

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

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

RECITALS

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

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

SECTION 1. Definitions.

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

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

ATTACHMENT 2

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

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

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

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

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

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

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

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

J. "Term" is defined in Section 3.

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

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

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

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

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

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

SECTION 3. Term.

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

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

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

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

SECTION 4. Facility Operations.

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

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

SECTION 5. Cinelux's Responsibilities to Operate the Theatre

5.1. Theatre Uses.

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

5.2. Community Use of Theatre Facility and Fee Schedules.

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

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

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

5.3. Town Use of Theatre

A. Professional film programming shall be a prioritized use in the Theater.

B. When not utilizing the Theatre for core programming needs, but not less than 2 times per year, Cinelux shall make the Theatre available to the Town at no cost.

5.4. Operating Procedures.

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

SECTION 6. Rent and Monetary Obligations.

6.1 Monthly Rent. For the first (1) year after the Delivery Date, Cinelux shall pay no Rent for the Premises. For the second (2) year after the Delivery Date, Cinelux will pay base rent of \$5,000 per month. In year three (3) after the Delivery Date, Cinelux will pay monthly rent of \$10,000 per month. In no event shall rent exceed Ten Thousand Dollars (\$10,000) per month during the initial 5-year period. Prior to any extension of the Term of this Agreement, if an Extended Term is sought by the Parties, the Town reserves the right to review the accounts and financial records of Cinelux and open negotiations for a potential increase in rent.

6.2 Profit Sharing. The Town shall receive 5% of the Theatre's gross revenue annually. Gross revenue includes, but is not limited to, revenue from ticket sales, event rentals, concession sales of food and alcohol, and other sources.

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

6.4 Personal Property Taxes. Cinelux shall pay before delinquent, or if requested by Town, reimburse Town for, any and all taxes, fees, and assessments associated with the Premises, the personal property contained in the Premises and other taxes, fees, and assessments regarding any activities which take place at the Premises. Cinelux recognizes and understands in accepting this Lease that its interest therein may be subject to a possible possessory interest tax that Town or County may impose on such interest and that such tax payment shall not reduce any rent due Town hereunder and any such tax shall be the liability of and be paid by Cinelux.

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

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

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

6.8. Utilities at the Theatre.

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

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

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

SECTION 7. Books, Records and Accounts.

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

SECTION 8. Budgets, Audits and Reporting Requirements.

8.1 Budget Review.

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

8.2. Annual Reporting.

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

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

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

8.3. Additional Reporting Requirements.

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

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

8.4. City's Right to Audit.

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

SECTION 9. Ownership of Furniture, Fixtures and Equipment.

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

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

10.1. Ordinary Maintenance and Repairs.

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

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

10.2. Janitorial Services/Maintenance of FF&E.

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

10.3 Capital Repairs and Capital Replacements.

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

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

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

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

10.4. Security.

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

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

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

SECTION 11. Alterations to the Theatre.

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

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

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

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

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

SECTION 12. Alteration and Construction Requirements.

12.1. Application.

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

12.2. Plans and Specifications.

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

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

12.3. Inspection of Construction Work.

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

12.4. Bidding Requirements.

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

12.5. Approvals.

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

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

12.6. Prevailing Wages.

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

12.7. Costs.

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

12.8. Bonding Requirements.

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

12.9. Notice to Proceed.

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

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

12.10 Alternative Procedures.

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

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

SECTION 13. Pre-existing Theatre Tenants.

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

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

SECTION 14. Hold Harmless/Indemnification.

14.1 Indemnification.

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

14.2 Waiver of Claims.

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

SECTION 15. Damage, Destruction and Termination.

15.1 Nontermination and Nonabatement.

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

15.2 Force Majeure.

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

15.3 Restoration of Premises by Lessee.

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

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

giving notice to the other party.

If the cost of restoration exceeds ten percent (10%) of the then replacement value of the Premises totally or partially destroyed, Cinelux can elect to terminate this Agreement by giving notice to Town within sixty (60) days after determining the restoration cost and replacement value. If Cinelux elects to terminate this Agreement, Town, within thirty (30) days after receiving Cinelux's notice to terminate, can elect to pay to Cinelux, at the time Town notifies Cinelux of its election, the difference between ten percent (10%) of the replacement value of the Premises and the actual cost of restoration, in which case Cinelux shall restore the Premises. On Town's making its election to contribute, each party shall deposit immediately the amount of its contribution with such institutional lender or title company as may be jointly selected by the parties ("the Insurance Trustee"). If the destruction does not exceed ten percent (10%) of the then replacement value of the Premises, Cinelux shall immediately deposit the cost of restoration with the Insurance Trustee. This Agreement shall terminate if Cinelux elects to terminate this Agreement and Town does not elect to contribute toward the cost of restoration as provided in this Section.

