Thank you in advance for your time and consideration. I wish you a pleasant weekend.

Best regards,

Eric Rafia

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Draft Resolution to be modified by Town Council deliberations and direction.

DRAFT RESOLUTION 2024-__

**RESOLUTION OF THE TOWN COUNCIL
OF THE TOWN OF LOS GATOS
DENYING AN APPEAL OF THE DECISION OF THE PLANNING COMMISSION APPROVING
A REQUEST FOR DEMOLITION OF AN EXISTING SINGLE-FAMILY RESIDENCE AND
CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE WITH REDUCED SETBACKS
ON A NON-CONFORMING PROPERTY ZONED R-1D.**

**APN 410-15-039
ARCHITECTURE AND SITE APPLICATION: S-23-009
PROPERTY LOCATION: 212 THURSTION STREET
APPELLANT: ERIC RAFIA
PROPERTY OWNER/APPLICANT: MELEAH GUILLARDO**

WHEREAS, on December 13, 2024, the Architecture and Site application was scheduled as an “other business” item for the Planning Commission meeting to open a public hearing and allow for public comment on the matter. The Planning Commission continued the Architecture and Site application to the Planning Commission meeting of January 10, 2024 for consideration;

WHEREAS, on January 10, 2024, the Planning Commission held a public hearing and considered a request for demolition of an existing single-family residence and construction of a new single-family residence with reduced front yard setbacks on nonconforming property zoned R-1D. The Planning Commission approved the Architecture and Site application subject to conditions of approval;

WHEREAS, on January 22, 2024, the appellant, an interested person, filed a timely appeal of the decision of the Planning Commission approving the request for demolition of an existing single-family residence and construction of a new single-family residence with reduced front yard setbacks on nonconforming property zoned R-1D;

WHEREAS, this matter came before the Town Council for public hearing on March 5, 2024, and was regularly noticed in conformance with State and Town law; and

WHEREAS, the Town Council received testimony and documentary evidence from the appellant and all interested persons who wished to testify or submit documents. The Town Council considered all testimony and materials submitted, including the record of the Planning

Commission proceedings and the packet of materials contained in the Council Agenda Report for their meeting on March 5, 2024, along with any and all subsequent reports and materials prepared concerning this application; and

WHEREAS, the Town Council was unable to make the findings required to grant an appeal of a decision of the Planning Commission.

NOW, THEREFORE, BE IT RESOLVED:

In accordance with Town Code section 29.20.275, with the Town Council finds that:

1. There was not an error or abuse of discretion by the Planning Commission in approving the architecture and site application, because:

a. The application comports with all Zoning Code requirements with the exception of the front yard setback; and

b. Section 29.10.265 of the Town Code allows for the modification of any requirement of the zone on nonconforming property, including setbacks, when found to be compatible with the neighborhood. The Planning Commission found that the proposed front yard setback was compatible with the neighborhood in that other homes in the neighborhood have similar front yard setbacks. In addition, the Planning Commission found that the proposed setback will increase the front yard setback from the existing three feet, six inches to seven feet, three inches.

2. The Planning Commission decision is supported by substantial evidence in the record.

3. The appeal of the decision of the Planning Commission approving a request for demolition of an existing single-family residence and construction of a new single-family residence with reduced front yard setbacks on nonconforming property zoned R-1D is denied and the application approval is upheld.

4. The decision constitutes a final administrative decision pursuant to Code of Civil Procedure section 1094.6 as adopted by section 1.10.085 of the Town Code of the Town of Los Gatos. Any application for judicial relief from this decision must be sought within the time limits and pursuant to the procedures established by Code of Civil Procedure section 1094.6, or such shorter time as required by state and federal Law.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 5th day of March 2024, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

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**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 03/05/2024

ITEM NO: 14

DATE: February 26, 2024
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize the Town Manager to Send a Letter to Tait Firehouse, LLC to Terminate the Lease for 4 Tait Avenue

RECOMMENDATION:

Authorize the Town Manager to send a letter to Tait Firehouse, LLC to terminate the lease for 4 Tait Avenue.

BACKGROUND:

In March 2019, the Town Council authorized an Exclusive Negotiating Agreement with Imwalle Asset Management, LLC, to help guide the negotiations of a Master Lease Agreement. On August 4, 2020, the Town Council authorized the Town Manager to execute a long term lease agreement with Tait Firehouse, LLC for the property located at 4 Tait Avenue (Attachment 1). While Tait Firehouse, LLC is a unique entity, Imwalle Asset Management, LLC is the master tenant.

The decision to enter into a long term lease was predicated on the fact that the approach would allow the property to remain in Town control, maintain the historic value of the property, require no monetary resources from the Town, and ultimately provide an annual revenue stream to the Town. In addition, the Tait property requires significant upgrades to meet the Americans with Disabilities Act and the master tenant would take on those obligations.

On February 7, 2023, the Town Council authorized a First Amendment (Attachment 2) to the lease to modify the provisions which stipulate that if lease up has not occurred within certain time periods, either party can terminate the leases. The modification extended the deadline for the master tenant to find a subtenant to January 1, 2024. Even though the First Amendment

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

PAGE 2 OF 3

SUBJECT: Authorize the Town Manager to Send a Letter to Tait Firehouse, LLC to Terminate the Lease for 4 Tait Avenue

DATE: February 26, 2024

BACKGROUND (continued):

was not executed due to missing documents from the master tenant, the Town honored the one-year extension.

On December 22, 2023, Jim Foley (on behalf of Tait Firehouse, LLC) contacted the Town to request an additional six-month extension to secure tenants. He explained that he has been trying to secure tenants in a challenging economic environment and expects to find a subtenant acceptable to the Town in the next six months. The Town has also been contacted by the American Legion for a joint use with the Veterans Foundation as well as other parties interested in the property.

The Town Council met in closed session on February 13, 2024 and the reportable action under the Brown Act was direction to terminate the lease for 4 Tait.

DISCUSSION:

Given Council's direction, the Council is now being asked during the regular open session to act to authorize the Town Manager to send a letter of termination to Tait Firehouse, LLC.

CONCLUSION AND NEXT STEPS:

The action associated with this agenda item provides the Council with flexibility as to how it would like to manage the asset. Staff is in the process of obtaining an appraisal and evaluating other next steps.

At the second meeting in March, staff intends to bring a Resolution for Council consideration affirming that due to the property's size and location, it is exempt from the Surplus Lands Act.

In a future open session item, the Town Council will initiate the process to sell and/or lease the property. The Council is not being asked to make a sale or lease decision with this agenda item.

COORDINATION:

The preparation of this report was coordinated with the Town Attorney and Community Development Director.

FISCAL IMPACT:

There is no fiscal impact associated with the action of this item. At a later date, when Council determines the disposition of the property, the fiscal implications of that action will be disclosed.

PAGE 3 OF 3

SUBJECT: Authorize the Town Manager to Send a Letter to Tait Firehouse, LLC to
Terminate the Lease for 4 Tait Avenue

DATE: February 26, 2024

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. Master Lease with Tait Firehouse, LLC
2. First Amendment

LEASE AGREEMENT

MASTER LEASE

by and between

TOWN OF LOS GATOS, a California municipal corporation
(**"Landlord"**)

and

Tait Firehouse, LLC, a California limited liability company
(**"Master Tenant"**)

Los Gatos, California

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<u>Exhibit A</u>	Description and Site Plan Showing Location of Premises
<u>Exhibit B</u>	Form of Notice of Lease Term Dates
<u>Exhibit C</u>	Insurance Requirements for Master Tenant and Subtenants
<u>Exhibit D</u>	Memorandum of Lease Agreement

[Type here]

MASTER LEASE

This Master Lease ("Lease") is made and effective as of this _____ day of _____, 2020 ("Effective Date"), by and between THE TOWN OF LOS GATOS, a California municipal corporation (hereinafter "Landlord" or the "Town"), and Tait Firehouse, LLC, a California limited liability company ("Master Tenant").

RECITALS

A. The Town owns certain improved real property, commonly referred to as the Tait Property located at 4 Tait Avenue, APN 510-44-054, and as shown and described on Exhibit A attached hereto and made a part hereof, suitable for residential, office, restaurant, retail and other commercial operations (the "Property"). The building situated on such real property shall be referred to as the "Tait Building."

B. The Town has solicited proposals to develop the Tait Building and the future development of the Property will require significant capital improvements to make the area usable for commercial operators.

C. Master Tenant has been selected by the Town to develop the Tait Building and to sublease space within the Property to subtenant(s) consented to by the Town.

Now therefore, in consideration of their mutual promises as set forth in this Lease, the Town and Master Tenant agree as follows:

SECTION 1. BASIC LEASE PROVISIONS AND DEFINITIONS.

1.1 Master Tenant's Managing Member. Imwalle Asset Management, LLC, a California Limited Liability Company.

1.2 Premises and Address of Premises: The Premises consist of the Property and the Tait Building situated thereon. The address of the Premises is as follows:

4 Tait Avenue
Los Gatos, CA 95030

1.3 Rentable Area of Tait Building. As depicted in Exhibit A, the Rentable Area of the Tait Building is approximately 3090 square feet.

1.4 Lease Term. As provided in Section 3 below, the Term of the Lease commences on the Commencement Date and terminates, unless earlier terminated 34 years and 11 months from the Commencement Date as provided in Section 3.1 below.

1.5 Lease Contingency. This Lease is contingent on the Master Tenant submitting the necessary applications and documents to the Town for approval of the improvements and use of the property, such as, but not limited to, general plan amendment, a proposed site plan, concept drawings for the site plan, massing diagrams, and renderings identifying the location, general configuration, and proposed design characteristics of the buildings, parking spaces, landscaping, property subdivision, and other aspects of the improvement and uses. The Master Tenant acknowledges that the Project Proposal requires approvals and entitlements from the Town and shall submit a formal application for the Planning Approvals. Costs and fees associated with the Planning Approvals review shall be borne by the Master Tenant. Nothing in this Agreement shall be construed to compel the Town to approve or make any findings with respect to Planning Approvals. If Master tenant is unable to obtain Planning Approvals, either Landlord or Master Tenant may terminate this Lease by giving written notice of termination to the

other party Upon the giving of such notice of termination, this Lease shall terminate without liability of either party to the other.

This Lease is also contingent on Master Tenant and a Subtenant having executed a binding initial Sublease for any portion of the Premises and occupancy by Subtenants (the "Contingency"). If the Contingency has not been satisfied or waived by Landlord on or before the date twelve (12) months following the Effective Date, either Landlord or Master Tenant may terminate this Lease by giving written notice of termination to the other party Upon the giving of such notice of termination, this Lease shall terminate without liability of either party to the other.

1.6 Minimum Monthly Rent. The Minimum Monthly Rent shall be \$0.40 per Rentable Area of Tait Building (which equates to \$1,236 per month) payable to Landlord as provided in Section 4 below.

1.7 Percentage Rent. The Percentage Rent shall be that Rent specified in Section 4.3 below.

1.8 Capital Reserve Fund. For each month that Master Tenant pays to Landlord the Minimum Monthly Rent, Landlord shall deposit on a monthly basis to the account described in Section 8.6 below, the Minimum Monthly Rent received by Landlord.

1.9 Maintenance of Premises. The Master Tenant's obligations for Maintenance of the Premises are as set forth in Section 8 below.

1.10 Rent Commencement Date. The Rent Commencement Date shall be the date the first Subtenant opens for business on the Premises. The Rent Commencement Date shall be memorialized between Landlord and Master Tenant as set forth in Exhibit B (Form of Notice of Lease Terms).

1.11 Subtenant. The individual commercial operator(s) physically occupying the Premises to provide the services required under this Lease, as selected by Master Tenant and accepted by the Town (subject to Section 7.2 and Section 14.2 below). The Master Tenant cannot also be a Subtenant.

1.12 Permitted Uses. The operation of businesses providing residential, office, retail, restaurant, and other services approved by Master Tenant and Town, and any other lawful use, except as otherwise prohibited under this Lease pursuant to Section 5.2.

1.13 Town Manager. The Town Manager of the Town ("Town Manager") or his or her designated representative, shall serve as the Town's principal contact and liaison for coordinating all Town requests of Master Tenant and responses to Master Tenant's requests, and shall assist in the implementation of the Town's obligations hereunder, during the term of this Lease. The Town Manager may change his or her authorized representative at any time by giving written notice of the change to Master Tenant.

1.14 Master Tenant's Work and Tenant Improvement Loan Amortization. "Master Tenant's Work" is defined in Section 6.2. "Tenant Improvement Loan Amortization" is defined in Section 6.3.

SECTION 2. LEASED AREA.

2.1 Premises. Landlord hereby leases to Master Tenant, and Master Tenant hereby leases from Landlord the Premises referred to in Section 1.2 above, located at 4 Tait Avenue, Los Gatos, California 90530, as depicted on Exhibit A.

SECTION 3. TERM.

3.1 Term. The "Term" of this Lease shall commence as of the Effective Date ("Commencement Date") and shall end, unless earlier terminated or extended pursuant to the terms and

conditions of this Lease, on the date 34 years and 11 months after the Commencement Date ("Termination Date").

SECTION 4. RENT.

4.1 General. From and after the Rent Commencement Date, Master Tenant agrees to pay Landlord as rent for the Premises, in the manner and at the times set forth in this Lease, the Minimum Monthly Rent and the Percentage Rent, as further described in this Section 4.

4.1.1 All rent payments shall be sent to the Landlord's address in Section 21.1 and shall be addressed to the attention of the Town Finance Department, and shall be free from all credits, claims, demands, off-sets or counterclaims of any kind against the Town.

4.1.2 Minimum Monthly Rent shall be paid by Master Tenant to Landlord on a monthly basis in advance on or before the first day of each month during the Term.

4.1.3 Percentage Rent shall be paid in arrears on or before April 15 each calendar year for the amount due and owing for the preceding calendar year (or 90 days after any Termination Date).

4.2 Minimum Monthly Rent. The Minimum Monthly Rent shall be the amount indicated in Section 1.6. Minimum Monthly Rent shall be paid in advance on or before the first day of each calendar month during the Lease Term.

4.3 Percentage Rent.

4.3.1 Manner and Time of Payment. Percentage Rent shall equal 60% of the Sublease Income received by Master Tenant during each calendar year, remaining after Distribution of Sublease Income in accordance with Section 4.3.4(a) through Section 4.3.4(d) below.

4.3.2 Definition of Sublease Income. "Sublease Income" shall mean the sum of (a) all base rents actually received by Master Tenant from its Subtenants of the Premises (excluding reimbursements from Subtenants for any operating costs such as, but not limited to, taxes, insurance, utilities, and maintenance and repair costs, to the extent such reimbursements do not exceed Master Tenant's actual costs of such operating costs), (b) any interest earned on security deposits of Subtenants, (c) security deposits forfeited by Subtenants (to the extent applied to delinquent rentals owing by such applicable Subtenant) and any fees paid by Subtenants to Master Tenant for cancellation of their subleases; and (d) proceeds of business interruption or rental loss insurance actually collected by Master Tenant as a result of loss of sublease income. Sublease Income shall not include (i) the proceeds of any casualty insurance or condemnation awards, (ii) any management fee reimbursements received by Master Tenant from a Subtenant of the Premises, or (iii) the proceeds from any financing of any interest in the Premises or any Improvements. Sublease Income shall be determined on a cash basis for each calendar year.

4.3.3 Definition of Sublease Expenses. "Sublease Expenses" shall be determined on a cash basis for each calendar year and shall mean the sum of:

(a) all tenant improvement and remodeling costs paid by Master Tenant (other than costs of Master Tenant's Work or other Improvements, which will be repaid to Master Tenant through Tenant Improvement Loan Amortization Amounts);

(b) all leasing commissions paid by Master Tenant (excluding leasing commissions paid to Master Tenant or to persons or entities affiliated with Master Tenant);

(c) all legal and accounting expenses incurred and paid by Master Tenant in connection with the Premises and/or any Subleases;

(d) all possessory interest taxes and other property taxes paid by Master Tenant (to the extent not reimbursed to Master Tenant by Subtenants);

(e) all insurance costs paid by Master Tenant in connection with the Premises (to the extent not reimbursed to Master Tenant by Subtenants);

(f) all other costs incurred and paid by Master Tenant in connection with operating, maintaining, repairing, replacing, and subleasing the Premises, or applicable portion thereof, including, without limitation, costs incurred and paid by Master Tenant pursuant to Section 20.1 and/or Section 20.2(b) of this Lease (to the extent not reimbursed to Master Tenant by Subtenants).

