



STAFF REPORT

TOWN COUNCIL MEETING OF November 13, 2012

To: Town Council

From: Town Manager

Date: October 31, 2012

Subject: Approval of New Lease Agreement with South Placer Heritage Foundation for Blue Goose Land Lease

RECOMMENDATION:

Approve the New Lease with South Placer Heritage Foundation

DISCUSSION:

The South Placer Heritage Foundation requests the Town consider and approve modifications to their existing lease with the Town. The existing lease expires on January 1, 2015 and contains provisions for one renewal for five years. Generally, leases with short terms (five years or less) do not lend themselves to long term investments in the property by the leasee.

The proposed lease, which was drafted by Town staff and the president of the South Placer Heritage Foundation 1) establishes a term of ten (10) years with the right of the lessee to extend the lease for two (2) additional terms; 2) establishes a rent adjustment schedule for automatic annual rent increases by the greater of 2% or by the yearly CPI factor with a maximum increase of 5% in any given year. The terms and conditions in the lease mirror the terms and conditions in the modified lease for High Hand approved by the Council on August 14, 2012, thus making the ground leases at both ends of the shed to shed area under leases with similar terms.

CEQA :

Approval of the lease is exempt from CEQA requirements.

FINANCIAL IMPLICATIONS:

There are no substantive fiscal impacts to the Town.

DRAFT
SOUTH PLACER HERITAGE FOUNDATION LEASE

This Lease (“Lease”) is entered into this ____ of _____, 2012 (“the Effective Date”) by and between the **Town of Loomis**, a municipal corporation (“Lessor” or “Town”) and **South Placer Heritage Foundation, Inc.**, a California non-profit corporation (“Lessee” or “Foundation”).

Recitals

- A. The Foundation is a local, community-supported organization that was formed for the purpose of preserving several of Loomis’s historic buildings, such as the Depot and the Blue Goose and Blue Anchor fruit sheds. The Foundation owns the Blue Goose fruit shed. The Foundation donated the Depot to the Town and the Blue Anchor fruit shed was destroyed by fire.
- B. The Blue Goose fruit shed was built in 1945 and continuously operated until 2001 as an active fruit-packing and shipping operation for local peaches, plums and pears. The Foundation acquired the Blue Goose in 1995 and in 2002 began preservation of the building and continues to operate the building for commercial and community uses. The Foundation has provided tens of thousands of hours of labor and well over \$1,000,000 to renovate the Blue Goose to enhance and sustain its commercial and community uses.
- C. In addition to the improvements to the Blue Goose, the Foundation has spent approximately \$70,000 to improve the Webb Street parking area and the King Road area drainage. The Foundation also donated the Depot to the Town.
- D. The Town acquired the real property under and surrounding the Blue Goose (the “Blue Goose Parcel”) from Union Pacific Railroad in approximately 2008. Prior to the Town’s acquisition of this real property, the Foundation leased the Blue Goose Parcel from Union Pacific Railroad. The Town and the Foundation entered into that certain five-year lease for the Blue Goose Parcel dated January 1, 2010 (“Existing Lease”).
- E. The Town and the Foundation desire to replace the Existing Lease, as set forth below.

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

1. Existing Lease: Deletion and Replacement.

The Existing Lease is hereby terminated in its entirety and is replaced with this Lease.

2. Premises.

Lessor is the owner of that real property located at 3550 Taylor Road, upon which the building commonly known as the Blue Goose Shed is located, as more particularly described in Exhibit A (the "Premises" or the "Blue Goose Parcel"). Lessee is the owner of the Blue Goose fruit shed building ("Building").

3. Use.

The Premises shall only be used by Lessee and Lessee's tenants for uses that are consistent with the Town of Loomis Zoning Code for the zoning applicable to the Premises. Lessee shall have access to the entire Premises for parking by Lessee and Lessee's tenants. Lessee shall make parking available to the public during public events by prior arrangement and agreement worked out by Lessor and Lessee.

4. Term.

The term of this Agreement shall be for ten (10) years beginning on the Effective Date and terminating upon the tenth (10th) anniversary thereof. Lessee shall have the right to extend the term for two (2) additional ten (10) year periods on the same terms and conditions as set forth herein. In order to exercise that right, Lessee must provide written notice to Lessor of its intention to have the term extended for an additional ten (10) years, prior to the expiration of the preceding term.

