

TO: TOWN COUNCIL

FROM: TOWN MANAGER 

RE: CONSENT ITEM  
RESOLUTION REVISING LEASE AGREEMENT WITH SOUTH PLACER  
HERITAGE FOUNDATION ON THE BLUE GOOSE SHED

#### **ISSUE**

Council is asked to approve certain revisions to the South Placer Heritage Foundation Blue Goose Shed lease.

#### **RECOMMENDATION**

Approve resolution authorizing the lease revisions noted.

#### **MONEY**

A money issue concerns changing the annual percentage increase from the "greater of 3% or CPI" to the "greater of 2% or CPI." This would result in a slight loss of revenue, about \$13 to \$20 per month if the CPI factor falls below 2%. It is unlikely however that this would be significant over the term of the agreement. The 3% came from the Union Pacific lease agreement that the Town took over.

#### **CEQA**

There are no CEQA issues associated with the lease revisions.

#### **DISCUSSION**

When the Town acquired the Union Pacific railroad property it included the UP leases that were on the property among which was the one with the South Placer Heritage Foundation for the Blue Goose shed. The Town took over the then existing leases and in time put the language in a form suitable to the Town (the form in the attached lease).

The Foundation has recently been trying to recruit businesses to utilize vacant portions of the Blue Goose shed. A sticking point in that effort has been the current term of the lease with the Town which is for a period of 5 years with one 5 year extension. The Foundation would like to extend the term and thus give certainty to a business that they could remain at the Blue Goose shed for a number of years, 30 years is recommended which is the same time period as the land lease to the Chamber of Commerce on Doc Barnes Rd. In the course of discussions with Foundation several other clauses in the lease agreement were also reviewed for changes. Specific revisions are noted on the Resolution and noted on the attached lease in a box at the particular clause being revised.

**TOWN OF LOOMIS**

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOOMIS APPROVING A REVISED LEASE AGREEMENT WITH THE SOUTH PLACER HERITAGE FOUNDATION FOR USE OF TOWN OWNED PROPERTY AT 3550 TAYLOR RD, LOOMIS, CA

WHEREAS, the Town acquired certain property that was leased by the South Placer Heritage Foundation; and

WHEREAS, the Town and Foundation developed a mutually acceptable lease in 2010; and

WHEREAS, the Foundation has requested certain changes in the lease agreement and the Town is agreeable to the changes requested.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY the Town Council of the Town of Loomis to approve the attached South Placer Heritage Foundation Lease with revisions noted at Articles 1, 2, 3, 5, 6b, and 11b.

PASSED AND ADOPTED this 8<sup>th</sup> day of February 2011, by the following vote:

AYES:  
NOES:  
ABSENT:

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Clerk

\_\_\_\_\_  
Town Attorney

## SOUTH PLACER HERITAGE FOUNDATION LEASE

**This Agreement** is entered into this \_\_\_\_ of \_\_\_\_\_, 2011 [the Effective Date] by and between the Town of Loomis, a municipal corporation [Lessor] and South Placer Heritage Foundation, Inc. [Lessee].

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

1. Premises.

Lessor is the owner of that real property commonly known as the location of the Blue Goose Shed and more particularly described in Exhibit A [the Premises].

**ADD PHRASE:** "...and South Placer Heritage Foundation is the owner of the building commonly known as the Blue Goose."

2. Use.

The Premises shall only be used by Lessee for the operation of a food store, newspaper office and events hall.

**REPLACE WITH THE PHRASE:** "The Premises shall only be used by Lessee and it's tenants for uses that are consistent with the Town Zoning Code for the zoning applicable to 3550 Taylor Road which is the location of the Blue Goose shed. Lessee shall have access to the Town owned land surrounding the Blue Goose shed building for parking of Lessee and Lessee's tenants. Parking will be made available during public events by prior arrangement and agreement worked out by Lessor and Lessee."

3. Term.

The term of this Agreement shall be for five (5) years beginning on the Effective Date and terminating upon the fifth anniversary thereof, subject to Lessee's right to extend the term for an additional five (5) years 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 five years, prior to the expiration of the first term.