If the Premises are destroyed from a risk not covered by the insurance described in Section 20 (Insurance), and Cinelux has the obligation to restore the Premises as provided in subsection (8), both parties shall deposit with the Insurance Trustee their respective contributions toward the cost of restoration. All sums deposited with the Insurance Trustee shall be held for the following purposes and the Insurance Trustee shall have the following powers and duties:

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

Payments shall be made on presentation of certificates or vouchers from the architect or engineer retained by Cinelux showing the amount due. If the Insurance Trustee, in its reasonable discretion, determines that the certificates or vouchers are being improperly approved by the architect or engineer retained by Cinelux, the Insurance Trustee shall have the right to appoint an architect or an engineer to supervise construction and to make payments on certificates or vouchers approved by the architect or engineer retained by the Insurance Trustee. The reasonable expenses and charges of the architect or engineer retained by the Insurance Trustee shall be paid by the insurance trustee out of the trust fund. Both parties

shall promptly execute all documents and perform all acts reasonably required by the Insurance Trustee to perform its obligations under this Section.

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

If the Insurance Trustee resigns or for any reason is unwilling to act or continue to act, Town shall substitute a new trustee in the place of the designated insurance Trustee. The new trustee must be an institutional lender or title company.

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

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

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

Cinelux in accordance with the Provisions of Exhibit C.

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

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

E. On completion of the restoration, Cinelux shall immediately record a notice of completion in the county in which the Premises are located. The restoration shall not be commenced until sums sufficient to cover the cost of restoration are placed with the Insurance Trustee as provided in this Section.

SECTION 16 Assignment and Subletting.

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

16.2 No Release of Cinelux. No subletting or assignment as approved by Town shall release Cinelux of Cinelux's obligation or alter the primary liability of Cinelux to pay the rent and to perform all other obligations by Cinelux hereunder. The acceptance of rent by Town from any other person shall not be deemed to be a waiver by Town of any provision hereof. In the event of default by any assignee of Cinelux or any successor of Cinelux in the performance of any of the

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

SECTION 17 DEFAULTS; REMEDIES.

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

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

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

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

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

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

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

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

17.2.3 Pursue any other remedy now or hereafter available to Town under the laws or judicial decisions of the State of California. Town shall have all remedies provided by law and equity.

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

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

SECTION 18 INTEREST ON PAST-DUE OBLIGATIONS.

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

SECTION 19 HOLDING OVER.

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

SECTION 20 INSURANCE.

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

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

Cinelux shall deposit with the Town Manager, on or before the effective date of this Agreement, certificates of insurance and endorsements in conformance with this Agreement and keep such insurance in effect and the certificates therefore on deposit with Town during the Term of this Agreement. Should Cinelux not provide evidence of such required coverage at least three (3) days prior to the expiration of any existing insurance coverage, Town may purchase such insurance, on behalf of and at the expense of Cinelux to provide six months of coverage.

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

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

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

SECTION 21 DISPUTE RESOLUTION.

- 21.1 Unless otherwise mutually agreed to, any controversies between Cinelux and Town regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.
- 21.2 The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.
- 21.3 The costs of mediation shall be borne by the Parties equally.
- 21.4 Mediation under this section is a condition precedent to filing an action in any court.

SECTION 22 NON-LIABILITY OF OFFICIALS AND EMPLOYEES OF THE TOWN.

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

SECTION 23 NON-DISCRIMINATION

23.1 Non-discrimination. Cinelux agrees that in the performance of this Agreement and in connection with all of the activities Cinelux conducts on the Premises, it shall not discriminate against any employee or person because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person. Cinelux acknowledges that is familiar with the provisions set forth in Section 2.30.985 of the Los Gatos Municipal Code relating to nondiscrimination in employment.

SECTION 24 INDEPENDENT CONTRACTOR.

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

SECTION 25 CONFLICT OF INTEREST.

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

SECTION 26 MEMORANDUM OF AGREEMENT.

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

SECTION 27 ESTOPPEL CERTIFICATE.

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

SECTION 28 LIENS.

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

SECTION 29 VACATING.

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

SECTION 30 ABANDONMENT.

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

SECTION 31 NOTICES.

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

Town of
Los Gatos
Attention:
Town
Manager

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

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

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

SECTION 32 TIME.

Time shall be of the essence in this Agreement.

SECTION 33 AMENDMENTS.

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

SECTION 34 INTEGRATED DOCUMENT.

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

SECTION 35 WAIVER.

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

SECTION 36 INTERPRETATIONS.

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

SECTION 37 SEVERABILITY CLAUSE.

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

SECTION 38 GOVERNING LAW.

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

SECTION 39 VENUE.

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

SECTION 40 COMPLIANCE WITH LAWS.

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

SECTION 41 BROKERS.

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

ATTACHMENTS TO AGREEMENT.

The following exhibits are attached to and made a part of

this Agreement: "A" - Description of Subject

Premises

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

"C" - Insurance Requirements

"D" - Maintenance Matrix