Sublease Expenses shall not include any management fee of Master Tenant; however, Master Tenant may, through its agent or otherwise, collect a management fee on any sublease.

4.3.4 Distribution of Sublease Income. All Sublease Income shall be used by Master Tenant for the following uses and shall be distributed by Master Tenant in the following priority:

(a) First, to pay to Landlord the Minimum Monthly Rent as set forth in Section 4.2 above, which sum is payable by Master Tenant to Landlord whether or not Master Tenant collects and receives Sublease Income;

(b) Second, to pay Master Tenant its Sublease Expenses as defined in Section 4.3.3 above;

(c) Third, to pay Master Tenant funded Master Tenant Work Improvement Loans as provided by Section 6.3 below.

(d) Forth, to pay to Master Tenant the amount of Minimum Monthly Rent paid in that calendar year.

(e) Fifth, as provided by Section 4.3.1 above, to pay Percentage Rent to Landlord and the balance to Master Tenant.

4.3.5 Annual Statements. On or before April 15 of each calendar year, with the payment of Percentage Rent, Master Tenant shall furnish to the Town a statement (the "Annual Statement") duly certified by the Chief Financial Officer or the Managing Member or the equivalent of the Master Tenant, setting forth in reasonable detail the Sublease Income from the Premises and the amount of the Percentage Rent which was required to be paid to the Town during the preceding calendar year in accordance with the provisions of this Lease. The Annual Statement shall also contain a detailed breakdown showing how Master Tenant calculated Sublease Income and Sublease Expenses. In addition, Master Tenant shall provide to Landlord a copy of Master Tenant's federal income tax return promptly following filing same with the Internal Revenue Service. The amounts reported to Landlord by Master Tenant for Sublease Income and Sublease Expenses shall conform to the amounts reported on Master Tenant's federal income tax return filed with the Internal Revenue Service. Master Tenant's federal income tax return shall cover only income and expenses from the Premises and shall not include income and expenses from any other property.

4.3.6 Books and Records. Master Tenant shall keep and maintain at its headquarters 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 detail Master Tenant's calculation of the Percentage Rent. Books, records and accounts relating to Master Tenant's compliance with the terms, provisions, covenants and conditions of this Lease shall be

kept and maintained on a cash basis (except as otherwise expressly provided herein), in accordance with generally accepted accounting principles consistently applied, and shall be consistent with the requirements of this Lease which provide for the calculation of Percentage Rent. 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. Copies of all tax returns and other reports that Master Tenant may be required to furnish any governmental agency which would evidence or substantiate Master Tenant's calculation of the Percentage Rent shall at all reasonable times be open for inspection by the Town at the place that the books, records and accounts of Master Tenant are kept. Master Tenant shall preserve records on which any statement of Percentage Rent is based for a period of not less than four years after such statement is rendered, and for any period during which there is an audit undertaken pursuant to Subsection 4.3.6 hereof then pending.

4.3.7 Town Audits. The receipt by the Town of any statement pursuant to Subsection 4.3.5 above, or any payment by Master Tenant or acceptance by the Town of any Percentage Rent for any period shall not bind the Town as to the correctness of such statement or such payment; provided, however, the Town shall accept the correctness of such statement if it conforms to the amounts shown on Master Tenant's federal income tax return for the period covered by such statement. Within four years after the receipt of any such statement, the Town or any designated agent or employee of the Town at any time and at the Town's cost (except as provided below) shall be entitled to audit the books, records and accounts pertaining to the Premises and the operation thereof. Such audit shall be conducted during normal business hours at the principal place of business of Master Tenant and other places where records are kept. Provided that Master Tenant has fully cooperated, any audit undertaken pursuant to this Subsection shall be completed within 180 days of the commencement thereof, subject to extensions of time for any periods of delay by any third party due to no fault of the Town or its auditors, and in no event later than four years after the Town's receipt of the statement or statements being audited. Immediately after the completion of an audit, the Town shall deliver a copy of the results of such audit to Master Tenant. The Town shall not be entitled to more than one audit for any particular year, unless it shall appear from a subsequent audit that fraud or concealment may have occurred with respect to the Sublease Income of a previously audited year. If it shall be determined as a result of such audit that there has been a deficiency in any Percentage Rent, then such deficiency shall become immediately due and payable with interest at the legal rate of 10% per annum, such payment to be determined as of and accruing from the date that said payment should have been made. In addition, if Master Tenant's statement for any calendar year shall be found to have intentionally understated Sublease Income by more than five percent and the Town is entitled to a supplementary payment as a result of said understatement, then Master Tenant shall pay, in addition to the interest charges referenced hereinabove, all of the Town's reasonable costs and expenses connected with any audit or review of Master Tenant's accounts and records.

4.4 Late Payment Fees. Any rentals, fees or charges required to be paid by Master Tenant pursuant to the terms of this Lease shall be paid on or before the dates specified in Subsection 4.1 above ("due date") without any requirement of notice from the Town and without deduction or offset. Master Tenant hereby acknowledges that late payment to the Town of any fee, charge or other sum due hereunder will cause the Town to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. If any such fee, charge or other sum due from Master Tenant is not received by the Town within 30 days after its due date (10 days for Minimum Monthly Rent), then Master Tenant shall pay to the Town a late payment fee equal to one percent per month of the amount not paid, calculated, for each day or portion thereof, from the due date until the date that payment is received by Town. The parties hereby agree that such late fee represents a fair and reasonable estimate of the cost that the Town will incur by reason of Master Tenant's late payment. The Town's acceptance of such late fees shall not constitute a waiver of Master Tenant's default with respect to such overdue amount or stop the Town from exercising any of the other rights and remedies granted hereunder or at law or in equity. A failure to pay any fee on the due date shall constitute an event of default under this Lease. Notwithstanding any right or remedy of the Town on account of any nonpayment by Master Tenant, the obligation to pay the outstanding amounts due shall survive termination of this Lease.

SECTION 5. USE OF PREMISES.

5.1 Restricted Use. The Premises shall be used and occupied by Master Tenant, and any Subtenants approved by Town in accordance with Section 14 below only for Permitted Uses, and for no other purpose.

5.2 Prohibited Uses. Master Tenant shall not:

5.2.1 use or knowingly allow the use of the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees for any unlawful purpose; or

5.2.2 cause, maintain, or knowingly permit any nuisance in, on, or about the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees; commit or suffer to be committed any physical waste in or upon the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees; or

5.2.3 display or sell merchandise outside the defined exterior walls and doorways of the Tait Building; however, said restriction shall not apply to outside seating for a restaurant or other permitted use; or

5.2.4 cause or knowingly permit the undue accumulation of garbage, trash, rubbish or any other refuse in or about the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees; or

5.2.5 use or knowingly permit the use of any advertising such as, without limitation, loudspeakers, phonographs, public address systems, sound amplifiers, radio or broadcast within the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees in such a manner that any sounds reproduced, transmitted or produced shall be directed primarily beyond the interior of the Tati Building, and will keep all mechanical apparatus free of objectionable vibration and noise which may be transmitted beyond the interior of the Premises; or

5.2.6 Cause or knowingly permit obnoxious odors to emanate or be dispelled from the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees; or

5.2.7 Cause or knowingly permit any use of the Premises by Master Tenant or any of its Subtenants or any of their respective agents, employees, contractors, other representatives or invitees which violates any Town zoning code applicable to the Premises; or

The preceding to the contrary notwithstanding, Landlord agrees that if any Subtenant or any of Subtenant's agents, employees, contractors, other representatives or invitee acts or fails to act in any manner that causes Master Tenant to be in violation of any of the provisions of Section 5.2.1 through Section 5.2.7 above, then Master Tenant shall not be in breach or default under this Lease due to such act(s) or failure(s) to act by such applicable Subtenant or any of its agents, employees, contractors, other representatives or invitees so long as Master Tenant exercises commercially reasonable efforts to prevent such violation(s) from occurring and shall have taken steps in good faith within thirty (30) days after receipt of written notice from Landlord to remedy such failure and is continuing to so act with diligence and continuity and further, where possession of the Premises or portion thereof is necessary to cure a default under this Lease, Master Tenant will not be considered to be in default under this Lease as a result of a breach by a Subtenant or any of Subtenant's agents, employees, contractors, other

representatives or invitee under its sublease so long as Master Tenant has sent notice of default to, and commenced legal action against the Subtenant and is diligently and continuously pursuing an unlawful detainer action or other legal proceedings required to regain possession of the Premises or portion thereof from such Subtenant.

As used in the provisions of Section 5.2.1 through Section 5.2.7, the term "knowingly" includes what Master Tenant reasonably should have known with the exercise of reasonable inquiry and investigation.

5.3 Compliance with Laws. Master Tenant shall carry out, or cause to be carried out, all obligations under this Lease, including without limitation Master Tenant's Work, in conformity with all applicable state, federal, and local laws and regulations, including all applicable state labor laws and standards; Town zoning and development standards; building, plumbing, mechanical and electrical codes; all other provisions of the Town of Los Gatos Municipal Code; and all applicable disabled and handicapped access requirements, including the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.* ("Applicable Laws"). Master Tenant's obligations under this Section 5.3 shall include the obligation to undertake all appropriate inquiries with state and federal governmental enforcement and regulatory agencies as necessary to fully comply with all Applicable Laws, including any applicable prevailing wage requirements in connection with the construction of the Master Tenant's Work. Master Tenant also shall require that its Subtenants (to the extent expressly made applicable to such Subtenants) and their respective agents, employees, contractors and subcontractors, comply with all Applicable Laws in connection with the construction of the Subtenant's Work and Improvements.

SECTION 6. LEASEHOLD IMPROVEMENTS.

6.1 Condition of the Premises. Landlord shall deliver the Premises to Master Tenant on the Effective Date clean and free of debris.

6.2 Leasehold Improvements. Master Tenant agrees to install, or cause to be installed, in the Premises all improvements, fixtures, furniture and equipment within the Premises, as reasonably necessary for Master Tenant to attract and retain high quality Subtenants. Within one hundred eighty (180) calendar days after the Effective Date, Master Tenant shall provide Landlord a detailed description of work it proposes to undertake to ready the Premises for initial lease up to Subtenants ("Initial Master Tenant's Work"). In addition to providing Landlord all relevant information regarding a proposed Subtenant necessary for Landlord to evaluate and provide its consent to a proposed Subtenant pursuant to Section 14.2, Master Tenant shall provide Landlord a detailed description of the additional work, if any, to be undertaken by Master Tenant ("Additional Master Tenant's Work") as well as the work to be undertaken by a Subtenant ("Subtenant's Work") in connection with said applicable sublease.

The Initial Master Tenant's Work and all Additional Master Tenant's Work undertaken in connection with a sublease consented to by Landlord in accordance with 14.2 below, shall collectively be referred to herein as the "Master Tenant's Work". The term "Master Tenant's Work" does not include "Subtenant's Work" to be performed by Subtenants. It is acknowledged and agreed that the Subtenants of Master Tenant will install additional improvements, fixtures, furniture, and equipment as necessary for conduct of their operations, and shall all be responsible for complying with all applicable federal, state, and local statutes, laws, ordinances, rules, and regulations, and obtaining all necessary permits, to perform such work.

6.3 Master Tenant Work Improvement Loans.

6.3.1 As provided in Section 4.3.4 above, Master Tenant may utilize Sublease Income to repay itself for funds it advances or borrows from a third party lender for Master Tenant's Work, and any subsequent Improvements within the Premises that are neither Subtenant's Work nor funded by the Town's Capital Reserve Fund ("Master Tenant Work Improvement Loans"), on the following basis:

(a) Interest. Interest shall be on the basis of actual days elapsed, at a fixed rate of 3% per annum if funded by Master Tenant, or at the actual rate of interest charged by Master Tenant's lender if funded by a third-party lender, as of the date of each advance.

(b) Repayment Term. Whether funded by Master Tenant or a third-party lender, the repayment term shall be no greater than the Lease Term.

(c) Amortization. For each Master Tenant Work Improvement Loan funded by Master Tenant, interest only payments until the later of (i) first day of the month following the final advance under the loan, or (ii) the date subrent is due, and thereafter equal monthly payments of combined principal and interest necessary to fully amortize the loan over the remaining repayment term. If funded by a third-party lender, the loan shall be fully amortized in accordance with the terms of the loan.

6.4 Liens. All Master Tenant's Work and Subtenant's Work shall be completed free of mechanic's liens, with first-class materials and workmanship, and in compliance with all applicable rules, regulations, and laws applicable to the Premises.

6.5 Letter of Credit (LOC). All Master Tenant's Work or Subtenant's Work shall be approved by Landlord (which consent shall not be unreasonably withheld, conditioned or delayed). Such consent shall be deemed given if not denied in writing to Master Tenant within ten (10) business days following Landlord's receipt of such information required for Landlord to evaluate such applicable Master Tenant's Work or Subtenants Work. Master Tenant shall furnish to Town, at no cost or expense to the Town, a letter of credit ("LOC") in the amount not less than the sum of One Hundred Percent of the cost estimate of the Master Tenant's Work, in a form subject to the review and approval by the Town Manager or his or her designee (which approval shall not be unreasonably withheld, conditioned or delayed), which LOC shall secure Master Tenant's obligation to complete, and pay for the cost of completion of, the construction of the Master Tenant's Work within the time reasonably fixed by the Landlord, or such extension thereof as may be allowed. Master Tenant shall refrain from performing, or causing the performance of, any work related to the construction of Master Tenant's Work until Master Tenant furnishes a LOC satisfying this Section 6.5.

In the event Master Tenant fails to complete the Master Tenant's Work within the time fixed by Landlord or such extension period as determined by Landlord, and following Master Tenant's receipt of written notice of such failure from Landlord, Master Tenant fails to promptly commence action to complete the Master Tenant's Work within ten (10) calendar days of receipt of such notice, then Landlord may terminate this Lease for cause as specified in this Lease and Landlord shall be entitled to call on such LOC to the extent necessary to pay or reimburse Landlord for costs reasonably incurred by Landlord to complete the Master Tenant's Work (and the balance of such LOC proceeds or the LOC itself after payment or reimbursement to Landlord as provided immediately above shall be paid or returned to Master Tenant). In the event that Master Tenant fails to complete the Master tenant's Work within the time fixed by Landlord or such extension period as determined by Landlord, and following Master Tenant's receipt of written notice of such failure from Landlord, Master Tenant commences action to complete Master Tenant's Work within ten (10) calendar days of receipt of such notice but thereafter fails to diligently process such cure to completion, then, Landlord shall give a second, written notice to Master Tenant and if Master Tenant does not commence action to complete the Master tenant's Work within fifteen (15) days following Master Tenant's receipt of such second, written notice or thereafter diligently process such cure to completion, then Landlord may terminate this Lease for cause as specified in this Lease and Landlord shall be entitled to call on such LOC to the extent necessary to pay or reimburse Landlord for costs reasonably incurred by Landlord to complete Master Tenant's work (and the balance of such LOC proceeds or the LOC itself after payment or reimbursement to Landlord as provided immediately above shall be paid or returned to Master Tenant).

6.6 Ownership and Removal. All personal property not affixed in any way to the Premises including inventory, kitchen equipment, those nonstructural alterations as the Town approves for removal as were installed under this Lease and do not affect the structure of the Tait Building or the Premises, together with Master Tenant's Trade Fixtures, (collectively, "Master Tenant's Property") shall remain the

property of Master Tenant. Upon the termination or expiration of the Lease Term, if Master Tenant is not then in default under the Lease, Master Tenant may remove Master Tenant's Property from the Premises no later than the termination or expiration date. In addition, Master Tenant may remove from the Premises all items and Alterations installed by Master Tenant that are indicative of Master Tenant's business and may otherwise "de-identify" the Premises, as Master Tenant reasonably believes necessary or appropriate for the protection of Master Tenant's interest in Master Tenant's trademarks, trade names or copyrights. Master Tenant shall repair any damage to the Premises caused by such removal, including patching and filling holes. In no event shall Master Tenant remove or be required to remove any restrooms, flooring, ceilings, utility or electrical components located inside the walls or HVAC systems. All other utility systems will be capped and returned to a condition compatible with code requirements.