**CHANGE TERM TO BE:** 10 years with two 10 year extensions for a total of 30 years.

4. Rent.

Within fifteen (15) business days after the Effective Date and on the first day of each month thereafter, Lessee shall pay to Lessor as rent One Thousand Three Hundred & Thirty-One & 69/100 Dollars (\$1,331.69 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.

5. Rent Adjustments.

a. The rent shall be automatically increased without further notice to the Lessee by the greater of: (i) three percent 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-month period immediately preceding each anniversary of the Effective Date, adjusted to the nearest one-tenth of one percent.

<b>CHANGE:</b> change three percent to two percent.
---

b. The Consumer Price Index used herein is Urban Wage Earners and Clerical Workers (CPI-W, U.S. City Average, All Items, 1967=100) [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, no more than once every three (3) years, Lessor may re-determine the underlying Rent upon providing written notice of same to the Lessee.

6. Insurance and Indemnification

a. 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 \$2,000,000 per occurrence and an aggregate limit of not less than \$4,000,000;

(ii). Business Automobile Liability: A combined single limit of not less than \$2,000,000 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 \$5,000,000 per occurrence and an aggregate limit of at least \$10,000,000. 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 \$1,000,000 per loss, and an annual aggregate of \$2,000,000; 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. 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 of the Premises by Lessee, its agents, employees or invitees;
- (ii) breach of this Agreement by Lessee; or
- (iii) the location of the Premises or any part thereof;

and regardless of whether such liability, cost or expense is contributed to by the negligence, active or passive, of Lessor.

**STRIKE PHRASE:** "and regardless of whether such liability, cost or expense is contributed to by the negligence, active or passive, of Lessor."

7. Improvements / Fence - Barricade.

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. Lessor approves and Lessee agrees, at Lessee's sole cost and expense, to construct and maintain at all times during the term of this Agreement a fence – barricade of a design satisfactory to Lessor at the location shown in Exhibit B.

8. 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 Lease 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.

9. Taxes and Assessments.

Lessee shall pay, prior to delinquency, all taxes levied during the life of this Lease on all personal 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.

10. 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.

11. 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 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.

**ADD PHRASE:** "...and the tenants 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.

12. Hazardous Materials, Substances and Wastes.

a. Lessee shall be responsible 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 Lease 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 U.S.C. §§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.

13. 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.

14. 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.

15. Termination.

Lessor may terminate this Agreement for Lessee's default by giving Lessee notice of termination, if Lessee (i) defaults under any obligation of Lessee and, 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 (ii) Lessee abandons the Premises for a period of one hundred twenty (120) consecutive days.

16. 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.

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

a. Upon termination howsoever of this Agreement, Lessee (i) 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, and (ii) shall have removed from the Premises all structures, property and other materials not belonging to Lessor, and restored the surface to as good a condition as the same was in before such structures were erected, including without limitation, the removal of foundations, the filling in of excavations and pits, and the removal of debris and rubbish.

b. If Lessee has not completed such removal and restoration within thirty (30) days after termination of this Agreement, Lessor may, at its election, and at any time, (i) perform the work and Lessee shall reimburse Lessor for the cost thereof within thirty (30) days after bill is rendered, (ii) take title to all or any portion of such structures or property by giving notice of such election to Lessee, and/or (iii) treat Lessee as a holdover tenant at will until such removal and restoration is completed.

18. Notices.

Any notice, consent or approval to be given under this Agreement shall be in writing, and personally served, sent by 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.

19. 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 Sub-section 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.

20. 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.

21. 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.

22. 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.

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

**LESSOR**

**LESSEE**

By: \_\_\_\_\_  
Perry Beck, Town Manager

By: \_\_\_\_\_  
Randy Elder, President

**ATTEST:**

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Town Clerk

By: \_\_\_\_\_  
Town Attorney

**CERTIFICATE OF ACKNOWLEDGMENT**

STATE OF CALIFORNIA    )  
  ) ss.  
PLACER COUNTY            )

On \_\_\_\_\_, before me, \_\_\_\_\_, personally  
appeared \_\_\_\_\_, personally known  
to me (or 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.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