5. Rent.

Within fifteen (15) business days after the Effective Date and on the first (1st) day of each month thereafter, Lessee shall pay to Lessor as rent One Thousand Four Hundred Twelve & 79/100 Dollars (\$1,412.79) per month ("Rent"). Rent shall be payable to "The Town of Loomis" at Loomis Town Hall, 3665 Taylor Road, (P.O. Box 1330), Loomis, CA 95650, Attn. Finance Director.

6. Rent Adjustments.

a. The Rent shall be automatically increased without further notice to the Lessee by the greater of: (i) two percent (2%) annually, cumulative and compounded; or (ii) by the CPI Factor. The CPI Factor is the percentage of the adjustment stated in the Consumer Price Index (as indicated below) established during the last available twelve (12)-month period immediately preceding each anniversary of the Effective Date, adjusted to the nearest one-tenth (1/10th) of one percent (1%).

b. The Consumer Price Index used herein is the All Urban Consumers (CPI-U, U.S. City Average, All Items, 1984=100) (the "Index") published by the United States Department of Labor, Bureau of Labor Statistics, or any successor or substitute index published as a replacement for the Index by any United States governmental agency.

c. Notwithstanding any other provision herein, concurrent with Lessee's exercise of an extension of the Lease, Lessor, at its expense, may conduct a market study of prevailing, similar ground lease rents, upon providing written notice of same to the Lessee, for the purposes of determining the annual Rent for the first year of the extension period. The market study shall utilize the services of commercial real estate brokers and appraisers who are experienced in and ordinarily deal with ground lease transactions in the south Placer County area, which brokers and/or appraisers shall be approved by Lessor. Any such market study shall exclude from an upward rent adjustment any improvements made to the Blue Goose Parcel at Lessee's expense. The Rent for the remaining years in the extension period shall be increased in accordance with the provisions of Section 6(a) and (b) herein.

7. Insurance and Indemnification.

a. Insurance. During the term of this Agreement, Lessee shall maintain in full force and affect the following policies of insurance upon which Lessor shall be an additionally-named insured, and Lessee shall provide Lessor written proof of same:

(i) Commercial General Liability: Not less than Two Million Dollars (\$2,000,000.00) per occurrence and an aggregate limit of not less than Four Million Dollars (\$4,000,000.00);

(ii) Business Automobile Liability: A combined single limit of not less than Two Million Dollars (\$2,000,000.00) per accident for bodily injury, personal injury and property damage, and coverage must include liability arising out of any vehicle whether owned, hired or non-owned;

(iii) Worker's Compensation Insurance. As required by law;

(iv) Pollution Liability Insurance. If use of the Premises includes any generation, handling, enrichment, storage, manufacture or production of hazardous materials, pollution liability insurance is required with limits of at least Five Million Dollars (\$5,000,000.00) per occurrence and an aggregate limit of at least Ten Million Dollars (\$10,000,000.00). If hazardous materials are disposed of from the Premises, Lessee must furnish to Lessor evidence of pollution liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of One Million Dollars (\$1,000,000.00) per loss, and an annual aggregate of Two Million Dollars (\$2,000,000.00); and

(v) Umbrella or Excess Insurance. If Lessee utilizes umbrella or excess policies, these must "follow form" and afford no less than the primary policy.

b. Indemnification. Lessee shall release, defend (with counsel satisfactory to Lessor) and indemnify Lessor from and against all liability, cost and expense for loss of or damage to property and for injuries to or death of any person (including the property and employees of each party hereto) which arises or results from:

(i) use, occupancy, and enjoyment of the Premises by Lessee, its agents, employees, contractors, sub-lessees, or invitees;

(ii) breach of this Agreement by Lessee;

(iii) any act or omission of Tenant, its agents, contractors, or employees; or

(iv) from and against all costs, attorney's fees, expenses, and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon by Lessor or other party.