6.6.1 Subtenant's Personal Property. Landlord waives any statutory liens and rights of distress with respect to the personal property (non-affixed trade fixtures, equipment, inventory and merchandise) of each Subtenant from time to time located with the Premises, or applicable part thereof ("Subtenant's Personal Property"). This Lease (and each sublease entered into between Master Tenant and a Subtenant) does not grant a contractual lien or any other security interest to Landlord or in favor of Landlord with respect to Subtenant's Personal Property. In the event Landlord becomes the direct sublessor or landlord of a Subtenant, then, respecting any lender of any Subtenant having a security interest in any Subtenant's Personal Property ("Subtenant's Lender"), Landlord agrees: (i) to provide such Subtenant's Lender, upon written request of a Subtenant (accompanied by the name and address of Subtenant's Lender), with a copy of any default notice given to Subtenant under its sublease, concurrently with delivery of such default notice to Subtenant, and (ii) to allow Subtenant's Lender, prior to any termination of the sublease or repossession by Landlord of the applicable premises subleased by such Subtenant, the same period of time, after its receipt of such copy of default notice, to cure such default as is allowed the Subtenant under its sublease, and (iii) to permit Subtenant's Lender to enter the subleased premises for the purpose of removing Subtenant's Personal Property anytime within thirty (30) days after the effective date of any termination of the applicable sublease or any repossession of the subleased premises by Landlord (with Landlord having given Subtenant's Lender prior written notice of such date of termination or possession). Landlord will not be required to allow Subtenant's Lender to enter the subleased premises after entry of judgment in a forcible entry and detainer action, but agree to delay the filing of any such forcible entry and detainer action for thirty (30) days after delivery of written notice of such action to Subtenant's Lender, and will permit Subtenant's Lender to enter the subleased premises for the purpose of removing Subtenant's Personal Property any time within such thirty (30) days. Landlord further agrees to execute and deliver such instruments reasonably requested by Subtenant's Lender from time to time to evidence and effect this waiver and agreement of Landlord.

6.7 Abandonment. Any of Master Tenant's Property not removed from the Premises within sixty (60) business days of the date the Lease terminates or expires shall be deemed abandoned and shall thereupon become the property of Landlord. Landlord may possess and dispose of such property provided that Landlord shall not use or permit anyone holding under Landlord to use on the Premises (a) any trademark, trade name, millwork, copyrighted floor plan, copyrighted color palette, or sign used by Master Tenant in the Premises; or (b) any item similar to any other item protected by Master Tenant's intellectual property rights. This provision shall apply under all circumstances, including default by Master Tenant under this Lease.

SECTION 7. MASTER TENANT OBLIGATIONS – OPERATION OF PREMISES.

7.1 Responsibility of Master Tenant. Master Tenant shall serve as the master developer and sublandlord for the Subtenants and shall be obligated to ensure that the Premises are properly and fully operated, in good condition, for the approved commercial uses. Master Tenant shall be the primary point of contact for the Town with regard to all operational, administrative, and compliance issues under this Lease.

7.2 Leasing Standards. Subject to the provisions of Section 14.1 and 14.2 below, Master Tenant shall use its commercially reasonable efforts, consistent with good property management practices, to obtain first class commercial Subtenants for the Premises. However, if after reasonable

effort, Master Tenant is unable to attract Subtenants of similar type and quality on terms and conditions satisfactory to Master Tenant, Master Tenant may, subject to Section 14.2 below, sublease to Subtenants who may be considered less desirable in terms commercial type and quality. Landlord shall not unreasonably withhold its approval of any potential Subtenant who Master Tenant reasonably determines is the best available Subtenant on terms and conditions satisfactory to Master tenant.

7.3 Continuous Operations. Master Tenant shall use its commercially reasonable efforts, subject to the provisions of Section 7.2 above, to continuously sublet the Premises to approved Subtenants for commercial purposes during the term of this lease. If, for any reason, a Subtenant quits its business operations on the Premises, Master Tenant shall use its commercially reasonable efforts, in accordance with the provisions of Section 7.2 above, to promptly secure another Subtenant reasonably acceptable to Master Tenant and Landlord.

If for any reason during the first three (3) years after the Commencement Date the Premises in their entirety are left unleased for a continuous period of eighteen (18) months or more, then either the Landlord or Master Tenant may terminate this Lease by giving written notice of termination to the other, in which case, upon the giving of such notice of termination, each party shall be released of any future liability to the other, except as provided herein.

If for any reason after the first three (3) years following the Rent Commencement Date the Premises are more than fifty percent (50%) unleased for six (6) consecutive months, then Landlord may require Master Tenant to prepare and provide to Landlord, for its review and approval, a marketing plan to lease said unleased space. Master Tenant shall prepare and provide said marketing plan to Landlord within thirty (30) calendar days following written notice from Landlord to prepare said marketing plan. Landlord shall complete its review and approval of the marketing plan within thirty (30) calendar days following its submission by Master Tenant to Landlord. If for any reason the Premises remain more than fifty percent (50%) unleased for six (6) consecutive months following Landlord's approval of the marketing plan, and Master Tenant can document to Landlord's reasonable satisfaction that Master Tenant has diligently, and in good faith, pursued the lease of said unleased space in accordance with the approved marketing plan, then Landlord shall provide Master Tenant no less than an additional six (6) month period of time to lease the unleased space. If following said additional period of time granted by Landlord, the Premises are more than fifty percent (50%) unleased, then either the Landlord or Master tenant may terminate this Lease by giving written notice of termination to the other, in which case, upon the giving of such notice of termination, each party shall be released of any future liability to the other, except as provided herein.

If Landlord terminates the Lease pursuant to this Section 7.3, then Landlord shall assume the repayment of all outstanding Master Tenant Work Improvement Loans with the right to prepay such loans at Landlord's election without penalty. However, the Town's general fund shall assume no obligation for repayment of the Master Tenant Work Improvement Loans, which shall be repaid solely from future Sublease Income generated from the future operation of the Premises. Landlord's obligations under the immediately preceding sentence shall survive the termination of this Lease pursuant to this Section 7.3. If Master Tenant terminates the Lease pursuant to this Section 7.3, then Master Tenant shall assume the repayment of all outstanding Master Tenant Work Improvement Loans and no portion of Sublease Income or any other revenue generated by the Premises shall be obligated or utilized for repayment of said outstanding.

7.4 Signage and Displays. With respect to signage on the Premises, Landlord and Master Tenant agree as follows:

7.4.1 Landlord may allow Master Tenant may place a sign(s) on the exterior of the Tait Building to the extent such signage is allowed by law, provided that (i) the design and location of any such sign is approved in advance in writing by Landlord, and (ii) Master Tenant secures all necessary permits and approvals from the Town and/or any other applicable governmental authority. Any such signage shall be designed and installed in a manner that maintains the existing building system warranties, if any, applicable to the Tait Building. Upon expiration or earlier termination of this Lease, Master Tenant shall

remove Master Tenant's sign(s) from the exterior of the Tait Building, if applicable, and restore the exterior of the Tait Building to condition existing prior to the placement of such sign(s) on the exterior of the Tait Building, unless otherwise approved by Landlord.

7.5 Utilities. Master Tenant shall pay, or cause to be paid, for any and all costs, fees and expenses of water, gas, electricity, telephone, trash collection and recycling used by Master Tenant or any Subtenant in connection with the Premises during the Term of this Lease.

7.6 Deliveries. All deliveries shall be made at the hours not in violation of municipal ordinances.

7.7 Wireless Communications Equipment or Devices. The location of any equipment or device for the purpose of telecommunication or wireless access to services over the internet, by any party or for Master Tenant's or any Subtenants business operations, shall be coordinated with the Town and shall be subject to Town's reasonable approval.

7.8 PBID. Master Tenant will exercise commercially reasonable efforts to encourage its Subtenants to pay, if applicable, all Los Gatos Downtown Property Based Improvement District ("PBID") assessments for the Premises, which accrue during the term of this lease.

SECTION 8. MAINTENANCE, REPAIRS, AND ALTERATIONS.

8.1 Master Tenant's Obligations. Subject to the provisions of Section 8.2 below, and except for damage caused by fire or other casualty, whether or not insured or insurable, Master Tenant, at Master Tenant's sole cost and expense, shall keep, or cause to be kept, the Premises, in good condition and repair, including maintaining and repairing, or causing to be maintained or repaired, as necessary, all Master Tenant's Work, and all plumbing, HVAC, electrical and lighting facilities and equipment within the Premises, and any Master Tenant signage, and all doors and plate glass windows (both interior and exterior), interior walls, and flooring in the Premises. Master Tenant shall provide a contract for regular maintenance of the HVAC with an HVAC company reasonably approved by Landlord. Master Tenant shall be required to implement a program, reasonably acceptable to Landlord, for control and elimination of rodents and vermin on or around the Premises. Master Tenant shall be required to maintain any Outdoor Use Areas located on the Premises. Master Tenant shall remove graffiti from the exterior of the Premises within a reasonable time and shall always otherwise keep the exterior of the Premises in a clean and well-maintained condition. Notwithstanding any provision to the contrary, Master Tenant's obligations under this Section 8.1 shall not include making (a) any repair or improvement necessitated by the negligence or willful misconduct of Landlord, its agents, employees or servants; (b) any repair or improvement caused by Landlord's failure to perform its obligations hereunder or under any other agreement between Landlord and Master Tenant or (c) any capital repairs or capital improvements not funded by the Capital Reserve Fund.

8.2 Landlord's Obligations.

8.2.1 Except for repairs and maintenance to the Premises that Master Tenant must make under Section 8.1 above, Landlord shall be responsible, at its sole cost and expense, for the remediation of any Hazardous Materials discovered in, on, or about the Premises during the work performed under Section 6 above or discovered thereafter, provided, said discovery and presence of Hazardous Materials are not directly arising out of or attributable to Master Tenant or any subtenants use and/or occupancy of the Premises, Further, Landlord shall be responsible for, at its sole cost and expenses, the roof structure, roof membrane and supports, HVAC (excluding Master Tenant's maintenance contract), sprinkler system, foundation, exterior walls, and all structural components of the Tait Building. In the event of an emergency, Master Tenant may give Landlord such notice as is practicable under the circumstances (if any), and if Landlord fails to make such repairs immediately, Master Tenant may immediately undertake such repairs and submit an invoice for the reasonable costs thereof to Landlord for reimbursement. Notwithstanding any provision to the contrary, Landlord's obligations under this Section 8.2.1 shall not include making (a) any repair or improvement necessitated

by the negligence or willful misconduct of Master Tenant, Subtenants, or their agents, employees or servants; or (b) any repair or improvement caused by Master Tenant's failure to perform its obligations (including obligations which a Sublease obligates a Sublessee) hereunder or under any other agreement between Landlord and Master Tenant.

8.3 Surrender. Upon the expiration or termination of this Lease, Master Tenant shall surrender the Premises to Landlord in good order and condition, except for ordinary wear and tear, condemnation, and damage caused by fire or other casualty, whether or not insured or insurable, alterations and leasehold improvements made by Master Tenant and Subtenants, and in a broom clean condition.

8.4 Landlord's Rights. If Master Tenant fails to perform Master Tenant's obligations under Section 8.1 above, Landlord may, but shall not be required to, enter upon the Premises, after twenty (20) calendar days prior written notice to Master Tenant, and put the same in good order, condition and repair, and the actual costs thereof and an administrative fee of not more than 10% of the actual costs thereof, shall become due and payable as additional rent to Landlord together with Master Tenant's next Minimum Monthly Rent installment payment falling due after Master Tenant's receipt of an invoice for such costs; provided, however, Landlord shall not be able to exercise such remedies so long as Master Tenant commences to cure its failure within said twenty (20) day period and diligently pursues the cure to completion.

8.5 Improvements. The installation of the leasehold improvements necessary for Master Tenant's operation of its business in the Premises shall be performed in accordance with Section 6. Once such improvements are completed, Master Tenant shall not thereafter make any alterations, improvements, additions, upgrades or utility installations in, on or about the Premises, or install any further fixtures, furniture, or equipment therein (together, "Improvements") without Landlord's consent, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that minor interior Improvements that do not exceed the amount of \$50,000, and do not otherwise require permits under Applicable Laws ("Minor Improvements"), shall not require Landlord's consent under this Lease. All other Improvements exceeding \$50,000 for construction, or which require permits under Applicable Laws, or involve alterations to the exterior of the Premises ("Major Improvements") shall be subject to Landlord's review and approval under this Lease. Landlord may review all proposed Improvements for their consistency with the final as-built plans for the Tait Building and may approve variations from such drawings in its reasonable discretion. Town Manager is authorized to make such determination to approve Major Improvements which otherwise comply with Applicable Laws under this Lease. Notwithstanding Landlord's approval of Major Improvements under this Lease, Master Tenant shall be required to obtain all required permits for such Major Improvements under Applicable Law.

8.6 Capital Reserve Fund. On or before the fifteenth day following Landlord's receipt of the Minimum Monthly Rent, Landlord shall deposit the Minimum Monthly Rent to the account described in this Section 8.6 ("Capital Reserve Fund").

8.6.1 Maintenance of Capital Reserve Fund. The Capital Reserve Fund shall be maintained in a state or nationally chartered bank, the Local Agency Investment Fund Pooled Money Investment Account, or other such institution acceptable to Landlord.

8.6.2 Use of Capital Reserve Fund. Landlord may use monies in the Capital Reserve Fund to fund capital improvements to maintain the quality of the Premises or other purposes reasonably related to this Lease, subject to the reasonable consent of Master Tenant. The use of monies in the Capital Reserve Fund shall be controlled and directed by Landlord in its sole discretion, with input by Master Tenant, but will be used primarily for capital improvements to the Premises. Unused amounts in the Capital Reserve Fund on the Termination Date will be retained by the Town.

8.6.3 Master Tenant shall utilize Sublease Income to repay Landlord for funds it advances from the Capital Reserve Fund for uses identified in Section 8.6.2 above ("Capital Reserve Fund Improvement Loans"), on the following basis:

(a) Interest. Interest shall be on the basis of actual days elapsed, at a fixed rate of 4% per annum, as of the date of each advance.

(b) Repayment Term. The repayment term shall be the lesser of ten years or the initial term of the applicable Sublease if the Capital Reserve Fund Improvement Loan is related to Subtenant Work.

(c) Amortization. For each Capital Reserve Fund Improvement Loan, interest only payments until the later of (i) first day of the month following the final advance under the loan, or (ii) the date subrent is due if the Capital Reserve Fund Improvement Loan is related to Subtenant Work, and thereafter equal monthly payments of combined principal and interest necessary to fully amortize the loan over the remaining repayment term.

SECTION 9. INSURANCE.

9.1 General. Prior to commencing any work or operations under this Lease, and for the full term of this Lease and any extensions thereof, Master Tenant and any Subtenants, at each parties' sole cost and expense, shall obtain and maintain or shall cause to be obtained and maintained insurance against claims for injuries to persons or damages to property which may arise from or in connection with the activities of Master Tenant and its Subtenants, agents, employees and contractors, meeting at least the minimum insurance requirements set forth in Exhibit C on terms and conditions and in amounts as reasonably required by Town from time to time and with insurers reasonably acceptable to the Town and within commonly applicable industry standards for the type of operation. The Town shall not be obligated to take out insurance on Master Tenant's or Subtenant's property, including the Master Tenant's Work. Master Tenant shall be responsible for obtaining property insurance to cover the cost of repair or replacement of the Master Tenant's Work. Master Tenant and its Subtenants shall provide the Town with certificates of insurance or copies of all policies and such endorsements as may be reasonably required by the Town. These requirements are subject to reasonable amendment or waiver if so approved in writing by the Town Manager. From time to time at the request of the Finance Department of the Town of Los Gatos, Master Tenant shall provide a written statement of the replacement cost of the Master Tenant's Work.

During the term of the Lease, Landlord shall maintain general liability insurance in an amount of no less than \$2,000,000 per occurrence for bodily injury, property damage and personal injury, as well as property insurance covering the cost of repair or replacement of the Premises (excluding therefrom the Master Tenant's Work).

SECTION 10. INDEMNIFICATION BY MASTER TENANT.

