TOWN OF LOS GATOS
PLANNING COMMISSION STAFF REPORT
Meeting Date: November 12, 2014

ITEM NO: 5

PREPARED BY: Jennifer Savage, Senior Planner
jsavage@losgatosca.gov

APPLICATION NO: Conditional Use Permit Application U-13-017

LOCATION: **106 E. Main Street** (Town Civic Center, south side of E. Main Street, between Pageant Way and Villa Avenue)

APPLICANT: Museums of Los Gatos

CONTACT PERSON: Jeff Janoff

PROPERTY OWNER: Town of Los Gatos

APPLICATION SUMMARY: Requesting approval to operate a museum (Museums of Los Gatos) and related activities on property zoned C-1:PD. APN 529-34-108.

DEEMED COMPLETE: October 21, 2014
FINAL DATE TO TAKE ACTION: April 21, 2015

RECOMMENDATION: Forward Conditional Use Permit U-13-017 to the Town Council with a Recommendation of Approval, Subject to the Conditions Contained in this Report.

PROJECT DATA:

General Plan Designation:	Public
Zoning Designation:	C-1:PD – Neighborhood Commercial, Planned Development Overlay
Applicable Plans & Standards:	General Plan
Parcel Size:	1.86 acres

Surrounding Area:

	Existing Land Use	General Plan	Zoning
North	Commercial	Central Business District and Neighborhood Commercial	C-2, C-2:PD, and C-1:PD
East	Commercial and Residential	Neighborhood Commercial and Medium Density Residential	C-1:PD and RM-5:12
South	Residential	Medium Density Residential	R-1D
West	Commercial and Residential	Central Business District and Medium Density Residential	C-2 and RM-5:12

CEQA: The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15301: Existing Facilities.

FINDINGS:

- As required, pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, this project is Categorically Exempt, Section 15301: Existing Facilities.
- As required by Section 29.20.190 of the Town Code for granting a Conditional Use Permit.
- As required by Section IV.B of the Redevelopment Plan for the Central Los Gatos Redevelopment Project that it meets the use set forth in the Town's General Plan.

CONSIDERATIONS: None.

ACTION: Forward Conditional Use Permit U-13-017 to the Town Council with a Recommendation of Approval, subject to the conditions contained in this report.

EXHIBITS:

1. Location Map
2. Findings
3. Recommended Conditions of Approval
4. Lease Agreement
5. Letter of Justification/Written Description, received July 10, 2014 (three pages)
6. Justification for Required CUP Findings, received August 13, 2014 (one page)
7. Alcoholic Beverage Policy (six pages), includes Exhibit A
8. Development Plans (three pages), received July 22, 2014

BACKGROUND:

The Museums of Los Gatos (Museums) currently leases space from the Town of Los Gatos at 4 Tait Avenue and 75 Church Street. The Museums use these spaces to operate a community museum including art and history exhibits, artist talks and lectures, art sales, art workshops, and opening receptions. The Museums also hosts events at the Civic Center and around town, such as the Historic Homes Tour.

In 2013, the Town entered into a lease with the Museums of Los Gatos (Exhibit 4) for the space at 106 E. Main Street, a portion of the space previously occupied by the Town of Los Gatos Library in the Town Civic Center. The proposed project would allow the Museums of Los Gatos

to operate an art and history museum in this space. The Museums of Los Gatos would no longer operate at 4 Tait or 75 Church. The remaining portions of the former Library space would be occupied by Friends of the Library and the Town (Exhibit 8).

The analysis and recommended conditions of approval are consistent with the lease terms. The Planning Commission shall make a recommendation to the Town Council, who will be the final deciding body pursuant to Town Code Section 29.20.755(2).

PROJECT DESCRIPTION:

A. Conditional Use Permit

The applicant is requesting approval to operate an 11,932-square foot art and history museum, Museums of Los Gatos. The proposal includes an art museum and display area on the upper floor and a collection storage room, history museum, museum office, and education lab on the lower floor.

The applicant is proposing public access hours of 11:00 a.m. to 5:00 p.m., seven days a week. The applicant is proposing staff hours from 9:00 a.m. to 5:00 p.m. except when later hours are required for exhibit preparations, receptions, and similar activities.

The applicant is proposing a maximum of eight staff onsite at any given time. However, Museums of Los Gatos also uses interns, volunteers, and docents, and may add additional staff. The applicant is proposing committee meetings during weekdays with a maximum of 20 participants.

The applicant is proposing to rent the subject space for private events, such as weddings and receptions, to provide revenue, introduce the Museums of Los Gatos to a wider audience, and further the Museum's cultural reputation in the community. The applicant is also proposing to use the Town Council Chambers for lectures.

The applicant's proposal includes events with up to 350 attendees, including but not limited to:

- Use of the civic center, pageant grounds, or front lawn
- Receptions
- Beer and wine service
- Demonstrations
- Artist's talks or interviews
- Music, pre-recorded and live
- Performances
- Exhibit openings
- Fundraisers

- Weddings and other group events
- Catering

The applicant's proposal includes educational programs with up to 100 participants, including but not limited to:

- Children's Explorer program
- Art & History lectures
- Countywide High School Art Show
- Family Art Day
- Life drawing classes

Finally, the applicant is proposing to use a portion of the exterior space as a sculpture garden. The sculpture garden would be located northwest of the building at one of the former Library entrances (indicated in Exhibit A of Exhibit 4).

The applicant submitted a letter of justification/written description (Exhibit 5), justification for required CUP findings (Exhibit 6), and development plans (Exhibit 8).

When reviewing a Conditional Use Permit (CUP), the deciding body should consider the information in the applicant's business plan; however, the key consideration should be the explicit proposed use since the business plan can change from owner to owner. The explicit use may be, and is often, defined in the recommended conditions of approval as a "use" condition. The CUP runs with the land, and the deciding body should review applications based on the explicit use as opposed to the applicant or the applicant's business plan.

Since the use involves on-site consumption of alcohol, the Planning Commission shall make a recommendation to the Town Council, who will be the final deciding body pursuant to the Town Code.

B. Location and Surrounding Neighborhood

The project site is located in the Civic Center on the south side of E. Main Street, between Pageant Way and Villa Avenue (Exhibit 1). The subject tenant space is located on the west side of the property in portions of the space previously occupied by the Town of Los Gatos Library. Commercial uses are located to the west, north, and east; residential uses are located to the west, east, and south.

C. Zoning Compliance

The C-1:PD zoning designation allows museums subject to the approval of a Conditional Use Permit.

ANALYSIS:

A. Proposed Uses

The lease allows uses consistent with business purposes and as approved through a Conditional Use Permit (Section 5.1 of Exhibit 4). The lease also allows the premises to be made available for use for limited purposes (Section 5.4 of Exhibit 4). The lease requires written consent from the Town to sublet the space or for any person to use the space (Section 15 of Exhibit 4).

Art and History Museum

The proposed art and history museum use would include the art museum and display area, a collection storage room, history museum, museum office, and education lab. The proposed conditions of approval include a condition for the art and history museum use (condition 3 of Exhibit 3).

Museum Activities and Events

The museum currently offers museum receptions, demonstrations, artist's talks and lectures, and exhibit openings at their current locations. The applicant is proposing to use the subject space for museum activities and events including but not limited to demonstrations, artist's talks and lectures, performances, exhibit opening receptions, and fundraisers. The activities may include music: pre-recorded and live, beer and wine service, and catering. The applicant is proposing up to 350 attendees.