c. Exemption of Lessor from Liability. Except for the sole negligence or willful misconduct of Lessor, its agents, contractors, and employees, Lessee, as a material part of the consideration to Lessor, hereby assumes all risk of damage to property of Lessee or injury to persons, in, upon or about the Premises arising from any cause, and Lessee hereby waives all claims in respect thereof against Lessor. Lessee, as a material part of the consideration to Lessor, hereby acknowledges that there is a risk of harm to Lessee's property and injury to persons in, upon or about the Premises arising from any cause or event, and Lessee agrees to assume all such risks of harm and Lessee hereby waives all claims in respect thereof against Lessor. Lessee hereby agrees that Lessor shall not be liable for injury to Lessee's business or any loss of income therefrom, or for loss of, or damage to, the goods, wares, merchandise or other property of Lessee, Lessee's employees, invitees, customers, or any other person in or about the Premises, nor shall Lessor be liable for injury to the person of Lessee, Lessee's employees, agents or contractors, whether such damage or injury is caused by or results from theft, fire, steam, electricity, gas, water, or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said damage or injury results from conditions arising from or upon the Premises, or from other sources or places, or from new construction, or the repair, alteration or improvement of any part of the Premises, or of the equipment, fixtures or appurtenances applicable thereto, and regardless of whether the cause of such damages or injury or the means of repairing the same is inaccessible to Lessee. Lessor shall not be liable for any damages arising from any act or negligence of any other tenant, occupant or user of the Premises.

8. Improvements

a. No improvements shall be placed upon the Premises by Lessee or become a part of the real property, without Lessor's prior written consent.

b. Other Improvements to the Premises. Lessee agrees all improvements to be done on Lessor's land shall receive Lessor's prior written consent. Further, where applicable, all proposed improvements shall be found in general conformance with the adopted Down Town Masterplan prepared by MIG approved July 7, 2010, as that Masterplan may be amended or replaced. Lessee agrees to cooperate fully with the Lessor for all improvements built by the Lessor on Lessor's property. Lessor agrees that any improvements built by Lessor on the

Premises shall not interfere with Lessee's general use and enjoyment of the Premises. This provision does not apply to Lessee's improvements to the Building.

9. Reservations, Title and Prior Rights.

a. Lessor reserves to itself, its agents and contractors, the right to enter the Premises at such time as will not unreasonably interfere with Lessee's use of the Premises.

b. Lessee acknowledges that Lessor makes no representations or warranties, express or implied, concerning the title to the Premises, and that the rights granted to Lessee under this Agreement do not extend beyond such right, title or interest as Lessor may have in and to the Premises. Without limitation of the foregoing, this Agreement is made subject to all outstanding rights, whether or not of record. Lessor reserves the right to renew any such outstanding rights granted by Lessor or Lessor's predecessors.

10. Taxes and Assessments.

a. Personal Property Taxes. Lessee shall pay, prior to delinquency, all taxes levied during the life of this Agreement on all personal and real property and improvements on the Premises not belonging to Lessor. If such taxes are paid by Lessor, either separately or as a part of the levy on Lessor's real property, Lessee shall reimburse Lessor in full within thirty (30) days after rendition of Lessor's bill, unless Lessee reasonably disputes such tax.

b. Possessory Interest Taxes. In the event, that pursuant to Revenue and Taxation Code section 107.6, there will be possessory interest taxes imposed on Lessee's possession or right to possession to the Premises, Lessee shall be responsible for the payment of possessory interest taxes imposed on Lessee's possession or right to possession to the Premises pursuant to this Agreement, and of any other special assessments or taxes imposed on the Premises during the course of this Agreement. Lessee shall pay all such taxes and assessments on or before the date on which they are due.

11. Water Rights.

This Agreement does not include any right to the use of water under any water right of Lessor, or to establish any water rights except in the name of Lessor.

12. Care and Use of Premises.

a. Lessee shall use reasonable care and caution against damage or destruction to the Premises. Lessee shall not use or permit the use of the Premises for any unlawful purpose, maintain any nuisance, permit any waste or use the Premises in any way that creates a hazard to persons or property. Lessee shall be responsible for all maintenance and repair for the Premises, including but not limited to, the building and surrounding sidewalks, driveways and parking lot. in the condition premises are as of the date of this lease. Lessee shall keep the sidewalks and public ways on the Premises free and clear from any substance which might create a hazard.

b. Lessee shall not permit any sign on the Premises, except signs relating to Lessee's business, and the subtenants of Lessee, in compliance with the Loomis Zoning Ordinance.

c. If any improvements on the Premises other than the Lessor's improvements are damaged or destroyed by fire or other casualty, Lessee shall, within thirty (30) days after such casualty, remove all debris resulting therefrom. If Lessee fails to do so, Lessor may remove such debris, and Lessee agrees to reimburse Lessor for all expenses incurred within thirty (30) days after rendition of Lessor's bill.

d. Lessee shall comply with all governmental laws, ordinances, rules, regulations and orders relating to Lessee's use of the Premises.