10.1 General. Master Tenant shall defend, indemnify, and hold Landlord and Landlord's agent, officers, directors, employees, and contractors harmless against and from any and all injuries, costs, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties, and demands of any kind or nature (including reasonable attorneys' fees) in connection with any and all third party claims to the extent arising out of Master Tenant's use of the Premises ("Claims"), including, but not limited to: (a) injuries occurring within the Premises; (b) any intentional acts or negligence of Master Tenant or Master Tenant's officers, agents, employees, subtenants, or contractors; (c) any breach or default in the performance of any obligation on Master Tenant's part to be performed under this Lease; (d) any violation by Master Tenant or any of its officers, agents, employees, subtenants or contractors of any law, ordinance or regulation governing the use of the Premises, (e) any injuries (including death of any person), claims, or causes of action relating to or involving the sale of alcoholic beverages on the Premises; or (f) the failure of any representation or warranty made by Master Tenant herein to be true when made. This indemnity does not include any Claims caused by or arising out of the intentional or negligent acts or omissions of Landlord or its agents, officers, contractors or employees. This indemnity shall survive termination of this Lease only as to claims arising out of events that occur prior to termination of the Lease.

SECTION 11. ENVIRONMENTAL LIABILITY.

11.1 Environmental Law. The term "Environmental Law" means collectively: (i) the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601, *et seq.*, (ii) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801, *et seq.*, (iii) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, *et seq.*, (iv) the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, *et seq.*, (v) the Clean Air Act, as amended, 42 U.S.C. § 7401, *et seq.*, (vi) the Toxic Substances Control Act, as amended, 15 U.S.C. § 2601, *et seq.*, (vii) the Clean Water Act, as amended, 33 U.S. Code § 1251, *et seq.*, (viii) the Oil Pollution Act, as amended, 33 U.S.C. § 2701, *et seq.*, (ix) California Health & Safety Code § 25100, *et seq.* (Hazardous Waste Control), (x) the Hazardous Substance Account Act, as amended, Health & Safety Code § 25300, *et seq.*, (xi) the Unified Hazardous Waste and Hazardous Materials Management Regulatory Program, as amended, Health & Safety Code § 25404, *et seq.*, (xii) Health & Safety Code § 25531, *et seq.* (Hazardous Materials Management), (xiii) the California Safe Drinking Water and Toxic Enforcement Act, as amended, Health & Safety Code § 25249.5, *et seq.*, (xiv) Health & Safety Code § 25280, *et seq.* (Underground Storage of Hazardous Substances), (xv) the California Hazardous Waste Management Act, as amended, Health & Safety Code § 25170.1, *et seq.*, (xvi) Health & Safety Code § 25501, *et seq.*, (Hazardous Materials Response Plans and Inventory), (xvii) Health & Safety Code § 18901, *et seq.* (California Building Standards), (xviii) the Porter-Cologne Water Quality Control Act, as amended, California Water Code § 13000, *et seq.*, (xix) California Fish and Game Code §§ 5650-5656, (xx) the Polanco Redevelopment Act, as amended, Health & Safety Code § 33459, *et seq.*, (xxi) Health & Safety Code § 25403, *et seq.* (Hazardous Materials Release Cleanup), and (xxii) any other federal, state or local laws, ordinances, rules, regulations, court orders or common law related in any way to the protection of the environment, health or safety, or industrial hygiene.

11.2 Hazardous Materials. "Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government under any Environmental Laws, including any material or substance which is defined as "hazardous," "extremely hazardous," "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "hazardous substance" or "hazardous material" under any Environmental Laws, including, without limitation, chlorinated solvents, petroleum, or any fraction thereof, friable asbestos, and polychlorinated biphenyls.

11.3 Release of Hazardous Materials. Except as provided below in Section 11.4, Master Tenant shall not store, dispose of, transport, generate or otherwise introduce any Hazardous Material in, on or around the Premises. If any Hazardous Material is deposited, released, stored, disposed, transported, generated or otherwise introduced by Master Tenant in, on, or around the Premises, Master Tenant, at Master Tenant's sole cost and expense, shall comply with all applicable laws, rules, regulations and policies of any governmental body with jurisdiction over the same, to remove, transport and dispose of such substances and perform all remediation and cleanup necessary or advisable to remediate any damage to persons, property or the environment as a result of the presence of such Hazardous Materials.

11.4 Master Tenant's Use of Hazardous Materials. Notwithstanding the above and provided that Master Tenant complies with all Applicable Laws and Environmental Laws, Master Tenant shall have the right to use Hazardous Materials on the Premises to the extent such Hazardous Materials (i) are contained in restaurant and/or household products, office supply products or janitorial products customarily used in the maintenance, rehabilitation, operation or management of facilities similar to the Premises; or (ii) are commonly used by a significant portion of the population living within the region of the Premises, including, but not limited to, alcoholic beverages, aspirin, tobacco products, NutraSweet and saccharine, so long as Master Tenant provides the appropriate warning, if required to do so under any Applicable Law or Environmental Law.

11.5 Environmental Indemnity. Master Tenant shall protect, indemnify, and hold harmless Landlord and Landlord's officer's employees, agents, representatives, contractors, and subcontractors from and against any and all loss, damage, cost, expense, or liability (including attorneys' fees), and the

costs of repairs and improvements necessary to return the Premises to the physical condition existing prior to Master Tenant's undertaking any activity related to any Hazardous Substance, directly arising out of or attributable to Master Tenant's or Master Tenant's agents', contractors', employees' or Subtenants' use, manufacture, storage, release, or disposal of a Hazardous Substance on the Premises. Landlord shall protect, indemnify, and hold harmless Master Tenant and Master Tenant's employees, agents, parents, representatives, subtenants, contractors, subcontractors and subsidiaries from and against any and all loss, damage, cost, expense, or liability (including attorneys' fees) and the costs of repairs and improvements necessary to return the Premises, or applicable portion thereof, to the physical condition existing prior to undertaking any activity related to any Hazardous Substance directly arising out of or attributable to Landlord's or Landlord's agents', contractors', or employees' use, manufacture, storage, release, or disposal of a Hazardous Substance on the Premises. The provisions of this Section 11.5 shall survive the termination of this Lease.

SECTION 12. TAXES AND ASSESSMENTS/ POSSESSORY INTEREST TAX.

12.1 General. Master Tenant acknowledges and agrees that this Lease will create a possessory interest subject to property taxation. Master Tenant agrees to pay and discharge, as additional rent for the Premises during the term of this Lease, before delinquency, all taxes (including, without limitation, possessory interest taxes associated with the Premises, this Lease and any so-called value added tax), assessments (including, without limitation, all assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the term of this Lease), fees, levies, water and sewer rents, rates and charges, vault license fees or rentals, license and permit fees and other governmental charges of any kind or nature whatsoever, general and special, ordinary and extraordinary, foreseen and unforeseen, or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing (all of the foregoing collectively called "taxes") which are or may be at any time or from time to time during the term of this Lease levied, charged, assessed or imposed upon or against the Premises or any improvements which are now or hereafter located thereon, or against any of Master Tenant's personal property now or hereafter located thereon, or which may be levied, charged, assessed or imposed upon or against the leasehold estate created hereby or which may be imposed upon any taxable interest of Master Tenant acquired pursuant to this Lease on account of any taxable possessory right which Master Tenant may have acquired pursuant to this Lease. Master Tenant shall pay or reimburse Landlord, as the case may be, for any fines, penalties, interest or costs which may be added by the collecting authority for the late payment or nonpayment of any taxes required to be paid by Master Tenant hereunder.

SECTION 13. PROHIBITION AGAINST CHANGE IN MASTER TENANT AND CONTROL OF MASTER TENANT AND THE PREMISES AND TRANSFER OF MASTER TENANT'S RIGHTS UNDER THIS LEASE.

13.1 Qualifications of Master Tenant. Master Tenant acknowledges that the qualifications and identity of Master Tenant, including in particular Master Tenant's Managing Members, are of particular concern to the community and the town, in view of the following:

13.1.1 The importance of the proper subleasing of the Premises to the general welfare of the community;

13.1.2 The reliance by the Town upon Master Tenant to assure the quality of the Premises and its use, operation and maintenance;

13.1.3 The fact that a change in Master Tenant or control of all or a portion of Master Tenant, or any act or transaction involving or resulting in a change in Master Tenant is for practical purposes a Transfer or disposition of the Premises; and

13.1.4 The importance to the Town and the community of the standards for the use, operation and maintenance of the Premises and associated areas.

13.2 Acknowledgment of Importance of Qualifications. Master Tenant further recognizes that it is because of such qualifications and identity that the Landlord is entering into this Lease with Master Tenant. No voluntary or involuntary successor-in-interest of Master Tenant shall acquire any rights or powers under this Lease except as expressly set forth in this Lease.

13.3 Completion of Master Tenants Work. Prior to the completion of Master Tenant's Work, Master Tenant shall not (i) assign all or any part of its rights or obligations under this Lease, (ii) lease or sublease any portion of the Premises (other than subleases of portions of the Premises to permitted Subtenants as otherwise provided in the Lease), (iii) make or permit to be made any changes in the composition of Master Tenant's ownership, limited liability company status, or members, or (iv) effect any transaction which would in any way change the Master Tenant's ownership, management, control or obligations relating to the Premises.

13.4 Permitted Transfers. Following the period described in Section 13.3 above (i.e. completion of Master Tenant's Work), Master Tenant may, with the prior review and approval of the Town Manager (which shall not be unreasonably withheld, conditioned or delayed), make changes in the composition of Master tenant's ownership, corporate or other entity status, shareholders, members or partners (if applicable), provided that Master Tenant's managing Member, retains the power to control Master Tenant's active, day-to-day management responsibilities ("Day-to-Day management"). For purposes of the immediately preceding sentence, "control" shall mean the power to direct or cause the direction of the Day-to-Day Management of the Master tenant. Five years from the Commencement Date, provided Master Tenant has performed all of its obligations under this Lease, Master Tenant may appoint, with the consent of Landlord which shall not be unreasonably withheld, a new Master Tenant Managing Member.

13.5 Notification of Changes in Ownership or Control. During the term of this Lease, the Master Tenant shall promptly notify the Town of any and all changes whatsoever in the Master tenant's ownership, corporate or other status, management or control of the Master tenant and the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information.

13.6 Termination for Transfer. This Lease shall terminate pursuant to Section 18 if there is any voluntary or involuntary assignment or Transfer other than provided in in Section 13.4 or as otherwise expressly provided in this Lease.

SECTION 14. ASSIGNMENT AND SUBLETTING.

14.1 General. Except for those Subtenants approved by Town as provided herein, Master Tenant shall not assign, let or sublet the whole or any portion of the Premises.

14.2 Conditions for Landlord's Consent to Subtenants. Landlord's decision to grant or withhold its consent to a Subtenant may be based upon standards relevant to the type of subtenant and its proposed operation, including but not limited to: (i) experience or lack of experience in operating a retail establishment; (ii) the operating standards of such subtenant and whether it will provide the premium caliber of facilities and services acceptable to Landlord; (iii) the financial capacity to perform the provisions of this Lease and produce a fair return to Landlord; (iv) the experience of the proposed subtenant; (v) the ability of the Master Tenant and subtenants to perform the provisions of this Lease. However, Landlord shall not unreasonably withhold, condition or delay its approval of any potential Subtenant who Master tenant reasonably determines is the best available Subtenant on terms and conditions satisfactory to Master tenant, so long as Master tenant has made reasonable efforts to attract the highest quality potential Subtenants available on terms and conditions satisfactory to Master tenant.

14.3 Conditions for Landlord's Consent to Assignment. Landlord's decision to grant or withhold its consent to any assignment of this Lease by Master tenant shall be at the Landlord's sole and exclusive discretion, but otherwise may be based upon standards of commercial reasonableness, including but not limited to the financial capacity, experience and ability of assignee to perform the provisions of the Lease.

14.4 Approval by Town Manager. Any such consent, if given by Landlord, shall be in writing and may be approved by the Town Manager on behalf of Landlord.

14.5 Recognition Agreement. In connection with each Sublease consented to by Landlord, Landlord shall agree in writing in favor of the applicable Subtenant that if this Lease terminates, then Landlord shall attorn to such applicable Subtenant on the terms and conditions of such Subtenant's sublease. In the event of such attornment, Landlord shall assume all of the Master Tenant's obligations under the applicable sublease accruing from and after the date the Master Lease terminates. Landlord shall indemnify, defend and hold Master Tenant harmless from and against any and all claims, damages, liabilities, demands, actions, causes of action, judgments, injuries, liens, costs and expenses (including, without limitation, reasonable attorneys' fees and costs of suit) arising from any breach or default by Landlord of any of its assumed obligations under the applicable sublease; however, such indemnification, defense and hold harmless obligation shall not be applicable to any claims, damages, liabilities, demands, actions, causes of action, judgments, injuries, liens, costs and expenses (including, without limitation, reasonable attorneys' fees and costs of suit) to the extent arising from any breach by Master Tenant of any obligations of the sublessor under the applicable sublease occurring prior to the date Landlord attorns to the applicable Subtenant under the terms of the applicable Subtenant's sublease. Landlord's obligations under this Section 14.5 shall survive the termination of this Lease.

SECTION 15. MORTGAGE OF LEASEHOLD.

15.1 Prohibited Encumbrances. Except as permitted in Section 0 below, Master Tenant shall not:

15.1.1 Engage in any financing or other transaction placing any mortgage or deed of trust upon the Property, or upon Master Tenant's leasehold estate therein or the improvements constructed thereon; or

15.1.2 Place or suffer to be placed upon Master Tenant's leasehold estate or the improvements thereon any lien, levy, attachment or other encumbrance (other than a lien upon said leasehold estate for taxes and assessments levied but not delinquent or payable with penalty); provided, however, the foregoing notwithstanding, Master Tenant shall have the right to contest or appeal the validity of any such lien, levy, encumbrance or attachment, provided that Master Tenant shall first furnish adequate security to the reasonable satisfaction of Landlord to protect the Premises during the pendency of such contest or appeal.

Any such mortgage, deed of trust, levy, attachment, encumbrance or lien (collectively, "encumbrance") not permitted pursuant to the terms of this Lease and caused or created by Master Tenant shall be deemed to be a violation of this covenant on the date of its execution or filing of record, regardless of whether or when it is foreclosed or otherwise enforced, unless Master Tenant shall, within twenty (20) days of such date of execution or filing of record, remove such encumbrance or provide adequate security to the reasonable satisfaction of Landlord to protect the Premises and the improvements thereon from such encumbrance.

15.2 Permissible Encumbrances.

15.2.1 Anything in this Lease to the contrary notwithstanding, with Landlord's prior written consent (which shall not be unreasonably withheld, conditioned or delayed), Master Tenant's Work may be funded by debt, and accordingly Master Tenant may assign or encumber the estate created by this Lease, by way of leasehold mortgages, leasehold deeds of trust, or otherwise.

15.2.2 With Landlord's prior written consent (which shall not be unreasonably withheld, conditioned or delayed), Master Tenant may assign or encumber the estate created by this Lease by way of not more than two leasehold mortgages and/or leasehold deeds of trusts at any one time encumbering Master Tenant's leasehold interests, provided that such leasehold mortgages and/or

leasehold deeds of trusts comply with the requirements of this Section 15. Landlord shall have no obligation to make any changes to this Lease to accommodate any Permitted Mortgagee but agrees to work with Master Tenant in good faith in Master Tenant's efforts to obtain a Permitted Mortgage.

15.2.3 The fee title to the Premises cannot be encumbered pursuant to this Section 15; only the leasehold interest of the Master Tenant under this Lease (including, without limitation, Master Tenant's interest in the Premises, Master Tenant's Work, Subtenant's Work and Master Tenant's Property and any personal property of any Subtenant) may be so encumbered.

15.2.4 An encumbrance permitted by this Section 15 shall be referred to as a "Permitted Mortgage." The holder of a Permitted Mortgage is herein referred to as a "Permitted Mortgagee."

15.3 Notice to Landlord. Except when Landlord's prior approval or consent shall be required, Master Tenant shall notify Landlord within twenty (20) days of the time of creation of any lien or encumbrance which has been created on or attached to Master Tenant's leasehold estate therein or the Master Tenant improvements thereon, whether by act of Master Tenant or otherwise. If such lien or encumbrance is not created by an act of Master Tenant, Master Tenant shall notify Landlord of such creation as of the time Master Tenant first knows of such creation or attachment.