The proposed museum activities and events are consistent with museum uses and promotional activities. However, the deciding body should consider whether live entertainment and beer and wine service is consistent with the Alcoholic Beverage Policy (Exhibit 7). The Alcoholic Beverage Policy discourages entertainment establishments that serve alcoholic beverages. Therefore, staff has included a condition of approval to limit entertainment to art and history performances and any other entertainment must be consistent with Town Codes and policies (condition 11 of Exhibit 3). The Alcoholic Beverage Policy regulates the consumption of beer and wine, and is analyzed further in this report.

Staff understands the applicant is requesting an unlimited number of Museum events. The Museum's activities and events are for the benefit of the public and community and, given the nature of the Museum's activities and events, they are unlikely to be detrimental to surrounding residences and the Civic Center. However, activities and events with entertainment, beer and wine service, and up to 350 attendees could create impacts to nearby residences, businesses, and other users of the Civic Center. Therefore, the deciding body should consider conditions that minimize potential impacts including hours, maximum number of attendees, and parking.

Events are typically limited for CUPs to reduce the frequency of potential impacts the events may cause. In this case, staff believes that no limit on the number of museum activities and events is acceptable with conditions that limit hours, the number of attendees, live entertainment, and beer and wine service. In addition, museum activities and events that impact parking must be coordinated with the Town Manager's Office (Section 5.2.4 of Exhibit 4; condition 5 of Exhibit 3) to ensure no conflict with Town events, meetings, or operations (condition 5 of Exhibit 3).

Private Social and Corporate Events

The Museums of Los Gatos currently offers its facilities (4 Tait Avenue and 75 Church Street) for rent for social and corporate events, including pre-recorded and live music performances, other performances, fundraisers, weddings, wedding receptions, and other group events. The applicant is proposing to allow the same in the subject space (Exhibit 5) to provide revenue to benefit the Museums. The applicant is proposing events with up to 350 attendees and up to 10 events per month.

The deciding body should consider potential impacts from private and corporate events with music, beer and wine service, and up to 350 attendees. After considering Town operations, events, and meetings, including the operations of the Adult Recreation Center and Public Library, staff recommends 26 events per year, subject to conditions that limit potential impacts (condition 7 of Exhibit 3). This allows approximately one private or corporate event every two weeks and allows the applicant to cluster events during seasons with a higher demand for events.

Educational Programs

The applicant is proposing educational programs including but not limited to a children's explorer program, art and history lectures, Countywide high school art show, family art day, and life drawing classes. The applicant is proposing up to 100 participants. Classes are permitted in the C-1:PD zone with a Conditional Use Permit. This is reflected in the draft conditions (Exhibit 3).

Town Council Chambers, Civic Center, Pageant Grounds, and Front Lawn

Section 5.1.1 of the lease (Exhibit 4) allows uses consistent with Museums of Los Gatos business purposes and approved through a Conditional Use Permit. Section 5.1.3 of the lease allows the applicant to reserve the Town Council Chambers. If the deciding body finds merit with the applicant's proposal, use of the Town Council Chambers, Civic Center, Pageant Grounds, and the Front Lawn shall be subject to Town policies and fees (conditions 14 and 15 of Exhibit 3).

Space Shared with the Town

The former Library space will include approximately 916 square feet with two offices and a conference room for Town use. Consistent with the lease with the Town, these two offices are for exclusive use of by the Town. The Town has the right to use the conference room weekdays during Town business hours. Museums of Los Gatos would have priority for use of the conference room on Saturday, Sunday, and Town Holidays (condition 16 of Exhibit 3 and Section 5.9 of Exhibit 4).

B. Hours of Operation

Public Hours

The applicant is proposing maximum public access hours of 11:00 a.m. to 5:00 p.m., seven days a week. The lease agreement limits their hours to 11:00 a.m. to 7:00 p.m., Thursday through Tuesday, and 1:00 p.m. to 7:00 p.m., on Wednesday. The lease allows additional morning hours for school children when those school children are transported by bus or other vehicles that do not park in any Civic Center lot or on the streets immediately adjacent to the Civic Center. The lease requires that the museum is open to the public a minimum of 25 hours per week unless they are in the process of changing exhibits.

Staff has recommended a condition consistent with the lease (Exhibit 3). The applicant would be able to expand public access hours past 5:00 p.m. to 7:00 p.m., as allowed in the lease, without the need to return to the deciding body for a CUP modification. The recommended condition also limits hours on Wednesdays consistent with the lease.

Staff Hours

The applicant is proposing staff hours from 9:00 a.m. to 5:00 p.m. and unspecified later hours for exhibit preparations, receptions, and similar activities. The lease limits the number of staff on Wednesday prior to 1:00 p.m. to five. Event hours are discussed below. Staff recommends that exhibit preparation activities end by 10:00 p.m. to reduce the potential for disturbances to nearby residences (condition 4 of Exhibit 3). The recommended condition in Exhibit 3 also reflects the applicant's proposed staff hours with the Wednesday limitation included in the lease.

Event Hours

The applicant is not proposing specific hours for events. The lease permits additional evening hours (beyond 7:00 p.m.) for events when no Town meeting or event is scheduled. Staff recommends events permitted up to 10:00 p.m. to minimize the potential for disruptions to nearby residences (located to the west and south of the Civic Center).

Through verbal communications with the applicant, staff understands the applicant is amenable to ending Museum and private events at 10:00 p.m. However, if the deciding body finds merit to allow events past 10:00 p.m., the deciding body shall make the findings required by the Town's current Alcoholic Beverage Policy (Exhibit 7) for alcoholic beverage service past 10:00 p.m.

Delivery Hours

The applicant is proposing to use the western door for delivery vehicles. There are two constraints for deliveries to consider: nearby residences and Town meetings or events. Staff recommends that deliveries occur between 9:00 a.m. and 7:00 p.m. to limit the potential for disturbances to nearby residences (condition 12 of Exhibit 3). Deliveries would also be required to avoid other Town meetings and events.

C. Number of Staff, Participants, and Attendees

The applicant is proposing a maximum of eight staff onsite at any given time. However, the operation also uses interns, volunteers, and docents, and the Museums may add additional staff in the future. Parking limits the number of staff (staff, interns, volunteers, docents, etc.) to nine onsite at any given time (see parking analysis below). The lease limits the number of staff on Wednesday prior to 1:00 p.m. to five.

The applicant is proposing committee meetings during weekdays with a maximum of 20 participants. The applicant is proposing up to 350 attendees for museum and private events and up to 100 participants for educational programs. The floor plans (Exhibit 8) label the occupancy for each area with a total occupancy of 253 people. Therefore, staff recommends events be limited to a maximum of 253 people (conditions 5 and 7 of Exhibit 3). Through verbal communications with the applicant, Town staff understands the applicant recognizes the building and fire code requirements that require this condition.

D. Alcoholic Beverage Service and Live Entertainment

The lease allows the service of beer and wine. The applicant is proposing beer and wine service during museum and private events. Staff recommends museum and private events end at 10:00 p.m. to reduce disturbances to nearby residences. However, if the deciding body finds merit to allow events past 10:00 p.m., the deciding body shall make the findings required by the Town's current Alcoholic Beverage Policy (Exhibit 7) for alcoholic beverage service past 10:00 p.m.

The existing Alcoholic Beverage Policy discourages entertainment establishments that serve alcoholic beverages. The Town is considering Town Code modifications to update the Alcoholic Beverage Policy and establish parameters for late night entertainment. Staff has included a condition of approval to allow art and history performances and

entertainment consistent with Town Codes and policies, as amended (condition 11 of Exhibit 3). In other words, the applicant would need to comply with the applicable Town Codes and polices that are in effect when they consider the addition of other forms of entertainment or performances without need a modification of the CUP.