13. Hazardous Materials, Substances and Wastes.

a. Lessee shall be responsible for, and shall indemnify and hold Lessor harmless for, all damages, losses, costs, expenses, claims, fines and penalties related in any manner to any Hazardous Substance use of the Premises (or of any property in proximity to the Premises) during the term of this Agreement or, if longer, during Lessee's occupancy of the Premises, regardless of Lessor's consent to such use or any negligence, misconduct or strict liability of Lessor, including without limitation, (i) any diminution in the value of the Premises and/or any adjacent property, and (ii) the cost and expense of clean-up, restoration, containment, remediation, decontamination, removal, investigation, monitoring, closure or post-closure. Notwithstanding the foregoing, Lessee shall not be responsible for Hazardous Substances (i) existing on, in or under the Premises prior to the earlier to occur of the commencement of the term of this Agreement or Lessee's taking occupancy of the Premises, or (ii) migrating from adjacent property not controlled by Lessee, or (iii) placed on, in or under the Premises by Lessor, except where the Hazardous Substance is discovered by, or the contamination is exacerbated by, the excavation or investigation undertaken by or at the behest of Lessee. Lessee shall have the burden of proving by a preponderance of the evidence that any of the foregoing exceptions to Lessee's responsibilities for Hazardous Substances applies.

b. For purposes of this Agreement, the term "Hazardous Substance" shall mean (i) those substances included within the definitions of "hazardous substance," "pollutant," "contaminant," or "hazardous waste," in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 United States Code sections 9601, et seq., as

amended or in RCRA, the regulations promulgated pursuant to either such Act, or state laws and regulations similar to or promulgated pursuant to either such Act, (ii) any material, waste or substance which is (a) petroleum, (b) asbestos, (c) flammable or explosive, or (d) radioactive; and (iii) such other substances, materials and wastes which are or become regulated or classified as hazardous or toxic under any existing or future federal, state or local law.

14. Utilities.

a. Lessee will arrange and pay for all utilities and services supplied to the Premises or to Lessee.

b. All utilities and services shall be separately metered to Lessee. If not separately metered, Lessee shall pay its proportionate share as reasonably determined by Lessor.

15. Liens.

Lessee shall not allow any liens to attach to the Premises for any services, labor or materials furnished to the Premises or otherwise arising from Lessee's use of the Premises. Lessor shall have the right to discharge any such liens at Lessee's expense.

16. Default.

The occurrence of any one or more of the following events shall constitute a material default of this Agreement by Lessee: (i) the failure of Lessee to make any payment of Rent or other payment required to be made by Lessee hereunder, as and when due, where such failure shall continue for a period of five (5) days after written notice by Lessor to Lessee; (ii) failure of Lessee to observe or perform any of the covenants or obligations to be observed or performed by Tenant, other than the payment of sums hereunder, where after written notice is given by Lessor to Lessee specifying the default, Lessee fails either to immediately commence to cure the default, or to complete the cure expeditiously, but in all events within thirty (30) days after the default notice is given, or (iii) Lessee abandons the Premises for a period of one hundred twenty (120) consecutive days.

17. Lessor's Remedies.

Lessor's remedies for Lessee's default are to (a) enter and take possession of the Premises, without terminating the Agreement, and relet the Premises on behalf of Lessee, collect and receive the Rent from reletting, and charge Lessee for the cost of reletting, and/or (b) terminate this Agreement as provided in Section 15 above and sue Lessee for damages, and/or (c) exercise such other remedies as Lessor may have at law or in equity. Lessor may enter and take possession of the Premises by self-help, by changing locks if necessary, and may lock out Lessee, all without being liable for damages.

18. Vacation of Premises; Removal of Lessee's Property.

a. Upon termination howsoever of this Agreement, Lessee shall have peaceably and quietly vacated and surrendered possession of the Premises to Lessor, without Lessor giving any notice to quit or demand for possession.

b. The expiration or termination of this Agreement and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Agreement as to matters occurring or accruing during the Term hereof, or by reason of Lessee's occupancy of the Premises.

19. Notices.

Any notice, consent or approval to be given under this Agreement shall be in writing, and personally served, sent by a reputable courier service, or sent by certified mail, postage prepaid, return receipt requested, to Lessor at the address contained in Section 4 above; and to Lessee at P. O. Box 1152, Loomis, CA 95650, or to such other address as a party may designate in notice given to the other party. Mailed notices shall be deemed served five (5) days after deposit in the U.S. Mail. Notices which are personally served or sent by courier service shall be deemed served upon receipt.