15.4 Mortgages Subordinate to Lease. Any mortgage permitted under Section 15 hereof shall be subject and subordinate to this Lease and, except as otherwise expressly provided herein or in any separate written agreement between Landlord and a Permitted Mortgagee, the rights of Landlord hereunder.

15.5 Extent of Encumbrance. A Permitted Mortgage shall encumber no interest in property other than Master Tenant's interest in the leasehold and improvements to the Premises, including without limitation, Master Tenant's interest in the Premises, Master Tenant's Work, Subtenant's Work and Master Tenant's Property, and any personal property of any Subtenant.

15.6 Disposition of Insurance Proceeds and Condemnation Awards. A Permitted Mortgage shall contain provisions permitting the disposition and application of the insurance proceeds and condemnation awards in the manner provided in this Lease. In the event that the Premises, or any portion thereof, are damaged or destroyed or condemned by power of eminent domain, in whole or in part, to the extent required by the provisions of the Permitted Mortgage, the proceeds therefrom shall be held by the Permitted Mortgagee, to be applied in the case of damage or destruction pursuant to the terms of the Permitted Mortgage with any excess to be paid to Landlord and Tenant as their interests may appear and to be applied in accordance with Section 17.3 hereof in the case of condemnation.

15.7 Permitted Mortgagee. Except as otherwise approved in writing by Landlord, a Permitted Mortgage may be given only to a responsible bona fide institutional lender. For the purposes hereof, the term "institutional lender" shall mean any one of the following lending institutions: a commercial or savings bank; a state bank or national bank, a trust company; an insurance company; a savings and loan association; a building and loan association; a credit union; an investment banking firm; an educational institution; a pension, retirement or welfare fund; a charity; a real estate investment trust ("REIT") but only if the REIT is publicly traded and registered with the U.S. Securities & Exchange Commission, and the amount of the Permitted Mortgage does not exceed two percent of the value of the REIT's assets; an endowment fund or foundation authorized to make loans in the State of California; or any other responsible financial institution.

15.8 Continuing Terms and Covenants. Except as otherwise expressly provided in this Lease or in a separate document executed by Landlord, all rights acquired by said Permitted Mortgagee under said Permitted Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights of Landlord hereunder, none of which covenants, conditions and restrictions is or shall be waived by Landlord by reason of the giving of such Permitted Mortgage, except as expressly provided in this Lease or in a separate document executed by Landlord. Notwithstanding

any foreclosure of any Permitted Mortgage and so long as this Lease has not been terminated, unless and until a Permitted Mortgagee takes possession of the Premises (subject to any Subleases then in existence, if applicable) and to the extent Master Tenant is receiving the revenues from the Premises, Master Tenant shall remain liable for the payment of Minimum Monthly Rent, Percentage Rent and all other payments payable pursuant to this Lease, and for the performance of all of the terms, covenants and conditions of this Lease which by the terms hereof are to be carried out and performed by Master Tenant.

15.9 Affirmation of Lease in Bankruptcy. In the event of the filing of a petition in bankruptcy by the Master Tenant, and the Master Tenant rejects this Lease under Section 365 of the Bankruptcy Code, the Landlord shall, upon the request of a Permitted Mortgagee, affirm this Lease, and the Landlord will enter into a new Lease on the same terms and conditions with the Permitted Mortgagee immediately upon Master Tenant's rejection of this Lease. In the event of the filing of a petition in bankruptcy by the Landlord, and the Landlord rejects this Lease and the Master Tenant does not affirm it, a Permitted Mortgagee will have the authority to affirm the Lease on behalf of the Master Tenant and to keep the Lease in full force and effect.

15.10 Notice Required. Master Tenant shall submit to Landlord within the times set forth in this Section 15 a written notice of its intention to enter into a Permitted Mortgage, and shall submit to Landlord such information and detail as will enable Landlord to determine the compliance of such intended Permitted Mortgage with the provisions of this Section 15 and this Lease. If Landlord has not objected to the intended Permitted Mortgage on the grounds of noncompliance with provisions of this Lease within 45 days of receipt by Landlord of such notice and information, the intended Permitted Mortgage shall be deemed to comply with the provisions of this Section 15 and this Lease and be deemed approved by Landlord, provided that in no event shall any such deemed approval act or operate to subordinate Landlord's fee title to the Property to the Permitted Mortgage. Master Tenant shall thereafter promptly submit to Landlord final documents in connection with such Permitted Mortgage upon their execution or receipt by Master Tenant, or upon the funding of the loan secured by the Permitted Mortgage, for review by Landlord for compliance with the provisions of this Section 15 and this Lease.

15.11 Landlord's Right to Cure Master Tenant's Defaults on Leasehold Mortgages. Master Tenant agrees that any Permitted Mortgage shall provide:

15.11.1 That the Permitted Mortgagee shall in writing by certified or registered mail (or recognized overnight courier service) give notice to Landlord of the occurrence of any event of default under said Permitted Mortgage; and

15.11.2 That Landlord shall be given at least 30 days' notice of default in debt service payments or any other obligation of Master Tenant under a Permitted Mortgage before such Permitted Mortgagee will initiate any mortgage foreclosure action or accelerate the indebtedness or exercise its power of sale. If any payments required to be made under the provisions of the Permitted Mortgage shall not be paid, or any other act or omission shall occur which constitutes a default under the terms of such Permitted Mortgage, Landlord may cure such default during any period that Master Tenant is in default thereunder, provided that Landlord shall comply with the provisions of Section 18 hereof calling for prior notice to Master Tenant except in cases of emergency where earlier action is required, notifying Master Tenant of Landlord's intention to cure such default on Master Tenant's behalf. Landlord shall not commence to cure such default if (a) Master Tenant shall have cured such default within said 30-day period, or (b) except for defaults in the payment of money, Master Tenant shall have commenced to cure such default and is diligently pursuing such cure in full compliance with the terms of the Permitted Mortgage, or (c) Master Tenant shall have obtained from the Permitted Mortgagee a written extension of time in which to cure such default, together with a separate written extension of time granting Landlord reasonable additional time to cure said default if said default is not cured within said extended time, and executed copies thereof are delivered to Landlord. Any Permitted Mortgage shall further expressly provide that, in the event Master Tenant fails to cure any default thereunder, Landlord shall have a reasonable period of time (considering the nature of the default) to cure such default following the

expiration of all periods (including any extensions of time and periods during which performance is waived) allowed for Master Tenant's cure of such default.

15.11.3 If Landlord shall elect to cure any default under a Permitted Mortgage, Master Tenant shall pay the costs reasonably incurred by Landlord in curing such default to Landlord, together with interest thereon at the "Reference Rate" of the Bank of America plus three percent and not to exceed the maximum rate for which the parties may lawfully contract, as Additional Rent. Master Tenant hereby authorizes Landlord, in Landlord's name, without any obligation or duty to do so, to do any act or thing required of or permitted to Master Tenant to prevent any default under said Permitted Mortgage or any acceleration thereof, or the taking of any portion of the security for the Permitted Mortgage by foreclosure or other action to enforce the collection of the indebtedness, and Master Tenant agrees to indemnify and hold Landlord harmless from any costs, damages, expenses or liabilities (including reasonable attorneys' fees) resulting from Landlord exercising its rights pursuant to this Section 15. Notwithstanding any provisions of this Lease to the contrary, if Landlord shall elect to cure any default under a Permitted Mortgage and such Permitted Mortgage is non-recourse to Master Tenant, Master Tenant shall not be obligated to reimburse Landlord for any costs incurred by Landlord, provided; however, any payments made by Landlord shall be payable to the extent Master Tenant is receiving rental payments under this Lease and such payments to Landlord shall be payable prior to any other payments.

15.12 Notice to Landlord. No Permitted Mortgagee shall have the rights or benefits mentioned in this Section 15 nor shall the provisions of this Section 15 be binding upon Landlord, unless and until the name and address of the Permitted Mortgagee shall have been delivered to Landlord, notwithstanding any other form of notice, actual or constructive.

15.13 Rights and Obligations of Permitted Mortgagees. If Master Tenant, or Master Tenant's successors or assigns, shall mortgage this Lease in compliance with the provisions of this Section 15, then, so long as any such Permitted Mortgage shall remain unsatisfied of record, the following provisions shall apply:

15.13.1 Landlord, upon serving upon Master Tenant any notice of default pursuant to the provisions of Section 18 hereof, or any other notice under the provisions of or with respect to this Lease, shall also serve a copy of such notice upon any Permitted Mortgagee at the address of such Permitted Mortgagee provided pursuant to Section 15.12 above, and no notice by Landlord to Master Tenant hereunder shall affect any rights of a Permitted Mortgagee unless and until thirty (30) days after a copy thereof has been so served to such Permitted Mortgagee. Notwithstanding any event of default by Master Tenant under this Lease, Landlord shall have no right to terminate this Lease unless Landlord shall have given the Permitted Mortgagee written notice of such default and Permitted Mortgagee shall have failed to remedy such default as provided below or acquire Master Tenant's estate created hereby or commence foreclosure or other appropriate proceedings in the nature thereof, as all set forth in, and within the time specified by this Section 15.13.

15.13.2 In case Master Tenant shall have failed to cure any default hereunder within the period provided for Master Tenant to cure such default, Landlord shall so notify any Permitted Mortgagee of such failure and any Permitted Mortgagee shall, within thirty (30) days of receipt of such notice have the right, but not the obligation, to remedy such default or cause the same to be remedied, and Landlord shall accept such performance by or at the instance of the Permitted Mortgagee as if the same had been made by Master Tenant; provided, however, that if the breach or default is with respect to the Master Tenant's Work, nothing contained in this Section or any other Section or provision of this Lease shall be deemed to permit or authorize such Permitted Mortgagee, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the improvements beyond the extent necessary to conserve or protect the improvements or construction already made without first having expressly assumed the obligation to Landlord to complete, in the manner provided in this Lease, the improvements on the Premises or the part thereof to which the lien or title of such Permitted Mortgagee relates.

15.13.3 For the purposes of this Section 15 no event of default, other than an event of default due to a default in the payment of money, shall be deemed to exist under Section 18 hereof with respect to the performance of work required to be performed, or of acts to be done or of conditions to be remedied, if steps shall, in good faith, have been commenced by Master Tenant or a Permitted Mortgagee within the time permitted therefor to rectify the same and shall be prosecuted to completion with diligence and continuity as Section 18 hereof provides.

15.13.4 Anything herein contained to the contrary notwithstanding, upon the occurrence of an event of default, other than an event of default due to a default in the payment of money (for which the Permitted Mortgagee shall have no more than thirty (30) days following receipt of written notice from Landlord to cure such monetary default), Landlord shall take no action to effect a termination of this Lease without first giving to any Permitted Mortgagee written notice thereof and a reasonable time thereafter which shall not be less than ninety (90) days within which to either (a) obtain possession of the mortgaged property (including possession by a receiver), or (b) institute, prosecute and complete foreclosure proceedings or otherwise diligently acquire Master Tenant's interest under this Lease. A Permitted Mortgagee, upon acquiring Master Tenant's interest under this Lease, shall be required promptly to cure all defaults then reasonably susceptible to being cured by such Permitted Mortgagee; provided, however, that: (1) such Permitted Mortgagee shall not be obligated to continue such possession or to continue such foreclosure proceedings after such defaults shall have been cured; (2) nothing herein contained shall preclude Landlord, subject to the provisions of this Section 15, from exercising any rights or remedies under this Lease with respect to any other default by Master Tenant (subject to Permitted Mortgagee's cure rights set forth in this Section 15), during the pendency of such foreclosure proceedings; and (3) such Permitted Mortgagee shall agree with Landlord, in writing, to comply during the period of such forbearance with such of the terms, conditions and covenants of this Lease as are reasonably susceptible to being complied with by such Permitted Mortgagee (however, consistent with the provisions of Section 15.13.10 below, the provisions of this clause (3) shall not obligate such Permitted Mortgagee to cure any defaults of the Master Tenant, or to expend any monies or to take any actions to comply with the terms, conditions or covenants of this Master Lease, prior to such Permitted Mortgagee acquiring Master Tenant's interest under this Lease). Any default by Master Tenant not reasonably susceptible to being cured by such Permitted Mortgagee, or the occurrence of any of the events specified in Section 18, shall be deemed waived by Landlord upon completion of such foreclosure proceedings or upon such acquisition of Master Tenant's interest in this Lease, except that any such events of default which are reasonably susceptible to being cured after such completion and acquisition shall then be cured with reasonable diligence. Such Permitted Mortgagee, or its designee or other purchaser in foreclosure proceedings, may become the legal owner of the leasehold estate of this Lease through such foreclosure proceedings or by assignment of this Lease in lieu of foreclosure. A Permitted Mortgagee or its designee or other party which becomes the legal owner of the leasehold estate of this Lease through foreclosure proceedings or by an assignment of this Lease in lieu of foreclosure shall be deemed by such acquisition to have assumed all of Master Tenant's rights and obligations under this Lease accruing during the period of such Permitted Mortgagee's or its designee's ownership of the leasehold estate of this Lease. If a Permitted Mortgagee is prohibited by any process or injunction, or any bankruptcy, insolvency or other judicial proceeding involving Master Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified for commencing or prosecuting such foreclosure or other proceedings in the nature thereof, the times specified for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; provided that the Permitted Mortgagee shall have fully cured any default in the monetary obligations of Master Tenant under this Lease and shall continue to pay currently such monetary obligations as and when the same fall due, and provided that the Permitted Mortgagee shall diligently attempt to remove any such prohibition.

15.13.5 In the event of the termination of this Lease prior to the natural expiration of the then current Term due to default of Master Tenant or operation of law (except by eminent domain) as provided in Section 18, including, without limitation, due to any rejection of this Lease in any bankruptcy, insolvency or other debtor relief proceeding, Landlord shall immediately serve upon the holder of the senior Permitted Mortgage written notice that the Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all

other defaults, if any, under this Lease then known to Landlord. The senior Permitted Mortgagee or its nominee, purchaser or assignee shall thereupon have the option to obtain a new lease in accordance with and upon the following terms and conditions:

(a) Upon the written request of said Permitted Mortgagee, within sixty (60) days after service of such notice that the Lease has been terminated, or within sixty (60) days after the expiration of this Lease if Master Tenant was unable to renew the Term hereof, Landlord shall enter into a new lease of the Property and improvements thereon with such holder, or its designee or assignee, as follows:

(i) Such new lease shall be the same priority as this Lease, shall be effective as of the date of termination of this Lease, and shall be for the remainder of the Term and at the rent and upon all the agreements, terms, covenants and conditions hereof, including any applicable rights of renewal and the use provisions for restaurant and food service purposes specified above. Such new lease shall require that the tenant perform any unfulfilled obligation of Master Tenant under this Lease which is reasonably susceptible to being performed by such tenant. Upon the execution of such new lease, the tenant named therein shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for such termination, and shall pay all expenses, including reasonable counsel fees, court costs and disbursements incurred by Landlord in connection with such defaults and termination, the recovery of possession of the Property, and the preparation, execution and delivery of such new lease. Upon the execution and delivery of the new lease, title to all leasehold improvements (including, without limitation, all of the Master Tenant's Work) as well as all Master Tenant's Property, shall automatically vest in the Permitted Mortgagee or its nominee as the new Master Tenant under this Lease until the expiration of the term or sooner termination of the new lease.

(ii) Effective upon the commencement of the term of any new lease executed pursuant to this Subsection 15.13.5, all subleases then in effect shall be assigned and transferred without recourse by Landlord to the tenant under such new lease, and all monies on deposit with Landlord which Master Tenant would have been entitled to use but for the termination or expiration of this Lease may be used by the tenant under such new lease for the purposes of and in accordance with the provisions of such new lease, unless credited against expenses in accordance with Subsection 15.13.5(a)(i) above.

15.13.6 Any notice or other communication which Landlord shall desire or is required to give to or serve upon the holder of a Permitted Mortgage under this Lease shall be in writing and shall be served by certified mail, return receipt requested, addressed to such holder at the address provided for pursuant to Section 15.12 hereof, or at such other address as shall be designated by such holder in writing given to Landlord by certified mail, return receipt requested. Any notice or other communication which the holder of a Permitted Mortgage under this Lease shall desire or is required to give to or serve upon Landlord shall be deemed to have been duly given or served if (a) sent by certified mail, return receipt requested, addressed to Landlord at Landlord's address as set forth in Subsection 21.1 of this Lease or at such other addresses as shall be designated by Landlord by notice in writing given to such holder by certified mail, return receipt requested, and (b) sent by certified mail, return receipt requested, to the Landlord's other mortgages, if any.