E. Parking

The former Library space is 14,663 square feet. The former Library operation required 41 parking spaces (one parking space for every 590 square feet plus one parking space for each employee).

The existing Friends of the Library use is considered retail and requires one parking space for every 300 square feet of retail. The Town's offices proposed in the former Library are an office use and require one parking space for every 250 square feet of office. Museums require one parking space for every 590 square feet plus one parking space for each employee. Parking requirements for the existing and proposed uses are in the following table.

	Type of Use	Square Feet	Required Parking
Town Offices/Conference Room	office	916	4
Friends of the Library	retail	1,858	7
Museums of Los Gatos	museum	11,889	29
	Total Required Parking		40

The existing and proposed uses require 40 parking spaces; the previous use required 41. With one extra parking space, the museum could have a maximum of nine staff onsite at any given time (11,889/590 = 21 + 9 staff = 30 parking spaces). Therefore, the proposed use would meet Town Code parking requirements.

F. Conditional Use Permit Findings

To grant approval of a Conditional Use Permit, the deciding body must make the following findings:

(1) The proposed use of the property is essential or desirable to the public convenience or welfare; and
(2) The proposed use will not impair the integrity and character of the zone; and
(3) The proposed use would not be detrimental to public health, safety or general welfare; and
(4) The proposed use of the property is in harmony with the various elements or objectives of the General Plan and the purposes of the Town Code.

The applicant submitted justification for the findings (Exhibit 6). With regard to finding one, the use would provide the public art and history exhibits not otherwise seen in Los Gatos. With regard to the second finding, the use will not impair the integrity of the zone since the use will be in a commercial zone and the proposed educational component is consistent with other nearby uses. In terms of finding three, the use will not be detrimental to public health safety or general welfare because conditions placed on the permit mitigate potential impacts. With regard to the final finding, the proposed use meets the objectives of the General Plan and Town Code in that the use promotes arts in Los Gatos.

G. General Plan

The goals and policies of the 2020 General Plan applicable to this project include but are not limited to:

- Policy HS-4.2 – Coordinate with public and private schools, local nonprofits, service clubs, and other agencies to provide opportunities for youth to explore and enjoy sports, creative and performing arts, and future career paths.
- Goal HS-14 – To enrich the Town by making visual arts, the performing arts, literary arts and other cultural amenities more accessible to the Town's residents.
- Policy HS-14.6 – Encourage private/public funding, development, and operation of cultural amenities, activities, and centers consistent with the small town character of Los Gatos.

H. Environmental Review

The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of California Environmental Quality Act, Section 15301: Existing Facilities.

PUBLIC COMMENTS:

At this time, the Town has not received any public comment.

SUMMARY AND RECOMMENDATION:

A. Summary

The proposed art and history museum, Museums of Los Gatos, would permit an existing art and history museum to occupy a portion of the former Library space in the Civic Center. Staff recommends approval of the CUP with conditions consistent with the lease and with the intent to reduce potential impacts. The site has adequate parking to accommodate the art and history museum. The proposed application is in conformance with Town Code, as conditioned, and is supported by the General Plan.

The deciding body should consider whether there is merit to permit the scope of activities and events proposed by the applicant including, but not limited to, the Museums' activities and events, educational events, private and corporate events, and live entertainment. The deciding body should consider the lease (Exhibit 4) and recommended conditions of approval (Exhibit 3). The Planning Commission is the recommending body to the Town Council.

B. Recommendation

Staff recommends approval of the Conditional Use Permit subject to the recommended conditions of approval. If the Planning Commission finds merit with the proposed project, it should:

1. Find that the proposed project is categorically exempt, pursuant to Section 15301 of the California Environmental Quality Act as adopted by the Town (Exhibit 2); and
2. Make the required findings as required by Section 29.20.190 of the Town Code for granting approval of a Conditional Use Permit (Exhibit 2); and
3. Make the required finding as required by Section IV.B of the Redevelopment Plan for the Central Los Gatos Redevelopment Project that it meets the use set forth in the Town's General Plan (Exhibit 2); and
4. Forward a recommendation of approval to the Town Council for Conditional Use Permit application U-13-017 with the conditions contained in Exhibit 3.

If the deciding finds merit to permit events after 10:00 p.m., the deciding body must make the findings required by the Town's Alcoholic Beverage Policy.

If the Commission has concerns with the proposed use, it can:

1. Continue the matter to a date certain with specific direction; or
2. Recommend approval of the application with additional and/or modified conditions; or
3. Recommend denial of the application.

Prepared by:
Jennifer Savage, AICP
Senior Planner

Approved by:
Laurel R. Prevetti
Assistant Town Manager/Community Development Director

LRP:JS:cg

cc: Museums of Los Gatos Association, 4 Tait Avenue, Los Gatos, CA 95030

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106 E. Main Street

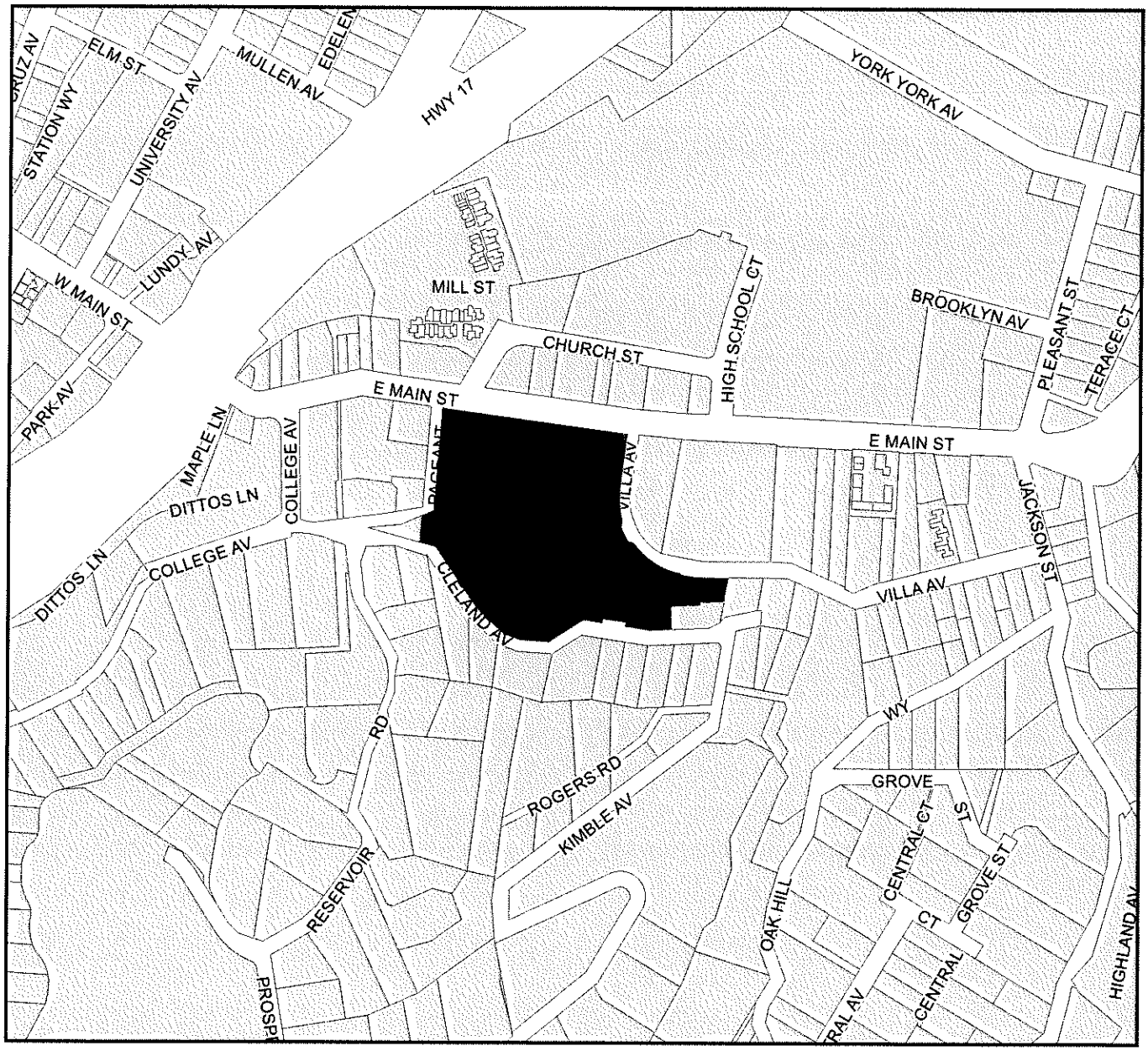

EXHIBIT 1

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REQUIRED FINDINGS FOR:

106 E. Main Street
Conditional Use Permit U-13-017

Requesting approval to operate a museum (Museums of Los Gatos) on property zoned C-1:PD. APN 529-34-108.
PROPERTY OWNER: Town of Los Gatos
APPLICANT: Museums of Los Gatos

FINDINGS

Required finding for CEQA:

- The project is Categorically Exempt pursuant to Section 15301 of the State Environmental Guidelines as adopted by the Town.

Required findings for a Conditional Use Permit:

- As required by Section 29.20.190 of the Town Code for granting a Conditional Use Permit:

  The deciding body, on the basis of the evidence submitted at the hearing, may grant a conditional use permit when specifically authorized by the provisions of the Town Code if it finds that:

  (1) The proposed use is essential or desirable to the public convenience or welfare in that the use would provide the public art and history exhibits not otherwise seen in Los Gatos; and
  (2) The proposed use will not impair the integrity and character of the zone in that the use will be in a commercial zone and the proposed educational component is consistent with other nearby uses; and
  (3) The proposed use would not be detrimental to public health, safety or general welfare because conditions placed on the permit will mitigate potential impacts; and
  (4) The proposed use of the property is in harmony with the various elements or objectives of the General Plan and the purposes of the Town Code as discussed within the November 12, 2014 Planning Commission Staff Report.

Required findings for the Town's Alcoholic Beverage Policy:

- As required by Chapter II Section 6 of the Town Alcohol Beverage Policy for granting alcohol service beyond the hours of 10:00 p.m.

  The deciding body shall make the following findings prior to approving an application for a Conditional Use Permit to serve alcoholic beverages past 10:00 p.m.:

  A. Late night service will not adversely impact adjacent residential neighborhoods.

B. The applicant does not have a history of complaints and non-compliance with local ordinances or the Alcoholic Beverage Policy.
C. The applicant has demonstrated a clear benefit to the community.

Required finding for the Redevelopment Plan for the Central Los Gatos Redevelopment Project Area:

- That the proposed project is consistent with the Redevelopment Plan for the Central Los Gatos Redevelopment Project Area (Section IV.B) in that the subject property is designated commercial and the proposed use falls under general commercial uses.

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CONDITIONS OF APPROVAL – ***November 12, 2014***

106 E. Main Street
Conditional Use Permit U-13-017

Requesting approval to operate a museum (Museums of Los Gatos) on property zoned C-1:PD. APN 529-34-108.
PROPERTY OWNER: Town of Los Gatos
APPLICANT: Museums of Los Gatos

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 listed below and in substantial compliance with the plans approved and noted as received by the Town on July 22, 2014. Any changes or modifications to the approved plans shall be approved by the Community Development Director, the Development Review Committee, the Planning Commission, or Town Council, 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. USE: The approved use is the operation of an art and history museum.
4. HOURS OF OPERATION: Maximum hours of operation are:
   a. Monday 11:00 a.m. to 7:00 p.m.
   b. Tuesday 11:00 a.m. to 7:00 p.m.
   c. Wednesday 1:00 p.m. to 7:00 p.m. (up to five staff are permitted before 1:00 p.m.)
   d. Thursday 11:00 a.m. to 7:00 p.m.
   e. Friday 11:00 a.m. to 7:00 p.m.
   f. Saturday 11:00 a.m. to 7:00 p.m.
   g. Sunday 11:00 a.m. to 7:00 p.m.
   h. Staff may be onsite as early as 9:00 a.m. and up to 10:00 p.m. for exhibit preparations and meetings, and as permitted elsewhere in these conditions.
5. MUSEUM EVENTS: Museum events, such as committee meetings, exhibit openings, fundraisers, and private art/history receptions, are permitted. Museum events may require a special event permit from the Los Gatos-Monte Sereno Police Department, or a Park Permit from the Los Gatos Parks and Public Works Department.
   a. OCCURANCE: Museum events cannot conflict with Town meetings, events and operations. The applicant must coordinate with the Town Manager's Office for events that may affect parking at the Civic Center.
   b. HOURS: Museum events may occur past 7:00 p.m. when no Town meeting or event is scheduled, and must end by 10:00 p.m.
   c. NUMBER OF ATTENDEES: The maximum number of attendees is 253 based on maximum occupancy inside the space leased from the Town.
6. ALCOHOLIC BEVERAGE SERVICE: The service of beer and wine is permitted prior to 10:00 p.m.
7. PRIVATE EVENT RENTAL: The space may be rented out for private events and receptions, including weddings.

a. OCCURANCE: Private events are permitted up to 26 times per year. Museum events cannot conflict with Town meetings, events, or operations. The applicant must coordinate with the Town Manager's Office for events that may affect parking at the Civic Center.
b. HOURS: Private events may occur past 7:00 p.m. when no Town meeting or event is scheduled, and must end by 10:00 p.m.
c. NUMBER OF ATTENDEES: The maximum number of attendees is 253 based on maximum occupancy inside the space leased from the Town.

8. FOOD AND BEVERAGE SERVICE: Food and beverage service is permitted.
9. SCULPTURE GARDEN: A sculpture garden between the west parking lot and the west entrance is permitted. An Architecture and Site application may be required for an enclosure for the sculpture garden.
10. EDUCATIONAL: Educational events and activities, such as an education lab, the Explorer program, Family Art Day, and life drawing classes, are permitted.
    a. NUMBER OF ATTENDEES: Educational events and activities are limited to 100 attendees and/or participants.
    b. HOURS: Educational events and activities may occur outside of regular hours of operation, but not before 1:00 p.m. on Wednesdays, only if the school children are transported by bus or other vehicles neither of which may park in any Civic Center Parking lot or on streets immediately adjacent to the Civic Center.
    c. BUSES: No buses or oversized vehicles may park in any Civic Center Parking lot or on streets immediately adjacent to the Civic Center.
11. ENTERTAINMENT: Art and history performances are permitted. Other entertainment must be consistent with Town Codes and policies, as amended.
12. DELIVERIES: Deliveries are permitted from 9:00 a.m. to 7:00 p.m. seven days a week to align with staff attendance provided a staff member is present to receive the delivery. Deliveries vehicles shall not block access to the parking lot, parked vehicles, or Civic Center buildings. Deliveries shall not occur during Town meetings or events.
13. SIGNS: A Sign Permit from the Los Gatos Community Development Department is required for any permanent or temporary signs. Approval by the Town Council is required prior to issuance of a Sign Permit per the lease with the Town.
14. TOWN COUNCIL CHAMBERS: The Town Council Chambers may be used for lectures if the lectures do not conflict with Town events or meetings and the lectures are approved by the Town Manager prior to occurring. The applicant is subject to the Town's policy and fee requirements for the use of the Town Council Chambers.
15. CIVIC CENTER, PAGEANT GROUNDS, AND FRONT LAWN: The applicant is subject to the Town's policy and fee requirements for the use of the Civic Center, Pageant Grounds, and Front Lawn.
16. CONFERENCE ROOM: The conference room shown on Exhibit A of the lease shall be made available by the Town to the applicant on a shared basis. The Town shall have exclusive right to schedule the conference room on all week days during Town business hours. The applicant shall have priority of use of the conference room on Saturday, Sunday, and Town holidays.
17. NUMBER OF STAFF: When the museum is open to the public, and during activities and events, the number of staff, including but not limited to museum staff, interns, volunteers, and docents, shall be limited to nine onsite at any given time. Additional staff, interns,