20. Assignment.

a. Lessee may sublease the Premises or assign this Agreement, by operation of law or otherwise, only if Lessee provides Lessor with advance notice of the assignment or sublease and the subtenant's or assignee's written agreement for the benefit of Lessor to be bound by the terms of this Agreement. No subletting or assignment shall relieve Lessee of its obligations under this Agreement. Any assignment or sublease by Lessee in violation of this Subsection 19.a shall be void and ineffective and shall, at the option of Lessor, result in the immediate termination of this Agreement.

b. Subject to this Section 19, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

21. Attorney's Fees.

If either party retains an attorney to enforce this Agreement, the prevailing party is entitled to recover reasonable attorney's fees and costs.

22. Rights and Obligations of Lessor.

If any of the rights and obligations of Lessor under this Agreement are substantially and negatively affected by any changes in the laws applicable to this Agreement, whether statutory, regulatory or under federal or state judicial precedent, then Lessor may require Lessee to enter into an amendment to this Agreement to eliminate the negative effect on Lessor's rights and

obligations to the extent reasonably possible.

23. Waivers.

No waiver by Lessor of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Lessee of the same or any other provision. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessee's consent to or approval of any subsequent act by Lessee. The acceptance of Rent hereunder by Lessor shall not be a waiver of any preceding breach by Lessee of any provision hereof, other than the failure of Lessee to pay the particular Rent so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such Rent.

24. No Development Fees Owed.

The Town and the Foundation acknowledge and agree that no development, mitigation, impact or any other type of fee is owed by the Foundation to the Town related to the Building.

25. Entire Agreement.

This Agreement is the entire agreement between the parties, and supersedes all other oral or written agreements between the parties pertaining to this transaction. This Agreement may be amended only by a written instrument signed by Lessor and Lessee.

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EXHIBIT "A"

PARCEL 3

LEGAL DESCRIPTION:

Being all that certain real property situate in the Town of Loomis, County of Placer, State of California, and lying in its entirety within Section 9, Township 11 North, Range 7 East, Mount Diablo Meridian and being all of Parcel 6 as described in Quit Claim Deed to the Town of Loomis recorded in Document No. 08-0095584 and all of Parcel 5 as described in Quit Claim Deed to the Town of Loomis recorded in Document No. 08-0095585 of Official Placer County Records, and being more particularly described as follows:

Commencing at the Northeast corner of said Section 9, Township 11 North, Range 7 East, Mount Diablo Meridian as said corner is shown on that certain parcel map filed in Book 12 of Parcel Maps, at Page 24 of Official Placer County Records; thence South $20^{\circ}15'17''$ West 930.47 feet to the most Southerly corner of said Parcel 5 as said parcel is described in said document, said point being the **Point of Beginning** of this description; thence from said Point of Beginning Northwesterly along the Southwesterly lines of said Parcel 5 and said Parcel 6 as said parcel is described in said document, North $54^{\circ}09'57''$ West 150.00 feet to the most Westerly corner of said Parcel 6; thence from said corner along the Northwesterly line of said Parcel 6, North $36^{\circ}09'53''$ East 812.13 feet to the most Northerly corner of said Parcel 6; thence from said corner in a Southwesterly direction along the Easterly lines of said Parcels 5 & 6, South $22^{\circ}09'00''$ West 619.39 feet to a Southeasterly corner of said Parcel 5; thence from said corner along the Southeasterly line of said Parcel 5, South $36^{\circ}09'53''$ West 210.32 feet to the Point of Beginning of this description, containing 1.76 acres more or less of land.