15.13.7 Anything herein contained to the contrary notwithstanding, the provisions of this Section 15 shall inure only to the benefit of the holders of Permitted Mortgages. Neither a Permitted Mortgagee nor any other holder or owner of the indebtedness secured by a leasehold mortgage or otherwise shall be liable upon the covenants, agreements or obligations of Master Tenant contained in this Lease, unless and until such Permitted Mortgagee or that holder or owner acquires the interest of Master Tenant.

15.13.8 During such period of time that any Permitted Mortgage is in existence, Landlord shall not agree to any mutual termination or accept any surrender of this Lease (except upon the expiration of the term of this Lease, or upon the earlier termination of this Lease (x) in connection with a casualty or condemnation in accordance with the provisions of this Lease, or (y) by reason of a default by

Master Tenant that is not cured or remedied within the applicable notice and cure period set forth in this Lease in accordance with the provisions of this Lease, in either case subject to the Permitted Mortgagee's rights under this Lease, including, without limitation, the provisions of this Section 15.13), nor shall Landlord consent to any amendment or modification of this Lease, without the prior consent of a Permitted Mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed and shall be given within ten (10) business days of written request therefor.

15.13.9 Landlord shall mail or deliver to Permitted Mortgagee at the address of Permitted Mortgagee provided to Landlord a duplicate copy of all notices which Landlord may from time to time give to Master Tenant pursuant to this Lease.

15.13.10 Foreclosure of a Permitted Mortgage or any sale thereunder, whether by judicial proceedings or by virtue of any power of sale contained in the Permitted Mortgage, or any conveyance of the leasehold estate created hereby from Master Tenant to Permitted Mortgagee by virtue or in lieu of foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Landlord or constitute a breach of any provision of or a default under this Lease. Upon such foreclosure, sale or conveyance, Landlord shall recognize the Permitted Mortgagee, or any other foreclosure sale purchaser, as Master Tenant hereunder and such party shall attorn to Landlord, be subject to the provisions regarding assignment set forth in Section 15.14 below and shall fully perform Master Tenant's obligations hereunder. The preceding notwithstanding, a Permitted Mortgagee shall have no liability for Master Tenant's obligations under this Lease unless and until it becomes the Master Tenant under this Lease by means of foreclosure or deed in lieu thereof or pursuant to any new lease obtained pursuant to the terms above, and thereafter the Permitted Mortgagee or its successor or assign or designee shall be liable under this Lease or such new lease only for the period of time that such Permitted Mortgagee or its successor, assign or designee remains tenant hereunder or thereunder. Nothing herein shall be construed to obligate any Permitted Mortgagee to remedy any default of Master Tenant, and any failure of a Permitted Mortgagee to complete any such cure after commencing the same shall not give rise to any liability of the Permitted Mortgagee to Landlord or Master Tenant.

15.14 Assignment by Mortgagee. If any Permitted Mortgagee shall acquire title to Master Tenant's interest in this Lease by foreclosure of a mortgage thereon, or by assignment in lieu of foreclosure or by an assignment from a designee or wholly-owned subsidiary corporation of such mortgagee, or under a new lease pursuant to this Section 15, such Permitted Mortgagee or its successor, assign or designee may assign such lease and shall thereupon be released from all liability for the performance or observance of the covenants and conditions in such lease contained on Master Tenant's part to be performed and observed from and after the date of such assignment, provided that Landlord shall receive an executed counterpart copy of such assignment, together with the name and address of the assignee.

SECTION 16. DAMAGE TO PREMISES.

16.1 Landlord's Obligation to Repair. If subsequent to completion of Master Tenant's Work, a material part of the Premises provided by Landlord in Exhibit A, shall, by reason of fire, earthquake, the elements, acts of God or other unavoidable casualty, be destroyed or so damaged as to become unusable in whole or in part and the damage can, by proceeding with reasonable diligence, be repaired within 365 days from the date of such destruction or damage, Landlord shall promptly and diligently repair the damage (subject to the limitations set forth in Section 20.2) and this Lease shall remain in full force and effect. If a material part of the Premises provided by Landlord in Exhibit A, are damaged, and the damage cannot, by proceeding with reasonable diligence, be repaired within 365 days from the date of such destruction or damage, this Lease may be terminated by Landlord by written notice given to Master Tenant within thirty (30) days after the date of the casualty. Such notice shall terminate this Lease as of the date of the casualty.

16.2 Election to Terminate. If subsequent to completion of Master Tenant's Improvements a material part of the Premises provided by Landlord in Exhibit A, are damaged, and the damage cannot,

by proceeding with reasonable diligence, be repaired within 365 days from the date of such destruction or damage, and Landlord has not terminated this Lease pursuant to Subsection 16.1 above, then this Lease may be terminated by Master Tenant by written notice given to Landlord within sixty (60) days after the date of the casualty. Such notice shall terminate this Lease as of the date of the casualty. If Master Tenant does not make the foregoing election within the required period and Landlord has not terminated the Lease, then Landlord shall promptly and diligently repair the damage and this Lease shall remain in full force and effect (subject to the provisions of Subsection 16.3 below regarding completion of Landlord's repairs). If Landlord is required or elects to repair the Premises under the provisions of Subsection 16.1 and fails to complete such repair within 365 days after the casualty described in Subsection 16.1 above (or at least to complete such repair, within such 365 day period, to the extent that permits substantial resumption of Master Tenant's business (and the businesses of the Subtenants in existence as of the date of the damage or destruction) in the Premises, provided that Landlord thereafter continuously and diligently pursues any remaining required repairs to completion), then thereafter Master Tenant, at Master Tenant's option, may terminate this Lease by giving Landlord written notice of Master Tenant's election to do so at any time prior to the substantial completion of such repair. In such event this Lease shall terminate as of the date of Master Tenant's notice.

16.3 Abatement of Rent. If a material part of the Premises provided by Landlord in Exhibit A, is damaged, and Landlord is required or elects to repair them pursuant to the provisions of Subsection 16.1, the Minimum Monthly Rent and Percentage Rent payable pursuant to Section 4 shall be abated from the date of the casualty until such Premises is sufficiently restored to allow Master Tenant to occupy the Premises and operate within the same manner as existed immediately prior to such damage or destruction. If, however, Master Tenant is able to occupy and operate its business within a portion of the Premises, Minimum Monthly Rent or Percentage Rent shall be abated only for the portion of the Premises that Master Tenant cannot occupy and operate within in the same manner as existed immediately prior to such damage or destruction. Such partial abatement shall be calculated on a square foot basis. The abatement of Minimum Monthly Rent and Percentage Rent (and Master Tenant's right to terminate this Lease as provided in Subsection 16.2 above, shall be Master Tenant's sole remedies due to the occurrence of the casualty. Landlord shall not be liable to Master Tenant or any other person or entity for any direct, indirect or consequential damage due to or arising from the casualty.

16.4 Application of Insurance Proceeds. If any part of the Master Tenant's Work or any other leasehold improvements constructed by or on behalf of Master Tenant is damaged or destroyed, and at the time of such damage or destruction, the leasehold interest of the Master Tenant hereunder, or applicable portion thereof, was encumbered by a Permitted Mortgage, then the proceeds of insurance allocable to such Master Tenant's Work or other leasehold improvements constructed by or on behalf of Master Tenant first shall be applied to pay off or pay down the loan encumbered by the Permitted Mortgage unless the applicable Permitted Mortgagee allows such insurance proceeds to be used to restore such Master Tenant's Work or other leasehold improvements.

SECTION 17. CONDEMNATION.

17.1 Total Condemnation. If, during the term of this Lease, the whole of the Premises shall be taken pursuant to any condemnation proceeding or a part of the Premises is taken pursuant to any condemnation proceeding and the remaining portion is not suitable for the purposes for which Master Tenant was using the Premises prior to the taking, then this Lease shall terminate as of the date that actual physical possession of the Premises is taken, and after that date, both Landlord and Master Tenant shall be released from any future obligations arising under this Lease.

17.2 Partial Condemnation. If, during the term of this Lease, only a part of the Premises is taken pursuant to any condemnation proceeding and the remaining portion is suitable for the purposes for which Master Tenant was using the Premises prior to the taking in the sole discretion of Master Tenant, then this Lease shall, as to the part so taken, terminate as of the date that actual physical possession of such portion of the Premises is taken, and after that date, both Landlord and Master Tenant shall be released from any future obligations under this Lease with respect to such portion of the Premises taken.

17.3 Condemnation Award. If the whole or any part of the Premises are taken pursuant to any condemnation proceeding, then Landlord shall be entitled to the entirety of any condemnation award except that portion allocable to the value of Master Tenant's leasehold interest of the unexpired term of this Lease, any Master Tenant's Property, Subtenant's Personal Property and/or any unsalvageable trade fixtures or furnishings owned by Master Tenant, any amounts specifically awarded or agreed upon by the Master Tenant and the condemning authority for the unamortized portion of Master Tenant's leasehold improvements and each Subtenant's leasehold improvements shall be the property of Master Tenant (except that the portion of the condemnation award allocable to each Subtenant's Personal Property and each Subtenant's leasehold improvements shall be awarded to Master Tenant or the applicable Subtenant(s), as their interests may appear, or as provided in the applicable Sublease) ("Master Tenant's Award"). The foregoing notwithstanding, if the whole or a portion of the Premises shall be taken pursuant to any condemnation proceeding and at that time the leasehold interest of the Master Tenant, or applicable portion thereof, was encumbered by a Permitted Mortgage, then Master Tenant's Award first shall be applied to pay off or pay down the loan encumbered by the Permitted Mortgage. Master Tenant shall require in any sublease of the Premises, that any Subtenant waive any and all rights against any public entity and/or the Landlord for any portion of the condemnation award relating to the Subtenant(s) value of the leasehold interest of any unexpired term.

17.4 Effect of Termination. In the event this Lease is canceled or terminated pursuant to any of the provisions of this Section 17 all rentals and other charges payable on the part of Master Tenant to Landlord hereunder shall be paid either as of the date upon which actual physical possession shall be taken by the condemner, or as of the date upon which Master Tenant ceases doing business in, upon or from the Premises, whichever first occurs; and the parties shall thereupon be released from all further liability hereunder, except for any liability arising prior to the date upon which actual physical possession shall be taken by the condemner.

SECTION 18. DEFAULT, REMEDIES, AND TERMINATION.

18.1 Master Tenant's Default. If: (i) Master Tenant shall fail to comply with any of the provisions herein providing for the construction of the Master Tenant's Work, and such failure shall continue for thirty (30) days after receipt of written notice thereof, unless Master Tenant shall have taken steps in good faith within such period to remedy such failure and is continuing to so act with diligence and continuity; or (ii) Master Tenant shall fail to pay any rent or other monies due under this Lease after the same are due, and such failure shall continue for ten (10) days after receipt of written notice thereof to Master Tenant, or (iii) Master Tenant shall fail to perform any other term, covenant, or condition herein contained, and such failure shall continue for thirty (30) days after receipt of written notice thereof, unless Master Tenant shall have taken steps in good faith within such period to remedy such failure and is continuing to so act with diligence and continuity and further, where possession of the Premises or portion thereof is necessary to cure a default under this Lease, Master Tenant will not be considered to be in default under this Lease as a result of a breach by a Subtenant under its sublease so long as Master Tenant has sent notice of default to, and commenced legal action against the Subtenant and is diligently and continuously pursuing an unlawful detainer action or other legal proceedings required to regain possession of the Premises or portion thereof from such Subtenant, or (iv) the Master Tenant's interest herein or any part thereof be assigned or transferred, either voluntarily or by operation of law, except pursuant to a Permitted Transfer or Section 14.2 or Section 15, whether by judgment, execution, death or any other means, or (v) the Master Tenant shall file any petition or institute any proceedings under any bankruptcy act, state or federal, or if such petition or proceeding be filed or be instituted or taken against the Master Tenant and such petition remains undischarged for a period of 90 days; or if any receiver of the business or of the property or assets of Master Tenant shall be appointed by any court (except a receiver appointed at the instance or request of the Landlord) and Master Tenant fails to obtain dissolution of the receiver within 90 days after appointment of the receiver; or (vi) Master Tenant shall make a general or any assignment for the benefit of its creditors; or (vii) Master Tenant shall abandon (other than a temporary cessation of operations in connection with renovations of the Premises to which Master Tenant has obtained Landlord's approval, if applicable, as required by the terms hereof) the Premises; or (viii) Master Tenant has made any written or oral representation to the Landlord in connection with this Lease that Master Tenant knows was false in any material respect as of the date

made or submitted, Master Tenant knew or should have known that the Landlord would rely on such false representation, and the Landlord relies on such false representation to its detriment in any material respect, then in any of such events Landlord shall have the following options, subject to the provisions of Section 15:

18.1.1 To collect, by suit or otherwise, each installment of rent or other sum as it becomes due hereunder, or to enforce by suit or otherwise, any other term or provision hereof on the part of Master Tenant required to be kept or performed; and/or

18.1.2 To reenter the Premises, remove all persons therefrom, take possession of the Premises and of all equipment, fixtures and personal property thereon or therein, and either with or without terminating this Lease to make commercially reasonable efforts to relet the Premises or any portion thereof (but nothing contained herein shall be construed as obligating Landlord to relet the whole or any portion of the Premises) for such term or terms (which may be for a term extending beyond the term of the Lease) and at such reasonable rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable. In addition to the foregoing, Landlord shall have the right, but not the obligation to, make such alterations and repairs to the Premises, or to divide or subdivide the Premises, as may be required or occasioned by any such reletting. Provided, however, Landlord's right to make alterations, repairs or improvements to the Premises after Master Tenant's default shall be limited to those alterations, repairs, and/or improvements necessary for the purpose of reletting the Premises. In the event Landlord relets the Premises, or any portion thereof, it shall execute any such lease in its own name, but the Master Tenant in such lease of reletting shall be under no obligation whatsoever to see to the application by Landlord of any rent collected by Landlord for the account of Master Tenant, nor shall Master Tenant hereunder have any right or authority whatsoever to collect any rent as the Master Tenant in the lease of reletting. Upon any such reletting, the rents received on any such reletting shall be applied first to the expenses of reletting and collecting, including necessary renovations and alterations of the Premises and reasonable attorneys' fees and any real estate commissions actually paid, and thereafter toward payment of all sums due or to become due to Landlord hereunder; if a sufficient sum shall not be thus realized to pay such rent and other charges, Master Tenant shall pay to Landlord monthly any deficiency, and Landlord may sue therefor as each such deficiency shall arise, but if the Premises are relet for an amount in excess of that necessary to pay such rent and other charges, Master Tenant shall not be entitled to any such excess; and/or

18.1.3 To terminate this Lease, in which event Master Tenant agrees immediately to surrender possession of the Premises and to pay to the Landlord as the amount of damage sustained by Landlord by reason of Master Tenant's breach of this Lease, the following:

(a) The worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus

(b) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss Master Tenant proves could have been reasonably avoided; plus

(c) 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 award exceeds the amount of such rental loss that Master Tenant proves could be reasonably avoided.

As used in Sections 18.1.3(a) and 18.1.3(a) above, the term "worth at the time of award" is computed by allowing interest from the date such amount becomes due and payable at one percent (1%) per annum above the rate which the Bank of America announces publicly at its San Francisco or Los Angeles executive offices as its "Reference Rate" for unsecured commercial loans.