volunteers, and docents may be onsite if those additional staff, interns, volunteers, and docents arrive and depart by means that do not require additional parking spaces, such as walking, biking, or carpooling. On Wednesdays, up to five staff are permitted before 1:00 p.m. regardless of their transportation method.

18. TOWN INDEMNITY: Applicants are notified that Town Code Section 1.10.115 requires that any applicant who receives a permit or entitlement from the Town shall defend, indemnify, and hold harmless the Town and its officials in any action brought by a third party to overturn, set aside, or void the permit or entitlement. This requirement is a condition of approval of all such permits and entitlements whether or not expressly set forth in the approval, and may be secured to the satisfaction of the Town Attorney.
19. LAPSE FOR DISCONTINUANCE: If the activity for which the Conditional Use Permit has been granted is discontinued for a period of one (1) year, the approval lapses pursuant to Section 29.20.340 of the Zoning Ordinance.
20. MODIFICATIONS TO THE SPACE: Any future modifications to the space must be consistent with the lease with the Town and obtain all required permits.

TO THE SATISFACTION OF THE CHIEF OF POLICE:

21. ALCOHOLIC BEVERAGE SERVICE NOTIFICATION: The applicant shall notify, in writing, the Los Gatos-Monte Sereno Police Department of any intentioned service of alcohol at least two weeks prior of any anticipated event that includes alcohol beverage service. The Los Gatos-Monte Sereno Police Department shall have the authority to designate how, when, and where alcoholic beverages are served.
22. UNIFORMED SECURITY: Uniformed privately provided security guards may be required in or around the premises by the Chief of Police if alcohol related problems recur that are not resolved by the licensed owner.
23. CONSULTATION AND TRAINING: At the discretion of the Chief of Police, periodic meetings will be conducted with representatives from the Police Department for on-going employee training on alcoholic beverage service to the general public.

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LEASE AGREEMENT

BETWEEN
TOWN OF LOS GATOS
AND
LOS GATOS MUSEUM ASSOCIATION

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

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

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

LEASE PROVISIONS

1. PREMISES.

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

2. TERM.

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

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

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

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

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

3. RENT and MONETARY OBLIGATIONS.

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

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

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

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

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

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

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

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

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

4. [reserved]

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

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

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

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

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

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

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

5.2 Hours of Operations.

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

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

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

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

when Town events or meetings are scheduled.

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

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

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

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

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

and notifying Town in writing of receipt of such permit.

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

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

6. **HAZARDOUS MATERIALS**.

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

radioactive materials and waste.

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

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

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

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

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

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

7. UTILITIES AND OPERATING EXPENSES.

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

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

8. TAXES.

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

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

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

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

9. MAINTENANCE.

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

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

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

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

10. TENANT IMPROVEMENTS.

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

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

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

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

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

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

11. ALTERATIONS BY LESSEE

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

12. HOLD HARMLESS/INDEMNIFICATION.

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

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

13. DAMAGE, DESTRUCTION AND TERMINATION.

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

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

13.3 Restoration of Premises by Lessee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The restoration shall be accomplished as follows:

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

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

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

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

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

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

14. SIGNS AND MARKETING.

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

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

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

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

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

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

15. **ASSIGNMENT AND SUBLETTING.**

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

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

16. **DEFAULTS; REMEDIES.**

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

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

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

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

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

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

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

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

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

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

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

provided by law and equity.

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

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

17. INTEREST ON PAST-DUE OBLIGATIONS.

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

18. HOLDING OVER.

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

19. TOWN'S ACCESS.

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

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

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

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

20. **INSURANCE.**

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

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

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

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

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

21. [reserved]

22. **DISPUTE RESOLUTION**.

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

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

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

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

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

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

24. **NON-DISCRIMINATION**

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

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

25. **INDEPENDENT CONTRACTOR**.

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

Town.

26. **CONFLICT OF INTEREST**.

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

27. **MEMORANDUM OF LEASE**.

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

28. **ESTOPPEL CERTIFICATE**.

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

29. **LIENS.**

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

30. **VACATING**.

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

31. **ABANDONMENT**.

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

32. **NOTICES**.

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

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

And to Lessee addressed as follows:
Los Gatos Museum Association
Mary Ellen Comport, President
4 Tait Avenue
Los Gatos, CA 95030
E-mail: mecomport@comcast.net

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

33. **TIME**.

Time shall be of the essence in this Lease.

34. **AMENDMENTS**.

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

35. **SIGNING AUTHORITY**.

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

36. **CAPTIONS**.

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

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

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

38. **INTEGRATED DOCUMENT**.

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

39. **WAIVER**.

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

40. **INTERPRETATIONS**.

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

41. **SEVERABILITY CLAUSE**.

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

42. **GOVERNING LAW**.

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

43. **VENUE**.

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

44. **COMPLIANCE WITH LAWS**.

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

45. **BROKERS.**

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

46. **ATTACHMENTS TO LEASE**.

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

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

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

TOWN:

TOWN OF LOS GATOS (LESSOR)

Greg Larson, Town Manager

TENANT:

MUSEUMS OF LOS GATOS

Mary Ellen Comport, President of the Board

ATTEST:

Town Clerk Administrator

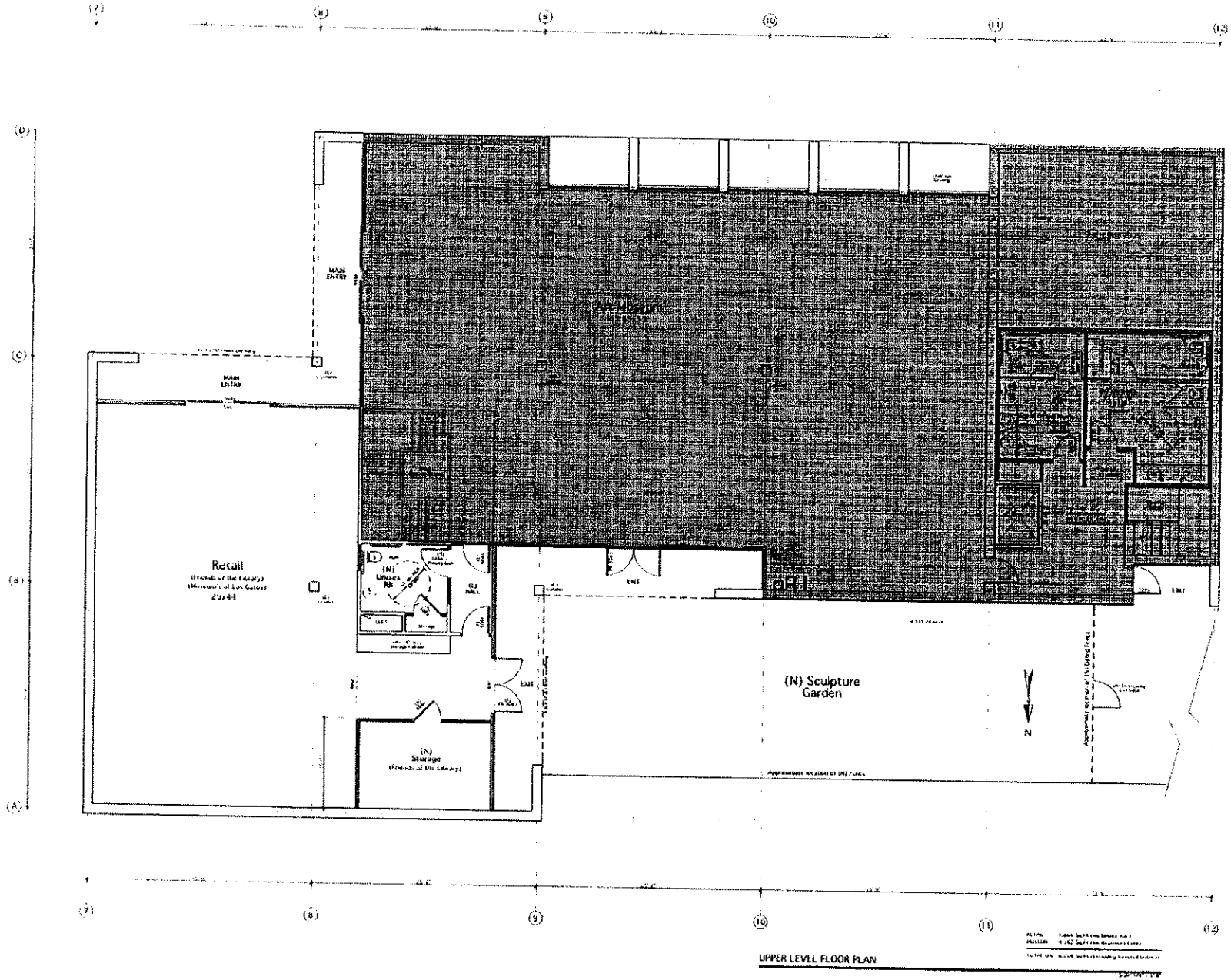
APPROVED AS TO FORM:

Judith Propp, Town Attorney

LEASE AGREEMENT

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

DESCRIPTION OF SUBJECT PREMISES



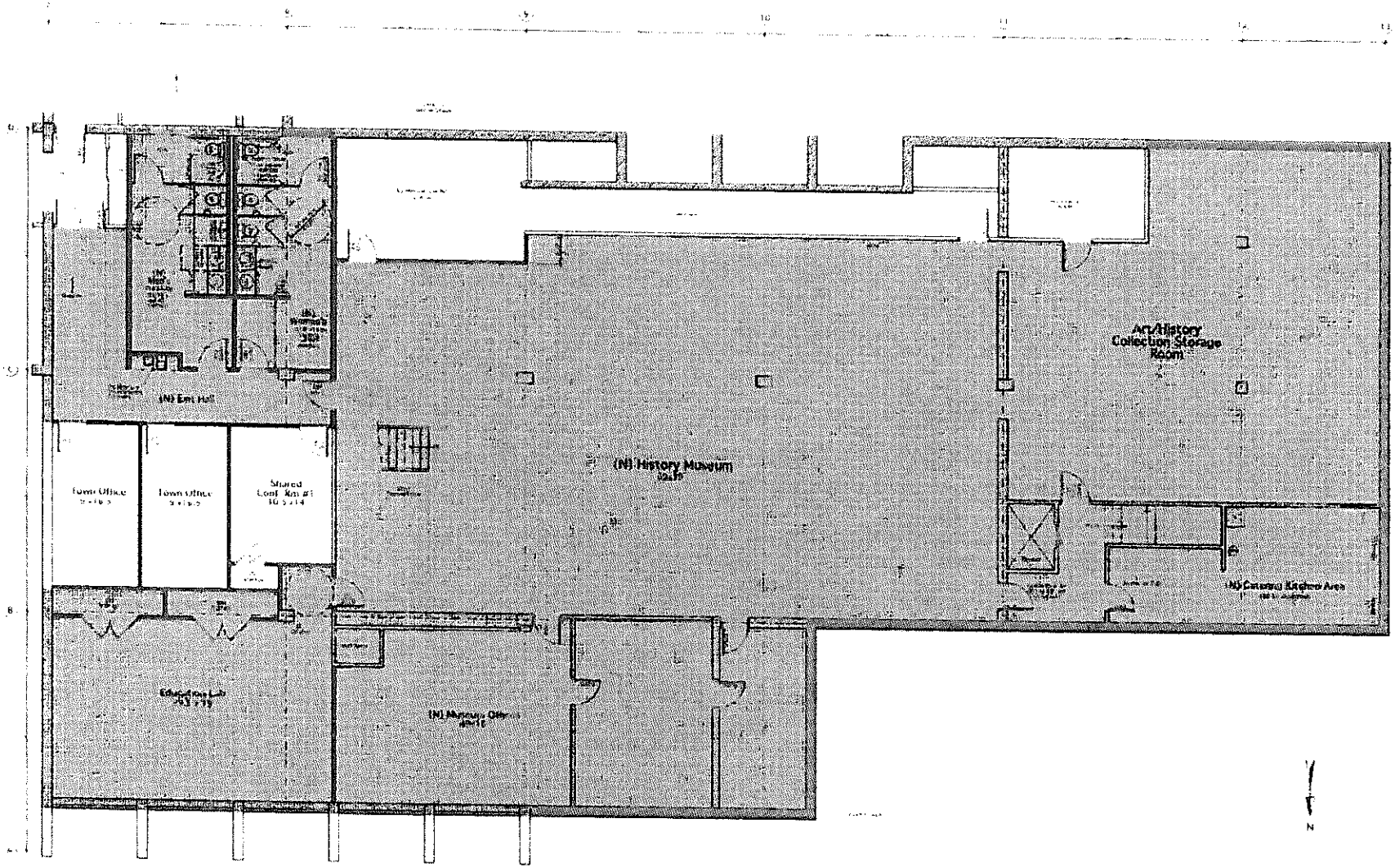
UPPER LEVEL FLOOR PLAN

TERRY L. MARTIN ASSOCIATES A.I.A.

TOWN OF LOS GATOS CIVIC CENTER
Former Library Space Renovation
110 E. Main Street
Los Gatos, CA 95030

UPPER LEVEL FLOOR PLAN

A-1.5



LOWER LEVEL FLOOR PLAN - OPTION #2

TOWN OF LOS GATOS CIVIC CENTER
Former Library Space Renovation
110 E. Main Street
Los Gatos, CA 95030

LOWER LEVEL FLOOR PLAN - OPTION #2

A2
(Opt #2)

LEASE AGREEMENT

BETWEEN
TOWN OF LOS GATOS
AND
MUSEUMS OF LOS GATOS
EXHIBIT B

LIST OF TOWN IMPROVEMENTS

Town will make the following improvements to the Premises:

Upstairs and downstairs restrooms

Integrated-Building HVAC system

Construction of walls for two Town Offices and Conference Room

Elevator Improvements

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

EXHIBIT C

STANDARD INSURANCE REQUIREMENTS

Insurance Requirements for Lessee:

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

Coverages (RL 28.1A) S

Minimum Scope of Insurance

Coverage shall be at least as broad as:

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

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

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

Including Owned, Hired and
Non-Owned Automobiles

(3) Workers' Compensation — Statutory
Employers Liability — $1,000,000 per accident for bodily injury or disease

(4) Lessee's Property Insurance

Lessee shall procure and maintain property insurance coverage for:

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

(b) all other improvements, betterments, alterations, and additions to the premises.