Surveyors Group, Inc.
TOL 10-07
02-18-10

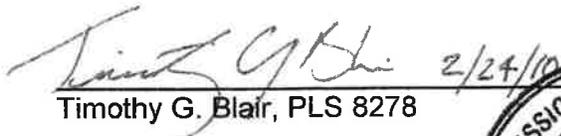
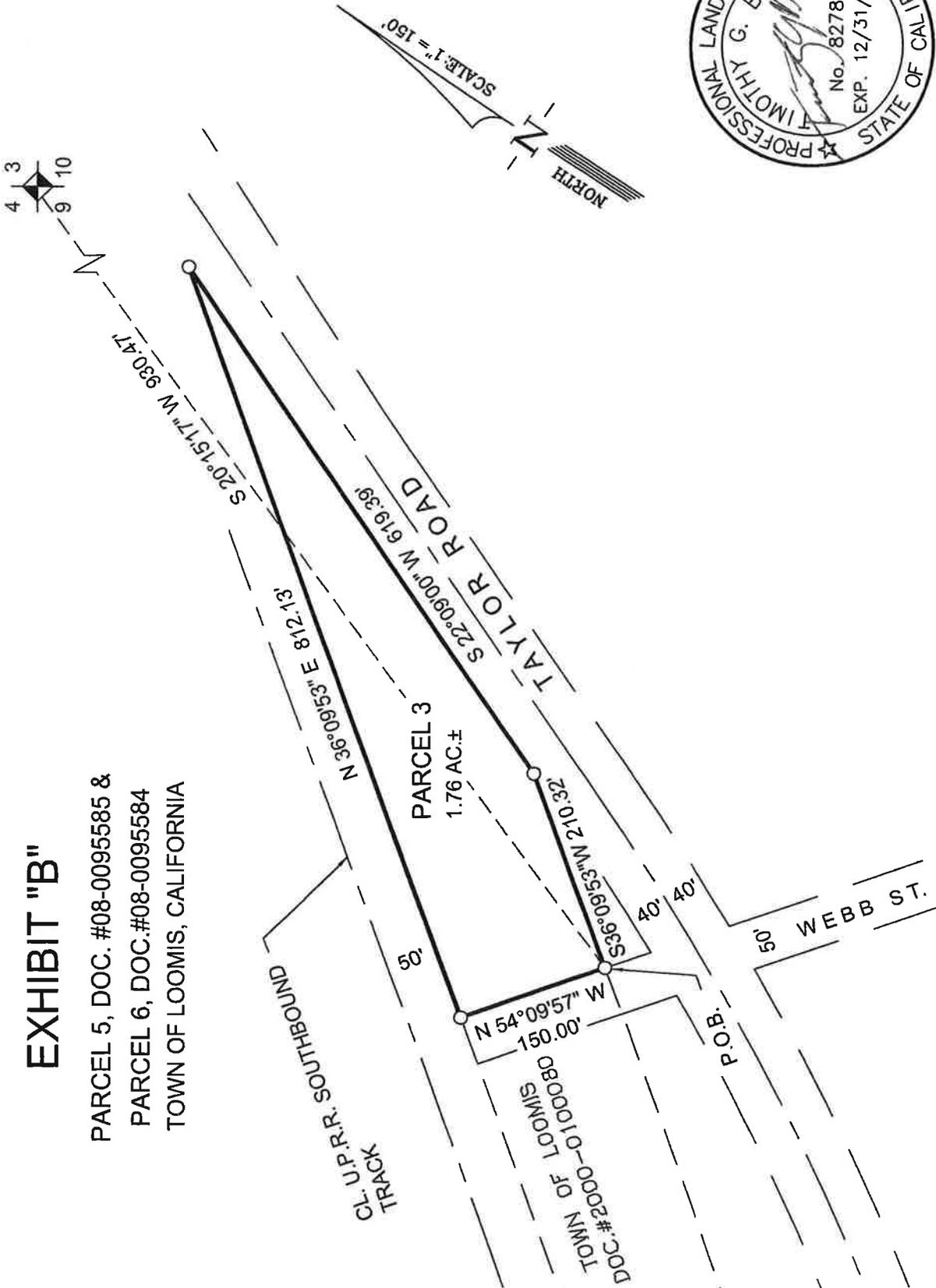
 2/24/10
Timothy G. Blair, PLS 8278



EXHIBIT "B"

PARCEL 5, DOC. #08-0095585 &
PARCEL 6, DOC.#08-0095584
TOWN OF LOOMIS, CALIFORNIA



SURVEYORS GROUP, INC.
LAND SURVEYORS CIVIL ENGINEERS
9001 FOOTHILLS BOULEVARD, SUITE 150
ROSEVILLE, CALIFORNIA 95747
(916) 789-0822 (fax)
email: surveyorsgroup@surrest.net

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

LESSOR:

LESSEE:

By: _____
Sandra Calvert, Mayor

By: _____
Randy Elder, President

ATTEST:

By: _____
Town Clerk

APPROVED AS TO FORM:

By: _____
Town Attorney

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
PLACER COUNTY)

On _____, 20__ before me, _____,
Notary Public, personally appeared _____, who proved to me
on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

NOTARY PUBLIC [SEAL]

Exhibit A

(See Attached Legal Description of the Premises)

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