As used in Section 18.1.3(b) above, the term "worth at the time of the award" is computed by discounting the amount determined pursuant to Section 18.1.3(b) at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

18.1.4 Pursuant to its rights of re-entry, Landlord may remove all persons from the Premises (but not any Subtenants to which Landlord is obligated to attorn) using such force as may be reasonably necessary therefor and may, but shall not be obligated to, remove all property therefrom, including, but not limited to, Master Tenant's property (but not any Subtenant's Personal Property), and may, but shall not be obligated to, enforce any rights Landlord may have against said property, or store the same in any public or private warehouse or elsewhere at the cost and for the account of Master Tenant or the owners or owner thereof, or to treat all or portions of said property as having no value and to dispose of said property accordingly. Anything contained herein to the contrary notwithstanding, Landlord shall not be deemed to have terminated this Lease or the liability of Master Tenant to pay any rent or other sum of money thereafter to accrue hereunder, or Master Tenant's liability for damages under any of the provisions hereof, by any such re-entry, or by any action in unlawful detainer or otherwise to obtain possession of the Premises, unless Landlord shall have notified Master Tenant in writing that Landlord has so elected to terminate this Lease. Master Tenant covenants and agrees that the service by Landlord of any notice in unlawful detainer and the surrender of possession pursuant to such notice shall not (unless Landlord elects to the contrary at the time of, or at any time subsequent to, the service of such notice, and Landlord's election be evidenced by written notice thereof to Master Tenant) be deemed to be a termination of this Lease, or the termination of any liability of Master Tenant hereunder to Landlord.

18.2 Landlord's Default. If Landlord fails to comply with or defaults in the performance of any provision of the Lease, Master Tenant shall have the right (but not the obligation) in addition to any and all other rights and remedies available to Master Tenant at law or in equity, to cure such nonconformance or default on behalf of Landlord, upon 30 days prior written notice to Landlord and to any mortgagee of Landlord, if the name and address of such mortgagee has been previously provided to Master Tenant by Landlord, except in an emergency, Master Tenant may cure such nonconformance or default without such written notice so long as Master Tenant makes reasonable efforts to notify Landlord of such emergency. Upon receipt from Master Tenant of notice of such cure and demand for payment, Landlord shall repay any expenditure made by Master Tenant within 30 days of written request therefor. If Landlord fails to make such repayment within such 30 day period, then, anything herein to the contrary notwithstanding, Master Tenant may offset the amount owed it by Landlord pursuant to this Section 18.2 against the Minimum Monthly Rent and/or Percentage Rent payable by Master Tenant to Landlord hereunder until fully offset.

SECTION 19. TOWN REQUIREMENTS.

19.1 Non-discrimination. Master Tenant shall not restrict the rental, use, occupancy, tenure, or enjoyment of the Premises or any portion thereof, on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin of any person. During the term hereof, any contracts or subleases relating to the construction, use or occupancy of the Premises or any portion thereof, shall contain or be subject to substantially the following nondiscrimination and nonsegregation clauses:

"There shall be no discrimination against or segregation of, any person, or group of persons, on account of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in the sale, lease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee, himself or herself, 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, or vendees of the land."

19.2 Enforcement of Town Requirements. In enforcing Section 19.1, Landlord may require Master Tenant to terminate the sublease of any Subtenant that fails to comply with that Section. Failure of Master Tenant to commence actions to terminate the subleases of noncomplying Subtenants within 90 days of notice from Landlord shall constitute an event of default by the Master Tenant.

SECTION 20. COMPLIANCE WITH LAW.

20.1 General. During the Lease term, Master Tenant, at its sole cost and expense, shall comply promptly with all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances ("Laws") pertaining to Master Tenant's use of the Premises or the improvements thereon, including those which require the making of any structural, unforeseen or extraordinary changes to the Premises, whether or not any such Laws which may be hereafter enacted were within the contemplation of the parties at the time of execution of this Lease, or involve a change of policy on the part of the governmental body enacting the same. In connection with the foregoing, Master Tenant acknowledges that Landlord, acting not as Landlord but in its governmental capacity, has certain governmental regulatory authority over the Premises and agrees that "Law" as defined herein includes any legal requirement imposed by Landlord acting not as Landlord but in its capacity as a governmental regulatory body.

20.2 Regulations Requiring Modifications to Premises. If, under its regulatory authority, Town adopts new laws, rules or ordinances that are generally applicable to commercial buildings and which require upgrades, changes, or modifications to the Premises in order to comply with such Town-adopted laws, rules, or regulations, then the cost or expense of compliance shall be as follows:

(a) Town shall bear the cost or expense of compliance to the extent that such laws, rules or regulations require modifications to the structure or shell of the Premises in the condition delivered to Master Tenant in Exhibit A.

(b) During the first ten years following the Rent Commencement Date, Master Tenant shall bear the cost or expense of compliance to the extent that such new laws, rules, or regulations require modifications to Master Tenant's Work and any subsequent alterations thereto. After the tenth year following the Rent Commencement Date, Landlord and Master Tenant shall split equally all such costs.

SECTION 21. GENERAL PROVISIONS.

21.1 Notices, Demands, and Communications Between the Parties. All notices and other communications required or permitted to be given under this Agreement shall be in writing and may be delivered by hand, by facsimile transmission with verification of receipt, by email, by overnight courier service, or by United States mail, postage prepaid and return receipt requested, addressed to the respective parties as follows:

Town: Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030
Attention: Town Manager
Email: manager@losgatosca.gov

With copy to: Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030
Attention: City Attorney
Email: attorney@losgatosca.gov

To Tenant: Tait Firehouse, LLC

223 West Main Street Suite B
Los Gatos CA 95030
Attr: Donald Imwalle, Jr.

Email: don@imwalledev.com
CC: jimfoley@pennantproperties.com
Jason@farwellrashkis.com

or to such other address as any party may designate by notice in accordance with this Section.

A copy of any notice of a legal nature, including, but not limited to, any claims against Town, its officers or employees shall also be served in the manner specified above to the following address:

Town of Los Gatos
City Attorney's Office
110 E. Main Street
Los Gatos, CA 95030

Notice shall be deemed effective on the date of personal delivery by hand or the date of receipt of facsimile transmission (with verification of receipt) or email, or if sent by overnight courier service, then one business day after delivery of such notice to such courier service or, if mailed, three days after deposit in the mail.

21.2 Warranty Against Payment of Consideration for Agreement. Master Tenant warrants that it has not paid or given, and will not pay or give, any third party (other than Colliers International who introduced Landlord and Master Tenant to one another) any money or other consideration for obtaining this Agreement.

21.3 Non-liability of Town Officials and Employees. No member, official, or employee of the Town shall be personally liable to Master Tenant or any successor in interest of Master Tenant, in the event of any default or breach by the Town or for any amount which may become due to Master Tenant or to its successor, or on any obligations under the terms of this Agreement.

21.4 Enforced Delay; Extension of Time of Performance. The specific provisions of this Agreement to the contrary notwithstanding, except for payment of any monetary payments required under this Agreement, neither party shall be in default under this Agreement if an obligation to perform is delayed due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; inability to obtain or delay in obtaining materials due to lack of supply; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or enjoining to the performance of the terms of this Agreement. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within ten days of the commencement of the cause. The foregoing notwithstanding, the total time period excused under this Section shall not exceed two years.

21.5 Approvals and Town Manager's Authority. Approvals required of the Town (except for approvals expressly identified herein as being in the sole discretion of the Town) or Master Tenant shall not be unreasonably withheld, and approval or disapproval shall be given within a reasonable time. The Town Manager or his/her designee shall have the authority to act on behalf of the Town with regard to any and all actions required of the Town under this Lease. Such actions include but are not limited to the issuance of approvals and disapprovals and execution of all documents, including minor amendments to this Lease.

21.6 Holding Over. If Master Tenant shall hold over the term of this Lease, without Landlord's prior written consent, such holding over shall be construed as a tenancy from month to month, on the same terms and conditions as this Lease, and at 150% of the Minimum Monthly Rent or the monthly Percentage Rent, whichever is higher, in effect during the final full calendar of the term of this Lease.

21.7 Time of the Essence. Time is of the essence hereof, and waiver by the Landlord or Master Tenant of a breach of any term, covenant or condition herein contained, whether express or implied, shall not constitute a waiver of any subsequent breach thereof, or a breach of any other term, covenant, or condition herein contained, and acceptance of rent hereunder shall not be a waiver of any breach, except a breach of covenant to pay the rent so accepted. No acceptance by Landlord of any partial payment of any sum due hereunder shall be deemed an accord and satisfaction or otherwise bar Landlord from recovering the *full* amount due, even if such payment is designated "payment in full," bears any restrictive endorsement, or is otherwise conditionally tendered. The times for Master Tenant's performance of any obligations set forth in this Lease and the Exhibits may be extended by the Landlord's Town Manager, if he finds, at his sole discretion, that Master Tenant has been delayed for reasons not in Master Tenant's control. Any such extension shall be in writing.

21.8 Successors and Assigns. Subject to the provisions of Section 14 hereof, this Lease shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and permitted assigns of the parties hereto.

21.9 Landlord's Access. Landlord and its agents shall have the right, subject to the rights of the Subtenants then in effect, to enter the Premises upon 72 hours prior written notice for the purpose of inspecting the same, and making such alterations, repairs, improvements or additions to the Premises as are deemed necessary or desirable consistent with this Lease. Notwithstanding the foregoing, in the event of an emergency requiring Landlord's entry into the Premises, Landlord may give Master Tenant shorter notice in any manner that is practicable under the circumstances. When entering or performing any repair or other work in the Premises, Landlord, its agents, employees and/or contractors (a) shall identify themselves to Master Tenant's personnel immediately upon entering the Premises, and (b) shall not, in any way, materially or unreasonably affect, interrupt or interfere with Master Tenant's (or any of its Subtenants') use, business or operations on the Premises or obstruct the visibility of or access to the Premises.

21.10 Legal Relationship. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venturer or any association between Landlord and Master Tenant. Landlord and Master Tenant expressly agree that neither the method of computation of rent nor any act of the parties hereto shall be deemed to create any relationship between Landlord and Master Tenant other than the relationship of Landlord and Master Tenant.

21.11 Consents. Whenever the right of approval or consent is given to a party pursuant to this Lease, the party shall not unreasonably withhold, condition or delay its consent unless this Lease expressly provides otherwise. All approvals and reviews required of Landlord under this Lease may be undertaken and/or given by Landlord's Town Manager.

21.12 General. The terms "Landlord" and "Master Tenant" herein or any pronouns used in place thereof shall mean and include the masculine or feminine, the singular or plural number, and jointly and severally individuals, firms or corporations, and each of their respective heirs, executors, administrators, successors and permitted assigns, according to the context hereof. The headings of Sections herein are inserted only for convenience and reference and shall in no way define or limit the scope or intent of any provisions of this Lease. This Lease shall be construed under the laws of the State of California, and venue shall be in in the applicable courts located in Santa Clara County, California.

21.13 Quiet Enjoyment. Upon payment of the rent as aforesaid and upon the observance and performance by Master Tenant of all of the terms and provisions to be observed by Master Tenant under this Lease, Master Tenant shall peaceably hold and enjoy the Premises for the term hereof without hindrance or interruption by Landlord or any other person, except as herein expressly provided.

21.14 Regulatory Authority. Master Tenant acknowledges that, at any time when the Town is the Landlord hereunder, Landlord shall have certain governmental regulatory authority over the Premises. Master Tenant agrees and expressly acknowledges that any approval or consent required or permitted

hereunder by the Town, acting in its capacity as Landlord under this Lease, (1) is distinct from any approval or consent of such entity acting in the capacity of governmental regulatory authority, whether or not related to the same matter, and (2) shall not compromise, diminish or in any way limit the authority of such entity to give, deny or condition its approval or consent when acting as a governmental regulatory authority.

21.15 Costs and Expenses. Whenever this Lease provides that either party shall be entitled to recover fees, costs or expenses from the other, such fees, costs or expenses shall be reasonable in nature.

21.16 Entire Agreement. This Lease and the exhibits attached hereto (which are incorporated herein by this reference) represent the entire agreement between the parties concerning the subject matter hereof and supersede any prior written or verbal agreements or understandings with respect thereto.

21.17 Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

21.18 Joint and Several. If Master Tenant is more than one party, then the parties and entities who comprise Master Tenant under this Agreement from time to time, are jointly and severally liable to the Town for the performance of all of the promises and obligations of Master Tenant under this Agreement. In the event of any default by Master Tenant hereunder, the Town may proceed against any one or more of the aforementioned parties who comprise Master Tenant without waiving its rights to proceed against any of the others.

21.19 Memorandum of Agreement. The parties hereto shall execute, acknowledge and record the Memorandum of Agreement, in the form attached hereto as Exhibit D, within ten days after the Rent Commencement Date.

21.20 CASp Inspection. Pursuant to California Civil Code Section 1938, Landlord hereby discloses, and Tenant hereby acknowledges, that the Premises has not been inspected by a Certified Access Specialist ("CASp"). California Civil Code Section 1938 also requires that this Lease contain the following statement:

"A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs to correct violations of the construction related accessibility standards within the premises."

In accordance with the foregoing, Master Tenant, upon at least thirty (30) days' prior written notice to Landlord, shall have the right to require a CASp inspection of the Premises. If Master Tenant requires a CASp inspection of the Premises, then: (i) Landlord and Tenant shall mutually agree on the arrangements for the time and manner of the CASp inspection during such thirty (30) day period; (ii) Master Tenant shall be solely responsible to pay the cost of the CASp inspection as and when required by the CASp. It is understood by the parties that Landlord shall not be required to perform, or cause to be performed, any and all repairs needed to correct violations of the construction related accessibility standards within or relating to the Premises and Master Tenant can terminate this lease if it is determined, by Master Tenant that any repairs to correct violations would be too costly.

21.21 First Right of Refusal. If Landlord receives from a third party a bona fide offer to purchase the Premises, before Landlord may accept such an offer, Landlord must first give written notice to Master Tenant of said offer. Master Tenant shall have thirty (30) days from the date of receipt of said offer, to provide Landlord with written acceptance of the offer, upon the same terms and conditions as set forth therein (but in addition thereto, such sale shall include all rights of Landlord in and to this Lease). If Master Tenant accepts said offer, closing shall take place within sixty (60) days from the date of acceptance. Master Tenant may elect to assign Master Tenant's rights to purchase the Premises to the parent of or a subsidiary of the Master Tenant, or other entity wholly owned by Master Tenant or its Managing Member. If Master Tenant fails to accept said offer within the thirty (30) days provided herein, Landlord may proceed to sell to said third party in accordance with the terms of the offer. If Landlord has not consummated a sale within one hundred eighty (180) days after the expiration of Master Tenant's option rights hereunder, the restrictions and options herein provided shall be restored and shall continue in full force and effect, and so long as these restrictions and options remain in effect the Landlord shall not thereafter sell or transfer the Premises without first giving Master Tenant notice as herein provided and otherwise complying with the foregoing provisions.

21.22 Force Majeure. This Lease and the obligations of the parties hereunder shall not be affected or impaired because a party is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, labor troubles, acts of God, epidemics, or any other cause beyond the reasonable control of such party. If Tenant is required to stop construction or is compelled to close its business or cease its business activities pursuant to a government order, recommendation or epidemic (or due to unavailability of labor or materials related to such epidemic), then Tenant shall not be required to pay Base Rent for the period of such closure; provided, however, that the Term of the Lease shall be extended by the number of days or months that Tenant's business is ordered closed and during such extended period Tenant's obligation to pay Base Rent shall continue (such Base Rent being suspended, such that Tenant receives the benefit of any rental abatement). If Tenant's occupancy is reduced by a government order then, for such period that Tenant's occupancy is reduced, the Base Rent shall be reduced pro rata. By way of example, if Tenant is required to limit occupancy to twenty-five percent (25%) pursuant to a government order then, for the period of time that such occupancy is limited to 25%, the Base Rent shall be reduced to 25%. As a condition precedent to availing itself of either a full or partial rental abatement as provided in this Section 21.22, Tenant must provide reasonable evidence to Landlord that Tenant has tendered a claim under all applicable insurance policies that Tenant is required to carry pursuant to Section 9] of this Lease and has pursued any and all state and federal financial assistance offered in response or relation to a government-imposed order to close or reduce occupancy, when and if such assistance is available. If Tenant receives any insurance proceeds or other financial assistance specified to cover any portion of its Base Rent or other monetary obligations under this Lease owed to Landlord (the "Rental Compensation"), then such Rental Compensation shall reduce any full or partial rental abatement that would otherwise be available to Tenant pursuant to this Section 21.22 in the amount of the Rental Compensation (provided that if the Rental Compensation covers rent and other costs, Tenant may first apply the monies to other costs, and the balance to Base Rent, and the abated rent shall be reduced by the portion of the Rental Compensation attributable to Base Rent).