Lessee's property insurance must fulfill the following requirements:

(a) it must be written on the broadest available "all risk" policy form or an equivalent form acceptable Town of Los Gatos, including earthquake sprinkler leakage.

(b) for no less than ninety percent (90%) of the full replacement cost (new without deduction for depreciation) of the covered items and property; and

(c) the amounts of coverage must meet any coinsurance requirements of the policy or policies.

(RL 28.2)

Deductibles and Self-Insured Retentions

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

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

Each insurance policy required by this Lease shall:

1. Be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Town.

2. Include a waiver of all rights of subrogation against the Town and the members of the Town Council and elective or appointive officers or employees, and each party shall

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

3. Name the Town of Los Gatos as a loss payee on the property policy.

4. Provide that the Town, its officers, officials, employees, agents and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Lessee; products and completed operations of the Lessee; premises owned, occupied or used by the Lessee; or automobiles owned, leased, hired or borrowed by the Lessee. The coverage shall contain no special limitations on the scope of protection afforded to the Town, its officers, officials, employees, agents or volunteers.

5. Provide that for any claims related to this Lease, the Lessee's insurance coverage shall be primary insurance as respects the Town, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the Town, its officers, officials, employees, agents or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.

6. Provide that any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Town, its officers, officials, employees, agents or volunteers.

7. Provide that Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

8. Lessee agrees to promptly pay to Town as Additional Rent, upon demand, the amount of any increase in the rate of insurance on the Premises or on any other part of Building that results by reason of Lessee's act(s) or Lessee's permitting certain activities to take place.

Acceptability of Insurers

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

LETTER OF JUSTIFICATION/WRITTEN DESCRIPTION OF PROPOSED PROJECT

To: Town of Los Gatos-Community Development Department

RECEIVED
JUL 10 2014
TOWN OF LOS GATOS
PLANNING DIVISION

Re: Museums of Los Gatos – Occupancy of Los Gatos Former Library Building

Date: May 27, 2014

General Description.

The Museums of Los Gatos (Museum) intends to lease from the Town of Los Gatos the former library located at 110 East Main Street. The Museums will occupy significant portions of the upstairs and downstairs of the former library located at 110 East Main Street. Significant floor space in both the ground floor and downstairs will be occupied by the Museum.

The facility will replace the present museum locations at 75 Church Street and 4 Tait Avenue.

The Museum intends to utilize the space to expand its offerings to the community in both History and Art exhibits, educational programs and related cultural activities and events. The space will also be utilized to accommodate the staff of the Museum from both the prior History and Art locations and house the permanent History collection.

Activities & Operations.

Immediately upon the relocation to the new space, the Museum intends to provide public access to the facilities Wednesday thru Sunday 11:00 am to 5:00 with extended hours selected weeknights and weekends for special events, receptions and committee meetings. Following the planned expansion of exhibits and rotational exhibit spaces the Museum anticipates opening Mondays and Tuesdays, 11:00 am to 5:00 pm.

Museum staff will maintain standard office hours 9:00 am to 5:00 pm however during exhibit preparations, receptions and similar activities there will be the requirement for their presence at later hours. At peak times the Museum would anticipate a maximum of eight staff members present.

There will also be the requirement from time to time for delivery vehicles to have access to the western door by the side parking lot.

Museum committee meetings will consist of Board members, volunteers and staff. Schedules for these meetings, mostly monthly, range between daytime and evening times, during weekdays. The size of museum committees varies between five and

twenty participants. Board meetings and Executive Board meetings are held monthly and are almost always convened at night or off site.

In accordance with an agreement with the Town of Los Gatos, the Museum will be on occasion using the Council Chambers for lectures when it is available. These lectures will normally be held in the evening and on a week day, but they may also be at other times and days.

Staffing.

The paid staff will be five to seven with one consultant. It is anticipated that there may be an increase in staffing when operations relocate. In addition to paid staff there are college and high school interns assisting in a multitude of museum projects on site and volunteers attending committees and as docents for exhibits and receptions.

Special events.

It is anticipated that the Museum will apply for special event or park permits for cultural activities that extend beyond the building perimeter and include the civic center, pageant park and or front lawn. The museum understands and will comply with the pre-existing special event permit process. The Museum does not intend to offer alcohol other than wine at receptions within the premises.

Each art/history exhibit will continue to incorporate an opening reception and other special activities for the duration of each exhibit. In some cases this may include demonstrations, artist's talks or interviews, music, or performances. Most special events are held in the weekday evenings or weekends. Past experience indicates that attendance can vary from 50 to 200 people. In the larger facility the Museum will expect increased numbers for special events in the range of 75 to 350 attendees.

An important part of the museums charter continues to be education, which takes various forms. The children's Explorer program, offered to school grades K - 8, is offered to schools throughout the South Bay. In many instances this does require busing in students. The museum will approach the logistics of the busing in a similar fashion to the present process either by circling the buses or parking off premises. Other educational programs include Art & History lecture series, the Countywide High School Art Show. The museum is including in its space planning an educational lab to be used for the Explorer program and events such as family Art day and life drawing classes. These events normally will not exceed one hundred (100) persons at any one time.

Exhibit openings, fundraisers, private art/history receptions, private receptions (including weddings or other group events) will be held within the premises and

catering is presently and will continue to be included. Drinks will be limited to soft drinks, beer and wine. The present kitchen may be enhanced to accommodate catering/food prepping capabilities. The kitchen will also provide lunch facilities for the staff. These events may include pre-recorded music or live music.

The Museum anticipates that renting out its space for use by private persons or organizations will provide needed revenue to maintain and operate the Museum. In addition such private events will make the Museum and its exhibits known to a wider audience and help to further the Museum's cultural reputation in the community. Such private events should not exceed ten (10) per month.

Signage.

The museum understands the regulations for external signage and will cooperate with the Town to meet town standards and sign ordinances and standards established for the Civic Center. It is anticipated that there will be door signs on the main entrance signifying the entrance to the museum, a permanent sign mounted on the outside wall of the Museum facing Main Street, and outdoor hanging posters advertising the current show(s).

Sculpture garden

The museum plans for the original main access pathway (for the former library) leading from the west side parking area to be converted to a sculpture garden with no access for the public other than through the museum exhibit areas. (There will be allowance for an emergency escape route.)The sculpture garden will be secured. A design to restrict access with a combination of materials will include continued visibility from the inside exhibit area, through the tall trees on the front lawn to Main Street. The design and materials will match or complement the existing exterior materials of the facility and must be approved by the Town.

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Museums of Los Gatos do hereby provide the following justification for the required CUP findings:

(1) The proposed uses of the property are essential or desirable to the public convenience or welfare;

The proposed use is that of a Museum of Art and History. This purpose serves the public by providing exhibits of art and history that would not otherwise be seen in Los Gatos. The location of the new Museum will be centrally located in the town and close to other public places such as the Library, Town Hall and the High School.

(2) The proposed uses will not impair the integrity and character of the zone;

The Museum is an educational institution. It will therefore fit well with its surrounding neighbors including the Library and High School.

(3) The proposed uses would not be detrimental to public health, safety or general welfare; and

The Museum will be engaged in activities which promote education, observation and contemplation. None of the proposed uses will be in any way detrimental to the public health, safety or general welfare.

(4) The proposed uses of the property are in harmony with the various elements or objectives of the general plan and the purposes of this chapter.