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

LANDLORD:

THE TOWN OF LOS GATOS

By: ^{DocuSigned by:} Laurel Prevetti
Laurel Prevetti
Town Manager

Attest:

^{DocuSigned by:} Shelley Neis
Town Clerk
Shelley Neis

Approved as to form:

^{DocuSigned by:} Robert W. Schultz
Town Attorney
Robert W. Schultz

MASTER TENANT:

Tait Firehouse, LLC,
a California Limited Liability Company

By: Imwalle Asset Management, LLC
a California Limited Liability Company

By: ^{DocuSigned by:} Donald Imwalle
Don Imwalle, Jr., Managing Member

Exhibit A

Description and Site Plan Showing Location of Premises

(NEXT PAGE)

Exhibit A



FORMER MUSEUM PROPERTY
SITE DESCRIPTION

TAX/PLAT MAP



EXISTING SITE/ FLOOR PLAN

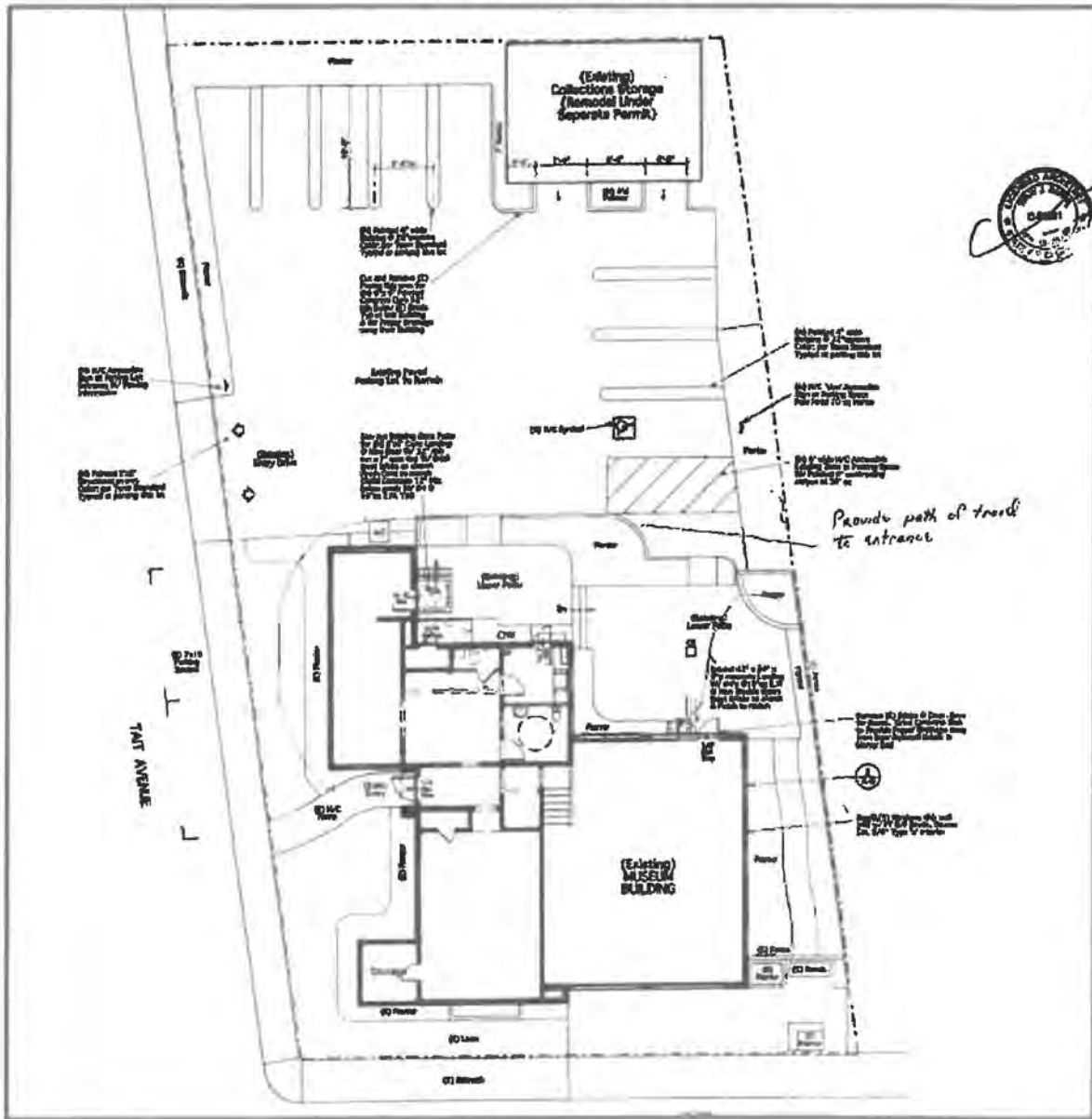


Exhibit B

Form of Notice of Lease Term Dates

[On Town Letterhead]

[Date]

Tait Firehouse, LLC
223 West Main Street Suite B
Los Gatos, CA 95030
Attn: Donald Imwalle, Jr.
Email: don@imwalledev.com
CC: jimfoley@pennantproperties.com
Jason@farwellrashkis.com

Re: Master Lease – 4 Tait Ave, Los Gatos, CA 95030

Dear Mr. Imwalle:

In accordance with that certain Master Lease dated _____, 2020, by and between the Town of Los Gatos and Tait Firehouse, LLC for the above referenced property, this letter is to confirm that the Rent Commencement Date as defined in Section 1.11 of the Master Lease is insert date. Please countersign this letter in the space below to acknowledge your agreement.

Please don't hesitate to contact me should you have any questions.

Sincerely yours,

_____, Town Manager

Acknowledged and Agreed this ____ day of _____, 202__

on behalf of

Tait Firehouse, LLC,
a California Limited Liability Company

By: Imwalle Asset Management, LLC
a California Limited Liability Company

By: _____
Don Imwalle, Jr., Managing Member

Exhibit C

Insurance Requirements for Master Tenant and Subtenants

Master Tenant is required to procure and provide proof of the insurance coverage required by Master Tenant as outlined in this Exhibit in the form of certificates and endorsements. Master Tenant shall obtain and maintain insurance against claims which may arise from or in connection with the activities of Master Tenant and its Subtenants, including agents, invitees, employees, and contractors of Master Tenant and its Subtenants, and must remain in full force and effect at all times during the period covered by the Lease Agreement. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. If Master Tenant fails to provide any of the required coverage in full compliance with the requirements set forth herein, Town may, at its sole discretion, terminate the Lease for default. Master Tenant further understands that the Town reserves the right to reasonably modify the insurance requirements set forth herein, with thirty (30) days' notice provided to Master Tenant, at any time as deemed necessary to protect the interests of the Town.

(A) **Insurance Types and Limits.** The following insurance types and limits are required unless otherwise specified in the Lease Agreement:

- (1) **Commercial General Liability Insurance ("CGL"):** Master Tenant shall maintain CGL and shall include coverage for liability arising from Master Tenant and its Subtenants, including invitees, employees, agents, or contractors of Master Tenant and its Subtenants, against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least One Million Dollars (\$1,000,000.00) for property damage.
 - i. **Liquor Liability:** Master Tenant shall maintain Liquor Liability, either under its CGL policy or as a separate policy, providing protection in the minimum amount of One Million Dollars (\$1,000,000.00) each claim.
- (2) **Workers' Compensation Insurance and Employer's Liability:** Master Tenant shall maintain Workers Compensation coverage, as required by law. The policy must comply with the requirements of the California Workers' Compensation Insurance and Safety Act and provide protection in the minimum amount of One Million Dollars (\$1,000,000.00) for any one accident or occurrence. If Master Tenant is self-insured, Master Tenant must provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.
- (3) **Automobile Liability:** Master Tenant shall maintain Automobile Liability covering all owned, non-owned and hired automobiles, against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least One Million Dollars (\$1,000,000.00) for property damage.
- (4) **Property:** Master Tenant shall maintain All Risk Property coverage for the appropriate limit to cover all personal property of Master Tenant, in, on, or about the Premises, covering the full replacement cost of such personal property to include furniture, installed fixtures, improvements, equipment, inventory and any other personal property of the Master Tenant. Master Tenant, and not any of the Subtenants, also shall maintain All Risk Property coverage for the full replacement cost of the Master Tenant's Work.

- i. **Business Interruption:** Master Tenant shall maintain adequate protection against business interruption and loss of income, either as part of a comprehensive Business Owner's Policy or under its Property Insurance.

(B) **Required Endorsements.** Master Tenant shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

(1) ALL Policies:

"Waiver of Subrogation" - Each required policy must include an endorsement providing that the carrier agrees to waive any right of subrogation it may have against the Town of Los Gatos and the Town's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

(2) General Liability:

- a. "Additionally Insured" - The Town of Los Gatos, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds;
- b. "Primary and Non-Contributing" - Insurance shall be primary non-contributing;
- c. "Separation of Insureds" - The inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.

(C) **Subtenants.** Master Tenant must ensure that each Subtenant is required to maintain the equal or greater insurance coverages required in this Exhibit, including those requirements related to the additional insureds and waiver of subrogation. However, Subtenants which do not engage in the sale and/or serving of alcohol in, on, or about the Premises, are not required to maintain Liquor Liability. Also, Subtenants shall not be obligated to insure the Master Tenant's Work.

(D) **Qualification of Insurers.** All insurance required pursuant to this Lease Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of "A-" or better and a financial size rating of "VII" or better.

(E) **Certificates.** Master Tenant shall furnish the Town with copies of all policies or certificates maintained by Master Tenant as outlined herein, whether new or modified, promptly upon receipt. Further, upon request by the Town, Master Tenant shall furnish the Town with copies of all policies or certificates maintained by Subtenants as outlined herein, whether new or modified. No policy subject to the Master Tenant's Lease with the Town shall be reduced, canceled, allowed to expire, or materially changed except after thirty (30) days' notice by the insurer to Town, unless due to non-payment of premiums, in which case ten (10) days written notice must be made to Town. Certificates, including renewal certificates, may be mailed electronically to _____ or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

Town of Los Gatos
Attn: Risk Management
110 E. Main Street
Los Gatos, CA 95030

Exhibit D

Memorandum of Lease Agreement

RECORDING REQUESTED BY

AND WHEN RECORDED RETURN TO:

Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95037
Attn: Town Manager

THIS DOCUMENT IS EXEMPT FROM
RECORDING FEES PURSUANT TO CALIFORNIA
GOVERNMENT CODE §§ 6103, 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

MEMORANDUM OF LEASE AGREEMENT

This Memorandum of Lease Agreement (this "**Memorandum**") is dated as of _____, 2020, and is between the Town of Los Gatos, a California municipal corporation ("**Landlord**"), and Tait Firehouse, LLC, a California limited liability company ("**Master Tenant**").

Recitals

A. Landlord and Master Tenant entered into that certain Lease Agreement, effective _____, 2020 ("**Lease**"), pursuant to which Landlord leased to Master Tenant and Master Tenant leased from Landlord the space located on the real property described in the attached Exhibit A (the "**Premises**").

B. Landlord and Master Tenant desire to execute this Memorandum to provide constructive notice of Master Tenant's rights under the Lease to all third parties.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

Agreement

1. Term. Landlord leases the Premises to Master Tenant for an initial term of thirty-four years and eleven months (34 years 11 months) commencing on the Commencement Date of _____, 202_, and expiring on _____, 205_.

2. Lease Terms. The lease of the Premises to Master Tenant is pursuant to the Lease, which is incorporated in this Memorandum by reference.

3. Assignment. Except as otherwise expressly provided in the Lease, Master Tenant's rights and obligations under the Lease may not be assigned without Landlord's prior written consent, which consent may be granted or withheld by Landlord in its sole and exclusive discretion, and any assignment without this consent will be void.

4. Successors and Assigns. This Memorandum and the Lease are binding and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject, however, to the provisions of the Lease on assignment.

5. Governing Law. This Memorandum and the Lease are governed by California law.

Executed as of the date first above written.

LANDLORD:

Town of Los Gatos,
a California municipal corporation

By: _____
Print Name: _____
Title: _____

MASTER TENANT:

Tait Firehouse, LLC,
a California Limited Liability Company

By: Imwalle Asset Management, LLC
a California Limited Liability Company

By: _____
Don Imwalle, Jr., Managing Member

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____ ss.

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____(Seal)
(Signature)

FIRST AMENDMENT TO AGREEMENT

This FIRST AMENDMENT TO AGREEMENT is dated for identification this 7th day of February 2023 and amends that certain Lease Agreement for Property Management Services dated October 29, 2020, made by and between the Town of Los Gatos ("Landlord" or the "Town"), and Tait Firehouse, LLC, a California Limited Liability Company ("Master Tenant").

RECITALS

A. Town and Master Tenant entered into a Lease Agreement for Property Management Services for the management and leasing of 4 Tait Avenue dated October 29, 2020 ("Agreement"), a copy of which is attached hereto and incorporated by reference as Attachment 1 to this Amendment.

Whereas, now the Town and Master Tenant mutually agree to amend the terms of the Agreement as follows:

FIRST AMENDMENT

1. The parties agree that the "Effective Date" referenced on Page 1 of the Master Lease ("Lease") shall be October 29th 2020.
2. **Section 1.4 Lease Term.** As provided in Section 3 below, the Term of the Lease commences on the ~~Commencement~~ **Effective** Date and terminates, unless earlier terminated 34 years and 11 months from the ~~Commencement~~ **Effective** Date as provided in Section 3.1 below.
3. **Section 1.5 Lease Contingency.** This Lease is contingent on the Master Tenant submitting the necessary applications and documents to the Town for approval of the improvements and use of the property, such as, but not limited to, general plan amendment, a proposed site plan, concept drawings for the site plan, massing diagrams, and renderings identifying the location, general configuration, and proposed design characteristics of the buildings, parking spaces, landscaping, property subdivision, and other aspects of the improvement and uses. The Master Tenant acknowledges that the Project Proposal requires approvals and entitlements from the Town and shall submit a formal application for the Planning Approvals. Costs and fees associated with the Planning Approvals review shall be borne by the Master tenant. Nothing in this Agreement shall be construed to compel the Town to approve or make any findings with respect to Planning Approvals. If Master Tenant is unable to obtain Planning Approvals, either Landlord or Master Tenant may terminate this Lease by giving written notice of termination to the other party. Upon the giving of such notice of termination, this Lease shall terminate without liability of either party to the other.

This Lease is also contingent on Master Tenant and a Subtenant having executed a binding initial Sublease for any portion of the Premises and occupancy by Subtenants (the "Contingency"). If the Contingency has not been satisfied or waived by Landlord on or before the date ~~twelve (12) months following the Effective Date~~ **January 1, 2024**, either

Landlord or Master Tenant may terminate this Lease by giving written notice of termination to the other party.

- 4. **Section 3.1 Term.** The "Term" of this Lease shall commence as of the Effective Date ("~~Commencement~~ Effective Date") and shall end, unless earlier terminated or extended pursuant to the terms and conditions of this Lease, on the date 34 years and 11 months after the ~~Commencement~~ Effective Date ("Termination Date").
- 5. **Section 7.3 Continuous Operations.** Master Tenant shall use its commercially reasonable efforts, subject to the provisions of Section 7.2 above, to continuously sublet the Premises to approved Subtenants for commercial purposes during the term of this lease. If, for any reason, a Subtenant quits its business operations on the Premises, Master Tenant shall use its commercially reasonable efforts, in accordance with the provisions of Section 7.2 above, to promptly secure another Subtenant reasonably acceptable to Master Tenant and Landlord.

If for any reason ~~during the first three (3) years following the Commencement Date~~ after **January 1, 2024**, the Premises in their entirety are left unleased for a continuous period of eighteen (18) months or more, then either the Landlord or Master Tenant may terminate this Lease by giving written notice of termination to the other, in which case, upon the giving of such notice of termination, each party shall be released of any future liability to the other, except as provided herein.

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

IN WITNESS WHEREOF, the Landlord and Master Tenant have executed this Amendment.

LANDLORD:

MASTER TENANT:

THE TOWN OF LOS GATOS

Tait Firehouse, LLC, a California Limited Liability Co.

By: Imwalle Asset Management, LLC
a California Limited Liability Co.

By: _____

By: _____

Laurel Prevetti, Town Manager

Don Imwalle, Jr., Managing Member

Approved as to Form:

Attest:

Gabrielle Whelan, Town Attorney

Wendy Wood, CMC, Town Clerk