The general plan contains a priority to promote the arts in Los Gatos. The proposed use as a Museum fulfills that General Plan priority.

(5) A hazardous waste facility proposal is subject to the California Health and Safety Code, Article 8.7, Section 25199—25199.14 and shall be consistent with the Santa Clara County Hazardous Waste Management Plan.

The proposed use will not conflict with the California Health and Safety Code.

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AUG 13 2014

TOWN OF LOS GATOS
PLANNING DIVISION

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RESOLUTION 2001 - 106

**RESOLUTION OF THE TOWN COUNCIL
OF THE TOWN OF LOS GATOS
AMENDING THE TOWN'S ALCOHOLIC BEVERAGE POLICY**

WHEREAS, the sale of alcoholic beverages, if not regulated, can jeopardize public safety, result in an increase of calls for police services and compromise the quality of life for Town residents; and

WHEREAS, The Town Council wants to balance the regulation of alcoholic beverage service and protection of residential neighborhoods with the goal of maintaining a vibrant and successful Downtown and commercial areas throughout Los Gatos; and

WHEREAS, the Town Council held a study session on July 2, 2001 to discuss issues relating to service of alcoholic beverages; and

WHEREAS, the Town Council has indicated a desire to review all applications for new alcohol service or change in existing service, and a need to amend the existing Alcohol Policy,

THEREFORE BE IT RESOLVED: the Town Council of the TOWN OF LOS GATOS does hereby adopt the amended Alcoholic Beverage Policy attached hereto as Exhibit A.

EXHIBIT 7

PASSED AND ADOPTED at a regular meeting of the Town Council held on the 17th day of September, 2001, by the following vote:

COUNCIL MEMBERS:

AYES: Randy Attaway, Steven Blanton, Sandy Decker, Steve Glickman, Mayor Joe Pirzynski.

NAYS: None

ABSENT: None

ABSTAIN: None

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:

CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

POLICY REGULATING THE CONSUMPTION AND SERVICE OF ALCOHOLIC BEVERAGES

I. Purpose

The consumption or service of alcoholic beverages, if not regulated, can jeopardize public safety, result in an increase of calls for police services and compromise the quality of life for Town residents. This policy provides parameters for alcoholic beverage service, particularly addressing late night service when alcohol related incidents are most likely to occur and when the disturbances to Town residents is least tolerable.

The service of alcoholic beverages, with or without meals, past 10 PM is a discretionary privilege to be determined on a case by case basis. The following provisions are intended to balance the protection of residential neighborhoods in close proximity to commercial districts and still maintain the viability of our commercial centers in which restaurants have an essential role. Hours of operation may be regulated based on an establishment's proximity to residential neighborhoods or schools, the concentration of establishments in an area serving alcoholic beverages or for other reasons that may arise at the public hearing.

The deciding body may approve a conditional use permit to serve alcoholic beverages based on the merits of the application and subject to the following requirements:

II. General policy

1. The Town shall continue to strongly discourage new applications for stand alone bars or restaurants with separate bars.

2. The Town shall continue to discourage applications for entertainment establishments serving alcoholic beverages.

3. Entertainment in association with an eating or drinking establishment may be allowed if standards and a permit process are adopted.

4. Alcoholic beverage service for new conditional use permit applications or applications for modification of a conditional use permit shall not be allowed:

   A. After 11 PM Sunday through Thursday, except for holidays and evenings before holidays.

   B. After 1 AM Friday, Saturday, holidays or evenings before holidays.

An existing establishment with a conditional use permit in good standing allowed to serve alcoholic beverages past the hours stated above may continue to operate under their existing hours of operation.

EXHIBIT A
of Exhibit 7

5. Any establishment serving alcoholic beverages shall be subject to the following:

   A. Uniformed privately provided security guards may be required in or around the premises by the Chief of Police if alcohol related problems recur that are not resolved by the licensed owner.

   B. At the discretion of the Chief of Police, periodic meetings will be conducted with representatives from the Police Department for on-going employee training on alcoholic beverage service to the general public.

   C. All establishments shall use an employee training manual that addresses alcoholic beverage service consistent with the standards of the Californian restaurant Association.

   D. All licensed operators shall have and shall actively promote a designated driver program such as complimentary non-alcoholic beverages for designated drivers.

   E. Taxicab telephone numbers shall be posted in a visible location.

6. The deciding body shall make the following findings prior to approving an application for conditional use permit to serve alcoholic beverages past 10PM:

   A. Late night service will not adversely impact adjacent residential neighborhoods.

   B. The applicant does not have a history of complaints and non-compliance with local ordinances or the Alcoholic Beverage Policy.

   C. The applicant has demonstrated a clear benefit to the community.

7. A meal is defined as a combination of food items selected from a menu (breakfast, lunch or dinner). Appetizers such as popcorn, nachos, pretzels, potato skins, relish trays, etc. (hot or cold) are not meals.

8. Alcoholic beverage service in approved outdoor seating areas may be permitted if adequate separation from public areas is provided as determined by the Town Manager. The separation shall clearly suggest that alcohol is not allowed outside the restaurant seating area.

III. Specific Policy

1. Restaurants:

   Alcoholic beverages may only be served with meals.

2. Restaurants With Separate Bars:

   Alcoholic beverage service is permitted in the dining area only in conjunction with meal service. Meal service shall be available until closing or 11 PM Sunday through Thursday and until 12 midnight Friday, Saturday, holidays and evenings before holidays, whichever is earlier, if late night bar service is available. Specific hours of operation for each establishment are determined upon issuance of a conditional use permit.

IV. Review Process

1. Proposals for new bars or restaurants with bars and all requests for new alcohol service or a change to existing service shall be reviewed by the Planning Commission. The Commission will make a recommendation to the Town Council and the Council shall have final review authority.

2. Changes in ownership for businesses involving service of alcoholic beverages shall be reviewed by the Community Development Department. The following process will be followed:

   a. The Director of Community Development shall contact the new business owner to make them aware of the conditions of approval attached to the Use Permit for the location.

   b. One year following issuance of a business license, surrounding/impacted property owners shall be notified and any comments regarding the operation of the business shall be solicited.

   c. If the Director of Community Development becomes aware of any alcohol related impacts on the surrounding neighborhood, the Director shall review the operation of the business to determine whether there is a violation of the use permit.

d. If there are violations of the use permit that have not been voluntarily corrected by the business owner the matter will be forwarded to the Planning Commission for public hearing pursuant to Section 29.20.310 of the Zoning Ordinance.

e. Pursuant to Section 29.20.315 of the Zoning Ordinance the Planning Commission may revoke or modify the conditional use permit if it finds that sufficient grounds exist.

IV. Enforcement

All conditional use permits issued to establishments for alcoholic beverage service on-site shall be subject to Section 29.30.310(b) of the Town Code authorizing the Town Manager to take enforcement action if it is determined that the sale of alcohol has become a nuisance to the Town's public health, safety or welfare. Enforcement of section 29.20.310(b) of the Town Code will be based on, but not limited to, the following factors:

I. The number and types of calls for service at or near the establishment ~~which~~ **that** are a direct result of patrons actions;

II. The number of complaints received from residents ad other citizens concerning the operation of an establishment;

III. The number of arrests for alcohol, drug, disturbing the peace, fighting and public nuisance violations associated with an establishment;

IV. The number and kinds of complaints received from the State Alcoholic Beverage Control office and the County Health Department;

V. Violation of conditions of approval related to alcoholic beverage service.

The Alcoholic Beverage Policy is not to be construed to be a right of development. The Town retains the right of review and approval (or denial) of each project based on its merits.